



# Criminal Procedure (Scotland) Act 1975

## 1975 CHAPTER 21

### PART I

#### SOLEMN PROCEDURE

#### PROCEDURE PRIOR TO TRIAL

#### *First Diet*

#### **103 Sheriff court case**

- (1) At the first diet the procurator fiscal of the district in which such diet is called shall represent Her Majesty's Advocate, unless an advocate depute or the procurator fiscal of the district of the second diet shall do so. Where the case is one the second diet of which is to be in the sheriff court, the sheriff shall proceed according to the existing law and practice as varied by this Part of this Act, and where the sheriff presiding is not the sheriff of the court of the second diet, he shall have all the powers exercised under the existing law and practice by a sheriff at a first diet.
- (2) Where the accused pleads guilty in whole or in part, the sheriff shall have power to adjourn the case to another sitting of his court with a view to considering what sentence should be pronounced, whether the case be one the second diet of which is to be called in his own or another court; and where the second diet is fixed for a different court any interlocutor disposing of any preliminary plea, any plea tendered, any interlocutor adjourning the case, or any sentence pronounced shall be written on the record copy of the indictment.
- (3) Where the accused pleads guilty to the indictment or any part thereof, he shall be required to sign the same if he be able to write; and in every case the sheriff shall append his signature to the plea recorded.
- (4) Where—
  - (a) the accused pleads guilty only to a part of the charge, or to a minor offence included in the charge, and the prosecutor does not accept such plea, or

---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

- (b) where on a plea of guilty to the whole charge the sheriff shall consider it expedient in the circumstances, whether on the representation of the accused or otherwise, that the sentence to be pronounced should be determined by the sheriff of the district in which the second diet is to be called,

the sheriff shall sign an interlocutor on said record copy in the form set out in Schedule H to the Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form, and the sheriff clerk shall record any interlocutor signed, plea tendered or sentence pronounced, in the books of court, or in a record to be kept for the purpose, and shall forthwith transmit the record copy of the indictment to the sheriff clerk of the district of the court of the second diet.

- (5) Nothing contained in this section shall require a plea tendered by or on behalf of a company to be signed.

#### **104 Remit to High Court for sentence**

In any proceedings on indictment in which the second diet is to be in the sheriff court—

- (a) where the accused shall either at the first or at the second diet plead guilty in whole or in part, and the prosecutor shall accept such plea, or  
 (b) where the accused shall at the second diet be found guilty in whole or in part by verdict of the jury.

the sheriff, if he shall hold that any sentence which he can competently pronounce is inadequate and that the question of punishment should be disposed of by the High Court.—

- (i) shall endorse upon the record copy of the indictment a certificate of the plea tendered or of the verdict returned, and  
 (ii) shall by interlocutor written on the said record copy remit the accused to the said court for sentence, and  
 (iii) may, if he shall think fit, append to such interlocutor a note setting forth the reasons for such remit, and such remit shall be of the like force and effect in all respects as a remit in terms of section 102 of this Act.

#### **105 High Court case**

- (1) At the first diet, where the case is one in which the second diet is to be in the High Court, the sheriff shall hear any objection of a preliminary nature, whether to the citation or relevancy or otherwise.

(2) If—

- (a) the sheriff shall be of opinion, upon any objection made to—  
 (i) any discrepancy between the record copy of the indictment and the service copy, or  
 (ii) any error or deficiency in such service copy, or in the notice of citation,

that such discrepancy, error or deficiency could not mislead or prejudice the accused, or

- (b) he shall be of opinion that any other preliminary objection made is frivolous, or  
 (c) no preliminary objection be made,

---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

the sheriff shall call upon the accused to plead guilty or not guilty, and shall endorse upon the record copy of the indictment a certificate of the plea tendered in the form set out in Schedule 1 to the Criminal Procedure (Scotland) Act 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form.

- (3) Where the accused pleads guilty to the indictment or any part thereof, he shall be required to sign the same if he is able to write ; and in every case the sheriff shall append his signature to the plea recorded.
- (4) Where the sheriff shall hold such a discrepancy, error or deficiency as aforesaid to be one which tends substantially to mislead and prejudice the accused, or where any other preliminary objection shall be held by him not to be frivolous, he shall endorse upon the record copy of the indictment a certificate in the form set out in Schedule K to the said Act of 1887 or in an Act of Adjournal under this Act or as nearly as may be in such form, and the sheriff clerk shall record any certificate so written on such record copy in the books of court or in a record to be kept for the purpose, and shall forthwith transmit the record copy of the indictment to the Clerk of Justiciary.
- (5) Nothing contained in this section shall require a plea tendered by or on behalf of a company to be signed.

#### **106 Power to convict on plea of guilty to offence other than that charged in indictment**

If a person charged on indictment with any crime or offence tenders a plea of guilty of any other crime or offence of which he could competently, by virtue of any enactment, be found guilty on the trial of such indictment, and if the plea is accepted by the prosecutor it shall be competent to convict such person of the crime or offence to which he has so pled guilty and to sentence him accordingly.

#### **107 Solicitor of place of second diet may defend at both diets**

In all cases a solicitor who is entitled to conduct proceedings in the courts of the district of the second diet shall be entitled to appear at the first diet and to conduct the defence, although he may not be entitled to conduct other law business in the locality of the first diet.

#### **108 Certain objections competent only at first diet**

No objection by the accused to the validity of the citation against him, on the ground of any discrepancy between the record copy of the indictment and the copy served on him, or on account of any error or deficiency in such service copy or in the notice of citation, shall be competent unless the same be stated to the sheriff at the first diet before the accused is called upon to plead, and no such discrepancy, error or deficiency shall entitle the accused to object to plead to such indictment unless the sheriff shall be satisfied that the same tended substantially to mislead and prejudice the accused.

#### **109 Interlocutor of relevancy unnecessary**

It shall not be necessary to enter upon the record an interlocutor finding the indictment relevant and, when objections are taken to the relevancy, it shall not be necessary to enter on the record copy of the indictment or in the record any other minute setting

---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

forth how such objections were disposed of, except that such objections were sustained or repelled, and such minute shall be signed by the clerk of court.

**110 Where sentence delayed, original warrant of commitment stands**

In all cases where the accused pleads guilty at the first diet and is not forthwith sentenced by the sheriff, he shall be detained in custody until he is sentenced, under the existing warrant of commitment, unless the Lord Advocate shall consent to his being suffered to go at large, and, where such consent is given, it shall be on such conditions as to bail as the Lord Advocate shall fix, but no unreasonable delay shall be allowed to take place between the time of the accused pleading guilty and his being brought up for sentence.

**111 Postponement on old warrant where diet deserted**

Where a diet is deserted *pro loco et tempore*, or where a diet is postponed or adjourned, or an order issued for the trial to take place at a different place from that first given notice of, it shall not be necessary that a new warrant should be granted for the incarceration of the accused, but the warrant of commitment on which he is at the time in custody till liberated in due course of law shall continue in force.