



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART VII

SOLEMN PROCEEDINGS

The indictment

64 Prosecution on indictment.

- (1) All prosecutions for the public interest before the High Court or before the sheriff sitting with a jury shall proceed on indictment in name of Her Majesty's Advocate.
- (2) The indictment 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.
- (3) Indictments in proceedings before the High Court shall be signed by the Lord Advocate or one of his deutes.
- (4) Indictments in proceedings before the sheriff sitting with a jury shall be signed by the procurator fiscal, and the words "By Authority of Her Majesty's Advocate" shall be prefixed to the signature of the procurator fiscal.
- (5) The principal record and service copies of indictments and all notices of citation, lists of witnesses, productions and jurors, and all other official documents required in a prosecution on indictment may be either written or printed or partly written and partly printed.
- (6) Schedule 3 to this Act shall have effect as regards indictments under this Act.

Status: Point in time view as at 06/04/2001. This version of this cross heading contains provisions that are not valid for this point in time.

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65 Prevention of delay in trials.

- (1) Subject to subsections (2) and (3) below, an accused shall not be tried on indictment for any offence unless the trial is commenced within a period of 12 months of the first appearance of the accused on petition in respect of the offence; and, failing such commencement within that period, the accused
 - [^{F1}(a) shall be discharged forthwith from any indictment as respects the offence; and
 - (b) shall not at any time be proceeded against on indictment as respects the offence]
- (2) Nothing in subsection (1) above 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.
- (3) On an 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.
- [^{F2}(3A) An application under subsection (3) shall not be made at any time when an appeal made with leave under section 74(1) of this Act has not been disposed of by the High Court.]
- (4) Subject to subsections (5) to (9) 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.
- (5) Subject to subsection (6) below, a single judge of the High Court, may, on an application made to him for the purpose, for any sufficient cause extend the period mentioned in subsection (4)(a) above.
- (6) An application under subsection (5) above shall not be granted if the judge is satisfied that, but for some fault on the part of the prosecution, the indictment could have been served within the period of 80 days.
- (7) A single judge of the High Court may, on an application made to him for the purpose, extend the period mentioned in subsection (4)(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;
 - (c) any other sufficient cause which is not attributable to any fault on the part of the prosecutor.
- (8) 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.
- (9) For the purposes of this section, a trial shall be taken to commence when the oath is administered to the jury.
- (10) In calculating the period of 12 months specified in subsections (1) and (3) above there shall be left out of account any period during which the accused is detained, other than

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while serving a sentence of imprisonment or detention, in any other part of the United Kingdom or in any of the Channel Islands or the Isle of Man in any prison or other institution or place mentioned in subsection (1) or (1A) of section 29 of the ^{M1}Criminal Justice Act 1961 (transfer of prisoners for certain judicial purposes).

Textual Amendments

- F1** S. 65(1)(a)(b) substituted (4.7.1996) for words by 1996 c. 25, s. 73(3) (with s. 78(1))
- F2** S. 65(3A) inserted (1.8.1997) by 1997 c. 48, s. 62(1), Sch. 1 para. 21(9); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)

Modifications etc. (not altering text)

- C1** S. 65 extended (1.10.1997) by 1997 c. 43, s. 41, Sch. 1 Pt. II para. 10(1)(a); S.I. 1997/2200, art. 2(1)(g)
- C2** S. 65 modified (1.10.1997) by 1997 c. 43, s. 41, Sch. 1 Pt. II para. 11(1)(a); S.I. 1997/2200, art. 2(1)(g) (subject to transitional provisions in art. 5)
- C3** S. 65 applied (with modifications) (1.10.1997) by S.I. 1997/1776, arts. 1, 2, Sch. 1 paras. 5-7; S.I. 1997/2200, art. 2(1)(g) (subject to transitional provisions in art. 5)

Marginal Citations

- M1** 1961 c.39.

66 Service and lodging of indictment, etc.

- (1) When a sitting of the sheriff court or of the High Court has been appointed to be held for the trial of persons accused on indictment—
 - (a) where the trial diet is to be held in the sheriff court, the sheriff clerk; and
 - (b) where the trial diet is to be held in the High Court, the Clerk of Justiciary,shall issue a warrant to officers of law to cite the accused, witnesses and jurors, in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form, and such warrant authenticated by the signature of such clerk, or a duly certified copy thereof, shall be a sufficient warrant for such citation.
- (2) The execution of the citation against an accused, witness or juror shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form.
- (3) A witness may be cited by sending the citation to the witness by ordinary or registered post or by the recorded delivery service and a written execution in the form prescribed by Act of Adjournal or as nearly as may be in such form, purporting to be signed by the person who served such citation together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such citation.
- (4) The accused shall be served with a copy of the indictment and of the list of the names and addresses of the witnesses to be adduced by the prosecution.
- (5) Except in a case to which section 76 of this Act applies, the prosecutor shall on or before the date of service of the indictment lodge the record copy of the indictment with the clerk of court before which the trial is to take place, together with a copy of the list of witnesses and a copy of the list of productions.
- (6) Except where the indictment is served under section 76(1) of this Act, a notice shall be served on the accused with the indictment calling upon him to appear and answer to the indictment—

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- (a) where the case is to be tried in the sheriff court, at a first diet not less than 15 clear days after the service of the indictment and not less than 10 clear days before the trial diet; and
 - (b) at a trial diet (either in the High Court or in the sheriff court) not less than 29 clear days after the service of the indictment and notice.
- (7) Service of the indictment, lists of witnesses and productions, and any notice or intimation to the accused, and the citation of witnesses, whether for precognition or trial, may be effected by any officer of law.
- (8) No objection to the service of an indictment or to the citation of a witness shall be upheld on the ground that the officer who effected service or executed the citation was not at the time in possession of the warrant of citation, and it shall not be necessary to produce the execution of citation of an indictment.
- (9) The citation of witnesses may be effected by any officer of law duly authorised; and in any proceedings, the evidence on oath of the officer shall, subject to subsection (10) below, be sufficient evidence of the execution of the citation.
- (10) A court shall not issue a warrant to apprehend a witness who fails to appear at a diet to which he has been duly cited unless the court is satisfied that the witness received the citation or that its contents came to his knowledge.
- (11) No objection to the competency of the officer who served the indictment to give evidence in respect of such service shall be upheld on the ground that his name is not included in the list of witnesses served on the accused.
- (12) Any deletion or correction made before service on the record or service copy of an indictment shall be sufficiently authenticated by the initials of the person who has signed, or could by law have signed, the indictment.
- (13) Any deletion or correction made on a service copy of an indictment, or on any notice of citation, postponement, adjournment or other notice required to be served on an accused shall be sufficiently authenticated by the initials of any procurator fiscal or of the person serving the same.
- (14) Any deletion or correction made on any execution of citation or notice of other document requiring to be served shall be sufficiently authenticated by the initials of the person serving the same.

67 Witnesses.

- (1) The list of witnesses shall consist of the names of the witnesses together with an address at which they can be contacted for the purposes of precognition.
- (2) It shall not be necessary to include in the list of witnesses the names of any witnesses to the declaration of the accused or the names of any witnesses to prove that an extract conviction applies to the accused, but witnesses may be examined in regard to these matters without previous notice.
- (3) Any objection in respect of misnomer or misdescription of—
 - (a) any person named in the indictment; or
 - (b) any witness in the list of witnesses,
 shall be intimated in writing to the court before which the trial is to take place, to the prosecutor and to any other accused, where the case is to be tried in the sheriff court,

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at or before the first diet and, where the case is to be tried in the High Court, not less than ten clear days before the trial diet; and, except on cause shown, no such objection shall be admitted at the trial diet unless so intimated.

- (4) Where such intimation has been given or cause is shown and the court is satisfied that the accused making the objection has not been supplied with sufficient information to enable him to identify the person named in the indictment or to find such witness in sufficient time to precognosce him before the trial, the court may grant such remedy by postponement, adjournment or otherwise as appears to it to be appropriate.
- (5) Without prejudice to—
- (a) any enactment or rule of law permitting the prosecutor to examine any witness not included in the list of witnesses; or
 - (b) subsection (6) below,
- in any trial it shall be competent with the leave of the court for the prosecutor to examine any witness or to put in evidence any production not included in the lists lodged by him, provided that written notice, containing in the case of a witness his name and address as mentioned in subsection (1) above, has been given to the accused not less than two clear days before the day on which the jury is sworn to try the case.
- (6) It shall be competent for the prosecutor to examine any witness or put in evidence any production included in any list or notice lodged by the accused, and it shall be competent for an accused to examine any witness or put in evidence any production included in any list or notice lodged by the prosecutor or by a co-accused.

[^{F3}67A Failure of witness to attend for, or give evidence on, precognition.

- (1) This section applies where a prosecutor has obtained a warrant to cite a witness for precognition and has served a citation for precognition on the witness.
- (2) Where this section applies, a witness who—
- (a) fails without reasonable excuse, after receiving at least 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 guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to a term of imprisonment not exceeding 21 days.]

Textual Amendments

F3 S. 67A inserted (1.8.1997) by 1997 c. 48, s. 57(1); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)

68 Productions.

- (1) The list of productions shall include the record, made under section 37 of this Act (incorporating any rectification authorised under section 38(1) of this Act), of proceedings at the examination of the accused.

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- (2) The accused shall be entitled to see the productions according to the existing law and practice in the office of the sheriff clerk of the district in which the court of the trial diet is situated or, where the trial diet is to be in the High Court in Edinburgh, in the Justiciary Office.
- (3) Where a person who has examined a production is adduced to give evidence with regard to it and the production has been lodged at least eight days before the trial diet, it shall not be necessary to prove—
 - (a) that the production was received by him in the condition in which it was taken possession of by the procurator fiscal or the police and returned by him after his examination of it to the procurator fiscal or the police; or
 - (b) that the production examined by him is that taken possession of by the procurator fiscal or the police,
 unless the accused, at least four days before the trial diet, gives in accordance with subsection (4) below written notice that he does not admit that the production was received or returned as aforesaid or, as the case may be, that it is that taken possession of as aforesaid.
- (4) The notice mentioned in subsection (3) above shall be given—
 - (a) where the accused is cited to the High Court for the trial diet, to the Crown Agent; and
 - (b) where he is cited to the sheriff court for the trial diet, to the procurator fiscal.

69 Notice of previous convictions.

- (1) No mention shall be made in the indictment of previous convictions, nor shall extracts of previous convictions be included in the list of productions annexed to the indictment.
- (2) If the prosecutor intends to place before the court any previous conviction, he shall cause to be served on the accused along with the indictment a notice in the form set out in an Act of Adjournal or as nearly as may be in such form, and any conviction specified in the notice shall be held to apply to the accused unless he gives, in accordance with subsection (3) below, written intimation objecting to such conviction on the ground that it does not apply to him or is otherwise inadmissible.
- (3) Intimation objecting to a conviction under subsection (2) above shall be given—
 - (a) where the accused is cited to the High Court for the trial diet, to the Crown Agent; or
 - (b) where the accused is cited to the sheriff court for the trial diet, to the procurator fiscal,
 at least five clear days before the first day of the sitting in which the trial diet is to be held.
- (4) Where notice is given by the accused under section 76 of this Act of his intention to plead guilty and the prosecutor intends to place before the court any previous conviction, he shall cause to be served on the accused along with the indictment a notice in the form set out in an Act of Adjournal or as nearly as may be in such form.
- (5) Where the accused pleads guilty at any diet, no objection to any conviction of which notice has been served on him under this section shall be entertained unless he has,

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at least two clear days before the diet, given intimation to the procurator fiscal of the district to the court of which the accused is cited for the diet.

70 Proceedings against bodies corporate.

- (1) This section applies to proceedings on indictment against a body corporate.
- (2) The indictment may be served by delivery of a copy of the indictment together with notice to appear at the registered office or, if there is no registered office or the registered office is not in the United Kingdom, at the principal place of business in the United Kingdom of the body corporate.
- (3) Where a letter containing a copy of the indictment has been sent by registered post or by the recorded delivery service to the registered office or principal place of business of the body corporate, an acknowledgement or certificate of the delivery of the letter issued by the [^{F4}postal operator] shall be sufficient evidence of the delivery of the letter at the registered office or place of business on the day specified in such acknowledgement or certificate.
- (4) A body corporate may, for the purpose of—
 - (a) stating objections to the competency or relevancy of the indictment or proceedings; or
 - (b) tendering a plea of guilty or not guilty; or
 - (c) making a statement in mitigation of sentence,appear by a representative of the body corporate.
- (5) Where at the trial diet the body corporate does not appear as mentioned in subsection (4) above, or by counsel or a solicitor, the court shall, on the motion of the prosecutor, if it is satisfied that subsection (2) above has been complied with, proceed to hear and dispose of the case in the absence of the body corporate.
- (6) Where a body corporate is sentenced to a fine, the fine may be recovered in like manner in all respects as if a copy of the sentence certified by the clerk of the court were an extract decree of the Court of Session for the payment of the amount of the fine by the body corporate to the Queen’s and Lord Treasurer’s Remembrancer.
- (7) Nothing in section 77 of this Act shall require a plea tendered by or on behalf of a body corporate to be signed.
- (8) In this section, “representative”, in relation to a body corporate, means an officer or employee of the body corporate duly appointed by it for the purpose of the proceedings; and a statement in writing purporting to be signed by the managing director of, or by any person having or being one of the persons having the management of the affairs of the body corporate, to the effect that the person named in the statement has been appointed the representative of the body corporate for the purpose of any proceedings to which this section applies shall be sufficient evidence of such appointment [^{F5}; and “officer” and “any person having or being one of the persons having the management of the affairs of the body corporate”, in relation to a limited liability partnership, means a member of the limited liability partnership].

Textual Amendments

- F4** Words in s. 70(3) substituted (26.3.2001) by [S.I. 2001/1149, art. 3\(1\)](#), [Sch. 1 para. 104\(2\)](#) (subject to [art. 1\(3\)](#))

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F5 Words in s. 70(8) inserted (6.4.2001) by S.S.I. 2001/128, reg. 5, **Sch. 4 para. 1**

Modifications etc. (not altering text)

C4 S. 70 extended (6.1.1997) by S.I. 1996/2827, **reg. 70(4)**

C5 S. 70 applied (18.6.2001) by 2000 c. 8, s. 403(4)(b); S.I. 2001/1820, art. 2, **Sch.**

S. 70 applied (with modifications) (16.2.2001) by 2000 c. 41, s. 153(4); S.I. 2001/222, art. 2, **Sch. 1 Pt. 1**

S. 70 applied (31.5.2002) by Anti-terrorism, Crime and Security Act 2001 (c. 24), s. 69(4)(b); S.I. 2002/1279, **art. 2**

S. 70 applied (1.4.2005) by Gangmasters (Licensing) Act 2004 (c. 11), ss. {21(4)(b)}, {22(6)(b)}, 29; S.I. 2005/447, **art. 1**

VALID FROM 06/06/2011

[^{F6}70A Defence statements

- (1) This section applies where an indictment is served on an accused.
- (2) The accused must lodge a defence statement at least 14 days before the first diet.
- (3) The accused must lodge a defence statement at least 14 days before the preliminary hearing.
- (4) At least 7 days before the trial diet the accused must—
 - (a) where there has been no material change in circumstances in relation to the accused's defence since the last defence statement was lodged, lodge a statement stating that fact,
 - (b) where there has been a material change in circumstances in relation to the accused's defence since the last defence statement was lodged, lodge a defence statement.
- (5) If after lodging a statement under subsection (2), (3) or (4) there is a material change in circumstances in relation to the accused's defence, the accused must lodge a defence statement.
- (6) Where subsection (5) requires a defence statement to be lodged, it must be lodged before the trial diet begins unless on cause shown the court allows it to be lodged during the trial diet.
- (7) The accused may lodge a defence statement—
 - (a) at any time before the trial diet, or
 - (b) during the trial diet if the court on cause shown allows it.
- (8) As soon as practicable after lodging a defence statement or a statement under subsection (4)(a), the accused must send a copy of the statement to the prosecutor and any co-accused.
- (9) In this section, “defence statement” means a statement setting out—
 - (a) the nature of the accused's defence, including any particular defences on which the accused intends to rely,
 - (b) any matters of fact on which the accused takes issue with the prosecution and the reason for doing so,

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- (c) particulars of the matters of fact on which the accused intends to rely for the purposes of the accused's defence,
- (d) any point of law which the accused wishes to take and any authority on which the accused intends to rely for that purpose,
- (e) by reference to the accused's defence, the nature of any information that the accused requires the prosecutor to disclose, and
- (f) the reasons why the accused considers that disclosure by the prosecutor of any such information is necessary.]

Textual Amendments

- F6** S. 70A inserted (prosp.) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. **124(3)**, **206(1)** (with s. **124(1)**)

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