Criminal Justice (Scotland) Act 1980

1980 CHAPTER 62

PART II

PROCEDURE AND EVIDENCE

Procedure

6 Judicial examination.

(1) In section 20 of the 1975 Act (accused at examination need not emit a declaration)—

(a) in subsection (1), after the words "declaration, and" there shall be inserted the words " subject to section 20A of this Act ";

(b) at the end of subsection (3) there shall be added the words " , and that declaration shall be taken in further examination. "; and

(c) after subsection (3) there shall be inserted the following subsections—

"(3A) An accused person may, where subsequent to examination (or further examination) on any charge the prosecutor desires to question him as regards an extrajudicial confession (whether or not a full admission) allegedly made by him, to or in the hearing of an officer of police, which is relevant to the charge and as regards which he has not previously been examined, be brought before the sheriff for further examination.

(3B) Where the accused is brought before the sheriff for further examination it shall be in the power of the sheriff to delay that exa@nation for a period not exceeding 24 hours in order to allow time for the attendance of the accused's solicitor.

(3C) Any proceedings before the sheriff in examination or further examination shall be conducted in chambers and outwith the presence of any co-accused.".

(2) After section 20 of the 1975 Act there shall be inserted the following sections—

"**20A Accused at examination may be questioned by prosecutor.**

(1) Subject to the following provisions of this section, an accused on being brought before the sheriff for examination on any charge (whether that examination is the first examination or a further examination) may be questioned by the prosecutor in so far as such questioning is directed towards eliciting any denial, explanation, justification or comment which the accused may have as regards—

(a) matters averred in the charge:

Provided that the particular aims of a line of questions under this paragraph shall be to determine—

(i) whether any account which the accused can give ostensibly discloses a category of defence (as for example alibi, incrimination, or the consent of an alleged victim); and

(ii) the nature and particulars of that defence;

(b) the alleged making by the accused, to or in the hearing of an officer of police, of an extrajudicial confession (whether or not a full admission) relevant to the charge:

Provided that questions under this paragraph may only be put if the accused has, before the examination, received from the prosecutor or from an officer of police a written record of the confession allegedly made ; or

(c) what is said in any declaration emitted in regard to the charge by the accused at the examination.

(2) The prosecutor shall, in framing questions in exercise of his power under subsection (1) above, have regard to the following principles—

(a) the questions should not be designed to challenge the truth of anything said by the accused ;

(b) there should be no reiteration of a question which the accused has refused to answer at the examination ; and

(c) there should be no leading questions ;

and the sheriff shall ensure that all questions are fairly put to, and understood by, the accused.

(3) The accused, where he is represented by a solicitor at the judicial examination, shall be told by the sheriff that he may consult that solicitor before answering any question.

(4) With the permission of the sheriff, the solicitor for the accused may ask the accused any question the purpose of which is to clarify any ambiguity in an answer given by the accused to the prosecutor at the examination or to give the accused an opportunity to answer any question which he has previously refused to answer.

(5) An accused may decline to answer a question under subsection (1) above; and, where he is subsequently tried on the charge mentioned in that subsection or on any other charge arising out of the circumstances which gave rise to the charge so mentioned, his having so declined may be commented upon by the prosecutor, the judge presiding at the trial, or any co-accused, only where and in so far as the accused (or any witness called on his be half in evidence

avers something which could have been. stated appropriately in answer to that question.

(6) The procedure in relation to examination under this section shall be prescribed by Act of Adjournal under this Act.

2OB Record to be made of proceedings at examination.

(1) The prosecutor shall provide for averbatim record to be made by a shorthand writer of all questions to and answers and declarations by, the accused in examination, or further examination, under sections 20 and 20A of this Act.

(2) The shorthand writer shall sign the transcript of the notes taken by him and shall certify that it is a complete and accurate record of the said questions, answers and declarations; and, subject to subsection (4) below, it shall for all purposes be so deemed.

(3) Subject to subsections (5) and (6) below, within 14 days of the date of examination or further examination, the prosecutor shall—

(a) serve a copy of the transcript on the accused examined ; and

(b) serve a further such copy on the solicitor (if any) for that accused.

(4) Subject to subsections (5) and (6) below, where notwithstanding the certification mentioned in subsection (2) above the said accused or the prosecutor is of the opinion that a transcript served under paragraph (a) of subsection (3) above contains an error or is incomplete he may—

(a) within 10 days of service under the said paragraph (*a*), serve notice of such opinion on the prosecutor or as the case may be the said accused; and

(b) within 14 days of service under paragraph (*a*) of this subsection, apply to the sheriff for the error or incompleteness to be rectified;

and the sheriff shall within seven days of the application hear the prosecutor and the said accused in chambers and may authorise rectification:

Provided that where—

(i) the person on whom notice is served under paragraph (*a*) of this subsection agrees with the opinion to which that notice relates the sheriff may dispense with such hearing;

(ii) the said accused neither attends, nor secures that he is represented at, such hearing it shall, subject to paragraph (i) above, nevertheless proceed.

(5) Where at the time of a further examination a trial diet is already fixed and the interval between the further examination and that diet is not sufficient to allow of the time limits specified in subsections (3) and (4) above, the sheriff shall (either or both)—

(a) direct that those subsections shall apply in the case with such modifications as to time limits as he shall specify;

(b) postpone the trial diet:

Provided that postponement under paragraph (*b*) above alone shall only be competent where the sheriff considers that to proceed under paragraph (*a*)

above alone, or paragraphs (*a*) and (*b*) above together, would not be practicable.

(6) Any time limit mentioned in subsections (3) and (4) above (including any such time limit as modified by a direction under subsection (5) above) may extended, in respect of the case, by the High Court.

(7) In so far as it is reasonably practicable so to arrange, the sheriff who deals with any application made under subsection (4) above shall be the sheriff before whom the examination (or further examination) to which the application relates was conducted.

(8) Any decision of the sheriff, as regards rectification under subsection (4) above, shall be final.

(9) A copy of—

(a) a transcript required by paragraph (*a*) of subsection (3) above to be served on an accused or by paragraph (*b*) of that subsection to be served on his solicitor; or

(b) a notice required by paragraph (*a*) of subsection (4) above to be served on an accused or on the prosecutor,

may either be personally served on the accused, solicitor or prosecutor (as the case may be) or sent to him by registered post or by the recorded delivery service ; and a written execution purporting to be signed by the person who served such transcript or notice, together with, where appropriate, a post office receipt for the relative registered or recorded delivery letter shall be sufficient evidence of service of such a copy.".

(3) For section 151 of the 1975 Act (accused's declaration in solemn proceedings to be received in evidence without being sworn to by witnesses), there shall be substituted the following section—

"**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 2OB(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.".

(4) For section 352 of the 1975 Act (accused's declaration, in summary proceedings, to be received in evidence without being sworn to by witnesses), there shall be substituted the following section—

"**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 swom to by witnesses.

(2) Subject to section 2OB(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.".

Modifications etc. (not altering text)

C1 The text of ss. 6, 11, 13–22, 24, 25, 27–30, 33–38, 40, 43, 45(1), (3), 46(1)(*e*)(*f*), (2), 47–51, 53, 54, 56, 57, 79, 83(2)(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

7 Jurisdiction of district courts.

(1) Except in so far as any enactment (including this Act or an enactment passed after this Act) otherwise provides, the statutory offences which it shall be competent for a district court to try shall be those in respect of which the maximum penalty which may be imposed does not exceed 60 days imprisonment or a fine of **[**F1level 4 on the standard scale**]** or both.

(2) F2

(3) . . . F3 it shall be competent, whether or not the accused has been previously convicted of an offence inferring dishonest appropriation of property, for any of the following offences to be tried in the district court—

theft or reset of theft, falsehood, fraud or wilful imposition, breach of trust or embezzlement where (in any such case) the amount concerned does not exceed **[**F1level 4 on the standard scale**]**;

. . . F4

Textual Amendments

F1 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **Sch. 7**

F2 S. 7(2) repealed by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), ss. 3, 5, Sch. 1, Sch. 4 paras. 1, **2**

F3 Words repealed by Criminal Justice Act 1982 (c. 48, SIF 39:1), **Sch. 16**

F4 Words repealed by Criminal Justice Act 1982 (c. 48, SIF 39:1), **Sch. 16**

8 . . . . . F5

Textual Amendments

F5 S. 8 repealed by Criminal Justice Act 1982 (c. 48, SIF 39:1), **Sch. 16**

9 Citation of defence witness for precognition.

(1) The sheriff may, on the application of an accused, grant warrant to cite any person (other than a co-accused), who is alleged to be a witness in relation to any offence of which the accused has been charged, to appear before the sheriff in chambers at such time or place as shall be specified in the citation, for precognition on oath by the accused or his solicitor in relation to that offence, if the court is satisfied that it is reasonable to require such precognition on oath in the circumstances.

(2) Any person who, having been duly cited to attend for precognition under subsection (1) above and having been given at least 48 hours notice, fails without reasonable excuse to attend shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding **[**F6level 3 on the standard scale**]** or to imprisonment for a period not exceeding 21 days; and the court may issue a warrant for the apprehension of the person concerned, ordering him to be brought before a sheriff for precognition on oath.

(3) Any person who, having been duly cited to attend for precognition under subsection (1) above, attends but—

(i) refuses to give information within his knowledge or to produce evidence in his possession; or

(ii) prevaricates in his evidence,

shall be guilty of an offence and shall be liable to be summarily subjected forthwith to a fine not exceeding **[**F7level 3 on the standard scale**]** or to imprisonment for a period not exceeding 21 days.

Textual Amendments

F6 Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289H, **Sch. 7D**

F7 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), **Sch. 7**

10 Identification parades.

(1) Subject to subsection (2) below, the sheriff may, on an application by an accused at any time after the accused has been charged with an offence, order that, in relation to the alleged offence, the prosecutor shall hold an identification parade in which the accused shall be one of those constituting the parade.

(2) The sheriff shall make an order in accordance with subsection (1) above only after giving the prosecutor an opportunity to be heard and only if—

(a) an identification parade, such as is mentioned in subsection (1) above, has not been held at the instance of the prosecutor;

(b) after a request by the accused, the prosecutor has refused to hold, or has unreasonably delayed holding, such an identification parade; and

(c) the sheriff considers the application under subsection (1) above to be reasonable.

(3) An application under subsection (1) above shall be by petition.

(4) F8

Textual Amendments

F8 S. 10(4) repealed by Legal Aid (Scotland) Act 1986 (c. 47, SIF 77:2), s. 45(3), **Sch. 5**

11 Discharge and assignation of diets in summary procedure.

In section 314 of the 1975 Act (orders of court on complaint)—

(a) in subsection (2), after the word "subsection" there shall be inserted the words—

"of a judge—

(a) to pronounce an order of court assigning a diet for the disposal of the case may be exercised on his behalf by the clerk of court

(b)" ;

(b) in subsection (3) the words "or a later" shall cease to have effect ;

(c) at the end there shall be added the following subsections—

"(4) Where the prosecutor and the accused make joint application to the court (orally or in writing) for postponement of a diet which has been fixed, the court shall discharge the diet and fix in lieu thereof a later diet unless the court considers that it should not do so because there has been unnecessary delay on the part of one or more of the parties.

(5) Where the prosecutor has intimated to the accused that he desires to postpone or accelerate a diet which has been fixed, and the accused refuses, or any of the accused refuse, to make a joint application to the court for that purpose, the prosecutor may make an incidental application for that purpose under section 310 of this Act; and, after giving the parties an opportunity to be heard, the court may discharge the diet and fix in lieu thereof a later diet or, as the case may be. an earlier diet.

(6) Where an accused has intimated to the prosecutor and to all the other accused that he desires such postponement or acceleration and the prosecutor refuses,

or any of the other accused refuse, to make a joint application to the court for that purpose, the accused who has so intimated may apply to the court for that purpose; and, after giving the parties an opportunity to be heard, the court may discharge the diet and fix in lieu thereof a later diet or, as the case may be, an earlier diet.".

Modifications etc. (not altering text)

C2 The text of ss. 6, 11, 13–22, 24, 25, 27–30, 33–38, 40, 43, 45(1), (3), 46(1)(*e*)(*f*), (2), 47–51, 53, 54, 56, 57, 79, 83(2)(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

12 Abolition of mandatory first diet in solemn procedure.

It shall no longer be mandatory to fix two diets of appearance in every case in solemn proceedings; [F9] and accordingly the1975 Act shall have effect subject to the amendments contained in Schedule 4 to this Act.

Textual Amendments

F9 Words are in the form in which the provision was originally enacted. They were not reproduced in Statutes in Force and do not reflect any amendments or repeals which may have been made prior to 1.2.1991.

13 Written notice of evidence incriminating co-accused in solemn procedure.

In section 82 of the 1975 Act (written notice of special defence etc.), for subsection (1) there shall be substituted the following subsection—

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

(a) a plea of special defence, or as the case may be, notice of intention to lead such evidence, has been lodged not less than 10 clear days before the trial diet ; or

(b) the accused having satisfied the court that there was good reason for paragraph (a) above not being complied with, such plea or notice has been lodged before the oath is administered to the jury.".

Modifications etc. (not altering text)

C3 The text of ss. 6, 11, 13–22, 24, 25, 27–30, 33–38, 40, 43, 45(1), (3), 46(1)(*e*)(*f*), (2), 47–51, 53, 54, 56, 57, 79, 83(2)(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

14 Prevention of delay in trials.

(1) For section 101 of the 1975 Act there shall be substituted the following section—

"**101 Prevention of delay in trials.**

(1) An accused shall not be tried on indictment for any offence unless such trial is commenced within a period of 12 months of the first appearance of that accused on petition in respect of that offence ; and, failing such commencement within that period, the accused shall be discharged forthwith and thereafter he shall be for ever free from all question or process for that offence :

Provided that—

(i) nothing in this subsection shall bar the trial of an accused for whose arrest a warrant has been granted for failure to appear at a diet in the case ;

(ii) on application made for the purpose, the sheriff or, where an indictment has been served on the accused in respect of the High Court, a single judge of that court, may on cause shown extend the said period of 12 months.

(2) Subject to subsections (3), (4) and (5) below, an accused who is committed for any offence until liberated in due course of law shall not be detained by virtue of that committal for a total period of more than—

(a) 80 days, unless within that period the indictment is served on him, which failing he shall be liberated forthwith ; or

(b) 110 days, unless the trial of the case is commenced within that period, which failing he shall be liberated forthwith and thereafter he shall be for ever free from all question or process for that offence.

(3) A single judge of the High Court may, on application made to him for the purpose, for any sufficient cause extend the period mentioned in subsection (2)(a) above:

Provided that he shall not extend the said period if he is satisfied that, but for some fault on the part of the prosecution, the indictment could have been served within that period.

(4) A single judge of the High Court may, on application made to him for the purpose, extend the period mentioned in subsection (2)(*b*) above where he is satisfied that delay in the commencement of the trial is due to—

(a) the illness of the accused or of a judge

(b) the absence or illness of any necessary witness; or

(c) any other sufficient cause which is not attributable to any fault on the part of the prosecutor.

(5) The grant or refusal of any application to extend the periods mentioned in this section may be appealed against by note of appeal presented to the High Court; and that Court may affirm, reverse or amend the determination made on such application.

(6) For the purposes of this section, a trial shall be taken to commence when the oath is administered to the jury.".

(2) After section 331 of the 1975 Act there shall be inserted the following section—

"**331A Prevention of delay in trials.**

(1) Subject to subsections (2) and (3) below, a person charged with a summary offence shall not be detained in that respect for a total of more than forty days after the bringing of the complaint in court unless his trial is commenced within that period, failing which he shall be liberated forthwith and thereafter he shall be for ever free from all question or process for that offence.

(2) The sheriff may, on application made to him for the purpose, extend the period mentioned in subsection (1) above and order the accused to be detained awaiting trial for such period as he thinks fit where he is satisfied that delay in the commencement of the trial is due to—

(a) the illness of the accused or of a judge

(b) the absence or illness of any necessary witness; or

(c) any other sufficient cause which is not attributable to any fault on the part of the prosecutor.

(3) The grant or refusal of any application to extend the period mentioned in subsection (1) above may be appealed against by note of appeal presented to the High Court ; and that Court may affirm, reverse or amend the determination made on such application.

(4) For the purposes of this section, a trial shall be taken to commence when the first witness is sworn.".

Modifications etc. (not altering text)

C4 The text of ss. 6, 11, 13–22, 24, 25, 27–30, 33–38, 40, 43, 45(1), (3), 46(1)(*e*)(*f*), (2), 47–51, 53, 54, 56, 57, 79, 83(2)(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

15 Intermediate diet in summary procedure.

After section 337 of the 1975 Act there shall be added the following section—

"**337A Intermediate diet.**

(1) The court may, at any time, as respects a case which is adjourned for trial, 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.

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

Modifications etc. (not altering text)

C5 The text of ss. 6, 11, 13–22, 24, 25, 27–30, 33–38, 40, 43, 45(1), (3), 46(1)(*e*)(*f*), (2), 47–51, 53, 54, 56, 57, 79, 83(2)(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

16 Procedure where accused desires to plead guilty under solemn procedure.

For section 102 of the 1975 Act there shall be substituted the following section—

"**102 Procedure where accused desires to plead guilty.**

(1) Where an accused intimates in writing to the Crown Agent that he intends to plead guilty and desires to have his case disposed of at once, the accused may be served with an indictment (unless one has already been served) and a notice to appear at a diet of the appropriate court not less than four clear days after the date of the notice ; and it shall not be necessary to lodge or give notice of any list of witnesses or productions.

(2) In subsection (1) above, "appropriate court" means—

(a) in a case where at the time of the intimation mentioned in that subsection an indictment had not been served, either the High Court or the sheriff court ; and

(b) in any other case, the court specified in the notice served under section 75 of this Act on the accused.

(3) If at any such diet the accused pleads not guilty to the charge or pleads guilty only to a part of the charge, and the prosecutor declines to accept such restricted plea, the diet shall be deserted*pro loco et tempore*, and thereafter the cause may proceed in accordance with the other provisions of this Part of this Act except that in a case mentioned in paragraph (*b*) of subsection (2) above the court may postpone the trial diet and the period of such postponement shall not count towards any time limit applying in respect of the case.".

Modifications etc. (not altering text)

C6 The text of ss. 6, 11, 13–22, 24, 25, 27–30, 33–38, 40, 43, 45(1), (3), 46(1)(*e*)(*f*), (2), 47–51, 53, 54, 56, 57, 79, 83(2)(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

17 Procedure where accused desires to plead guilty under solemn procedure.

In section 338 of the 1975 Act (failure of accused to appear) the existing words shall be subsection (1) of that section and after that subsection there shall be inserted the following subsections—

"(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 £200 ; 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.".

Modifications etc. (not altering text)
C7 The text of ss. 6, 11, 13–22, 24, 25, 27–30, 33–38, 40, 43, 45(1), (3), 46(1)(*e*)(*f*), (2), 47–51, 53, 54, 56, 57, 79, 83(2)(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

18 Desertion of trial diet.

(1) In section 127 of the 1975 Act (procedure where trial does not take place) after subsection (1) there shall be inserted the following subsection—

"(IA) 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) After section 338 of the said Act there shall be added the following section—

"**338A Desertion of trial diet.**

(1) lt 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.".

Modifications etc. (not altering text)
C8 The text of ss. 6, 11, 13–22, 24, 25, 27–30, 33–38, 40, 43, 45(1), (3), 46(1)(*e*)(*f*), (2), 47–51, 53, 54, 56, 57, 79, 83(2)(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

19 No case to answer.

(1) After section 140 of the 1975 Act there shall be inserted the following section—

"**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.".

(2) After section 345 of the 1975 Act there shall be inserted the following section—

"**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.

(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.".

Modifications etc. (not altering text)

C9 The text of ss. 6, 11, 13–22, 24, 25, 27–30, 33–38, 40, 43, 45(1), (3), 46(1)(*e*)(*f*), (2), 47–51, 53, 54, 56, 57, 79, 83(2)(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

20 Correction of entries.

After section 227 of the 1975 Act there shall be inserted the following provision—

"**227A Correction of entries.**

(1) Subject to the provisions of this section, it shall be competent to correct an entry in—

(a) the record of proceedings in a solemn prosecution ; or

(b) the extract of a sentence passed or an order of court made in such proceedings,

in so far as that entry constitutes an error of recording or is incomplete.

(2) Such entry may be corrected—

(a) by the clerk of the court, at any time before either the sentence (or order) of the court is executed or, on appeal, the proceedings are transmitted to the Clerk of Justiciary;

(b) by the clerk of the court, under the authority of the court which passed the sentence or made the order, at any time after the execution of the sentence (or order) of the court but before such transmission as is mentioned in paragraph (*a*) above; or

(c) by the clerk of the court under the authority of the High Court in the case of a remit under subsection (4)(*b*) below.

(3) A correction in accordance with paragraph (b) or (c) of subsection (2) above shall be intimated to the prosecutor and to the former accused or his solicitor.

(4) Where, during the course of an appeal, the High Court becomes aware of an erroneous or incomplete entry, such as is mentioned in subsection (1) above, the court—

(a) may consider and determine the appeal as if such entry were corrected; and

(b) either before or after the determination of the appeal, may remit the proceedings to the court of first instance for correction in accordance with subsection (2)(*c*) above.

(5) Any correction under subsections (1) and (2) above by the clerk of the court shall be authenticated by his signature and, if such correction is authorised by a court, shall record the name of the judge or judges authorising such correction and the date of such authority."; and the same provision shall (with the appropriate section number) be substituted for section 439 of the 1975 Act, except that, in paragraph (*a*) of subsection (1) of the provision, for the word "solemn" there shall be substituted the word " summary ".

Modifications etc. (not altering text)

C10 The text of ss. 6, 11, 13–22, 24, 25, 27–30, 33–38, 40, 43, 45(1), (3), 46(1)(*e*)(*f*), (2), 47–51, 53, 54, 56, 57, 79, 83(2)(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

21 Trial may proceed in accused's absence if he misconducts himself.

In section 145(1) of the 1975 Act (trial in open court), at the end there shall be added the following proviso—

" : 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. "

Modifications etc. (not altering text)

C11 The text of ss. 6, 11, 13–22, 24, 25, 27–30, 33–38, 40, 43, 45(1), (3), 46(1)(*e*)(*f*), (2), 47–51, 53, 54, 56, 57, 79, 83(2)(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

22 Restrictions on report of proceedings involving person under 16.

For section 169 of the 1975 Act there shall be substituted the following provision—

"169 Restrictions on report of proceedings involving person under 16.

(1) No newspaper report of any proceedings in a court shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any person under the age of 16 years concerned in the proceedings, either—

(a) as being a person against or in respect of whom the proceedings are taken ; or

(b) as being a witness therein ;

nor shall any picture which is, or includes, a picture of a person under the age of 16 years so concerned in the proceedings be published in any newspaper in a context relevant to the proceedings :

Provided that, in any case—

(i) where the person is concerned in the proceedings as a witness only and no one against whom the proceedings are taken is under the age of 16 years, the foregoing provisions of this subsection shall not apply unless the court so directs ;

(ii) the court may at any stage of the proceedings if satisfied that it is in the public interest so to do, direct that the requirements of this section (including such requirements as applied by a direction under paragraph (i) above) shall be dispensed with to such extent as the court may specify ;

(iii) the Secretary of State may, after completion of the proceedings, if so satisfied by order dispense with the said requiremients to such extent as may be specified in the order.

(2) This section shall, with the necessary modifications, apply in relation to sound and television broadcasts as it applies in relation to newspapers.

(3) A person who publishes matter in contravention of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding £500.

(4) In this section, references to a court shall not include a court in England, Wales or Northern Ireland." ; and the same provision shall (with the appropriate section number) be substituted for section 374 of the 1975 Act.

Modifications etc. (not altering text)

C12 The text of ss. 6, 11, 13–22, 24, 25, 27–30, 33–38, 40, 43, 45(1), (3), 46(1)(*e*)(*f*), (2), 47–51, 53, 54, 56, 57, 79, 83(2)(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

23 Peremptory challenge of jurors.

The number of peremptory challenges allowed to each accused, and to the prosecutor, as respects the jurors in any trial shall be reduced from five to three;. . . [F10]

Textual Amendments

F10 Words substitute new s. 130(1) in Criminal Procedure (Scotland) Act 1975 (c. 21)

24 Seclusion of jury after retiral.

(1) In section 153 of the 1975 Act (seclusion of jury after retiral)—

(a) in subsection (2), after the word "and" there shall be inserted the words " , except in so far as is provided for, or is made necessary, by an instruction under subsection (3A) below, " ; and

(b) for subsection (3) there shall be substituted the following subsections—

"(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.".

(2) In section 154 of the 1975 Act (oral verdicts), the words from "; and provided also" to the end shall cease to have effect.

Modifications etc. (not altering text)

C13 The text of ss. 6, 11, 13–22, 24, 25, 27–30, 33–38, 40, 43, 45(1), (3), 46(1)(*e*)(*f*), (2), 47–51, 53, 54, 56, 57, 79, 83(2)(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

25 Interpretation of 1975 Act.

In section 462(1) of the 1975 Act (interpretation)—

(a) for the definition of "officer of law" there shall be substituted the following definition—

""officer of law" includes, in relation to the service and execution of any warrant, citation, petition, indictment, complaint, list of witnesses, order, notice, or other proceeding or document—

(i) any macer, messenger-at-arms, sheriff officer or other person having authority to execute a warrant of the court ;

(ii) any constable within the meaning of the Police (Scotland) Act 1967 ;

(iii) where the person upon whom service or execution is effected is in prison at the time of service on him, any prison officer ; and

(iv) any person (or class of persons) authorised in that regard for the time being by the Lord Advocate or by the Secretary of State ;" ;

(b) for the definition of "probationer" there shall be substituted the following definition—

““probationer” means a person who is under supervision by virtue of a probation order or who was under such supervision at the time of the commission of any relevant offence or failure to comply with such order ;”.

Modifications etc. (not altering text)

C14 The text of ss. 6, 11, 13–22, 24, 25, 27–30, 33–38, 40, 43, 45(1), (3), 46(1)(*e*)(*f*), (2), 47–51, 53, 54, 56, 57, 79, 83(2)(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

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

Changes to legislation:
There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1980, Cross Heading: Procedure.