



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VII

#### SOLEMN PROCEEDINGS

##### *Non-availability of judge*

#### **87 Non-availability of judge.**

- (1) Where the court is unable to proceed owing to the death, illness or absence of the presiding judge, the clerk of court may convene the court (if necessary) and—
  - (a) in a case where no evidence has been led, adjourn the diet and any other diet appointed for [<sup>F1</sup>the same day] to—
    - (i) a time later the same day, or a date not more than seven days later, when he believes a judge will be available; or
    - (ii) a later [<sup>F2</sup>date] not more than two months after the date of the adjournment; or
  - (b) in a case where evidence has been led—
    - (i) adjourn the diet and any other diet appointed for [<sup>F3</sup>the same day] to a time later the same day, or a date not more than seven days later, when he believes a judge will be available; or
    - (ii) with the consent of the parties, desert the diet *pro loco et tempore*.
- (2) Where a diet has been adjourned under sub-paragraph (i) of either paragraph (a) or paragraph (b) of subsection (1) above the clerk of court may, where the conditions of that subsection continue to be satisfied, further adjourn the diet under that sub-paragraph; but the total period of such adjournments shall not exceed seven days.
- (3) Where a diet has been adjourned under subsection (1)(b)(i) above the court may, at the adjourned diet—
  - (a) further adjourn the diet; or
  - (b) desert the diet *pro loco et tempore*.

*Status: Point in time view as at 12/10/2009.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Non-availability of judge is up to date with all changes known to be in force on or before 22 May 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)*

- (4) Where a diet is deserted in pursuance of subsection (1)(b)(ii) or (3)(b) above, the Lord Advocate may raise and insist in a new indictment, and—
- (a) where the accused is in custody it shall not be necessary to grant a new warrant for his incarceration, and the warrant or commitment on which he is at the time in custody till liberation in due course of law shall continue in force; and
  - (b) where the accused is at liberty on bail, his bail shall continue in force.

#### Textual Amendments

- F1** Words in s. 87(1)(a) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 3\)](#), ss. 25, 27(1), [Sch. para. 31\(a\)\(i\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F2** Words in s. 87(1)(a)(ii) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 3\)](#), ss. 25, 27(1), [Sch. para. 31\(a\)\(ii\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F3** Words in s. 87(1)(b)(i) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 3\)](#), ss. 25, 27(1), [Sch. para. 31\(b\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)

#### [<sup>F4</sup>87A Disposal of preliminary matters at trial diet

Where—

- (a) any preliminary plea or issue; or
- (b) in a case to be tried in the High Court, any application, notice or other matter referred to in section 72(6)(b)(iii) or (iv) of this Act,

is to be disposed of at the trial diet, it shall be so disposed of before the jury is sworn, unless, where it is a preliminary issue consisting of an objection to the admissibility of any evidence, the court at the trial diet considers it is not capable of being disposed of before then.]

#### Textual Amendments

- F4** [S. 87A](#) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 3\)](#), [ss. 13\(2\)](#), 27(1); S.S.I. 2004/405, [art. 2](#), Sch. 1

**Status:**

Point in time view as at 12/10/2009.

**Changes to legislation:**

Criminal Procedure (Scotland) Act 1995, Cross Heading: Non-availability of judge is up to date with all changes known to be in force on or before 22 May 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.