



Criminal Justice (Scotland) Act 1980

1980 CHAPTER 62

PART II

PROCEDURE AND EVIDENCE

Evidence

26 Routine evidence

- (1) For the purposes of any proceedings for an offence under any of the enactments specified in column 1 of Schedule 1 to this Act, a certificate purporting to be signed by a person or persons specified in column 2 thereof, and certifying the matter specified in column 3 thereof shall, subject to subsection (3) below, be sufficient evidence of that matter and of the qualification or authority of that person or those persons.
- (2) For the purposes of any summary criminal proceedings, a report purporting to be signed by two authorised forensic scientists shall, subject to subsection (3) below, be sufficient evidence of any fact (or conclusion as to fact) contained in the report and of the authority of the signatories.

In the foregoing provisions of this subsection, " authorised " means authorised by the Secretary of State to make a report to which this subsection shall apply.

- (3) Subsections (1) and (2) above shall not apply to a certificate, or as the case may be report, tendered on behalf of the prosecution—
 - (a) unless a copy has been served on the accused not less than fourteen days before his trial; or
 - (b) where the accused, not less than six days before his trial, or by such later time before his trial as the court may in special circumstances allow, has served notice on the prosecutor that the accused challenges the matter, qualification or authority mentioned in subsection (1) above or as the case may be the fact, conclusion or authority mentioned in subsection (2) above.
- (4) A copy of a certificate, or as the case may be report, required by subsection (3) above, or of a conviction or extract conviction required by subsection (8) below, to

Status: This is the original version (as it was originally enacted).

be served on the accused or of a notice required by either of those subsections or by subsection (6) or (7) below to be served on the prosecutor may either be personally served on the accused or the prosecutor (as the case may be) or sent to him by registered post or by the recorded delivery service; and a written execution purporting to be signed by the person who served such certificate or notice, together with, where appropriate, a post office receipt for the relative registered or recorded delivery letter shall be sufficient evidence of service of such a copy.

- (5) At any trial of an offence under summary procedure it shall be presumed that the person who appears in answer to the complaint is the person charged by the police with the offence unless the contrary is alleged.
- (6) Where in a trial an autopsy report is lodged as a production by the prosecutor it shall be presumed that the body of the person identified in that report is the body of the deceased identified in the indictment or complaint, unless the accused not less than six days before the trial, or by such later time before the trial as the court may in special circumstances allow, gives notice that the contrary is alleged.
- (7) At the time of lodging an autopsy or forensic science report as a production the prosecutor may intimate to the accused that it is intended that only one of the pathologists or forensic scientists (whom the prosecutor shall specify) purporting to have signed the report shall be called to give evidence in respect thereof; and the evidence of that pathologist or forensic scientist shall be sufficient evidence of any fact (or conclusion as to fact) contained in the report and of the qualifications of the signatories, unless the accused, not less than six days before the trial, or by such later time before the trial as the court may in special circumstances allow, serves notice on the prosecutor that he requires the attendance at the trial of the other pathologist or forensic scientist also.
- (8) In any proceedings for an offence under section 99 (b) of the Road Traffic Act 1972 (driving while disqualified) a conviction or an extract conviction—
- (i) of which a copy has been served on the accused not less than fourteen days before his trial;
 - (ii) which purports to be signed by the clerk of court; and
 - (iii) which shows that the person named therein is disqualified for holding or obtaining a driving licence,
- shall be sufficient evidence of the application of that disqualification to the accused, unless, not less than six days before his trial, he serves notice on the prosecutor that he denies such application.

27 Parties may examine each other's witnesses etc.

After section 82 of the 1975 Act there shall be inserted the following section—

“82A Parties may examine each other's witnesses etc.

It shall be competent for the prosecutor to examine any witness or put in evidence any production included in any list or notice lodged by the accused, and it shall be competent for an accused to examine any witness or put in evidence any production included in any list or notice lodged by the prosecutor or by a co-accused.”.

28 Co-accused competent witness for defence

In each of sections 141 and 346 of the 1975 Act (accused and spouse competent witnesses for defence)—

- (a) in paragraph (a) of the proviso, at the end there shall be added the words—
 - “or in accordance with subsection (2) or (3) below”;
- (b) the provisions of the section as so amended shall be subsection (1) of the section ; and
- (c) after that subsection there shall be added the following subsections—
 - “(2) The accused may—
 - (a) with the consent of a co-accused, call that other accused as a witness on the accused's behalf; or
 - (b) ask a co-accused any question in cross-examination if that co-accused gives evidence,
but he may not do both in relation to the same co-accused.
 - (3) The prosecutor or the accused may call as a witness a co-accused who has pleaded guilty to all charges against him which remain before the court (whether or not he has been sentenced); and the party calling such co-accused as a witness shall not require to give notice thereof, but the court may grant any other party such adjournment or postponement of the trial as may seem just.”.

29 Spouse to be competent witness

For each of sections 143 and 348 of the 1975 Act there shall be substituted the following section (with the appropriate section number)—

Spouse to be competent witness.

- (1) The spouse of a person charged with an offence may be called as a witness—
 - (a) by that person ;
 - (b) by a co-accused or by the prosecutor without the consent of that person.
- (2) Nothing in this section shall—
 - (a) make the spouse of an accused a compellable witness for a co-accused or for the prosecutor in a case where such spouse would not be so compellable at common law;
 - (b) compel a spouse to disclose any communication made between the spouses during the marriage.
- (3) The failure of the spouse of an accused to give evidence shall not be commented on by the defence or the prosecutor.”.

30 Additional evidence and evidence in replication

- (1) For section 149 of the 1975 Act (witness may be recalled) there shall be substituted the following sections—

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

“149 Additional evidence.

- (1) The judge may, on a motion of the prosecutor or defence made after the close of that party's evidence and before the commencement of the speeches to the jury, permit him to lead additional evidence; but such permission shall only be granted where the judge—
 - (a) considers that the additional evidence is *prima facie* material; and
 - (b) accepts that at the time the party's evidence was closed either—
 - (i) the additional evidence was not available and could not reasonably have been made available ; or
 - (ii) the materiality of such additional evidence could not reasonably have been foreseen by the party.
- (2) The judge may permit the additional evidence to be led notwithstanding that—
 - (a) a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 81 and 82(2) of this Act has not been given ; or
 - (b) a witness must be recalled.
- (3) The judge may, when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.

149A Evidence in replication.

- (1) The judge may, on a motion of the prosecutor made after the close of the defence evidence and before the commencement of the speeches to the jury, permit the prosecutor to lead additional evidence for the purpose of—
 - (a) contradicting evidence, led by the defence, which could not reasonably have been anticipated by the prosecutor ; or
 - (b) providing such proof as is mentioned in section 147 of this Act.
 - (2) The judge may permit the additional evidence to be led notwithstanding that—
 - (a) a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 81 and 82(2) of this Act has not been given; or
 - (b) a witness must be recalled.
 - (3) The judge may when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.”.
- (2) For section 350 of the 1975 Act (witness may be recalled) there shall be substituted the following sections—

“350 Additional evidence.

- (1) The judge may, on a motion of the prosecutor or defence made after the close of that party's evidence and before the prosecutor proceeds to address the judge on the evidence, permit that party to lead additional evidence; but such permission shall only be granted where the judge—
 - (a) considers that the additional evidence is *prima facie* material; and
 - (b) accepts that at the time the party's evidence was closed either—

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

- (i) the additional evidence was not available and could not reasonably have been made available; or
 - (ii) the materiality of such additional evidence could not reasonably have been foreseen by the party.
- (2) The judge may permit the additional evidence to be led notwithstanding that a witness must be recalled.
- (3) The judge may, when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.

350A Evidence in replication.

- (1) The judge may, on a motion of the prosecutor made after the close of the defence evidence and before the prosecutor proceeds to address the judge on the evidence, permit the prosecutor to lead additional evidence, for the purpose of—
- (a) contradicting evidence, led by the defence, which could not reasonably have been anticipated by the prosecutor; or
 - (b) providing such proof as is mentioned in section 349 of this Act.
- (2) The judge may permit the additional evidence to be led notwithstanding that a witness must be recalled.
- (3) The judge may, when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.”.

31 Offences in connection with lights, reflectors, obstruction, etc., to be provable by one witness

In section 80 of the Road Traffic Regulation Act 1967 (enforcement of certain traffic laws) there shall be inserted after subsection (9) the following subsection—

“(9A) In any proceedings in Scotland for an offence to which this section applies committed in respect of a vehicle to which any of paragraphs (a) to (d) and (f) of subsection (1) above is applicable, it shall be lawful to convict the accused on the evidence of one witness.”.

32 Evidence by letter of request or on commission

- (1) In any criminal proceedings in the High Court or the sheriff court the prosecutor or the defence may, at an appropriate time, apply to a judge of the court in which the trial is to take place (or, if that is not yet known, to a judge of the High Court) for—
- (a) the issue of a letter of request to a court, or tribunal, exercising jurisdiction in a country or territory outside the United Kingdom, Channel Islands and Isle of Man for the examination of a witness resident in the said country or territory ; or
 - (b) the appointment of a commissioner to examine, at any place in the United Kingdom, Channel Islands, or Isle of Man, a witness who by reason of being ill or infirm is unable to attend the trial diet.

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

- (2) A hearing, as regards any application under subsection (1) above by a party, shall be conducted in chambers but may be dispensed with if the application is not opposed. The application may be granted only if the judge is satisfied that—
- (a) the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial; and
 - (b) there would be no unfairness to the other party were such evidence to be received in the form of the record of an examination conducted by virtue of that subsection.
- (3) Any such record as is mentioned in paragraph (b) of subsection (2) above shall, without being sworn to by witnesses, be received in evidence in so far as it either accords with the averment mentioned in paragraph (a) of that subsection or can be so received without unfairness to either party.
- (4) The procedure as regards the foregoing provisions of this section shall be prescribed by Act of Adjournal under the 1975 Act.
- (5) In subsection (1) above, "appropriate time" means as regards—
- (a) solemn proceedings, any time before the oath is administered to the jury;
 - (b) summary proceedings, any time before the first witness is sworn,
- or (but only in relation to an application under paragraph (b) of that subsection) any time during the course of the trial if the circumstances on which the application is based had not arisen, or would not have merited such application, within the period mentioned in paragraph (a), or as the case may be (b), of this subsection.
- (6) This section is without prejudice to any existing power at common law to adjourn a trial diet to the place where a witness is.