



Criminal Procedure (Amendment) (Scotland) Act 2004

2004 asp 5

PART 2

SOLEMN PROCEEDINGS GENERALLY

13 Preliminary pleas and preliminary issues

(1) For section 79 (preliminary pleas) of the 1995 Act, substitute—

“79 Preliminary pleas and preliminary issues

- (1) Except by leave of the court on cause shown, no preliminary plea or preliminary issue shall be made, raised or submitted in any proceedings on indictment by any party unless his intention to do so has been stated in a notice under section 71(2) or, as the case may be, 72(3) or (6)(b)(i) of this Act.
- (2) For the purposes of this section and those sections—
 - (a) the following are preliminary pleas, namely—
 - (i) a matter relating to the competency or relevancy of the indictment;
 - (ii) an objection to the validity of the citation against a party, on the ground of any discrepancy between the record copy of the indictment and the copy served on him, or on account of any error or deficiency in such service copy or in the notice of citation; and
 - (iii) a plea in bar of trial; and
 - (b) the following are preliminary issues, namely—
 - (i) an application for separation or conjunction of charges or trials;
 - (ii) a preliminary objection under section 27(4A)(a), 255 or 255A of this Act;
 - (iii) an application under section 278(2) of this Act;
 - (iv) an objection by a party to the admissibility of any evidence;

Status: This is the original version (as it was originally enacted).

- (v) an assertion by a party that there are documents the truth of the contents of which ought to be admitted, or that there is any other matter which in his view ought to be agreed; and
 - (vi) any other point raised by a party, as regards any matter not mentioned in sub-paragraphs (i) to (v) above, which could in his opinion be resolved with advantage before the trial.
- (3) No discrepancy, error or deficiency such as is mentioned in subsection (2)(a)(ii) above shall entitle an accused to object to plead to the indictment unless the court is satisfied that the discrepancy, error or deficiency tended substantially to mislead and prejudice the accused.
- (4) Where the court, under subsection (1) above, grants leave for a party to make, raise or submit a preliminary plea or preliminary issue (other than an objection to the admissibility of any evidence) without his intention to do so having been stated in a notice as required by that subsection, the court may—
- (a) if it considers it appropriate to do so, appoint a diet to be held before the trial diet for the purpose of disposing of the plea or issue; or
 - (b) appoint the plea or issue to be disposed of at the trial diet.”.
- (2) After section 87 of the 1995 Act insert—

“87A Disposal of preliminary matters at trial diet

Where—

- (a) any preliminary plea or issue; or
- (b) in a case to be tried in the High Court, any application, notice or other matter referred to in section 72(6)(b)(iii) or (iv) of this Act,

is to be disposed of at the trial diet, it shall be so disposed of before the jury is sworn, unless, where it is a preliminary issue consisting of an objection to the admissibility of any evidence, the court at the trial diet considers it is not capable of being disposed of before then.”.