



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PROCEDURE PRIOR TO TRIAL

Lodging of List of Witnesses, Productions, Special Defence, Etc.

[^{F1}78 **Record copy of indictment and list of witnesses.**

- (1) Except in a case to which section 102 of this Act applies, the record copy of the indictment shall on or before the date of service of the indictment be lodged with the clerk of the court before which the trial is to take place; and a copy of the list of witnesses and a copy of the list of productions shall be lodged with him not less than 10 clear days before the trial diet.
- (2) The list of productions shall include the record, made under section 20B of this Act (with any rectification, authorised under subsection (4) of that section, incorporated), of proceedings at the examination of the accused.]

Textual Amendments

- F1** S. 78 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 4 para. 8, [Sch. 6 para. 1](#)

79 **Description of witnesses.**

- (1) The list of witnesses shall consist of the names of the witnesses, with their addresses added, and it shall not be necessary to insert the words “now or lately residing at,” or any similar words, and it shall not be an objection to the admissibility of any witness that he has ceased to reside at the address given before the date of the trial, provided that he resided at such address at some time, not being more than six months previous to the date of the trial.
- (2) It shall not be necessary to insert in the list of witnesses the names of any witnesses to the declaration of the accused or the names of any witnesses to prove that an extract

Status: Point in time view as at 03/02/1995.

Changes to legislation: Criminal Procedure (Scotland) Act 1975, Cross Heading: Lodging of List of Witnesses, Productions, Special Defence, Etc. is up to date with all changes known to be in force on or before 01 September 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)

conviction applies to the accused, but witnesses may be examined in regard to these matters without previous notice.

[^{F2}80 Objection to witness.

(1) Any objection in respect of misnomer or misdescription of—

- (a) any person named in the indictment; or
- (b) any witness in the list of witnesses,

shall be intimated in writing to the court before which the trial is to take place, to the prosecutor and to any other accused not less than 10 clear days before the trial diet; and, except on cause shown, no such objection shall be admitted at the trial diet unless so intimated.

(2) Where such intimation has been given or cause is shown and the court is satisfied that the accused making the objection has not been supplied with sufficient information to enable him to identify the person named in the indictment or to find such witness in sufficient time to precognose him before the trial, the court may grant such remedy by postponement, adjournment or otherwise as appears to it to be appropriate.]

Textual Amendments

F2 S. 80 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 4 para. 9, **Sch. 6 para. 1**

81 Examination by prosecutor of witnesses, etc., not included in lists lodged.

[^{F3}Without prejudice to section 82A of this Act] In any trial it shall be competent with the leave of the court for the prosecutor to examine any witness or to put in evidence any production not included in the lists lodged by him, provided that written notice containing, in the case of a witness, his name and address shall have been given to the accused not less than two clear days before the day on which the jury is sworn to try the case.

Textual Amendments

F3 Words inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 1, **Sch. 7 para. 28**

82 Written notice of special defence and examination of witnesses and productions not included in lists lodged.

[^{F4}(1) It shall not be competent for an accused to state a special defence or to lead evidence calculated to exculpate the accused by incriminating a co-accused unless—

- (a) a plea of special defence, or as the case may be, notice of intention to lead such evidence, has been lodged not less than 10 clear days before the trial diet; or
- (b) the accused having satisfied the court that there was good reason for paragraph (a) above not being complied with, such plea or notice has been lodged before the oath is administered to the jury.]

Status: Point in time view as at 03/02/1995.

Changes to legislation: Criminal Procedure (Scotland) Act 1975, Cross Heading: Lodging of List of Witnesses, Productions, Special Defence, Etc. is up to date with all changes known to be in force on or before 01 September 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)

- (2) It shall not be competent for the accused to examine any witnesses or to put in evidence any productions not included in the lists lodged by the prosecutor, unless written notice of the names and addresses of such witnesses and of such productions shall have been given to the procurator fiscal of the district of the [F5 trial diet] when the case is to be tried in the sheriff court, or to the Crown Agent where the case is to be tried in the High Court, at least three clear days before the day on which the jury is sworn to try the case, or unless the accused shall show before a jury is sworn to try the case that he was unable to give the full notice of three days in regard to any witnesses he may desire to examine or productions he may desire to lodge, and where this is shown the court shall give such remedy to the prosecutor by adjournment or postponement of the trial or otherwise as shall seem just.
- (3) A copy of every written notice required by the last foregoing subsection shall be lodged by the accused with the sheriff clerk of the district in which the [F5 trial diet] is to be held, or in any case the [F5 trial diet] of which is to be held in the High Court in Edinburgh with the Clerk of Justiciary, at or before the [F5 trial diet], for the use of the court.

Textual Amendments

- F4** S. 82(1) substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 13, **Sch. 6 para. 1**
- F5** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 10, **Sch. 6 para. 1**

[F6]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.]

Textual Amendments

- F6** S. 82A inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 27, **Sch. 6 para. 2**

83 Accused entitled to see productions.

The accused shall be entitled to see the productions according to the existing law and practice in the office of the sheriff clerk of the district in which the court of the [F7 trial diet] is situated or, where the [F7 trial diet] is to be in the High Court in Edinburgh, in the Justiciary Office.

Textual Amendments

- F7** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 11, **Sch. 6 para. 1**

Status: Point in time view as at 03/02/1995.

Changes to legislation: Criminal Procedure (Scotland) Act 1975, Cross Heading: Lodging of List of Witnesses, Productions, Special Defence, Etc. is up to date with all changes known to be in force on or before 01 September 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)

84 Proof as to productions.

Where a person who has examined a production is adduced to give evidence with regard thereto and the production has been lodged at least eight days before the [F8 trial diet], it shall not be necessary to prove that the production was received by him in the condition in which it was taken possession of by the procurator fiscal or the police and returned by him after his examination of it to the procurator fiscal or the police unless the accused, at least four days before the [F8 trial diet], gives to the Crown Agent, where he is cited to the High Court for the [F8 trial diet], or to the procurator fiscal of the district to the court of which he is cited for the [F8 trial diet], where the case is to be tried in the sheriff court, written notice that he does not admit that the production was received or returned as aforesaid.

Textual Amendments

F8 Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 4 para. 12, [Sch. 6 para. 1](#)

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.

Status:

Point in time view as at 03/02/1995.

Changes to legislation:

Criminal Procedure (Scotland) Act 1975, Cross Heading: Lodging of List of Witnesses, Productions, Special Defence, Etc. is up to date with all changes known to be in force on or before 01 September 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.