



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VII

#### SOLEMN PROCEEDINGS

##### *Pre-trial proceedings*

#### **[<sup>F1</sup>72 Preliminary hearing: procedure up to appointment of trial diet**

- (1) A preliminary hearing shall be conducted in accordance with this section and section 72A.
- (2) The court shall—
  - (a) where the accused is charged with an offence to which section 288C [<sup>F2</sup>or 288DC] of this Act applies; or
  - (b) in any case—
    - (i) in respect of which section 288E of this Act applies; or
    - (ii) in which an order has been made under section 288F(2) of this Act, before taking any further step under this section, ascertain whether the accused has engaged a solicitor for the purposes of the conduct of his case at or for the purposes of the preliminary hearing.
- (3) After complying with subsection (2) above, the court shall dispose of any preliminary pleas (within the meaning of section 79(2)(a) of this Act) of which a party has given notice not less than 7 clear days before the preliminary hearing to the court and to the other parties.
- (4) After disposing of any preliminary pleas under subsection (3) above, the court shall require the accused to state how he pleads to the indictment.
- (5) If the accused tenders a plea of guilty, section 77 of this Act shall apply.
- (6) After the accused has stated how he pleads to the indictment, the court shall, unless a plea of guilty is tendered and accepted—

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- (a) in any case—
    - (i) where the accused is charged with an offence to which section 288C [F<sup>3</sup> or 288DC] of this Act applies;
    - (ii) in respect of which section 288E of this Act applies; or
    - (iii) in which an order has been made under section 288F(2) of this Act, ascertain whether the accused has engaged a solicitor for the purposes of his defence at the trial;
  - (b) unless it considers it inappropriate to do so at the preliminary hearing, dispose of—
    - (i) any preliminary issues (within the meaning of section 79(2)(b) of this Act) of which a party has given notice not less than 7 clear days before the preliminary hearing to the court and to the other parties;
    - (ii) any [F<sup>4</sup> vulnerable] witness notice under section 271A(2) or vulnerable witness application under section 271C(2) appointed to be disposed of at the preliminary hearing;
    - (iii) subject to subsection (8) below, any application under section 275(1) or 288F(2) of this Act made before the preliminary hearing [F<sup>5</sup> (to the extent that the application has not already been disposed of)]; and
    - (iv) any other matter which, in the opinion of the court, could be disposed of with advantage before the trial;
  - (c) ascertain whether there is any objection to the admissibility of any evidence which any party wishes to raise despite not having given the notice referred to in paragraph (b)(i) above, and—
    - (i) if so, decide whether to grant leave under section 79(1) of this Act for the objection to be raised; and
    - (ii) if leave is granted, dispose of the objection unless it considers it inappropriate to do so at the preliminary hearing;
  - (d) ascertain which of the witnesses included in the list of witnesses are required by the prosecutor or the accused to attend the trial;
  - (e) ascertain whether subsection (7) below applies to any person who is to give evidence at or for the purposes of the trial or to the accused and, if so, consider whether it should make an order under section 271A(7) or 271D(2) of this Act in relation to the person or, as the case may be, the accused; and
  - (f) ascertain, so far as is reasonably practicable—
    - (i) the state of preparation of the prosecutor and the accused with respect to their cases; and
    - (ii) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of this Act.
- (7) This subsection applies—
- (a) to a person who is to give evidence at or for the purposes of the trial if that person is, or is likely to be, a vulnerable witness;
  - (b) to the accused if, were he to give evidence at or for the purposes of the trial, he would be, or would be likely to be, a vulnerable witness.
- (8) Where any application or notice such as is mentioned in subsection (6)(b)(iii) above is required by the provision under which it is made or lodged, or by any other provision of this Act, to be made or lodged by a certain time, the court—
- (a) shall not be required under that subsection to dispose of it unless it has been made or lodged by that time; but

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- (b) shall have power to dispose of it to the extent that the provision under which it was made, or any other provision of this Act, allows it to be disposed of notwithstanding that it was not made or lodged in time.
- (9) Where the court decides not to dispose of any preliminary issue, application, notice, objection or other matter referred to in subsection (6)(b) or (c) above at the preliminary hearing, it may—
  - (a) appoint a further diet, to be held before the trial diet appointed under section 72A of this Act, for the purpose of disposing of the issue, application, notice, objection or matter; or
  - (b) appoint the issue, application, notice, objection or other matter to be disposed of at the trial diet.]

#### Textual Amendments

- F1** Ss. 72-72D substituted for ss. 72-73A (1.2.2005, 1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 1(3)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)
- F2** Words in s. 72(2)(a) inserted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\)](#), s. 15(2), **sch. para. 4(5)(a)**; S.S.I. 2018/387, **reg. 2** (with **reg. 7**)
- F3** Words in s. 72(6)(a)(i) inserted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\)](#), s. 15(2), **sch. para. 4(5)(b)**; S.S.I. 2018/387, **reg. 2** (with **reg. 7**)
- F4** Word in s. 72(6)(b)(ii) substituted (1.9.2015) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), **ss. 11(2)**, 34; S.S.I. 2015/200, **art. 2(2)**, **sch.** (with arts. 1(3), 4)
- F5** Words in s. 72(6)(b)(iii) inserted (20.1.2020) by [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019 \(asp 8\)](#), **ss. 5(7)**, 12(2); S.S.I. 2019/392, **reg. 2**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5A inserted by [2010 asp 13 Sch. 7 para. 26](#)
- s. 13(1B)(1C) inserted by [2006 asp 10 s. 82\(2\)](#)
- s. 13(2)(aa) inserted by [2006 asp 10 s. 82\(3\)\(b\)](#)
- s. 13(3A) inserted by [2006 asp 10 s. 82\(4\)](#)
- s. 13(5)(ba) inserted by [2006 asp 10 s. 82\(5\)\(a\)](#)
- s. 13(6)(a)(iii) and word inserted by [2006 asp 10 s. 82\(6\)\(b\)](#)
- s. 13(8) inserted by [2006 asp 10 s. 82\(7\)](#)
- s. 22(5A) inserted by [2007 asp 6 s. 7\(2\)\(g\)](#)
- s. 22A(1A) inserted by [2023 asp 4 s. 1\(2\)](#)
- s. 23B(1)(1A) substituted for s. 23B(1) by [2023 asp 4 s. 2\(2\)\(a\)](#)
- s. 23B(6A) inserted by [2023 asp 4 s. 1\(3\)\(c\)](#)
- s. 23B(8)-(10) inserted by [2023 asp 4 s. 2\(2\)\(c\)](#)
- s. 23C(1A) inserted by [2023 asp 4 s. 2\(3\)\(b\)](#)
- s. 23C(3) inserted by [2023 asp 4 s. 2\(3\)\(c\)](#)
- s. 24(2C) inserted by [2023 asp 4 s. 4\(4\)](#)
- s. 24(2AA) inserted by [2023 asp 4 s. 4\(2\)](#)
- s. 73A inserted by [2004 asp 3 s. 2\(3\)](#)
- s. 167(7D)(7E) inserted by [2007 asp 17 sch. 4 para. 1\(3\)](#)
- s. 167(7D) words substituted by [2010 asp 13 Sch. 3 para. 16\(2\)](#)
- s. 167(7E) words substituted by [2010 asp 13 Sch. 3 para. 16\(3\)](#)
- s. 194ZA repealed by [2014 asp 18 sch. 3 para. 25](#)
- s. 200A inserted by [2016 asp 1 s. 85](#)
- s. 205A added by [1997 c. 48 s. 1\(1\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by 2003 asp 7, s. 19(3); S.S.I. 2003/288, art. 2, Sch.)
- s. 210ZA inserted by [2023 asp 4 s. 5](#)
- s. 249(4A)-(4D) inserted by [2014 asp 1 s. 24](#)
- s. 271D(4A) inserted by [2019 asp 8 s. 6\(4\)](#)
- s. 271F(2)(aa) inserted by [2019 asp 8 s. 10\(4\)](#)
- s. 271AA inserted by [2019 asp 8 s. 6\(2\)](#)
- s. 271BZD inserted by [2019 asp 8 s. 3\(2\)](#)
- s. 288AB288AC inserted by [2024 asp 1 s. 32\(3\)](#)
- Sch. 5A added by [1997 c. 48 s. 1\(2\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by 2003 asp 7, s. 19(3); S.S.I. 2003/288, art. 2, Sch.)