



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART IV

#### PETITION PROCEDURE

##### *Judicial examination*

#### **36 Judicial examination: questioning by prosecutor**

- (1) Subject to the following provisions of this section, an accused on being brought before the sheriff for examination on any charge (whether the first or a further examination) may be questioned by the prosecutor in so far as such questioning is directed towards eliciting any admission, denial, explanation, justification or comment which the accused may have as regards anything to which subsections (2) to (4) below apply.
- (2) This subsection applies to matters averred in the charge, and the particular aims of a line of questions under this subsection shall be to determine—
  - (a) whether any account which the accused can give ostensibly discloses a defence; and
  - (b) the nature and particulars of that defence.
- (3) This subsection applies to the alleged making by the accused, to or in the hearing of a constable, of an extrajudicial confession (whether or not a full admission) relevant to the charge, and questions under this subsection may only be put if the accused has, before the examination, received from the prosecutor or from a constable a written record of the confession allegedly made.
- (4) This subsection applies to what is said in any declaration emitted in regard to the charge by the accused at examination.
- (5) The prosecutor shall, in framing questions in exercise of his power under subsection (1) above, have regard to the following principles—

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*Status: This is the original version (as it was originally enacted).*

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- (a) the question should not be designed to challenge the truth of anything said by the accused;
  - (b) there should be no reiteration of a question which the accused has refused to answer at the examination; and
  - (c) there should be no leading questions,
- and the sheriff shall ensure that all questions are fairly put to, and understood by, the accused.
- (6) The accused shall be told by the sheriff—
    - (a) where he is represented by a solicitor at the judicial examination, that he may consult that solicitor before answering any question; and
    - (b) that if he answers any question put to him at the examination under this section in such a way as to disclose an ostensible defence, the prosecutor shall be under the duty imposed by subsection (10) below.
  - (7) With the permission of the sheriff, the solicitor for the accused may ask the accused any question the purpose of which is to clarify any ambiguity in an answer given by the accused to the prosecutor at the examination or to give the accused an opportunity to answer any question which he has previously refused to answer.
  - (8) An accused may decline to answer a question under subsection (1) above; and, where he is subsequently tried on the charge mentioned in that subsection or on any other charge arising out of the circumstances which gave rise to the charge so mentioned, his having so declined may be commented upon by the prosecutor, the judge presiding at the trial, or any co-accused, only where and in so far as the accused (or any witness called on his behalf) in evidence avers something which could have been stated appropriately in answer to that question.
  - (9) The procedure in relation to examination under this section shall be prescribed by Act of Adjournal.
  - (10) Without prejudice to any rule of law, on the conclusion of an examination under this section the prosecutor shall secure the investigation, to such extent as is reasonably practicable, of any ostensible defence disclosed in the course of the examination.
  - (11) The duty imposed by subsection (10) above shall not apply as respects any ostensible defence which is not reasonably capable of being investigated.