



Criminal Procedure (Amendment) (Scotland) Act 2004

2004 asp 5

PART 2

SOLEMN PROCEEDINGS GENERALLY

14 **Objections to admissibility of evidence raised without due notice**

(1) In section 71 (first diet) of the 1995 Act—

(a) after subsection (2) there is inserted—

“(2YA) At a first diet, the court shall also ascertain whether there is any objection to the admissibility of any evidence which any party wishes to raise despite not having given the notice referred to in subsection (2) above, and—

- (a) if so, decide whether to grant leave under section 79(1) of this Act for the objection to be raised; and
- (b) if leave is granted, dispose of the objection unless it considers it inappropriate to do so at the first diet.

(2ZA) Where the court, having granted leave for the objection to be raised, decides not to dispose of it at the first diet, the court may—

- (a) appoint a further diet to be held before the trial diet for the purpose of disposing of the objection; or
 - (b) appoint the objection to be disposed of at the trial diet.”
- (b) in subsection (3), for the words “or (2)” substitute “, (2) or (2YA)”.

(2) After section 79 of the 1995 Act (as inserted by section 13 of this Act) insert—

“79A Objections to admissibility of evidence raised after first diet or preliminary hearing

(1) This section applies where a party seeks to raise an objection to the admissibility of any evidence after—

- (a) in proceedings in the High Court, the preliminary hearing; or

Status: This is the original version (as it was originally enacted).

- (b) in proceedings on indictment in the sheriff court, the first diet.
- (2) The court shall not, under section 79(1) of this Act, grant leave for the objection to be raised if the party seeking to raise it has not given written notice of his intention to do so to the other parties.
 - (3) However, the court may, where the party seeks to raise the objection after the commencement of the trial, dispense with the requirement under subsection (2) above for written notice to be given.
 - (4) Where the party seeks to raise the objection after the commencement of the trial, the court shall not, under section 79(1) of this Act, grant leave for the objection to be raised unless it considers that it could not reasonably have been raised before that time.
 - (5) Where the party seeks to raise the objection before the commencement of the trial and the court, under section 79(1), grants leave for it to be raised, the court shall—
 - (a) if it considers it appropriate to do so, appoint a diet to be held before the commencement of the trial for the purpose of disposing of the objection; or
 - (b) dispose of the objection at the trial diet.
 - (6) In appointing a diet under subsection (5)(a) above, the court may postpone the trial diet for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.
 - (7) The accused shall appear at any diet appointed under subsection (5)(a) above.
 - (8) For the purposes of this section, the trial shall be taken to commence when the jury is sworn.”.