



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PART II

SUMMARY PROCEDURE

Trial Procedure

334 Procedure at first diet, etc.

- (1) Where the accused is present at the first calling of the case in a summary prosecution [^{F1}(whether or not a diet fixed by virtue of section 333A of this Act)], and—
- the complaint has been served on him, or
 - the complaint or the substance thereof has been read to him, or
 - he has legal assistance in his defence,

he shall [^{F2}, unless the court adjourns (or further adjourns) the case under the said section 333A,] be asked to plead in common form, and he may, prior to pleading, state [^{F3}an objection to the competency or relevancy of the complaint or the proceedings or issue a denial that he is the person charged by the police with the offence; and no such objection or denial shall be allowed to be stated or issued] at any future diet in the case except with the leave of the court, which may be granted only on cause shown.

- [^{F4}(2) In the absence of the accused, an objection to the competency or relevancy of a summary complaint or the proceedings thereon may be stated, or a denial that the accused is the person charged by the police with the offence may be issued, by counsel or by a solicitor on his behalf; and where such an objection is stated or denial is issued, the provisions of this Part of this Act shall apply in like manner as if the accused had appeared and stated the objection or issued the denial.]

- [^{F5}(2A) Without prejudice to any right of appeal under section 442 or 453A of this Act, a party may, with the leave of the court (granted either on the motion of that party or ex proprio motu) and in accordance with such procedure as may be prescribed by Act of Adjournal under this Act, appeal to the High Court against a decision of the court of first instance (other than a decision not to grant leave under this subsection) which

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relates to such objection or denial as is mentioned in subsection (1) above; but such appeal must be taken not later than two days after such decision.

- (2B) Where an appeal is taken under subsection (2A) above, the High Court may postpone the trial diet (if one has been fixed) for such period as appears to them to be appropriate and may, if they think fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.
- (2C) If leave to appeal under subsection (2A) above is granted by the court it shall not proceed to trial at once under paragraph (a) of section 337 of this Act; and paragraph (b) of that section shall be construed as requiring sufficient time to be allowed for the appeal to be taken.
- (2D) In disposing of an appeal under subsection (2A) above the High Court may affirm the decision of the court of first instance or may remit the case to it with such directions in the matter as they think fit; and where the court of first instance had dismissed the complaint, or any part of it, may reverse that decision and direct that the court of first instance fix a trial diet (if it has not already fixed one as regards so much of the complaint as it has not dismissed.)]
- (3) Where the accused is not present at a calling of the case in a summary prosecution and either—
- (a) the prosecutor produces to the court written intimation that the accused pleads not guilty or pleads guilty and the court is satisfied that such written intimation has been made or authorised by the accused, or
 - (b) a solicitor, or a person not being a solicitor who satisfies the court that he is authorised by the accused, appears on behalf of the accused and tenders a plea of not guilty or a plea of guilty,
- then—
- (i) in the case of a plea of not guilty, the provisions of this Part of this Act except paragraph (a) of section 337 shall apply in like manner as if the accused had appeared and tendered the plea, and
 - (ii) in the case of a plea of guilty, the court may, if the prosecutor accepts the plea, proceed to hear and dispose of the case in the absence of the accused in like manner as if he had appeared and pled guilty, or may, if it thinks fit, continue the case to another diet and require the attendance of the accused with a view to pronouncing sentence in his presence.
- (4) Where in pursuance of paragraph (ii) of the last foregoing subsection the court proceeds to hear and dispose of a case in the absence of the accused, it shall not pronounce a sentence of imprisonment or of Borstal training or of detention in a detention centre, young offenders institution, remand centre, or other establishment.
- (5) In this section a reference to a plea of guilty shall include a reference to a plea of guilty to a part only of the charge:
- Provided that where such a plea is not accepted by the prosecutor it shall be deemed to be a plea of not guilty.
- (6) It shall not be competent for any person appearing to answer a complaint, or for a solicitor appearing for the accused in his absence, to plead want of due citation or informality therein or in the execution thereof.

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Textual Amendments

- F1 Words in s. 334(1) inserted (18.9.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(30)(a)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(3), 4(1)(c), **Sch. 2**
- F2 Words in s. 334(1) inserted (18.9.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(30)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(3), 4(1)(c), **Sch. 2**
- F3 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 54(a)**
- F4 S. 334(2) substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 54(b)**
- F5 S. 334(2A)–(2D) inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 36, **Sch. 6 para. 1**

335 Amendment of complaint.

- (1) It shall be competent at any time prior to the determination of a summary prosecution, unless the court sees just cause to the contrary, to amend the complaint or any notice of penalty or previous conviction relative thereto 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 complaint or notice and the evidence.
- (2) 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 it shall think just.
- (3) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of court.

336 Plea of guilty.

Where the accused in a summary prosecution pleads guilty to the charge or to any part thereof, and his plea is accepted by the prosecutor, the plea shall be recorded and signed by the judge or clerk of court, and the court shall thereafter dispose of the case at the same or any adjourned diet. The plea and sentence may be combined, in which case one signature shall be sufficient to authenticate both.

337 Plea of not guilty.

Where the accused in a summary prosecution pleads not guilty to the charge or guilty to part only thereof, and the prosecutor does not accept such partial plea, the following provisions shall apply:—

- (a) the court may proceed to trial at once unless either party moves for an adjournment and the court shall adjudge it expedient to grant it; . . . ^{F6}
- (b) the court may adjourn the case for trial to as early a diet as is consistent with the just interest of both parties, in which case the prosecutor shall, if requested by the accused, furnish him with a copy of the complaint if he does not already have one;
- (c) where the accused is brought before the court by apprehension he shall be entitled to an adjournment of the case for not less than 48 hours, if the request

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for such adjournment is made before the prosecutor has commenced his proof, and the court shall inform the accused of his right to such adjournment:

Provided that the case may proceed to trial at once or on a shorter adjournment than 48 hours if the court considers that necessary to secure the examination of witnesses who otherwise would not be available;

- (d) where the accused is in custody, he may be committed to prison or to legalised police cells or to any other place to which he may lawfully be committed pending trial
 - [^{F7}(i) if he is neither granted bail nor ordained to appear, or
 - (ii) if he is granted bail on a condition imposed under section 1(3) of the Bail etc. (Scotland) Act 1980 that a sum of money is deposited in court, until the accused or a cautioner on his behalf has so deposited that sum.]
- (e) . . . ^{F8}
- (f) the court may from time to time, and at any stage of the case, on the motion of either party or ex proprio motu grant such adjournment as may be necessary for the proper conduct of the case, and where from any cause a diet has to be continued from day to day it shall not be necessary to intimate such continuation to the accused;
- (g) it shall not be necessary for the prosecutor to establish a charge or part of a charge to which the accused pleads guilty;
- (h) the court may, in any case where it considers such a course expedient, permit any witness for the defence to be examined prior to evidence for the prosecution having been led or concluded, but in any such case the accused shall be entitled to lead additional evidence after the case for the prosecution is closed.

Textual Amendments

F6 Word repealed by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), [Sch. 2](#)

F7 [S. 337\(d\)\(i\)\(ii\)](#) substituted for words by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), [ss. 47\(4\)\(a\)](#), [62\(3\)](#)

F8 [S. 337\(e\)](#) repealed by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\)](#), [Sch. 2](#) and [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 8](#)

[^{F9}337A Intermediate diet.

[The court may, when adjourning a case for trial in terms of section 337(b) of this Act, ^{F10}(1) and may also, at any time thereafter, whether before, on or after any date assigned as a trial diet, fix a diet (to be known as an intermediate diet) for the purpose of ascertaining—

- (a) the state of preparation of the prosecutor and of the accused with respect to their cases; and
 - (b) whether the accused intends to adhere to the plea of not guilty.]
- (2) At an intermediate diet, the court may ask the prosecutor and the accused any question for the purposes mentioned in subsection (1) above.
- (3) The accused shall attend an intermediate diet of which he has received intimation or to which he has been cited.

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- (4) A plea of guilty may be tendered at the intermediate diet; and section 336 of this Act shall apply accordingly.]

Textual Amendments

- F9** S. 337A added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 15, [Sch. 6 para. 1](#)
F10 S. 337A(1) substituted (*retrospectively*) by virtue of [1998 c. 10, s. 1\(3\)](#)

337B Removal of accused from court.

- (1) Without prejudice to section 338 of this Act, and subject to subsection (2) below, no part of a trial shall take place outwith the presence of the accused.
- (2) 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—
- (a) that he is removed from the court for so long as his conduct makes it necessary; and
 - (b) that the trial proceeds 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.

338 Failure of accused to appear.

[^{F12}(1)] Where the accused in a summary prosecution fails to appear at any diet of which he has received intimation, or to which he has been cited, the following provisions shall apply:—

- (a) the court may adjourn the trial to another diet, and order the accused to attend at such diet, and appoint intimation thereof to be made to him, which intimation shall be sufficiently given by an officer of law, or by letter signed by the prosecutor and sent to the accused at his last known address by registered post or by the recorded delivery service, and the production in court of the written execution of such officer or of an acknowledgment or certificate of the delivery of the letter issued by the Post Office shall be sufficient evidence of such intimation having been duly given;
- (b) where the accused is charged with any statutory offence for which a sentence of imprisonment cannot be imposed in the first instance, or where the statute founded on or conferring jurisdiction authorises procedure in the absence of the accused, the court may, on the motion of the prosecutor and upon proof that the accused has been duly cited, or has received due intimation of the diet where such intimation has been ordered, proceed to hear and dispose of the case in the absence of the accused. Unless the statute founded on authorises conviction in default of appearance, proof of the complaint must be led to the satisfaction of the court. The court in any case to which this paragraph applies may, if it shall judge it expedient, allow any solicitor who satisfies the court that he has authority from the accused so to do, to appear and plead for and defend him;
- (c) the court may grant warrant to apprehend the accused;
- (d)

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- [^{F14}(2) An accused who without reasonable excuse fails to attend any diet of which he has been given due notice, shall be guilty of an offence and liable on summary conviction—
- (a) to a fine not exceeding [^{F15}level 3 on the standard scale]; and
 - (b) to a period of imprisonment not exceeding—
 - (i) in the district court, 60 days; or
 - (ii) in the sheriff court, 3 months.
- (3) The penalties provided for in subsection (2) above may be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.
- (4) An accused may be dealt with for an offence under subsection (2) above either at his diet of trial for the original offence or at a separate diet.]

Textual Amendments

F12 Word inserted by virtue of [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 17

F13 S. 338(d) repealed by [Bail etc. \(Scotland\) Act 1980 \(c. 4\)](#), [Sch. 2](#)

F14 S. 338(2)–(4) inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 17, [Sch. 6 para. 1](#)

F15 Words substituted by virtue of [Criminal Procedure \(Scotland\) 1975 \(c. 21, SIF 39:1\)](#), s. 289G

[^{F16}338A Desertion of trial diet.

- (1) It shall be competent at the diet of trial, at any time before the first witness is sworn, for the court, on the application of the prosecutor, to desert the diet *pro loco et tempore*.
- (2) If, at a diet of trial, the court refuses an application by the prosecutor to adjourn the trial or to desert the diet *pro loco et tempore*, and the prosecutor is unable or unwilling to proceed with the trial, the court shall desert the diet *simpliciter*.
- (3) Where the court has deserted a diet *simpliciter* under subsection (2) above (and the court's decision in that regard has not been reversed on appeal), it shall not be competent for the prosecutor to raise a fresh libel.]

Textual Amendments

F16 S. 338A added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 18(2), [Sch. 6 para. 2](#)

339 Alibi.

It shall not be competent for the accused in a summary prosecution to found on a plea of alibi unless he gives, prior to the examination of the first witness for the prosecution, notice to the prosecutor of the plea with particulars as to time and place and of the witnesses by whom it is proposed to prove it. The prosecutor, on such notice being given, shall be entitled, if he so desires, to an adjournment of the case.

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340 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.

341 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.

342 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.

[^{F17}342A 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 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

F17 S. 342A inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 63

343 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.

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344 Punishment of witness for contempt.

- (1) If a witness in a summary prosecution shall wilfully fail to attend after being duly cited, or unlawfully refuse to be sworn, or after the oath has been administered to him refuse to answer any question which the court may allow, or to produce documents in his possession when required by the court, or shall prevaricate in his evidence, he shall be deemed guilty of contempt of court and be liable to be summarily punished forthwith for such contempt by a fine not exceeding [^{F18}level 3 on the standard scale] or by imprisonment for any period not exceeding [^{F19}21 days].
- (2) Where such punishment as aforesaid is summarily imposed, the clerk of court shall enter in the record of the proceedings the acts constituting the contempt or the statements forming the prevarication.
- (3) The foregoing provisions of this section shall be without prejudice to the prosecutor proceeding by way of formal complaint for any such contempt where such summary punishment, as above mentioned, is not imposed.
- (4) Any witness who, after being duly cited in accordance with section 315 of this Act—
 - (a) fails without reasonable excuse, after receiving at least [^{F20}48] hours' notice, to attend for precognition by a prosecutor at the time and place mentioned in the citation served on him, or
 - (b) refuses when so cited to give information within his knowledge regarding any matter relative to the commission of the offence in relation to which such precognition is taken,
 shall be liable to the like punishment as is provided in the foregoing provisions of this section.

Textual Amendments

F18 S. 338(d) repealed by [Bail etc. \(Scotland\) Act 1980 \(c. 4\)](#), [Sch. 2](#)

F19 Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62\)](#), s. 46(1)(c), [Sch. 6 para. 1](#)

F20 Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62\)](#), SIF 39:1), [Sch. 6 para. 1](#), [Sch. 7 para. 55](#)

345 Administration of oath to same witness in case at same diet.

Where a witness in a summary prosecution is examined on oath in a case in which the accused is charged with an offence under any statute, and where the same witness is examined at the same diet in subsequent cause against the same or different persons accused of offences under the same statute, it shall not be necessary for the judge to administer the oath to the witness in the subsequent cases, but it shall be sufficient that the judge shall remind him in each case that he is still on oath.

[^{F21}345A] 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 complaint; and
 - (b) on any other offence of which he could be convicted under the complaint were the offence charged the only offence so charged.

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- (2) If, after hearing both parties, the court 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, it 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 complaint.
- (3) If, after hearing both parties, the court is not satisfied as is mentioned in subsection (2) above, it 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

F21 S. 345A inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 19(2), Sch. 6 para. 2

346 Accused and spouse competent witnesses for defence.

[^{F22}(1)] The accused . . . ^{F23} shall be [^{F24}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—

- (a) the accused shall not be called as a witness in pursuance of this section except upon his own application [^{F25}or in accordance with subsection (2) or (3) below];
- (b) the failure of the accused . . . ^{F23} to give evidence shall not be commented upon by the prosecution;
- (c) ^{F26}
- (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 [^{F27}in the same proceedings];
- (g) every person called as a witness in pursuance of this section . . . ^{F23} 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.

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[^{F28}(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 [^{F29}or been acquitted of] all charges against him which remain before the court (whether or not [^{F30}in a case where the co-accused has pleaded guilty to any charge,] he has been sentenced) [^{F31}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

F22 S. 338(2)–(4) inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 17, **Sch. 6 para. 1**

F23 Words substituted by virtue of Criminal Procedure (Scotland) 1975 (c. 21, SIF 39:1), s. 289G

F24 Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 7 para. 56**

F25 Words in s. 338(1) 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. 120**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F26 S. 346(1) proviso paras. (c)(d) repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 1, **Sch. 8**

F27 Words in s. 339 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. 121**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F28 S. 346(2)(3) added by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 28(c), **Sch. 6 para. 1**

F29 Words in s. 79(1) 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. 31**; S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

F30 S. 80 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 4 para. 9, **Sch. 6 para. 1**

F31 Words in s. 80(1) 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. 32**; S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

[^{F32}346A Evidence in relation to sexual offences.

- (1) In any trial of a person on any charge to which this section applies, subject to section 346B, 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, in the case of paragraphs (b) to (g), attempting to commit any of the following offences, that is to say—
 - (a) attempted rape;
 - (b) sodomy;
 - (c) assault with intent to rape;

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- (d) indecent assault;
 - (e) indecent behaviour (including any lewd, indecent or libidinous practice or behaviour);
 - (f) an offence under any of the following provisions of the ^{M1}Sexual Offences (Scotland) Act 1976—
 - (i) section 2 (procuring by threats, etc.);
 - (ii) section 3(2) (unlawful sexual intercourse 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
 - (g) an offence under section 80(7) of the ^{M2}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

F32 S. 346A, 346B inserted by [Law Reform \(Miscellaneous Provisions\) Act 1985 \(c. 73, SIF 39:1\)](#), s. 36(2), [Sch. 3 para. 1](#)

Marginal Citations

M1 1976 c. 67(39:5).
M2 1980 c. 62(39:1).

346ZA 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 350 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.
- (3) In subsection (1) above, references to the complainer include references to a victim who is deceased.

Status: Point in time view as at 18/09/1993.

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346B Exceptions to prohibition.

- (1) Notwithstanding the terms of section 346A above, 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 346A(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 346A(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 346A(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.
- (3) Any application under this section shall be made in the course of the trial but in the absence of the complainer, any person cited as a witness and the public.

347 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.

[^{F34}348 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

F34 S. 348 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 29, [Sch. 6 para. 1](#)

Status: Point in time view as at 18/09/1993.

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349 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.

[^{F35}349A 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

F35 S. 349A inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [s. 73\(2\)](#)

[^{F36}350 Additional evidence.

- (1) The judge may, on a motion of the prosecutor or defence made [^{F37}at any time] before the prosecutor proceeds to address the judge on the evidence, permit that party 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 [^{F38}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.
- (2) The judge may permit the additional evidence to be led notwithstanding that 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

F36 Ss. 350, 350A substituted for s. 350 by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 30(2), [Sch. 6 para. 2](#)

F37 Words in s. 350(1) substituted (18.9.1993) by 1993 c. 9, s. 47(1), [Sch. 5 para. 1\(31\)\(a\)](#) (with s. 47(2), [Sch. 6 paras. 1, 2](#)); S.I. 1993/2050, arts. 3(3), 4(1)(c), [Sch. 2](#)

F38 Words in s. 350(1)(b) substituted (18.9.1993) by 1993 c. 9, s. 47(1), [Sch. 5 para. 1\(31\)\(b\)](#) (with s. 47(2), [Sch. 6 paras. 1, 2](#)); S.I. 1993/2050, arts. 3(3), 4(1)(c), [Sch. 2](#)

350A Evidence in replication.

- (1) The judge may, on a motion of the prosecutor made after the close of the defence evidence and before the prosecutor proceeds to address the judge on the evidence, permit the prosecutor to lead additional evidence, for the purpose of—
 - (a) contradicting evidence, [^{F39}given by any defence witness], which could not reasonably have been anticipated by the prosecutor; or

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- (b) providing such proof as is mentioned in section 349 of this Act.
- (2) The judge may permit the additional evidence to be led notwithstanding that 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

F39 Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 39:1\), s. 37](#)

351 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.

[^{F40}352 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.
- (2) Subject to section 20B(2) of this Act and to subsection (4) below, on the application of either an accused or the prosecutor, the court may refuse to admit the record or some part of the record as evidence; 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 which it is sought to have received in evidence under subsection (1) above.
- (4) Except on cause shown, an application under subsection (2) above shall not be heard unless notice of at least 10 clear days has been given to the court and to the other parties.]

Textual Amendments

F40 S. 352 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), s. 6\(4\), Sch. 6 para. 1](#)

353 Proof of official documents.

- (1) Any letter, minute or other official document issuing from the office or in the custody of any of the departments of state or government in the United Kingdom the production of which in evidence is required in any summary prosecution, and which according to the rules and regulations applicable to such departments may be competently produced, shall when produced be received as prima facie evidence of the matters

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contained in it without being produced or sworn to by any witness, and a copy thereof bearing to be certified by any person having authority to certify the same shall be treated as equivalent to the original, and no proof of the signature of the person certifying such copy, or of his authority to certify it, shall be necessary.

- (2) Any order by any of the departments of state or government or any local authority or public body made under powers conferred by any statute, or a print or copy of such order, shall when produced in a summary prosecution be received in evidence of the due making, confirmation, and existence of such order without being sworn to by any witness and without any further or other proof, but without prejudice to any right competent to the accused to challenge any such order as being ultra vires of the authority making it or on any other competent ground, and where any such order is referred to in the complaint it shall not be necessary to enter it in the record of the proceedings as a documentary production.
- (3) The provisions contained in this section shall be deemed to be in addition to, and not in derogation of, any powers of proving documents conferred by statute, or existing at common law.

354 Admissions by parties.

- (1) It shall not be necessary in any summary prosecution for either party to lead proof of any fact which is admitted by the opposite party, or to prove any documents the terms and application of which are not in dispute, and copies of any documents may, by agreement of the parties, be accepted as equivalent to the originals:

Provided that this subsection shall not apply unless the accused has legal assistance in his defence.

- (2) Admissions or agreements under the foregoing subsection may be made by lodging with the clerk of court a minute signed by the person or persons making the same or by his or their counsel or solicitor, and any facts and documents so admitted or agreed shall be accepted as if they had been duly proved.

355 Judges equally divided.

In a summary prosecution in a court consisting of more than one judge, if the judges are equally divided in opinion as to the guilt of the accused, the accused shall be found not guilty of the charge or part thereof on which such division of opinion exists.

356 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.

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357 Laying of previous convictions before court.

(1) Where the accused in a summary prosecution has been previously convicted of any offence and the prosecutor has decided to lay a previous conviction before the court, the following provisions shall have effect:—

- (a) a notice in the form, as nearly as may be, of Form No. 2 or 3 of Part III of Schedule 2 to the ^{M3}Summary Jurisdiction (Scotland) Act 1954 or of the appropriate form in an Act of Adjournal under this Act setting forth the previous conviction shall be served on the accused with the complaint where he is cited to a diet, and where he is in custody the complaint and such a notice shall be served on him before he is asked to plead;
- (b) the previous conviction shall not be laid before the judge until he is satisfied that the charge is proved;
- (c) if a plea of guilty is tendered or if, after a plea of not guilty, the accused is convicted the prosecutor shall lay the notice referred to in paragraph (a) of this subsection before the judge, and
 - [^{F41}(i) in a case where the plea of guilty is tendered in writing the accused shall be deemed to admit any previous conviction set forth in the notice, unless he expressly denies it in the writing by which that plea is tendered;
 - (ii) in any other case the judge or the clerk of court shall ask the accused whether he admits the previous conviction,

and if such admission is made or deemed to be made it shall be entered in the record of the proceedings.]

- (d) it shall not be necessary for the prosecutor to produce extracts of any previous convictions so admitted;
 - (e) where the accused does not admit any such previous conviction, the prosecutor unless he withdraws the conviction shall adduce evidence in proof thereof either then or at any other diet;
 - (f) a copy of any notice served on the accused under this subsection shall be entered in the record of the proceedings.
- (2) A conviction, or an extract conviction of any offence 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. 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 such official may not have been present in court at the trial to which such conviction relates. This provision shall be without prejudice to any other competent mode of proving a conviction and the application thereof to the accused.
- (3) Where in any court a book of record is kept of the convictions in the court containing the like particulars as are inserted in an extract conviction, and where at the end of each day's proceedings the entries in such book are certified as correct by the judge or clerk of court, such entries shall, in any proceeding in that court, be accepted as evidence of such convictions.
- (4) Where the accused in a summary prosecution is convicted of any offence and also of any aggravation by previous conviction, and is again accused of any offence in regard to which such conviction may be competently used as an aggravation, the production of the prior conviction, or an extract thereof, setting forth the particulars of the previous convictions therein libelled, shall be admissible and sufficient evidence

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to prove against the accused all the previous convictions and aggravations therein set forth.

- (5) Nothing in this section shall prevent evidence of previous convictions being led in causa where such evidence is competent in support of a substantive charge.

Textual Amendments

F41 Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 40, **Sch. 6 para. 1**

Modifications etc. (not altering text)

C1 [S. 357\(1\)](#) excluded by [Road Traffic Offenders Act 1988 \(c. 53, SIF 107:1\)](#), **ss. 31(2), 32(6)**

Marginal Citations

M3 [1954 c. 48\(39:1\)](#).

358 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.
- (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 ^{M4}Prisons (Scotland) Act 1952, or under section 16 of the ^{M5}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

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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

M4 1952 c. 52(39:1).

M5 1952 c. 61(39:1).

359 Record.

Proceedings in a summary prosecution shall be conducted summarily viva voce and, except where otherwise provided, no record need be kept of the proceedings other than the complaint, the plea, a note of any documentary evidence produced, and the conviction and sentence or other finding of the court:

Provided that any objections taken to the competency or relevancy of the complaint or proceedings, or to the competency or admissibility of evidence, shall, if either party desires it, be entered in the record of the proceedings.

360 Proceedings written or printed.

Proceedings in a summary prosecution may be either in writing or printed, or may be partly written and partly printed, and all forms bearing reference to any antecedent form may be either on the same sheet of paper therewith or on a separate sheet attached to it.

Status:

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Changes to legislation:

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