



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VII

#### SOLEMN PROCEEDINGS

##### *Verdict and conviction*

#### **100 Verdict of jury.**

- (1) The verdict of the jury, whether the jury are unanimous or not, shall be returned orally by the foreman of the jury unless the court directs a written verdict to be returned.
- (2) Where the jury are not unanimous in their verdict, the foreman shall announce that fact so that the relative entry may be made in the record.
- (3) The verdict of the jury may be given orally through the foreman of the jury after consultation in the jury box without the necessity for the jury to retire.

#### **101 Previous convictions: solemn proceedings.**

- (1) Previous convictions against the accused shall not [<sup>F1</sup>, subject to subsection (2) below and section 275A(2) of this Act,] be laid before the jury, nor shall reference be made to them in presence of the jury before the verdict is returned.
- (2) Nothing in subsection (1) above shall prevent the prosecutor—
  - (a) asking the accused questions tending to show that he has been convicted of an offence other than that with which he is charged, where he is entitled to do so under section 266 of this Act; or
  - (b) leading evidence of previous convictions where it is competent to do so under section 270 of this Act,

and nothing in this section or in section 69 of this Act shall prevent evidence of previous convictions being led in any case where such evidence is competent in support of a substantive charge.

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(3) Previous convictions shall not [<sup>F2</sup>, subject to section 275A(1) of this Act,] be laid before the presiding judge until the prosecutor moves  
[<sup>F3</sup>(a)] for sentence [<sup>F4</sup>, or]  
[<sup>F5</sup>(b) for a risk assessment order (or the court at its own instance proposes to make such an order)],  
and in that event the prosecutor shall lay before the judge a copy of the notice referred to in subsection (2) or (4) of section 69 of this Act.

[<sup>F6</sup>(3A) Where, under paragraph (b) of subsection (3) above, the prosecutor lays previous convictions before the judge, he shall also provide the judge with such details regarding the offences in question as are available to him.]

(4) On the conviction of the accused it shall be competent for the court, subject to subsection (5) below, to amend a notice of previous convictions so laid by deletion or alteration for the purpose of curing any error or defect.

<sup>F7</sup>(5) .....

(6) Any conviction which is admitted in evidence by the court shall be entered in the record of the trial.

(7) 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.

(8) Where any such intimation as is mentioned in section 69 of this Act is given by the accused, it shall be competent to prove any previous conviction included in a notice under that section in the manner specified in section 285 [<sup>F8</sup>, or as the case may be 286A,] of this Act, and the provisions of the [<sup>F9</sup>section in question] shall apply accordingly.

[<sup>F10</sup>(9) This section, except subsection (2) above, applies in relation to the alternative disposals mentioned in subsection (10) below as it applies in relation to previous convictions.

(10) Those alternative disposals are—

- (a) a—
  - (i) fixed penalty under section 302(1) of this Act;
  - (ii) compensation offer under section 302A(1) of this Act, that has been accepted (or deemed to have been accepted) by the accused in the two years preceding the date of an offence charged;
- (b) a work order under section 303ZA(6) of this Act that has been completed in the two years preceding the date of an offence charged[<sup>F11</sup>;
- (c) a restoration notice given under subsection (4) of section 20A of the Nature Conservation (Scotland) Act 2004 (asp 6) in respect of which the accused has given notice of intention to comply under subsection (5) of that section in the two years preceding the date of an offence charged.]

(11) Nothing in this section or in section 69 of this Act shall prevent the prosecutor, following conviction of an accused of an offence—

- (a) to which a fixed penalty offer made under section 302(1) of this Act related;
- (b) to which a compensation offer made under section 302A(1) of this Act related;  
<sup>F12</sup> ...
- (c) to which a work offer made under section 303ZA(1) of this Act related[<sup>F13</sup>; or

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(d) to which a restoration notice given under section 20A(4) of the Nature Conservation (Scotland) Act 2004 (asp 6) related,]

providing the judge with information about the making of the offer (including the terms of the offer) [<sup>F14</sup>or, as the case may be, about the giving of the notice (including the terms of the notice).]]

[<sup>F15</sup>(12) Any reference in this section to a previous conviction includes, where relevant, a conviction by a court in any part of the United Kingdom or in any member State of the European Union.]

#### Textual Amendments

- F1** Words in s. 101(1) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), [s. 10\(1\)\(a\)](#); S.S.I. 2002/443, [art. 3](#) (with [art. 4\(5\)](#))
- F2** Words in s. 101(3) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), [s. 10\(1\)\(b\)](#); S.S.I. 2002/443, [art. 3](#) (with [art. 4\(5\)](#))
- F3** Words in s. 101(3) renumbered as s. 101(3)(a) (19.6.2006) by virtue of [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), [ss. 1\(2\), 89](#), [Sch. 1 para. 2\(3\)\(a\)](#); S.S.I. 2006/332, [art. 2\(1\)\(2\)](#)
- F4** Word in s. 101(3) inserted (19.6.2006) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), [ss. 1\(2\), 89](#), [Sch. 1 para. 2\(3\)\(a\)](#); S.S.I. 2006/332, [art. 2\(1\)\(2\)](#)
- F5** S. 101(3)(b) inserted (19.6.2006) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), [ss. 1\(2\), 89](#), [Sch. 1 para. 2\(3\)\(a\)](#); S.S.I. 2006/332, [art. 2\(1\)\(2\)](#)
- F6** S. 101(3A) inserted (19.6.2006) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), [ss. 1\(2\), 89](#), [Sch. 1 para. 2\(3\)\(b\)](#); S.S.I. 2006/332, [art. 2\(1\)\(2\)](#)
- F7** S. 101(5) repealed (1.8.1997) by [1997 c. 48](#), [ss. 31, 62\(2\)](#), [Sch. 3](#); S.I. 1997/1712, [art. 3](#), [Sch.](#) (subject to [arts. 4, 5](#))
- F8** Words in s. 101(8) inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), [ss. 57\(2\)\(a\)](#), [89](#); S.S.I. 2003/288, [art. 2](#), [Sch.](#)
- F9** Words in s. 101(8) substituted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), [ss. 57\(2\)\(b\)](#), [89](#); S.S.I. 2003/288, [art. 2](#), [Sch.](#)
- F10** S. 101(9)-(11) added (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 53\(2\)](#), [84](#); S.S.I. 2008/42, [art. 3](#), [Sch.](#)
- F11** S. 101(10)(c) and semi colon inserted (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), [ss. 40\(3\)\(b\)\(i\)](#), [43\(1\)](#) (with [s. 41\(1\)](#)); S.S.I. 2011/279, [art. 2\(1\)\(q\)](#)
- F12** Word in s. 101(11) repealed (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), [ss. 40\(3\)\(b\)\(ii\)\(A\)](#), [43\(1\)](#) (with [s. 41\(1\)](#)); S.S.I. 2011/279, [art. 2\(1\)\(q\)](#)
- F13** S. 101(11)(d) and word inserted (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), [ss. 40\(3\)\(b\)\(ii\)\(B\)](#), [43\(1\)](#) (with [s. 41\(1\)](#)); S.S.I. 2011/279, [art. 2\(1\)\(q\)](#)
- F14** Words in s. 101(11) inserted (29.6.2011) by [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#), [ss. 40\(3\)\(b\)\(ii\)\(C\)](#), [43\(1\)](#) (with [s. 41\(1\)](#)); S.S.I. 2011/279, [art. 2\(1\)\(q\)](#)
- F15** S. 101(12) inserted (31.12.2020) by [The Criminal Justice \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2020 \(S.S.I. 2020/339\)](#), [regs. 1\(3\)](#), [13\(6\)](#) (with [reg. 16](#))

[<sup>F16</sup>101A Post-offence convictions etc.

- (1) This section applies where an accused person is convicted of an offence (“offence O”) on indictment.
- (2) The court may, in deciding on the disposal of the case, have regard to—
  - (a) any conviction in respect of the accused which occurred on or after the date of offence O but before the date of conviction in respect of that offence,

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- (b) any of the alternative disposals in respect of the accused that are mentioned in subsection (3).
- (3) Those alternative disposals are—
  - (a) a—
    - (i) fixed penalty under section 302(1) of this Act, or
    - (ii) compensation offer under section 302A(1) of this Act, that has been accepted (or deemed to have been accepted) on or after the date of offence O but before the date of conviction in respect of that offence,
  - (b) a work order under section 303ZA(6) of this Act that has been completed on or after the date of offence O but before the date of conviction in respect of that offence.
- (4) The court may have regard to any such conviction or alternative disposal only if it is—
  - (a) specified in a notice laid before the court by the prosecutor, and
  - (b) admitted by the accused or proved by the prosecutor (on evidence adduced then or at another diet).
- (5) A reference in this section to a conviction which occurred on or after the date of offence O is a reference to such a conviction by a court in any part of the United Kingdom or <sup>[F17]</sup>, where the court considers appropriate, in any] member State of the European Union.]

#### Textual Amendments

- F16** S. 101A inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. [70\(1\)](#), [206\(1\)](#); [S.S.I. 2011/178](#), art. 2, sch.
- F17** Words in s. 101A(5) substituted (31.12.2020) by [The Criminal Justice \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2020 \(S.S.I. 2020/339\)](#), regs. [1\(3\)](#), [13\(7\)](#) (with reg. 16)

## 102 Interruption of trial for other proceedings.

- (1) When the jury have retired to consider their verdict, and the diet in another criminal cause has been called, then, subject to subsection (3) below, if it appears to the judge presiding at the trial to be appropriate, he may interrupt the proceedings in such other cause—
  - (a) in order to receive the verdict of the jury in the preceding trial, and thereafter to dispose of the case;
  - (b) to give a direction to the jury in the preceding trial upon any matter upon which the jury may wish a direction from the judge or to hear any request from the jury regarding any matter in the cause.
- (2) Where in any case the diet of which has not been called, the accused intimates to the clerk of court that he is prepared to tender a plea of guilty as libelled or such qualified plea as the Crown is prepared to accept, or where a case is remitted to the High Court for sentence, then, subject to subsection (3) below, any trial then proceeding may be interrupted for the purpose of receiving such plea or dealing with the remitted case and pronouncing sentence or otherwise disposing of any such case.
- (3) In no case shall any proceedings in the preceding trial take place in the presence of the jury in the interrupted trial, but in every case that jury shall be directed to retire by the presiding judge.

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- (4) On the interrupted trial being resumed the diet shall be called *de novo*.
- (5) In any case an interruption under this section shall not be deemed an irregularity, nor entitle the accused to take any objection to the proceedings.

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