



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART IV

#### PETITION PROCEDURE

##### *Warrants*

#### **34 Petition for warrant.**

- (1) A petition for warrant to arrest and commit a person suspected of or charged with crime may be in the forms—
  - (a) set out in Schedule 2 to this Act; or
  - (b) prescribed by Act of Adjournal,or as nearly as may be in such form; and Schedule 3 to this Act shall apply to any such petition as it applies to the indictment.
- (2) If on the application of the procurator fiscal, a sheriff is satisfied that there is reasonable ground for suspecting that an offence has been or is being committed by a body corporate, the sheriff shall have the like power to grant warrant for the citation of witnesses and the production of documents and articles as he would have if a petition charging an individual with the commission of the offence were presented to him.

*[<sup>F1</sup>Petition proceedings outwith sheriffdom*

#### **Textual Amendments**

- F1** S. 34A and preceding cross-heading inserted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), ss. 31, 84; S.S.I. 2008/42, art. 3, Sch.

#### **34A Petition proceedings outwith sheriffdom**

- (1) Where the prosecutor believes—

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- (a) that, because of exceptional circumstances (and without an order under subsection (3) below), it is likely that there would be an unusually high number of accused persons appearing from custody for the first calling of cases on petition in the sheriff courts in the sheriffdom; and
  - (b) that it would not be practicable for those courts to deal with all the cases involved,
- the prosecutor may apply to the sheriff principal for the order referred to in subsection (2) below.
- (2) For the purposes of subsection (1) above, the order is for authority for petition proceedings against some or all of the accused persons to be—
    - (a) taken at a sheriff court in another sheriffdom; and
    - (b) maintained—
      - (i) there; or
      - (ii) at any of the sheriff courts referred to in subsection (1) above as may at the first calling of the case be appointed for further proceedings.
  - (3) On an application under subsection (1) above, the sheriff principal may make the order sought with the consent of the sheriff principal of the other sheriffdom.
  - (4) An order under subsection (3) above may be made by reference to a particular period or particular circumstances.
  - (5) This section does not confer jurisdiction for any subsequent proceedings on indictment.]

*Judicial examination*

**35 Judicial examination.**

- (1) The accused’s solicitor shall be entitled to be present at the examination.
- (2) The sheriff may delay the examination for a period not exceeding 48 hours from and after the time of the accused’s arrest, in order to allow time for the attendance of the solicitor.

<sup>F2</sup>(3) .....

<sup>F3</sup>(4) .....

<sup>F4</sup>(4A) An accused charged with <sup>F5</sup>an offence listed in subsection (4AA)(b) shall, as soon as he is brought before the sheriff for examination on the charge, be told—

- <sup>F6</sup>(a) that his case at, or for the purposes of, any relevant hearing <sup>F7</sup>... in the course of the proceedings may be conducted only by a lawyer,]
- (b) that it is, therefore, in his interests, if he has not already done so, to get the professional assistance of a solicitor; and
- (c) that, if he does not engage a solicitor for the purposes of <sup>F8</sup>the conduct of his case at or for the purposes of the<sup>F9</sup>hearing], the court will do so.

[ For the purposes of subsection (4A)—

- <sup>F10</sup>(4AA) (a) “relevant hearing” is to be construed in accordance with section 288C(1A) or (as the case may be) 288DC(4),
- (b) the list is—

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- (i) an offence to which section 288C applies (certain sexual offending),
- (ii) an offence to which section 288DC applies (domestic abuse cases).]

(4B) A failure to comply with subsection (4A) above does not affect the validity or lawfulness of the examination or of any other element of the proceedings against the accused.]

<sup>F11</sup>(5) .....

(6) Where the accused is brought before the sheriff for further examination the sheriff may delay that examination for a period not exceeding 24 hours in order to allow time for the attendance of the accused’s solicitor.

[<sup>F12</sup>(6A) In proceedings before the sheriff in examination or further examination, the accused is not to be given an opportunity to make a declaration in respect of any charge.]

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

(8) This section applies to procedure on petition, without prejudice to the accused being tried summarily by the sheriff for any offence in respect of which he has been committed until liberated in due course of law.

#### Textual Amendments

- F2** S. 35(3) repealed (17.1.2017) by Criminal Justice (Scotland) Act 2016 (asp 1), **ss. 78(2)(a)**, 117(2); S.S.I. 2016/426, art. 2, sch.
- F3** S. 35(4) repealed (17.1.2017) by Criminal Justice (Scotland) Act 2016 (asp 1), **ss. 78(2)(a)**, 117(2); S.S.I. 2016/426, art. 2, sch.
- F4** S. 35(4A)(4B) inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. 3, **Sch. para. 3**; S.S.I. 2002/443, **art. 3** (with art. 4(3))
- F5** Words in s. 35(4A) substituted (1.4.2019) by Domestic Abuse (Scotland) Act 2018 (asp 5), s. 15(2), **sch. para. 4(2)(a)**; S.S.I. 2018/387, reg. 2 (with reg. 7)
- F6** S. 35(4A)(a) substituted for s. 35(4A)(za)(a) (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **sch. 7 para. 36(a)**; S.S.I. 2011/178, art. 2, sch.
- F7** Words in s. 35(4A)(a) repealed (1.4.2019) by Domestic Abuse (Scotland) Act 2018 (asp 5), s. 15(2), **sch. para. 4(2)(b)**; S.S.I. 2018/387, reg. 2 (with reg. 7)
- F8** Words in s. 35(4A)(c) inserted (4.12.2004) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 12(b)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F9** Word in s. 35(4A)(c) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **sch. 7 para. 36(b)**; S.S.I. 2011/178, art. 2, sch.
- F10** S. 35(4AA) inserted (1.4.2019) by Domestic Abuse (Scotland) Act 2018 (asp 5), s. 15(2), **sch. para. 4(2)(c)**; S.S.I. 2018/387, reg. 2 (with reg. 7)
- F11** S. 35(5) repealed (17.1.2017) by Criminal Justice (Scotland) Act 2016 (asp 1), **ss. 78(2)(a)**, 117(2); S.S.I. 2016/426, art. 2, sch.
- F12** S. 35(6A) inserted (17.1.2017) by Criminal Justice (Scotland) Act 2016 (asp 1), **ss. 78(1)**, 117(2); S.S.I. 2016/426, art. 2, sch.

<sup>F13</sup>**36 Judicial examination: questioning by prosecutor.**

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**Textual Amendments**

**F13** S. 36 repealed (17.1.2017) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **ss. 78(2)(b)**, 117(2); S.S.I. 2016/426, art. 2, sch. (with art. 3)

**F14 37 Judicial examination: record of proceedings.**

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**Textual Amendments**

**F14** S. 37 repealed (17.1.2017) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **ss. 78(2)(b)**, 117(2); S.S.I. 2016/426, art. 2, sch. (with art. 3)

**F15 38 Judicial examination: rectification of record of proceedings.**

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**Textual Amendments**

**F15** S. 38 repealed (17.1.2017) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **ss. 78(2)(b)**, 117(2); S.S.I. 2016/426, art. 2, sch. (with art. 3)

**39 Judicial examination: charges arising in different districts.**

- (1) An accused against whom there are charges in more than one sheriff court district may be brought before the sheriff of any one such district at the instance of the procurator fiscal of such district for examination on all or any of the charges.
- (2) Where an accused is brought for examination as mentioned in subsection (1) above, he may be dealt with in every respect as if all of the charges had arisen in the district where he is examined.
- (3) This section is without prejudice to the power of the Lord Advocate under section 10 of this Act to determine the court before which the accused shall be tried on such charges.

*Committal*

**40 Committal until liberated in due course of law.**

- (1) Every petition shall be signed and no accused shall be committed until liberated in due course of law for any crime or offence without a warrant in writing expressing the particular charge in respect of which he is committed.
- (2) Any such warrant for imprisonment which either proceeds on an unsigned petition or does not express the particular charge shall be null and void.
- (3) The accused shall immediately be given a true copy of the warrant for imprisonment signed by the constable or person executing the warrant before imprisonment or by the prison officer receiving the warrant.

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