



# Criminal Justice (Scotland) Act 1995

## 1995 CHAPTER 20

### PART I

#### THE COURSE OF JUSTICE

##### *Pre-trial procedure*

#### **9 Execution of warrants granted by sheriff, etc**

For each of sections 15 and 327 of the 1975 Act (certain warrants granted by sheriff may be executed throughout Scotland), there shall be substituted the following section—

##### **“ Warrants granted by justice may be executed throughout Scotland**

Any warrant granted by a justice may, without being backed or endorsed by any other justice, be executed throughout Scotland in the same way as it may be executed within the jurisdiction of the justice who granted it.”

#### **10 Judicial examination**

(1) Section 20A of the 1975 Act (examination of accused by prosecutor before sheriff) shall be amended as follows.

(2) In subsection (1)—

- (a) after the words “eliciting any” there shall be inserted “admission,”; and
- (b) in paragraph (i) of the proviso to paragraph (a), for the words from “category” to the end there shall be substituted “defence”.

(3) After subsection (3) there shall be inserted the following subsection—

“(3A) The accused shall be told by the sheriff 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 (7) below.”.

(4) After subsection (6) there shall be inserted the following subsections—

“(7) 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.

(8) The duty imposed by subsection (7) above shall not apply as respects any ostensible defence which is not reasonably capable of being investigated.”.

## 11 Requirement to give notice of defence of automatism or coercion

After subsection (1) of section 82 of the 1975 Act (requirement to give notice of plea of special defence, etc.) there shall be inserted the following subsection—

“(1A) Subsection (1) above shall apply to a defence of automatism or coercion as if it were a special defence.”.

## 12 Agreement of evidence

(1) After section 84 of the 1975 Act there shall be inserted the following section—

### “84A Agreement of evidence

(1) Subject to subsection (2) below, the prosecutor and the accused (or each accused if more than one) shall each identify any facts which are facts—

- (a) which he would, apart from this section, be seeking to prove;
- (b) which he considers unlikely to be disputed by the other party (or by any of the other parties); and
- (c) in proof of which he does not wish to lead oral evidence,

and shall (without prejudice to section 16 of the Criminal Justice (Scotland) Act 1995 (procedure for proving uncontroversial evidence)) take all reasonable steps to secure the agreement of the other party (or each of the other parties) to them; and the other party (or each of the other parties) shall take all reasonable steps to reach such agreement.

(2) Subsection (1) above shall not apply in relation to proceedings as respects which the accused (or any of the accused if more than one) is not legally represented.

(3) The duty under subsection (1) above applies from the date of service of the indictment until the swearing of the jury or, where intimation is given under section 102 of this Act, the date of that intimation.”.

(2) After section 333A of that Act there shall be inserted the following section—

### “333B Agreement of evidence

(1) Subject to subsection (2) below, the prosecutor and the accused (or each accused if more than one) shall each identify any facts which are facts—

- (a) which he would, apart from this section, be seeking to prove;

---

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

---

- (b) which he considers unlikely to be disputed by the other party (or by any of the other parties); and
  - (c) in proof of which he does not wish to lead oral evidence,
- and shall (without prejudice to section 16 of the Criminal Justice (Scotland) Act 1995 (procedure for proving uncontroversial evidence)) take all reasonable steps to secure the agreement of the other party (or each of the other parties) to them; and the other party (or each of the other parties) shall take all reasonable steps to reach such agreement.
- (2) Subsection (1) above shall not apply in relation to proceedings as respects which the accused (or any of the accused if more than one) is not legally represented.
  - (3) The duty under subsection (1) above applies from the date on which the accused pleads not guilty until the swearing of the first witness or, where the accused tenders a plea of guilty at any time before the first witness is sworn, the date when he does so.”.

### **13 First and preliminary diets in solemn proceedings**

- (1) In section 75 of the 1975 Act (notice of trial diet), after the word “at” there shall be inserted—
  - “(a) where the case is to be tried in the sheriff court, a first diet not less than 15 clear days after the service of the indictment and not less than 10 clear days before the trial diet; and
  - (b)”.
- (2) After section 75 of that Act there shall be inserted the following section—

#### **“75A First diet**

- (1) At a first diet the court shall, so far as is reasonably practicable, ascertain whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular—
  - (a) the state of preparation of the prosecutor and of the accused with respect to their cases; and
  - (b) the extent to which the prosecutor and the accused have complied with the duty under section 84A(1) of this Act.
- (2) In addition to the matters mentioned in subsection (1) above the court shall, at a first diet, consider any matter mentioned in subsection (3) below of which a party has, not less than two clear days before the first diet, given notice to the court and to the other parties.
- (3) The matters referred to in subsection (2) above are—
  - (a) that the party intends to raise a matter relating to the competency or relevancy of the indictment or to raise an objection such as is mentioned in section 108(1) of this Act;
  - (b) that he intends to submit a plea in bar of trial or to apply for separation or conjunction of charges or trials or to raise a preliminary objection under section 67 of this Act or to make an application under section 151(2) of this Act;

---

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

---

- (c) that there are documents the truth of the contents of which ought in his view to be admitted, or that there is any other matter which in his view ought to be agreed; and
  - (d) that there is some other matter which could in his opinion be resolved with advantage before the trial.
- (4) At a first diet the court may ask the prosecutor and the accused any question in connection with any matter which it is required to ascertain or consider under subsection (1) or (2) above.
- (5) The accused shall attend a first diet of which he has been given notice and the court may, if he fails to do so, grant a warrant to apprehend him.
- (6) A first diet may proceed notwithstanding the absence of the accused.
- (7) The accused shall, at the first diet, be required to state how he pleads to the indictment, and section 103 of this Act shall apply where he tenders a plea of guilty.
- (8) Where at a first diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—
  - (a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and
  - (b) may fix a further first diet.
- (9) Subject to subsection (8) above, the court may, if it considers it appropriate to do so, adjourn a first diet.
- (10) In this section “the court” means the sheriff court.”.
- (3) In section 76 of that Act (preliminary diet)—
  - (a) in subsection (1)—
    - (i) after the words “where a party” there shall be inserted “to a case which is to be tried in the High Court”; and
    - (ii) for the words “court before which the trial is to take place” there shall be substituted “High Court”; and
  - (b) after subsection (6) there shall be inserted the following subsections—
    - “(6A) At a preliminary diet the court shall, in addition to disposing of any matter specified in a notice given under subsection (1) above or referred to in subsection (3) above, ascertain, so far as is reasonably practicable, whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular—
      - (a) the state of preparation of the prosecutor and of the accused with respect to their cases; and
      - (b) the extent to which the prosecutor and the accused have complied with the duty under section 84A(1) of this Act.
    - (6B) At a preliminary diet the court may ask the prosecutor and the accused any question in connection with any matter specified in a notice under subsection (1) above or referred to in subsection (3) above or which it is required to ascertain under subsection (6A) above.

---

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

---

- (6C) Where at a preliminary diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—
- (a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and
  - (b) may fix a further preliminary diet.
- (6D) Subject to subsection (6C) above, the court may, if it considers it appropriate to do so, adjourn a preliminary diet.”.
- (4) In section 76A(1) of that Act (appeal in connection with preliminary diet), for the words “preliminary diet” there shall be substituted “first diet or a preliminary diet, other than a decision to adjourn the diet or to postpone the trial diet”.

#### **14 Intermediate diet in summary proceedings**

- (1) Section 337A of the 1975 Act (intermediate diet) shall be amended as follows.
- (2) In subsection (1)—
- (a) after the word “ascertaining” there shall be inserted “, so far as is reasonably practicable, whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular”;
  - (b) the word “and” immediately following paragraph (a) shall cease to have effect; and
  - (c) after paragraph (b) there shall be inserted—  
“; and  
(c) the extent to which the prosecutor and the accused have complied with the duty under section 333B(1) of this Act.”.
- (3) After subsection (1) there shall be inserted the following subsections—
- “(1A) Where at an intermediate diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—
- (a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and
  - (b) may fix a further intermediate diet.
- (1B) Subject to subsection (1A) above, the court may, if it considers it appropriate to do so, adjourn an intermediate diet.”.
- (4) At the end of subsection (3) there shall be inserted—
- “unless—
- (a) he is legally represented; and
  - (b) the court considers that there are exceptional circumstances justifying him not attending.
- (4) The foregoing provisions of this section shall have effect as respects any court prescribed by the Secretary of State by order, in relation to proceedings commenced after such date as may be so prescribed, with the following modifications—

---

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

---

- (a) in subsection (1), for the word “may” there shall be substituted “shall, subject to subsection (1C) below,”; and
- (b) after subsection (1B) there shall be inserted the following subsections—

“(1C) If, on a joint application by the prosecutor and the accused made at any time before the commencement of the intermediate diet, the court considers it inappropriate to have such a diet, the duty under subsection (1) above shall not apply and the court shall discharge any such diet already fixed.

(1D) The court may consider an application under subsection (1C) above without hearing the parties.”.

- (5) An order under subsection (5) above shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.