



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XII

EVIDENCE

Additional evidence, etc.

268 Additional evidence

- (1) Subject to subsection (2) below, the judge may, on a motion of the prosecutor or the accused made—
 - (a) in proceedings on indictment, at any time before the commencement of the speeches to the jury;
 - (b) in summary proceedings, at any time before the prosecutor proceeds to address the judge on the evidence,permit him to lead additional evidence.
- (2) Permission shall only be granted under subsection (1) above where the judge—
 - (a) considers that the additional evidence is *prima facie* material; and
 - (b) accepts that at the commencement of the trial 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.
- (3) The judge may permit the additional evidence to be led notwithstanding that—
 - (a) in proceedings on indictment, a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given; or
 - (b) in any case, a witness must be recalled.
- (4) 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.

- (5) In this section “the commencement of the trial” means—
- (a) in proceedings on indictment, the time when the jury is sworn; and
 - (b) in summary proceedings, the time when the first witness for the prosecution is sworn.

269 Evidence in replication

- (1) The judge may, on a motion of the prosecutor made at the relevant time, permit the prosecutor to lead additional evidence for the purpose of—
- (a) contradicting evidence given by any defence witness which could not reasonably have been anticipated by the prosecutor; or
 - (b) providing such proof as is mentioned in section 263(4) of this Act.
- (2) The judge may permit the additional evidence to be led notwithstanding that—
- (a) in proceedings on indictment, a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given; or
 - (b) in any case, 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.
- (4) In subsection (1) above, “the relevant time” means—
- (a) in proceedings on indictment, after the close of the defence evidence and before the commencement of the speeches to the jury; and
 - (b) in summary proceedings, after the close of the defence evidence and before the prosecutor proceeds to address the judge on the evidence.

270 Evidence of criminal record and character of accused

- (1) This section applies where—
- (a) evidence is led by the defence, or the defence asks questions of a witness for the prosecution, with a view to establishing the accused’s good character or impugning the character of the prosecutor, of any witness for the prosecution or of the complainer; or
 - (b) the nature or conduct of the defence is such as to tend to establish the accused’s good character or to involve imputations on the character of the prosecutor, of any witness for the prosecution or of the complainer.
- (2) Where this section applies the court may, without prejudice to section 268 of this Act, on the application of the prosecutor, permit the prosecutor to lead evidence that the accused has committed, or has been convicted of, or has been charged with, offences other than that for which he is being tried, or is of bad character, notwithstanding that, in proceedings on indictment, a witness or production concerned is not included in any list lodged by the prosecutor and that the notice required by sections 67(5) and 78(4) of this Act has not been given.
- (3) In proceedings on indictment, an application under subsection (2) above shall be made in the course of the trial but in the absence of the jury.
- (4) In subsection (1) above, references to the complainer include references to a victim who is deceased.