



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART IV

#### PETITION PROCEDURE

##### *Judicial examination*

#### 35 Judicial examination.

- (1) The accused's solicitor shall be entitled to be present at the examination.
- (2) The sheriff may delay the examination for a period not exceeding 48 hours from and after the time of the accused's arrest, in order to allow time for the attendance of the solicitor.

<sup>F1</sup>(3) .....

<sup>F2</sup>(4) .....

<sup>F3</sup>(4A) An accused charged with <sup>F4</sup>[an offence listed in subsection (4AA)(b)] shall, as soon as he is brought before the sheriff for examination on the charge, be told—

- <sup>F5</sup>(a) that his case at, or for the purposes of, any relevant hearing <sup>F6</sup>... in the course of the proceedings may be conducted only by a lawyer,]
- (b) that it is, therefore, in his interests, if he has not already done so, to get the professional assistance of a solicitor; and
- (c) that, if he does not engage a solicitor for the purposes of <sup>F7</sup>[the conduct of his case at or for the purposes of the] <sup>F8</sup>[hearing], the court will do so.

[ For the purposes of subsection (4A)—

<sup>F9</sup>(4AA) (a) “relevant hearing” is to be construed in accordance with section 288C(1A) or (as the case may be) 288DC(4),

(b) the list is—

- (i) an offence to which section 288C applies (certain sexual offending),
- (ii) an offence to which section 288DC applies (domestic abuse cases).]

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Judicial examination is up to date with all changes known to be in force on or before 08 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4B) A failure to comply with subsection (4A) above does not affect the validity or lawfulness of the examination or of any other element of the proceedings against the accused.]

<sup>F10</sup>(5) .....

(6) Where the accused is brought before the sheriff for further examination the sheriff may delay that examination for a period not exceeding 24 hours in order to allow time for the attendance of the accused’s solicitor.

[<sup>F11</sup>(6A) In proceedings before the sheriff in examination or further examination, the accused is not to be given an opportunity to make a declaration in respect of any charge.]

(7) Any proceedings before the sheriff in examination or further examination shall be conducted in chambers and outwith the presence of any co-accused.

(8) This section applies to procedure on petition, without prejudice to the accused being tried summarily by the sheriff for any offence in respect of which he has been committed until liberated in due course of law.

**Textual Amendments**

- F1** S. 35(3) repealed (17.1.2017) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **ss. 78(2)(a)**, 117(2); [S.S.I. 2016/426](#), art. 2, sch.
- F2** S. 35(4) repealed (17.1.2017) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **ss. 78(2)(a)**, 117(2); [S.S.I. 2016/426](#), art. 2, sch.
- F3** S. 35(4A)(4B) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 3, **Sch. para. 3**; [S.S.I. 2002/443](#), **art. 3** (with art. 4(3))
- F4** Words in s. 35(4A) substituted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\)](#), s. 15(2), **sch. para. 4(2)(a)**; [S.S.I. 2018/387](#), reg. 2 (with reg. 7)
- F5** S. 35(4A)(a) substituted for s. 35(4A)(za)(a) (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), **sch. 7 para. 36(a)**; [S.S.I. 2011/178](#), art. 2, sch.
- F6** Words in s. 35(4A)(a) repealed (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\)](#), s. 15(2), **sch. para. 4(2)(b)**; [S.S.I. 2018/387](#), reg. 2 (with reg. 7)
- F7** Words in s. 35(4A)(c) inserted (4.12.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), **Sch. para. 12(b)**; [S.S.I. 2004/405](#), **art. 2**, Sch. 1 (subject to arts. 3-5)
- F8** Word in s. 35(4A)(c) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), **sch. 7 para. 36(b)**; [S.S.I. 2011/178](#), art. 2, sch.
- F9** S. 35(4AA) inserted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\)](#), s. 15(2), **sch. para. 4(2)(c)**; [S.S.I. 2018/387](#), reg. 2 (with reg. 7)
- F10** S. 35(5) repealed (17.1.2017) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **ss. 78(2)(a)**, 117(2); [S.S.I. 2016/426](#), art. 2, sch.
- F11** S. 35(6A) inserted (17.1.2017) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **ss. 78(1)**, 117(2); [S.S.I. 2016/426](#), art. 2, sch.

<sup>F12</sup>**36 Judicial examination: questioning by prosecutor.**

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**Changes to legislation:** *Criminal Procedure (Scotland) Act 1995, Cross Heading: Judicial examination is up to date with all changes known to be in force on or before 08 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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**Textual Amendments**

**F12** S. 36 repealed (17.1.2017) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **ss. 78(2)(b)**, 117(2); S.S.I. 2016/426, art. 2, sch. (with art. 3)

**F13** **37 Judicial examination: record of proceedings.**

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**Textual Amendments**

**F13** S. 37 repealed (17.1.2017) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **ss. 78(2)(b)**, 117(2); S.S.I. 2016/426, art. 2, sch. (with art. 3)

**F14** **38 Judicial examination: rectification of record of proceedings.**

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**Textual Amendments**

**F14** S. 38 repealed (17.1.2017) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **ss. 78(2)(b)**, 117(2); S.S.I. 2016/426, art. 2, sch. (with art. 3)

**39 Judicial examination: charges arising in different districts.**

- (1) An accused against whom there are charges in more than one sheriff court district may be brought before the sheriff of any one such district at the instance of the procurator fiscal of such district for examination on all or any of the charges.
- (2) Where an accused is brought for examination as mentioned in subsection (1) above, he may be dealt with in every respect as if all of the charges had arisen in the district where he is examined.
- (3) This section is without prejudice to the power of the Lord Advocate under section 10 of this Act to determine the court before which the accused shall be tried on such charges.

**Changes to legislation:**

Criminal Procedure (Scotland) Act 1995, Cross Heading: Judicial examination is up to date with all changes known to be in force on or before 08 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5A inserted by [2010 asp 13 Sch. 7 para. 26](#)
- s. 13(1B)(1C) inserted by [2006 asp 10 s. 82\(2\)](#)
- s. 13(2)(aa) inserted by [2006 asp 10 s. 82\(3\)\(b\)](#)
- s. 13(3A) inserted by [2006 asp 10 s. 82\(4\)](#)
- s. 13(5)(ba) inserted by [2006 asp 10 s. 82\(5\)\(a\)](#)
- s. 13(6)(a)(iii) and word inserted by [2006 asp 10 s. 82\(6\)\(b\)](#)
- s. 13(8) inserted by [2006 asp 10 s. 82\(7\)](#)
- s. 22(5A) inserted by [2007 asp 6 s. 7\(2\)\(g\)](#)
- s. 22A(1A) inserted by [2023 asp 4 s. 1\(2\)](#)
- s. 23B(1)(1A) substituted for s. 23B(1) by [2023 asp 4 s. 2\(2\)\(a\)](#)
- s. 23B(6A) inserted by [2023 asp 4 s. 1\(3\)\(c\)](#)
- s. 23B(8)-(10) inserted by [2023 asp 4 s. 2\(2\)\(c\)](#)
- s. 23C(1A) inserted by [2023 asp 4 s. 2\(3\)\(b\)](#)
- s. 23C(3) inserted by [2023 asp 4 s. 2\(3\)\(c\)](#)
- s. 24(2C) inserted by [2023 asp 4 s. 4\(4\)](#)
- s. 24(2AA) inserted by [2023 asp 4 s. 4\(2\)](#)
- s. 73A inserted by [2004 asp 3 s. 2\(3\)](#)
- s. 167(7D)(7E) inserted by [2007 asp 17 sch. 4 para. 1\(3\)](#)
- s. 167(7D) words substituted by [2010 asp 13 Sch. 3 para. 16\(2\)](#)
- s. 167(7E) words substituted by [2010 asp 13 Sch. 3 para. 16\(3\)](#)
- s. 194ZA repealed by [2014 asp 18 sch. 3 para. 25](#)
- s. 200A inserted by [2016 asp 1 s. 85](#)
- s. 205A added by [1997 c. 48 s. 1\(1\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)
- s. 210ZA inserted by [2023 asp 4 s. 5](#)
- s. 249(4A)-(4D) inserted by [2014 asp 1 s. 24](#)
- s. 271D(4A) inserted by [2019 asp 8 s. 6\(4\)](#)
- s. 271F(2)(aa) inserted by [2019 asp 8 s. 10\(4\)](#)
- s. 271AA inserted by [2019 asp 8 s. 6\(2\)](#)
- s. 271BZD inserted by [2019 asp 8 s. 3\(2\)](#)
- s. 288AB288AC inserted by [2024 asp 1 s. 32\(3\)](#)
- Sch. 5A added by [1997 c. 48 s. 1\(2\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)