



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VII

#### SOLEMN PROCEEDINGS

##### *The indictment*

#### 66 Service and lodging of indictment, etc.

[<sup>F1</sup>(1) This Act shall be sufficient warrant for—

- (a) the citation of the accused and witnesses to—
  - (i) any diet of the High Court to be held on any day, and at any place, the Court is sitting;
  - (ii) any diet of the sheriff court to be held on any day the court is sitting; or
  - (iii) any adjournment of a diet specified in sub-paragraph (i) or (ii) above; and
- (b) the citation of jurors for any trial to be held—
  - (i) in the High Court; or
  - (ii) under solemn procedure in the sheriff court.]

(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.

[<sup>F2</sup>(4) The accused may be cited either—

- (a) by being 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[<sup>F3</sup> and of the list of productions (if any) to be put in evidence by the prosecution]; or

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- (b) [<sup>F4</sup>if the accused, at the time of citation, is not in custody,] by a constable affixing to the door of the [<sup>F5</sup>relevant premises] a notice in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form—
- (i) specifying the date on which it was so affixed;
  - (ii) informing the accused that he may collect a copy of the indictment and of such [<sup>F6</sup>lists as are] mentioned in paragraph (a) above from a police station specified in the notice; and
  - (iii) calling upon him to appear and answer to the indictment at such diet as shall be so specified.

[<sup>F7</sup>(4ZA) In subsection (4)(b) above, “the relevant premises” means—

- (a) where the accused, at the time of citation, has been admitted to bail, his proper domicile of citation as specified for the purposes of section 25 of this Act; or
- (b) in any other case, any premises which the constable reasonably believes to be the accused’s dwelling-house or place of business.]

(4A) Where a date is specified by virtue of sub-paragraph (i) of subsection (4)(b) above, that date shall be deemed the date on which the indictment is served; and the copy of the indictment referred to in sub-paragraph (ii) of that subsection shall, for the purposes of subsections (12) and (13) below be deemed the service copy.

(4B) Paragraphs (a) and (b) of subsection (6) below shall apply for the purpose of specifying a diet by virtue of subsection (4)(b)(iii) above as they apply for the purpose of specifying a diet in any notice under subsection (6).]

[<sup>F8</sup>(4C) Where—

- (a) the accused is cited in accordance with subsection (4)(b) above; and
- (b) the charge in the indictment is of committing a sexual offence to which section 288C of this Act applies,

the accused shall, on collecting the indictment, be given a notice containing intimation of the matters specified in subsection (6A)(a) below.]

(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) [<sup>F9</sup>If the accused is cited by being served with a copy of the indictment, then except where such service is] 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—

- (a) where the case is to be tried in the sheriff court
  - [<sup>F10</sup>(i)] 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 [<sup>F11</sup>; and
  - (ii) at a trial diet not less than 29 clear days after service of the indictment,]

[<sup>F12</sup>(b) where the indictment is in respect of the High Court, at a diet not less than 29 clear days after the service of the indictment (such a diet being referred to in this Act as a “preliminary hearing”).]

[<sup>F13</sup>(6A) Where the charge in the indictment is of committing a sexual offence to which section 288C of this Act applies, the notice served under subsection (6) above shall—

- (a) contain intimation to the accused—

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[ where the case is to be tried in the High Court, that his case at or for  
<sup>F14</sup>(zi) the purposes of the preliminary hearing may be conducted only by a  
lawyer;]

(i) that, if he is tried for the offence, his defence [<sup>F15</sup>(including at any  
commissioner proceedings)]<sup>F16</sup>and any proof ordered as is mentioned  
in section 288C(1) of this Act] may be conducted only by a lawyer;

(ii) that it is, therefore, in his interests, if he has not already done so, to  
get the professional assistance of a solicitor; and

(iii) that if he does not engage a solicitor for the purposes of <sup>F17</sup>the conduct  
of his case at or for the purposes of the preliminary hearing or] his  
defence at the trial [<sup>F18</sup>(or at any related commissioner proceedings)],  
the court will do so; <sup>F19</sup> . . .

(b) <sup>F19</sup> . . . . .

[ A notice affixed under subsection (4)(b) above or served under subsection (6) above  
<sup>F20</sup>(6AA) shall, where the accused is a body corporate, also contain intimation to the accused—

(a) where the indictment is in respect of the High Court, that, if it does not appear  
as mentioned in section 70(4) of this Act or by counsel or a solicitor at the  
preliminary hearing—

(i) the hearing may proceed; and

(ii) a trial diet may be appointed,

in its absence; and

(b) in any case (whether the indictment is in respect of the High Court or the  
sheriff court), that if it does not appear as mentioned in paragraph (a) above  
at the trial diet, the trial may proceed in its absence.]

(6B) A failure to comply with subsection [<sup>F21</sup>(4C), (6A) or (6AA)] above does not affect  
the validity or lawfulness of any [<sup>F22</sup>notice affixed under subsection (4)(b) above or  
served under subsection (6) above] or any other element of the proceedings against  
the accused.]

<sup>F23</sup>(6C) An accused shall be taken to be served with—

(a) the indictment and lists of witnesses and productions; and

(b) the notice referred to in subsection (6) above,

if they are served on the solicitor specified in subsection (6D) below at that solicitor's  
place of business.

(6D) The solicitor referred to in subsection (6C) above is any solicitor who—

(a) has notified in writing the procurator fiscal for the district in which the charge  
against the accused was being investigated that he is engaged by the accused  
for the purposes of his defence; and

(b) has not informed that procurator fiscal that he has been dismissed by, or has  
withdrawn from acting for, the accused.

(6E) It is the duty of a solicitor who has, before service of an indictment, notified a  
procurator fiscal that he is engaged by the accused for the purposes of his defence to  
inform that procurator fiscal in writing forthwith if he is dismissed by, or withdraws  
from acting for, the accused.]

(7) [<sup>F24</sup>Subject to subsection (4)(b) above,]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.

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- (8) <sup>F25</sup> .....
- (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) <sup>F26</sup> .....
- (11) No objection to the competency of the officer who served the indictment [<sup>F27</sup>, or who executed a citation under subsection (4)(b) above,] to give evidence in respect of such service [<sup>F28</sup>or execution] 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 <sup>F29</sup> . . . 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 [<sup>F30</sup>or] other document [<sup>F31</sup>so] served shall be sufficiently authenticated by the initials of the person serving the same.
- [<sup>F32</sup>(15) In subsection (6A) above, “commissioner proceedings” means proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act.]

#### Textual Amendments

- F1** S. 66(1) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5), [ss. 7\(2\)](#), 27(1); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F2** S. 66(4)-(4B) substituted (27.6.2003) for s. 66(4) by [Criminal Justice \(Scotland\) Act 2003](#) (asp 7), [ss. 61\(1\)\(a\)](#), 89; S.S.I. 2003/288, [art. 2](#), Sch.
- F3** Words in s. 66(4)(a) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5), [ss. 25](#), 27(1), [Sch. para. 15\(a\)\(i\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F4** Words in s. 66(4)(b) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5), [ss. 7\(3\)\(a\)](#), 27(1); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F5** Words in s. 66(4)(b) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5), [ss. 7\(3\)\(b\)](#), 27(1); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F6** Words in s. 66(4)(b) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5), [ss. 25](#), 27(1), [Sch. para. 15\(a\)\(ii\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F7** S. 66(4ZA) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5), [ss. 7\(4\)](#), 27(1); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F8** S. 66(4C) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5), [ss. 25](#), 27(1), [Sch. para. 15\(b\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F9** Words in s. 66 (6 ) substituted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003](#) (asp 7), [ss. 61\(1\)\(b\)\(i\)](#), 89; S.S.I. 2003/288, [art. 2](#), Sch.
- F10** Words in s. 66(6)(a) renumbered as s. 66(6)(a)(i) (1.2.2005) by virtue of [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5), [ss. 1\(1\)\(a\)\(i\)](#), 27(1); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)

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- F11** S. 66(6)(a)(ii) and word inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 1(1)(a)(ii)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F12** S. 66(6)(b) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 1(1)(b)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F13** S. 66(6A)(6B) inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. 3, **Sch. para. 4**; S.S.I. 2002/443, **art. 3**
- F14** S. 66(6A)(a)(zi) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 15(c)(i)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F15** Words in s. 66(6A)(a)(i) inserted (23.4.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 35(1)(a)(i)**, 84; S.S.I. 2007/250, **art. 3(a)**
- F16** Words in s. 66(6A)(a)(i) added (25.11.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 85, 89, **Sch. 4 para. 3(2)**; S.S.I. 2003/475, **art. 2**, Sch.
- F17** Words in s. 66(6A)(a)(iii) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 15(c)(ii)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F18** Words in s. 66(6A)(a)(iii) inserted (23.4.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 35(1)(a)(ii)**, 84; S.S.I. 2007/250, **art. 3(a)**
- F19** S. 66(6A)(b) and preceding word repealed (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 1(2)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F20** S. 66(6AA) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 10(5)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F21** Words in s. 66(6B) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 15(d)(i)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F22** Words in s. 66(6B) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 15(d)(ii)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F23** S. 66(6C)-(6E) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 7(5)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F24** Words in s. 66 (7 ) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 61(1)(c)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F25** S. 66(8) repealed (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 7(6)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F26** S. 66(10) repealed (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 15(e)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F27** Words in s. 66(11) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 61(1)(e)(i)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F28** Words in s. 66(11) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 61(1)(e)(ii)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F29** Words in s. 66(13) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 61(1)(f)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F30** Words in s. 66(14) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 61(1)(g)(i)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F31** Words in s. 66(14) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 61(1)(g)(ii)**, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F32** S. 66(15) added (23.4.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 35(1)(b)**, 84; S.S.I. 2007/250, **art. 3(a)**

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