



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART VII

SOLEMN PROCEEDINGS

Notice by accused

[^{F1}79 Preliminary pleas and preliminary issues.

(1) Except by leave of the court on cause shown, no preliminary plea or preliminary issue shall be made, raised or submitted in any proceedings on indictment by any party unless his intention to do so has been stated in a notice under section 71(2) or, as the case may be, 72(3) or (6)(b)(i) of this Act.

[^{F2}(1A) Subsection (1) is subject to section 271Q(8).]

(2) For the purposes of this section and those sections—

(a) the following are preliminary pleas, namely—

- (i) a matter relating to the competency or relevancy of the indictment;
- (ii) an objection to the validity of the citation against a party, on the ground of any discrepancy between the record copy of the indictment and the copy served on him, or on account of any error or deficiency in such service copy or in the notice of citation; and
- (iii) a plea in bar of trial; and

(b) the following are preliminary issues, namely—

- (i) an application for separation or conjunction of charges or trials;
- [^{F3}(ii) a preliminary objection under any of the provisions listed in subsection (3A);]
- [^{F4}(iia) an application for a witness anonymity order under section 271P of this Act;]
- ^{F5}(iii)
- (iv) an objection by a party to the admissibility of any evidence;

Changes to legislation: Criminal Procedure (Scotland) Act 1995, Section 79 is up to date with all changes known to be in force on or before 20 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (v) an assertion by a party that there are documents the truth of the contents of which ought to be admitted, or that there is any other matter which in his view ought to be agreed; and
 - (vi) any other point raised by a party, as regards any matter not mentioned in sub-paragraphs (i) to (v) above, which could in his opinion be resolved with advantage before the trial.
- (3) No discrepancy, error or deficiency such as is mentioned in subsection (2)(a)(ii) above shall entitle an accused to object to plead to the indictment unless the court is satisfied that the discrepancy, error or deficiency tended substantially to mislead and prejudice the accused.
- [^{F6}(3A) For the purpose of subsection (2)(b)(ii), the provisions are—
- (a) section 27(4A)(a) or (4B), 90C(2A), 255 or 255A of this Act,
 - (b) section 9(6) of the Antisocial Behaviour etc. (Scotland) Act 2004 or that section as applied by section 234AA(11) of this Act,
 - (c) paragraph 6(5)(b) of schedule 1 to the Criminal Justice (Scotland) Act 2016.
 - [section 1A(2)(b) of the Abusive Behaviour and Sexual Harm (Scotland) Act ^{F7}(d) 2016 or section 7(2)(b) of the Domestic Abuse (Scotland) Act 2018.]
- (4) Where the court, under subsection (1) above, grants leave for a party to make, raise or submit a preliminary plea or preliminary issue (other than an objection to the admissibility of any evidence) without his intention to do so having been stated in a notice as required by that subsection, the court may—
- (a) if it considers it appropriate to do so, appoint a diet to be held before the trial diet for the purpose of disposing of the plea or issue; or
 - (b) appoint the plea or issue to be disposed of at the trial diet.]

Textual Amendments

- F1** S. 79 substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 13(1), 27(1)**; [S.S.I. 2004/405](#), **art. 2**, Sch. 1 (subject to arts. 3-5)
- F2** S. 79(1A) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 90(2)(a)(i)**, 206(1); [S.S.I. 2011/178](#), **art. 2**, sch.
- F3** S. 79(2)(b)(ii) substituted (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), **sch. 2 para. 33(a)**; [S.S.I. 2017/345](#), **art. 3**, sch.
- F4** S. 79(2)(b)(iia) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 90(2)(a)(ii)**, 206(1); [S.S.I. 2011/178](#), **art. 2**, sch.
- F5** S. 79(2)(b)(iii) repealed (17.1.2017) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **ss. 78(2)(d)**, 117(2); [S.S.I. 2016/426](#), **art. 2**, sch. (with art. 3)
- F6** S. 79(3A) inserted (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), **sch. 2 para. 33(b)**; [S.S.I. 2017/345](#), **art. 3**, sch.
- F7** S. 79(3A)(d) inserted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\)](#), s. 15(2), **sch. para. 10(2)**; [S.S.I. 2018/387](#), **reg. 2** (with reg. 7)

Changes to legislation:

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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. 44(5A)(5B) inserted by [2024 asp 5 s. 19\(2\)\(c\)](#)
- s. 49(1)-(1F) substituted for s. 49(1)-(3) by [2024 asp 5 s. 17\(2\)\(a\)](#)
- s. 49(4A)-(4C) inserted by [2024 asp 5 s. 17\(2\)\(c\)](#)
- s. 50(7) inserted by [2024 asp 5 s. 16\(2\)](#)
- s. 51(6)-(8) inserted by [2024 asp 5 s. 18\(2\)\(e\)](#)
- s. 70B and cross-heading inserted by [2024 asp 5 s. 16\(3\)](#)
- s. 73A inserted by [2004 asp 3 s. 2\(3\)](#)
- s. 142A inserted by [2024 asp 5 s. 16\(5\)](#)
- 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. 175(1)(ca) words substituted by [2024 asp 5 Sch. para. 7\(4\)\(a\)](#)
- 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. 208A inserted by [2024 asp 5 s. 19\(6\)](#)
- s. 210ZA inserted by [2023 asp 4 s. 5](#)
- s. 216(8)-(11) inserted by [2024 asp 5 s. 19\(7\)](#)
- 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\(3\)](#)
- s. 288BZA inserted by [2024 asp 5 s. 33\(2\)](#)

- 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.)