



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PROCEDURE PRIOR TO TRIAL

Procedure at Trial

121,^{F1}
122.

Textual Amendments

F1 Ss. 74(3), 105–107, 120–122 repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 1, 8, [Sch. 8](#)

123 Amendment of indictment.

- (1) No trial shall fail or the ends of justice be allowed to be defeated by reason of any discrepancy or variance between the indictment and the evidence.
- (2) It shall be competent at any time prior to the determination of the case, unless the court see just cause to the contrary, to amend the indictment by deletion, alteration or addition, so as to cure any error or defect therein, or to meet any objection thereto, or to cure any discrepancy or variance between the indictment and the evidence.
- (3) Nothing in this section shall authorise an amendment which changes the character of the offence charged, and, if the court shall be of opinion that the accused may in any way be prejudiced in his defence on the merits of the case by any amendment made under this section, the court shall grant such remedy to the accused by adjournment or otherwise as to the court may seem just.
- (4) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of court.

Status: Point in time view as at 03/02/1995.

Changes to legislation: Criminal Procedure (Scotland) Act 1975, Cross Heading: Procedure at Trial is up to date with all changes known to be in force on or before 23 July 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)

124 On plea of guilty, jury to be dispensed with and sentence pronounced.

When a person indicted shall plead guilty to the crime or crimes of which he is accused, it shall not be necessary to name a jury for the trial of the case, but the court before which the accused shall be tried shall have power forthwith to pronounce sentence in like manner as if a verdict of guilty had been returned.

Provided that such plea of guilty shall be made in open court, and shall then and there be subscribed by the panel, and shall be authenticated by the signature of the judge.

125 On plea of not guilty, jury to be balloted and sworn.

In the High Court, when the accused pleads not guilty, the clerk of the court shall make an entry in the record, that in respect that the panel pleaded not guilty, the panel was remitted to an assize, and that the following jurymen were balloted for and duly sworn to try the libel, and he shall proceed at once to ballot for and swear the jury.

126 On plea of not guilty, the indictment need not be read over.

When the accused, on being brought to the bar, shall say that he means to plead not guilty, and does not desire that the indictment should be read over, it shall not be necessary to read it over before proceeding with the trial.

127 Procedure where trial does not take place.

(1) Where at the [^{F2}trial diet]—

- (a) the diet has been deserted *pro loco et tempore* for any [^{F3}cause], or
- (b) an indictment is for any cause not brought to trial and no order has been given by the court postponing such trial or appointing it to be held at a subsequent date at some other sitting of the court,

it shall be lawful at any time within nine clear days after the date of such [^{F2}trial diet] to give notice to the accused on another copy of the indictment to appear to answer such indictment at a further diet either in the High Court or in the sheriff court when the charge is one that can be lawfully tried in that court, notwithstanding that the original citation to a [^{F2}trial diet] was to a different court.

[^{F4}(1A) The prosecutor shall not raise a fresh libel in a case where the court has deserted the trial diet *simpliciter* (and its decision in that regard has not been reversed on appeal).]

- (2) The notice referred to in subsection (1) of this section shall be in the form set out in Schedule N to the ^{M1}Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form.
- (3) The further diet specified in the notice referred to in subsection (1) of this section shall be not earlier than nine clear days from the giving of such notice.
- (4) On or before the day on which such notice is given, a list of jurors shall be prepared, signed and kept by the sheriff clerk of the district to which such notice applies in the manner provided in section 96 of this Act.

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Textual Amendments

- F2** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 4 para. 27(a), **Sch. 6 para. 1**
- F3** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 4 para. 27(b), **Sch. 6 para. 1**
- F4** [S. 127\(1A\)](#) inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **s. 18(1)**

Marginal Citations

- M1** [1887 c. 35\(39:1\)](#).

128 Provision for death or illness of judge.

- (1) Where the court is unable to proceed owing to the death or illness of the presiding judge, it shall be lawful for the clerk of court—
- in the case where the diet has not been called, to convene the court and adjourn the diet and any other diet appointed for that sitting to a later sitting;
 - in the case where the diet has been called but no evidence has been led, to adjourn the diet or any other diet appointed for that sitting to a later sitting; and
 - where evidence has been led, to desert the diet *pro loco et tempore* and to discharge the jury;
- and any such continuation, adjournment, desertion or other proceeding shall be entered in the record by the clerk of court.
- (2) Where a diet is deserted in pursuance of subsection (1)(c) of this section the Lord Advocate may raise and insist in a new indictment, and in any such case where the accused is in custody it shall not be necessary that a new warrant for his incarceration be granted, and the warrant of commitment on which he is at the time in custody till liberation in due course of law shall continue in force, and in any such case where the accused is at liberty on bail his bail shall continue in force.

129 Jury to be chosen by ballot in open court.

The jurors for the trial of any case shall be chosen in open court by ballot from the list of persons summoned which has been served upon the accused; and for that purpose the clerk of the court shall cause the name and designation of each juror to be written on a separate piece of paper or parchment, all the pieces being of the same size, and shall cause the pieces to be rolled up, as nearly as may be, in the same shape, and to be put into a box or glass and mixed, and the clerk shall draw out the said pieces of paper or parchment one by one from the box or glass; and if any of the persons whose names shall be so drawn shall not appear, or shall be challenged, with or without cause assigned, and set aside, [^{F5}or shall, before any evidence is led, be excused] then such further number shall be drawn until the number required for the trial shall be made out; and the persons so drawn and appearing, and being sworn, shall be the jury to try the accused, and their names shall be recorded in the minute book kept by the clerk.

Textual Amendments

- F5** [Ss. 48A, 48B](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117\(1\)](#), **Sch. 6 Pt. I para. 19**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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130 Challenges and objections to jurors.

- [^{F6}(1) In any trial each accused may challenge three jurors, as may the prosecutor, without giving any reason.]
- (2) A challenge of a juror shall be made when the name of that juror is balloted and shall not afterwards be allowed.
 - (3) Such challenge shall of itself disqualify the person challenged from serving as a juror at the trial.
 - (4) Nothing in this section shall affect the right of the accused or the prosecutor to object to any juror on cause shown.
 - (5) If any objection is taken to a juror on cause shown and such objection is founded on the want of sufficient qualification as provided by section [^{F7}1(1) of the ^{M2}Law Reform (Miscellaneous Provisions) (Scotland) Act 1980], such objection shall be proved only by the oath of the juror objected to.
 - (6) No objection to a juror shall be competent after he has been sworn to serve.

Textual Amendments

- F6** S. 130(1) substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 23
- F7** Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1980 \(c. 55, SIF 72:2\)](#), Sch. 2 para. 7

Marginal Citations

- M2** [1980 c. 55\(72:2\)](#).

131 Juror without citation not to be objected to.

It shall not be competent for the accused or the prosecutor to object to a juror on the ground that such juror has appeared without citation or without having been duly cited to attend.

132 Jurors chosen for one trial may continue to serve.

- (1) The jurors chosen for any particular trial may, when that trial is disposed of, without any new ballot, serve on the trials of other persons accused, provided that—
 - (a) such persons and the prosecutor consent thereto,
 - (b) the names of such jurors are contained in the list of assize, and
 - (c) such jurors are duly sworn to serve on each successive trial.
- (2) Where the trials referred to in subsection (1) of this section are in the High Court, the clerk of court shall at the commencement of the first of such trials engross the names and designations of the jurors in the record thereof, and in the record of the subsequent trial or trials it shall be sufficient to mention that the jurors who passed upon the preceding trial or trials also passed upon the assize of the panel or panels then under trial, no objection having been made to the contrary, the said jurors being always sworn together in presence of each panel or set of panels respectively.

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133 Jurors may be excused.

The court shall have power to excuse any juror from serving on any trial, the grounds of such excuse being stated in open court.

134 Provision for death or illness of jurors.

Where in the course of any trial any juror dies, or the court is satisfied that any juror is, through illness or for any other reason, unfit to continue to serve as a juror, the court may in its discretion, on application made by or on behalf of the Lord Advocate or an accused, direct that the trial shall proceed before the remaining jurors (if they shall be not less than twelve in number), and where any such direction is given the remaining jurors shall be deemed in all respects to be a properly constituted jury for the purpose of the trial and shall have power to return a verdict accordingly whether unanimous or by majority:

Provided that the remaining jurors shall not be entitled to return a verdict of guilty by majority unless at least eight of their number are in favour of such verdict and if, in any such case, the remaining jurors shall inform the court that fewer than eight of their number are in favour of a verdict of guilty, and that there is not a majority in favour of any other verdict, they shall be deemed to have returned a verdict of not guilty.

135 Clerk to state charge, and swear jury.

When a jury has been balloted, the clerk of court shall inform the jury of the charge against the accused either by reading the same in the words of the indictment (with the substitution of the third person for the second) or, if the presiding judge shall, because of the length or complexity of the indictment, so direct, by reading to the jury a summary of the charge approved by the judge; and the clerk of court shall thereafter administer the oath in common form; and it shall not be necessary to lay before the jury copies of the indictment, list of witnesses or list of productions, but it shall nevertheless be competent to the presiding judge, if he shall think fit, to direct that copies of the indictment (without any list of witnesses or of productions appended) shall be laid before the jury.

136 Trial to be continuous.

Every trial shall proceed from day to day till concluded unless the court shall see cause to adjourn over a day or days.

137 Seclusion of jury.

It shall not be necessary, when for any cause a trial which is proceeding is adjourned from one day to another, that the jury shall be secluded during the adjournment, except in cases where the court shall see fit, whether *ex proprio motu* or on the motion of the prosecutor or the accused, to order that the jury be kept secluded.

[^{F8}137A Verdict by judge alone.

- (1) Where, at any time after the jury has been sworn to serve in any trial, the prosecutor intimates to the court that he does not intend to proceed in respect of an offence charged in the indictment, the judge shall acquit the accused of that offence and the trial shall proceed only in respect of any other offence charged in the indictment.

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- (2) Where, at any time after the jury has been sworn to serve in any trial, the accused intimates to the court that he is prepared to tender a plea of guilty as libelled, or such other plea as the Crown is prepared to accept, in respect of any offence charged in the indictment, the judge shall accept the plea tendered and shall convict the accused accordingly.
- (3) Where an accused is convicted under subsection (2) above of an offence—
 - (a) the trial shall proceed only in respect of any other offence charged in the indictment; and
 - (b) without prejudice to any other power of the court to adjourn the case or to defer sentence, the judge shall not sentence him or make any other order competent following a conviction until a verdict has been returned in respect of every offence mentioned in paragraph (a) above.]

Textual Amendments

F8 S. 137A inserted (18.9.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(5)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(3), 5(b), **Sch.2**

138 Witnesses not to be excluded by reason of conviction, interest, etc.

- (1) No person adduced as a witness shall be excluded from giving evidence by reason of having been convicted of or having suffered punishment for crime, or by reason of interest, or by reason of agency or of partial counsel, or by reason of having appeared without citation or without having been duly cited to attend, or by reason of having been precognosced subsequently to the date of citation.
- (2) Every person so adduced, who is not otherwise by law disqualified from giving evidence, shall be admissible as a witness, notwithstanding any objection offered on any of the above-mentioned grounds.
- (3) Nothing in this section shall prevent such witness from being examined on any point tending to affect his credibility.
- (4) Where any person who is or has been an agent of the accused shall be adduced and examined as a witness for the accused, it shall not be competent to the accused to object, on the ground of confidentiality, to any question proposed to be put to such witness on matter pertinent to the issue of the guilt of the accused.

139 Witnesses admissible notwithstanding relationship to parties.

It shall be no objection to the admissibility of any witness that he or she is the father, mother, son, daughter, brother or sister, by consanguinity or affinity, or uncle, aunt, nephew or niece, by consanguinity of any party adducing such witness in any trial; nor shall it be competent to any witness to decline to be examined and give evidence on the ground of any such relationship.

[^{F9}139A Power to permit witness to be in court during trial.

The court may, on an application by any party to the proceedings, permit a witness to be in court during the proceedings or any part of the proceedings before he has

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given evidence if it appears to the court that the presence of the witness would not be contrary to the interests of justice.]

Textual Amendments

F9 S. 139A inserted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a)**, 63

140 Presence in court not to disqualify witnesses in certain cases.

In any trial the court need not reject any witness against whom it is objected that he has, without the permission of the court, and without the consent of the party objecting, been present in court during the proceedings; but the court may, in its discretion, admit the witness, where it appears to the court that the presence of the witness was not the result of culpable negligence or criminal intent, and that the witness has not been unduly instructed or influenced by what took place during his presence, or that injustice will not be done by his examination.

[^{F10}140A] No case to answer.

- (1) Immediately after the close of the evidence for the prosecution, the accused may intimate to the court his desire to make a submission that he has no case to answer both—
 - (a) on an offence charged in the indictment; and
 - (b) on any other offence of which he could be convicted under the indictment were the offence charged the only offence so charged.
- (2) Such a submission shall be heard by the judge in the absence of the jury.
- (3) If, after hearing both parties, the judge is satisfied that the evidence led by the prosecution is insufficient in law to justify the accused being convicted of the offence charged in respect of which the submission has been made or of such other offence as is mentioned, in relation to that offence, in paragraph (b) of subsection (1) above, he shall acquit him of the offence charged in respect of which the submission has been made and the trial shall proceed only in respect of any other offence charged in the indictment.
- (4) If, after hearing both parties, the judge is not satisfied as is mentioned in subsection (3) above, he shall reject the submission and the trial shall proceed, with the accused entitled to give evidence and call witnesses, as if such submission had not been made.]

Textual Amendments

F10 S. 140A inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 19(1), **Sch. 6 para. 2**

141 Accused and spouse competent witnesses for defence.

[^{F11}(1)] The accused . . . ^{F12} shall be [^{F13}a competent witness] for the defence at every stage of the case, whether the accused is on trial alone or along with a co-accused:

Provided that—

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- (a) the accused shall not be called as a witness in pursuance of this section except upon his own application [^{F14}or in accordance with subsection (2) or (3) below];
- (b) the failure of the accused . . . ^{F12} to give evidence shall not be commented upon by the prosecution;
- (c) . . . ^{F15}
- (e) the accused who gives evidence on his own behalf in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged;
- (f) the accused who gives evidence on his own behalf in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—
 - (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged; or
 - (ii) the accused or his counsel or solicitor has asked questions of the witnesses for the prosecution with a view to establish the accused's good character, or the accused has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of the witnesses for the prosecution; or
 - (iii) the accused has given evidence against any other person charged [^{F16}in the same proceedings];
- (g) every person called as a witness in pursuance of this section . . . ^{F12} shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

[^{F17}(2) The accused may—

- (a) with the consent of a co-accused, call that other accused as a witness on the accused's behalf; or
- (b) ask a co-accused any question in cross-examination if that co-accused gives evidence,

but he may not do both in relation to the same co-accused.

- (3) The prosecutor or the accused may call as a witness a co-accused who has pleaded guilty to [^{F18}or been acquitted of] all charges against him which remain before the court (whether or not [^{F19}, in a case where the co-accused has pleaded guilty to any charge,] he has been sentenced) [^{F20}or in respect of whom the diet has been deserted]; and the party calling such co-accused as a witness shall not require to give notice thereof, but the court may grant any other party such adjournment or postponement of the trial as may seem just.]

Textual Amendments

- F11** Word inserted by virtue of [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 28(b)
- F12** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 1, [Sch. 8](#)
- F13** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 1, [Sch. 7 para. 33](#)
- F14** Words added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 28(a), [Sch. 6 para. 1](#)

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- F15** S. 141(1) provisos (c), (d) repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 8**
- F16** Words substituted with saving by Criminal Evidence Act 1979 (c. 16, SIF 47), s. 1
- F17** S. 141(2)(3) added by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 28(c), **Sch. 6 para. 1**
- F18** Words in s. 54 substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 21**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F19** S. 58(3) and words in s. 58(2) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) for words by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 22**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F20** S. 60A inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 23**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

141ZA 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 149 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 a witness or production concerned is not included in any list lodged by the prosecutor and that the notice required by sections 81 and 82(2) of this Act has not been given.
- (3) 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.

[^{F22}141A Evidence in relation to sexual offences.

- (1) In any trial of a person on any charge to which this section applies, subject to section 141B, the court shall not admit, or allow questioning designed to elicit, evidence which shows or tends to show that the complainer—
- (a) is not of good character in relation to sexual matters;
 - (b) is a prostitute or an associate of prostitutes; or
 - (c) has at any time engaged with any person in sexual behaviour not forming part of the subject matter of the charge.
- (2) This section applies to a charge of committing or attempting to commit any of the following offences, that is to say
- (a) rape;
 - (b) sodomy;
 - (c) assault with intent to rape;
 - (d) indecent assault;

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- (e) indecent behaviour (including any lewd, indecent or libidinous practice or behaviour);
 - (f) an offence under section 106(1)(a) or 107 of the ^{M3}Mental Health (Scotland) Act 1984 (unlawful sexual intercourse with mentally handicapped female or with patient);
 - (g) an offence under any of the following provisions of the ^{M4}Sexual Offences (Scotland) Act 1976—
 - (i) section 2 (procuring by threats etc.);
 - (ii) section 3 (unlawful sexual inter course with girl under 13);
 - (iii) section 4 (unlawful sexual intercourse with girl under 16);
 - (iv) section 5 (indecent behaviour towards girl between 12 and 16);
 - (v) section 8 (abduction of girl under 18);
 - (vi) section 9 (unlawful detention of female); or
 - (h) an offence under section 80(7) of the ^{M5}Criminal Justice (Scotland) Act 1980 (homosexual offences).
- (3) In this section “complainer” means the person against whom the offence referred to in subsection (2) above is alleged to have been committed.
- (4) This section does not apply to questioning, or evidence being adduced, by the Crown.]

Textual Amendments

F22 S. 141A, 141B inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 39:1\)](#), s. 36(1), [Sch. 3 para. 1](#)

Marginal Citations

M3 1984 c. 36(85).

M4 1976 c. 67(39:5).

M5 1980 c. 62(39:1).

141B Exceptions to prohibition.

- (1) Notwithstanding the terms of section 141A, in any trial of a person on any charge to which that section applies, where the court is satisfied on an application by that person—
- (a) that the questioning or evidence referred to in section 141A(1) above is designed to explain or rebut evidence adduced, or to be adduced, otherwise than by or on behalf of that person,
 - (b) that the questioning or evidence referred to in section 141A(1)(c) above—
 - (i) is questioning or evidence as to sexual behaviour which took place on the same occasion as the sexual behaviour forming the subject-matter of the charge, or
 - (ii) is relevant to the defence of incrimination, or
 - (c) that it would be contrary to the interests of justice to exclude the questioning or evidence referred to in section 141A(1) above,
- the court shall allow such questioning or, as the case may be, admit such evidence.
- (2) Where questioning or evidence is or has been allowed or admitted under this section, the court may at any time limit as it thinks fit the extent of that questioning or evidence.

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- (3) Any application under this section shall be made in the course of the trial but in the absence of the jury, the complainer, any person cited as a witness and the public.

142 Evidence of accused.

Where the only witness to the facts of the case called by the defence is the accused, he shall be called as a witness immediately after the close of the evidence for the prosecution.

[^{F23}143 Spouse to be competent witness.

- (1) The spouse of a person charged with an offence may be called as a witness—
 - (a) by that person;
 - (b) by a co-accused or by the prosecutor without the consent of that person.
- (2) Nothing in this section shall—
 - (a) make the spouse of an accused a compellable witness for a co-accused or for the prosecutor in a case where such spouse would not be so compellable at common law;
 - (b) compel a spouse to disclose any communication made between the spouses during the marriage.
- (3) The failure of the spouse of an accused to give evidence shall not be commented on by the defence or the prosecutor.]

Textual Amendments

F23 S. 143 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 29, [Sch. 6 para. 1](#)

144 Notice of spouse as witness.

In a case where a list of witnesses is required, the husband or wife of the accused shall not be called as a witness for the defence unless notice has been given in the terms prescribed by section 82 of this Act.

145 Trial in open court.

- (1) Without prejudice to section 174 of this Act, no part of a trial shall take place outwith the presence of the accused

[^{F24}Provided that, if during the course of his trial an accused so misconducts himself that in the view of the court a proper trial cannot take place unless he is removed, the court may order him to be removed for so long as his conduct may make necessary and the trial to proceed in his absence; but if he is not legally represented the court shall appoint counsel or a solicitor to represent his interests during such absence.]
- (2) Where a debate has taken place on the relevance of an indictment, the judge shall give his decision as to relevance in open court in the presence of the accused.
- (3) From the commencement of the leading of evidence in a trial for rape or the like the judge may, if he thinks fit, cause all persons other than the accused and counsel and solicitors to be removed from the court-room.

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

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- (4) Any person who interrupts or disturbs the court shall be liable to imprisonment or a fine or both as the judge thinks fit.

Textual Amendments

F24 S. 145(1) proviso added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 21, [Sch. 6 para. 2](#)

146 Sheriff's notes of evidence.

The sheriff who has presided at a trial shall duly authenticate and preserve the notes of the evidence taken by him in the trial and, if called upon to do so by the High Court, shall exhibit them, or a certified copy thereof, to the High Court.

147 Witness may be examined, etc., as to having previously made a different statement.

In any trial, any witness may be examined as to whether he has on any specified occasion made a statement on any matter pertinent to the issue at the trial different from the evidence given by him in such trial; and in such trial evidence may be led to prove that such witness has made such different statement on the occasion specified.

148 Examination of witness.

In any trial, it shall be competent for the party against whom a witness is produced and sworn in causa to examine such witness, not in cross only, but also in causa.

[^{F25}148A Recall of witnesses.

In any trial, on the motion of either party, the presiding judge may permit a witness who has been examined to be recalled.]

Textual Amendments

F25 S. 148A inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 73(1)

[^{F26}149 Additional evidence.

- (1) The judge may, on a motion of the prosecutor or defence made [^{F27}at any time] before the commencement of the speeches to the jury, permit him to lead additional evidence; but such permission shall only be granted where the judge—
- (a) considers that the additional evidence is *prima facie* material; and
 - (b) accepts that at the time the [^{F28}jury was sworn] 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.
- (2) The judge may permit the additional evidence to be led notwithstanding that—

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- (a) a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 81 and 82(2) of this Act has not been given; or
 - (b) 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.]

Textual Amendments

- F26** Ss. 149, 149A substituted for s. 149 by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 30(1), [Sch. 6 para. 2](#)
- F27** Words substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(1), [Sch. 1 para. 9\(a\)](#)
- F28** Words substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(1), [Sch. 1 para. 9\(b\)](#)

149A Evidence in replication.

- (1) The judge may, on a motion of the prosecutor made after the close of the defence evidence and before the commencement of the speeches to the jury, permit the prosecutor to lead additional evidence for the purpose of—
 - (a) contradicting evidence, [^{F29}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 147 of this Act.
- (2) The judge may permit the additional evidence to be led notwithstanding that—
 - (a) a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 81 and 82(2) of this Act has not been given; or
 - (b) 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.

Textual Amendments

- F29** Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 39:1\)](#), s. 37

150 Admissions and agreements as to evidence.

- (1) In any trial, where the accused is legally represented, it shall not be necessary for the accused or for the prosecutor to prove any fact which is admitted by the other, or to prove any document, the terms and application of which are not in dispute between them; and a copy of any document may, where they so agree, be accepted as equivalent to the original document.
- (2) For the purposes of the foregoing subsection any admission or agreement shall be made by lodging with the clerk of court a minute in that behalf signed—

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- (a) in the case of an admission, by the person making the admission if he is the prosecutor, or by his counsel or solicitor if that person is the accused, and
 - (b) in the case of an agreement, by the prosecutor and the counsel or solicitor of the accused.
- (3) Where a minute has been signed and lodged as aforesaid, any facts and documents admitted or agreed thereby shall be deemed to have been duly proved; and a copy of any document so agreed to be accepted as equivalent to the original document shall be accepted as so equivalent.

[^{F30}151 Record of proceedings at examination to be received in evidence without being sworn to by witnesses.

- (1) Subject to subsection (2) below, 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 an accused shall be received in evidence without being sworn to by witnesses, and it shall not be necessary to insert the names of any witnesses to the record in any list of witnesses, either for the prosecution or for the defence.
- (2) Subject to sections 20B(2) and 76(1)(b) of this Act, on the application of either an accused or the prosecutor, the court may refuse to allow the record or some part of the record to be read to the jury; and at the hearing of such application it shall be competent for the defence to adduce as witnesses the persons who were present during the proceedings mentioned in subsection (1) above and for the defence and for the prosecutor to examine those witnesses upon any matters regarding the said proceedings.
- (3) “Record” in subsection (2) above comprises, as regards any trial, each record included, under section 78(2) of this Act, in the list of productions.]

Textual Amendments

F30 S. 151 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 6(3), [Sch. 6 para. 1](#)

152 Defence to speak last.

In any trial the accused or, where he is legally represented, his counsel or solicitor shall have the right to speak last.

153 Seclusion of jury, etc., after retiral.

- (1) As soon as the whole case for the prosecution and defence has been heard by the court, if any of the jurors has any doubt which he would like resolved, he shall raise the same in the presence of the accused in court before retiring to the jury room.
- (2) When the jury retire to consider their verdict, the clerk of court shall enclose the jury in a room by themselves and [^{F31}, except in so far as is provided for, or is made necessary, by an instruction under subsection (3A) below,] neither he nor any other person shall be present with the jury after they are enclosed.

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- [^{F32}(3) Except in so far as is provided for, or is made necessary, by an instruction under subsection (3A) below, until the jury intimate that they are ready to return their verdict—
- (a) no person shall visit the jury and no person (save the judge—
 - (i) in giving a direction, whether or not sought under paragraph (b) below; or
 - (ii) in response to a request made under that paragraph),shall communicate with them:
Provided that the judge may, for the purposes of this subsection, authorise a person to act on his behalf; and
 - (b) no juror shall come out of the jury room other than to receive or seek a direction from the judge or to make a request—
 - (i) for an instruction under subsection (3A) (a), (c) or (d) below; or
 - (ii) regarding any matter in the cause (as, for example, to have made available for examination by them any production).
- (3A) The judge may give such instructions as he considers appropriate as regards—
- (a) the provision of meals and refreshments for the jury;
 - (b) the making of arrangements for overnight accommodation for the jury and for their continued seclusion if such accommodation is provided;
 - (c) the communication of a personal or business message, unconnected with any matter in the cause, from a juror to another person (or vice versa); or
 - (d) the provision of medical treatment, or other assistance, immediately required by a juror.]

(4) If any prosecutor or other person contravenes the provisions of this section, the accused shall be acquitted of the crime with which he is charged.

Textual Amendments

F31 Words inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), s. 24\(1\)\(a\)](#)

F32 [S. 153\(3\)\(3A\)](#) substituted for s. 153(3) by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), s. 24\(1\)\(b\)](#)

154 Oral verdicts to be returned by juries.

The verdict of the jury, whether the jury are unanimous or not, shall be returned orally by the foreman of the jury unless the court shall direct a written verdict to be returned:

Provided that where the jury are not unanimous in their verdict, the foreman shall announce that fact so that the relative entry may be made in the record . . . ^{F33}.

Textual Amendments

F33 Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), s. 24\(2\)](#)

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155 Verdicts may be returned by juries without retiring.

It shall be lawful for the court to receive a verdict from a jury orally through the foreman of the jury after consultation in the jury box, although the said verdict be not arrived at after the jury shall have been enclosed, and to cause the same to be taken down and recorded; and, in a case where the jury retire and are enclosed to consider their verdict, it shall also be lawful for the court to receive such verdict orally through the foreman of the jury, in presence of the panel, provided the judge is then sitting in court, so that the jury may straightaway repair to the presence of the court attended by an officer of the court.

[^{F34}155A Taking of other proceedings while jury out.

During the period in which, in any criminal trial, the jury are retired to consider their verdict, the judge may sit in any other proceedings; and the trial shall not fail by reason only of his so doing.]

Textual Amendments

F34 S. 155A inserted (18.9.1993) by 1993 c. 9, s. 40(1) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(3), Sch.2

156 Interruption of trial for verdict in earlier trial.

- (1) When in any criminal trial the jury shall have retired to consider their verdict, and, owing to delay in returning their verdict or for other sufficient reason, the diet in another criminal cause has been called, then, subject to the following provisions of this section, it shall be lawful to interrupt the proceedings in such other cause—
 - (a) in order to receive the verdict of the jury in the preceding trial, and thereafter to dispose of the cause either by passing sentence upon the panel, or by postponing sentence, or by assoilzing the panel, as the case may be;
 - (b) to give a direction to the jury in the preceding trial upon any matter upon which the jury may wish a direction from the judge or to hear any request from the jury regarding any matter in the cause, as, for example, to make available any production for examination by the jury.
- (2) Whether in any cause interruption shall be allowed shall be a matter in the discretion of the judge who presides at the trial.
- (3) In no case shall the verdict of the jury in the preceding trial be returned, or sentence be imposed upon the panel, or any direction be asked or given, or any request be heard or granted, in the presence of the jury in the interrupted trial, but in every case such jury shall be directed to retire by the presiding judge.
- (4) In the case of any such interruption a minute of continuation of the diet of the interrupted trial shall be entered in the minute book of the court, and it shall be sufficient that the minute shall bear that the diet be continued until later in the same day without further specification of time, or to the following or a subsequent day as the court may direct.
- (5) The court may remand the jury in the preceding trial, and order them to be re-enclosed and to prepare a verdict in writing.

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(6) On the interrupted trial being resumed the diet shall be called de novo.

157 Interruption of trial for plea or sentence in another cause.

- (1) Where in any cause the diet of which has not been called, the panel shall intimate through his counsel to the clerk of court that he is prepared to tender a plea of guilty as libelled or such qualified plea as the Crown is prepared to accept, or where a cause is remitted to the High Court for sentence in which the panel has pleaded guilty under section 102 of this Act, then, subject to the following provisions of this section, any trial (other than a trial for murder) then proceeding may be interrupted for the purpose of receiving such plea or dealing with said remitted cause and pronouncing sentence or otherwise disposing of any such cause.
- (2) In the case of any such interruption an entry will be duly made in the minute book of the court continuing the diet of the interrupted trial until later in the same day without further specification of time, or to the following or a subsequent day as the court may direct.
- (3) In any such interposed cause, the plea of the panel shall not be tendered or accepted, nor sentence passed, in the presence of the jury in the interrupted trial, but said jury if not already retired shall be directed by the presiding judge to retire.

158 No proceeding under section 156 or 157 of this Act to be deemed an irregularity.

In any case provided for by section 156 or 157 of this Act the interruption thereby occasioned in the proceedings of the court shall not be deemed any irregularity, nor entitle the panel to take any objection to the proceedings.

159 Previous convictions.

- (1) A previous conviction may not be libelled as an aggravation of an offence.
- (2) Where a person is convicted of an offence, the court may have regard to any previous conviction in respect of that person in deciding on the disposal of the case.
- (3) Nothing in this section shall affect the sentence which a court may pass on a second or subsequent conviction.

160 Laying of previous convictions before jury.

- (1) Previous convictions against the accused shall not be laid before the jury, nor shall reference be made thereto in presence of the jury before the verdict is returned.
- (2) Nothing in this section shall prevent the prosecutor from laying before the jury evidence of previous convictions where, by the existing law, it is competent to lead evidence of such previous convictions as evidence in causa in support of the substantive charge, or where the accused shall lead evidence to prove previous good character.
- (3) It shall not be necessary for the jury to return a verdict finding whether previous convictions against the accused have been proved or not.

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161 Laying of previous convictions before judge.

- (1) Previous convictions shall not be laid before the presiding judge until the prosecutor moves for sentence, and in that event the prosecutor shall lay before the judge a copy of the notice referred to in subsection (2) or (4) of section 68 of this Act.
- (2) On the conviction of the accused it shall be competent for the court to amend a notice of previous convictions so laid by deletion or alteration for the purpose of curing any error or defect therein:

Provided that no such amendment shall be made to the prejudice of the accused.
- (3) Where any such intimation as is mentioned in section 68 of this Act is given by the accused, it shall be competent to prove any previous conviction included therein in the manner set forth in section 162 of this Act, and the provisions of the said section shall apply accordingly.
- (4) Any conviction which is admitted in evidence by the court shall be entered in the record of the trial.
- (5) Nothing in this section or in section 68 of this Act shall prevent evidence of previous convictions being led in any case where such evidence is competent in support of a substantive charge.

162 Extract convictions to be received and manner of proof.

- (1) An extract conviction of any crime committed in any part of the United Kingdom, bearing to be under the hand of the officer in use to give out such extract conviction, shall be received in evidence without being sworn to by witnesses.
- (2) It shall be competent to prove by a witness or witnesses such previous conviction, or any facts relevant to the admissibility of the same, although the name of any such witness is not included in the list served on the accused; and the accused shall be entitled to examine witnesses in regard thereto.
- (3) An official of any prison in which the accused may have been confined on such conviction shall be a competent and sufficient witness to prove the application thereof to the accused, although he may not have been present in court at the trial to which such conviction relates.

163 Extract conviction to be issued by clerk having record copy of indictment.

Where the accused is convicted on indictment in the sheriff court of any crime and an extract of that conviction is subsequently required in evidence, such extract shall be issued by the clerk of the court having the custody of the record copy of the indictment although the plea of the accused may have been taken and the sentence on him pronounced in another court.

164 Proof of previous convictions by fingerprints.

- (1) A previous conviction may be proved against any person in any criminal proceedings by the production of such evidence of the conviction as is mentioned in this section and by showing that his fingerprints and those of the person convicted are the fingerprints of the same person.

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- (2) A certificate purporting to be signed by or on behalf of the Chief Constable of Strathclyde or the Commissioner of Police of the Metropolis, containing particulars relating to a conviction extracted from the criminal records kept by the person by or on whose behalf the certificate is signed, and certifying that the copies of the fingerprints contained in the certificate are copies of the fingerprints appearing from the said records to have been taken in pursuance of regulations for the time being in force under section 11 of the ^{M6}Prisons (Scotland) Act 1952, or under section 16 of the ^{M7}Prison Act 1952, from the person convicted on the occasion of the conviction or on the occasion of his last conviction, shall be sufficient evidence of the conviction or, as the case may be, of his last conviction and of all preceding convictions and that the copies of the fingerprints produced on the certificate are copies of the fingerprints of the person convicted.
- (3) Where a person has been apprehended and detained in the custody of the police in connection with any criminal proceedings, a certificate purporting to be signed by the chief constable concerned or a person authorised on his behalf, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.
- (4) A certificate purporting to be signed by or on behalf of the governor of a prison or of a remand centre in which any person has been detained in connection with any criminal proceedings, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.
- (5) A certificate purporting to be signed by or on behalf of the Chief Constable of Strathclyde, and certifying that the fingerprints, copies of which are certified as aforesaid by or on behalf of the Chief Constable or the Commissioner of Police of the Metropolis to be copies of the fingerprints of a person previously convicted and the fingerprints certified by or on behalf of a chief constable or a governor as aforesaid, or otherwise shown, to be the fingerprints of the person against whom the previous conviction is sought to be proved, are the fingerprints of the same person, shall be sufficient evidence of the matter so certified.
- (6) The method of proving a previous conviction authorised by this section shall be in addition to any other method of proving the conviction.

Marginal Citations

M6 1952 c. 52(39:1).

M7 1952 c. 61(39:1).

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