

# **CRIMINAL PROCEDURE (AMENDMENT) (SCOTLAND) ACT 2004**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 2 - Solemn Proceedings Generally**

##### ***Section 13 - Preliminary pleas and preliminary issues***

120. **Section 13(1)** substitutes a new section 79 into the 1995 Act. Most of this section replicates material already in the existing provisions in sections 72 and 79 of the 1995 Act including provision previously in section 72 for notice to be given to the court in relation to matters which can be dealt with before the trial. The new elements are that:
- it makes a clear division between preliminary pleas (which if conceded are likely to cause the case to fall) and preliminary issues. In new section 72 it is prescribed that at the preliminary hearing the former shall be taken before the accused is asked to plead, the latter after a plea has been taken and it is clear that the case is going to trial; and
  - it adds express reference to objections to the admissibility of evidence to the list of preliminary issues.
121. Subsection (1) provides that, except by leave of the court, no preliminary plea or issue shall be raised or submitted in any proceedings on indictment unless the party has given notice of his intention to do so as prescribed in the sections governing the procedure at preliminary hearings in the High Court and at first diets in the sheriff court on the timescale.
122. Subsection (2) defines preliminary pleas and preliminary issues
123. Subsection (3) provides that no accused shall be entitled to object to plead to an indictment due to a discrepancy, error or deficiency such as is mentioned in new section 79(2)(a)(ii) unless the court is satisfied that these tended to mislead and prejudice the accused.
124. Subsection (4) provides that where the court allows a party to make, raise or submit a preliminary plea or issue ( other than an objection to the admissibility of any evidence) without notice the court may, if it considers it appropriate to do so, appoint a diet to be held before the trial diet to consider it further. This provides another opportunity for such matters to be resolved before the trial diet, in addition to the preliminary hearing. Alternatively, the court may appoint the plea or issue to be disposed of at the trial diet.
125. **Section 13(2)** introduces a new Section 87A into the 1995 Act.
126. That section provides that where any preliminary plea or issue, or 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) is to be disposed of at the trial diet it shall be disposed of before the jury is

*These notes relate to the Criminal Procedure (Amendment) (Scotland)  
Act 2004 (asp 5) which received Royal Assent on 4th June 2004*

sworn, unless where it is 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.