



Criminal Justice (Scotland) Act 1980

1980 CHAPTER 62

PART II

PROCEDURE AND EVIDENCE

Procedure

6 Judicial examination

(1) In section 20 of the 1975 Act (accused at examination need not emit a declaration)—

- (a) in subsection (1), after the words " declaration, and " there shall be inserted the words " subject to section 20A of this Act ";
- (b) at the end of subsection (3) there shall be added the words " ; and that declaration shall be taken in further examination. " ; and
- (c) after subsection (3) there shall be inserted the following subsections—

“(3A) An accused person may, where subsequent to examination (or further examination) on any charge the prosecutor desires to question him as regards an extrajudicial confession (whether or not a full admission) allegedly made by him, to or in the hearing of an officer of police, which is relevant to the charge and as regards which he has not previously been examined, be brought before the sheriff for further examination.

(3B) Where the accused is brought before the sheriff for further examination it shall be in the power of the sheriff to delay that examination for a period not exceeding 24 hours in order to allow time for the attendance of the accused's solicitor.

(3C) Any proceedings before the sheriff in examination or further examination shall be conducted in chambers and outwith the presence of any co-accused.”.

(2) After section 20 of the 1975 Act there shall be inserted the following sections—

“20A Accused at examination may be questioned by prosecutor.

- (1) Subject to the following provisions of this section, an accused on being brought before the sheriff for examination on any charge (whether that examination is the first examination or a further examination) may be questioned by the prosecutor in so far as such questioning is directed towards eliciting any denial, explanation, justification or comment which the accused may have as regards—

- (a) matters averred in the charge:

Provided that the particular aims of a line of questions under this paragraph shall be to determine—

- (i) whether any account which the accused can give ostensibly discloses a category of defence (as for example alibi, incrimination, or the consent of an alleged victim); and
 - (ii) the nature and particulars of that defence;
- (b) the alleged making by the accused, to or in the hearing of an officer of police, of an extrajudicial confession (whether or not a full admission) relevant to the charge:

Provided that questions under this paragraph may only be put if the accused has, before the examination, received from the prosecutor or from an officer of police a written record of the confession allegedly made; or

- (c) what is said in any declaration emitted in regard to the charge by the accused at the examination.

- (2) The prosecutor shall, in framing questions in exercise of his power under subsection (1) above, have regard to the following principles—

- (a) the questions should not be designed to challenge the truth of anything said by the accused;
- (b) there should be no reiteration of a question which the accused has refused to answer at the examination; and
- (c) there should be no leading questions ;

and the sheriff shall ensure that all questions are fairly put to, and understood by, the accused.

- (3) The accused, where he is represented by a solicitor at the judicial examination, shall be told by the sheriff that he may consult that solicitor before answering any question.
- (4) With the permission of the sheriff, the solicitor for the accused may ask the accused any question the purpose of which is to clarify any ambiguity in an answer given by the accused to the prosecutor at the examination or to give the accused an opportunity to answer any question which he has previously refused to answer.
- (5) An accused may decline to answer a question under subsection (1) above; and, where he is subsequently tried on the charge mentioned in that subsection or on any other charge arising out of the circumstances which gave rise to the charge so mentioned, his having so declined may be commented upon by the prosecutor, the judge presiding at the trial, or any co-accused, only where

and in so far as the accused (or any witness called on his behalf) in evidence avers something which could have been stated appropriately in answer to that question.

- (6) The procedure in relation to examination under this section shall be prescribed by Act of Adjournal under this Act.

20B Record to be made of proceedings at examination.

- (1) The prosecutor shall provide for a *verbatim* record to be made by a shorthand writer of all questions to and answers and declarations by, the accused in examination, or further examination, under sections 20 and 20A of this Act.
- (2) The shorthand writer shall sign the transcript of the notes taken by him and shall certify that it is a complete and accurate record of the said questions, answers and declarations; and, subject to subsection (4) below, it shall for all purposes be so deemed.
- (3) Subject to subsections (5) and (6) below, within 14 days of the date of examination or further examination, the prosecutor shall—
- (a) serve a copy of the transcript on the accused examined; and
 - (b) serve a further such copy on the solicitor (if any) for that accused.
- (4) Subject to subsections (5) and (6) below, where notwithstanding the certification mentioned in subsection (2) above the said accused or the prosecutor is of the opinion that a transcript served under paragraph (a) of subsection (3) above contains an error or is incomplete he may—
- (a) within 10 days of service under the said paragraph (a), serve notice of such opinion on the prosecutor or as the case may be the said accused; and
 - (b) within 14 days of service under paragraph (a) of this subsection, apply to the sheriff for the error or incompleteness to be rectified;
- and the sheriff shall within seven days of the application hear the prosecutor and the said accused chambers and may authorise rectification:

Provided that where—

- (i) the person on whom notice is served under paragraph (a) of this subsection agrees with the opinion to which that notice relates the sheriff may dispense with such hearing;
 - (ii) the said accused neither attends, nor secures that he is represented at, such hearing it shall, subject to paragraph (i) above, nevertheless proceed.
- (5) Where at the time of a further examination a trial diet is already fixed and the interval between the further examination and that diet is not sufficient to allow of the time limits specified in subsections (3) and (4) above, the sheriff shall (either or both)—
- (a) direct that those subsections shall apply in the case with such modifications as to time limits as he shall specify ;
 - (b) postpone the trial diet:

Provided that postponement under paragraph (b) above alone shall only be competent where the sheriff considers that to proceed under paragraph (a)

above alone, or paragraphs (a) and (b) above together, would not be practicable.

- (6) Any time limit mentioned in subsections (3) and (4) above (including any such time limit as modified by a direction under subsection (5) above) may be extended, in respect of the case, by the High Court.
- (7) In so far as it is reasonably practicable so to arrange, the sheriff who deals with any application made under subsection (4) above shall be the sheriff before whom the examination (or further examination) to which the application relates was conducted.
- (8) Any decision of the sheriff, as regards rectification under subsection (4) above, shall be final.
- (9) A copy of—
 - (a) a transcript required by paragraph (a) of subsection (3) above to be served on an accused or by paragraph (b) of that subsection to be served on his solicitor ; or
 - (b) a notice required by paragraph (a) of subsection (4) above to be served on an accused or on the prosecutor,

may either be personally served on the accused, solicitor or prosecutor (as the case may be) or sent to him by registered post or by the recorded delivery service; and a written execution purporting to be signed by the person who served such transcript or notice, together with, where appropriate, a post office receipt for the relative registered or recorded delivery letter shall be sufficient evidence of service of such a copy.”.

- (3) For section 151 of the 1975 Act (accused's declaration in solemn proceedings to be received in evidence without being sworn to by witnesses), there shall be substituted the following section—

“151 Record of proceedings at examination to be received in evidence without being sworn to by witnesses.

- (1) Subject to subsection (2) below, the record made, under section 20B of this-Act (with any rectification, authorised under subsection (4) of that section, incorporated), of proceedings at the examination of an accused shall be received in evidence without being sworn to by witnesses, and it shall not be necessary to insert the names of any witnesses to the record in any list of witnesses, either for the prosecution or for the defence.
- (2) Subject to sections 20B(2) and 76(1)(6) of this Act, on the application of either an accused or the prosecutor, the court may refuse to allow the record or some part of the record to be read to the jury; and at the hearing of such application it shall be competent for the defence to adduce as witnesses the persons who were present during the proceedings mentioned in subsection (1) above and for the defence and for the prosecutor to examine those witnesses upon any matters regarding the said proceedings.
- (3) " Record " in subsection (2) above comprises, as regards any trial, each record included, under section 78(2) of this Act, in the list of productions.”.

- (4) For section 352 of the 1975 Act (accused's declaration, in summary proceedings, to be received in evidence without being sworn to by witnesses), there shall be substituted the following section—

“352 Record of proceedings at examination to be received in evidence without being sworn to by witnesses.

- (1) Subject to subsection (2) below, the record made, under section 20B of this Act (with any rectification, authorised under subsection (4) of that section, incorporated), of proceedings at the examination of an accused shall be received in evidence without being sworn to by witnesses.
- (2) Subject to section 20B(2) of this Act and to subsection (4) below, on the application of either an accused or the prosecutor, the court may refuse to admit the record or some part of the record as evidence ; and at the hearing of such application it shall be competent for the defence to adduce as witnesses the persons who were present during the proceedings mentioned in subsection (1) above and for the defence and for the prosecutor to examine those witnesses upon any matters regarding the said proceedings.
- (3) " Record " in subsection (2) above comprises, as regards any trial, each record which it is sought to have received in evidence under subsection (1) above.
- (4) Except on cause shown, an application under subsection (2) above shall not be heard unless notice of at least 10 clear days has been given to the court and to the other parties.”

7 Jurisdiction of district courts

- (1) Except in so far as any enactment (including this Act or an enactment passed after this Act) otherwise provides, the statutory offences which it shall be competent for a district court to try shall be those in respect of which the maximum penalty which may be imposed does not exceed 60 days imprisonment or a fine of £200 or both.
- (2) Nothing in subsection (1) above shall empower a district court to try an offence specified in Schedule 4 to the Road Traffic Act 1972 in respect of which disqualification from driving or endorsement of a driving licence is either obligatory or discretionary following conviction.
- (3) Without prejudice to section 289D of the 1975 Act (power to alter sums specified in certain provisions) it shall be competent, whether or not the accused has been previously convicted of an offence inferring dishonest appropriation of property, for any of the following offences to be tried in the district court—

theft or reset of theft, falsehood, fraud or wilful imposition, breach of trust or embezzlement where (in any such case) the amount concerned does not exceed £200;

and accordingly in section 285 of the 1975 Act (certain crimes not to be tried in inferior courts)—

 - (i) in paragraph (b) (iii) for the words " £25 " there shall be substituted the words " £200 "; and
 - (ii) in paragraph (b), sub-paragraph (iv) and the proviso shall cease to have effect.

8 Trial on indictment of summary offences

- (1) Any offence which may under the provisions of any enactment (including this Act or an enactment passed after this Act) be tried only summarily, being an offence which, if it had been triable on indictment, could competently have been labelled as an additional or alternative charge in the indictment, may (the provisions of this or any other enactment notwithstanding) be labelled in an indictment and may be tried accordingly.
- (2) A person shall not be liable to any higher penalty on conviction on indictment of an offence to which subsection (1) above applies than he would have been on summary conviction.

9 Citation of defence witness for precognition

- (1) The sheriff may, on the application of an accused, grant warrant to cite any person (other than a co-accused), who is alleged to be a witness in relation to any offence of which the accused has been charged, to appear before the sheriff in chambers at such time or place as shall be specified in the citation, for precognition on oath by the accused or his solicitor in relation to that offence, if the court is satisfied that it is reasonable to require such precognition on oath in the circumstances.
- (2) Any person who, having been duly cited to attend for precognition under subsection (1) above and having been given at least 48 hours notice, fails without reasonable excuse to attend shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50 or to imprisonment for a period not exceeding 21 days; and the court may issue a warrant for the apprehension of the person concerned, ordering him to be brought before a sheriff for precognition on oath.
- (3) Any person who, having been duly cited to attend for precognition under subsection (1) above, attends but—
 - (i) refuses to give information within his knowledge or to produce evidence in his possession ; or
 - (ii) prevaricates in his evidence,shall be guilty of an offence and shall be liable to be summarily subjected forthwith to a fine not exceeding £50 or to imprisonment for a period not exceeding 21 days.

10 Identification parades

- (1) Subject to subsection (2) below, the sheriff may, on an application by an accused at any time after the accused has been charged with an offence, order that, in relation to the alleged offence, the prosecutor shall hold an identification parade in which the accused shall be one of those constituting the parade.
- (2) The sheriff shall make an order in accordance with subsection (1) above only after giving the prosecutor an opportunity to be heard and only if—
 - (a) an identification parade, such as is mentioned in subsection (1) above, has not been held at the instance of the prosecutor;
 - (b) after a request by the accused, the prosecutor has refused to hold, or has unreasonably delayed holding, such an identification parade ; and
 - (c) the sheriff considers the application under subsection (1) above to be reasonable.

- (3) An application under subsection (1) above shall be by petition.
- (4) For the purpose of allowing legal aid to be given in relation to identification parades the Legal Aid (Scotland) Act 1967 shall be amended as follows—

- (a) in section 1 of that Act (scope and general conditions of legal aid—
- (i) in subsection (2), after the word "which" there shall be inserted the words " (or, in the case of the legal aid mentioned in subsection (5) (b) below, in contemplation of which) ";
 - (ii) for subsection (5) there shall be substituted the following subsection—

“(5) Legal aid shall consist of representation, on the terms provided for by this Act—

- (a) by a solicitor and so far as necessary by counsel (including all such assistance, other than that mentioned in paragraph (b) below, as is usually given by solicitor or counsel in the steps preliminary or incidental to any proceedings or in arriving at or giving effect to a settlement to prevent or bring to an end any proceedings);
- (b) by a solicitor at any identification parade held, by or on behalf of the prosecutor, in connection with or in contemplation of criminal proceedings against the person so represented.

In this subsection " prosecutor " has the same meaning as in Part III of the Criminal Procedure (Scotland) Act 1975.”; and

- (iii) in subsection (7), after sub-paragraph (ii) there shall be inserted the following words—

“or

- (iii) the legal aid is that mentioned in subsection (5)(b) of this section ;”;

- (b) in section 2 of that Act (financial conditions of legal aid)—
- (i) in subsection (5), after the words " legal aid " where they first occur, there shall be inserted the words " , other than that mentioned in section 1(5) (b) of this Act, "; and
 - (ii) after subsection (5) there shall be inserted the following subsection—

“(5AA) Notwithstanding the provisions of subsection (2) of this section, the legal aid mentioned in section 1(5)(b) of this Act shall be available to a person without inquiry into his resources.”;

- (c) in section 6 of that Act (entitlement to select solicitor or counsel) at the end of subsection (1) there shall be inserted the following proviso—

“: Provided that, where in pursuance of arrangements made by the Law Society in accordance with any scheme for the time being in force under section 8 of this Act a solicitor is available for the special purpose of giving the legal aid mentioned in section 1(5)(b) of this Act, this subsection shall not apply in relation to that legal aid.”; and

- (d) in section 16 of that Act (rules of court), in subsection (2), after the words " in connection with " where they first occur, there shall be inserted the words " (or, in the case of the legal aid mentioned in section 1(5)(b) of this Act, in contemplation of) " .

11 Discharge and assignation of diets in summary procedure

In section 314 of the 1975 Act (orders of court on complaint)—

- (a) in subsection (2), after the word " subsection " there shall be inserted the words—

“of a judge—

- (a) to pronounce an order of court assigning a diet for the disposal of the case may be exercised on his behalf by the clerk of court;

(b)”;

- (b) in subsection (3) the words " or a later" shall cease to have effect;
- (c) at the end there shall be added the following subsections—

“(4) Where the prosecutor and the accused make joint application to the court (orally or in writing) for postponement of a diet which has been fixed, the court shall discharge the diet and fix in lieu thereof a later diet unless the court considers that it should not do so because there has been unnecessary delay on the part of one or more of the parties.

(5) Where the prosecutor has intimated to the accused that he desires to postpone or accelerate a diet which has been fixed, and the accused refuses, or any of the accused refuse, to make a joint application to the court for that purpose, the prosecutor may make an incidental application for that purpose under section 310 of this Act; and, after giving the parties an opportunity to be heard, the court may discharge the diet and fix in lieu thereof a later diet or, as the case may be, an earlier diet.

(6) Where an accused has intimated to the prosecutor and to all the other accused that he desires such postponement or acceleration and the prosecutor refuses, or any of the other accused refuse, to make a joint application to the court for that purpose, the accused who has so intimated may apply to the court for that purpose; and, after giving the parties an opportunity to be heard, the court may discharge the diet and fix in lieu thereof a later diet or, as the case may be, an earlier diet.”.

12 Abolition of mandatory first diet in solemn procedure

It shall no longer be mandatory to fix two diets of appearance in every case in solemn proceedings; and accordingly the 1975 Act shall have effect subject to the amendments contained in Schedule 4 to this Act.

13 Written notice of evidence incriminating co-accused in solemn procedure

In section 82 of the 1975 Act (written notice of special defence etc.), for subsection (1) there shall be substituted the following subsection—

“(1) It shall not be competent for an accused to state a special defence or to lead evidence calculated to exculpate the accused by incriminating a co-accused unless—

- (a) a plea of special defence, or as the case may be, notice of intention to lead such evidence, has been lodged not less than 10 clear days before the trial diet; or
- (b) the accused having satisfied the court that there was good reason for paragraph (a) above not being complied with, such plea or notice has been lodged before the oath is administered to the jury.”.

14 Prevention of delay in trials

(1) For section 101 of the 1975 Act there shall be substituted the following section—

“101 Prevention of delay in trials.

- (1) An accused shall not be tried on indictment for any offence unless such trial is commenced within a period of 12 months of the first appearance of that accused on petition in respect of that offence; and, failing such commencement within that period, the accused shall be discharged forthwith and thereafter he shall be for ever free from all question or process for that offence:

Provided that—

- (i) nothing in this subsection shall bar the trial of an accused for whose arrest a warrant has been granted for failure to appear at a diet in the case ;
 - (ii) on application made for the purpose, the sheriff or, where an indictment has been served on the accused in respect of the High Court, a single judge of that court, may on cause shown extend the said period of 12 months.
- (2) Subject to subsections (3), (4) and (5) below, an accused who is committed for any offence until liberated in due course of law shall not be detained by virtue of that committal for a total period of more than—
- (a) 80 days, unless within that period the indictment is served on him, which failing he shall be liberated forthwith; or
 - (b) 110 days, unless the trial of the case is commenced within that period, which failing he shall be liberated forthwith and thereafter he shall be for ever free from all question or process for that offence.
- (3) A single judge of the High Court may, on application made to him for the purpose, for any sufficient cause extend the period mentioned in subsection (2) (a) above:

Provided that he shall not extend the said period if he is satisfied that, but for some fault on the part of the prosecution, the indictment could have been served within that period.

- (4) A single judge of the High Court may, on application made to him for the purpose, extend the period mentioned in subsection (2) (b) above where he is satisfied that delay in the commencement of the trial is due to—
 - (a) the illness of the accused or of a judge;
 - (b) the absence or illness of any necessary witness; or
 - (c) any other sufficient cause which is not attributable to any fault on the part of the prosecutor.
 - (5) The grant or refusal of any application to extend the periods mentioned in this section may be appealed against by note of appeal presented to the High Court; and that Court may affirm, reverse or amend the determination made on such application.
 - (6) For the purposes of this section, a trial shall be taken to commence when the oath is administered to the jury.”.
- (2) After section 331 of the 1975 Act there shall be inserted the following section—

“331A Prevention of delay in trials.

- (1) Subject to subsections (2) and (3) below, a person charged with a summary offence shall not be detained in that respect for a total of more than forty days after the bringing of the complaint in court unless his trial is commenced within that period, failing which he shall be liberated forthwith and thereafter he shall be for ever free from all question or process for that offence.
- (2) The sheriff may, on application made to him for the purpose, extend the period mentioned in subsection (1) above and order the accused to be detained awaiting trial for such period as he thinks fit where he is satisfied that delay in the commencement of the trial is due to—
 - (a) the illness of the accused or of a judge ;
 - (b) the absence or illness of any necessary witness; or
 - (c) any other sufficient cause which is not attributable to any fault on the part of the prosecutor.
- (3) The grant or refusal of any application to extend the period mentioned in subsection (1) above may be appealed against by note of appeal presented to the High Court; and that Court may affirm, reverse or amend the determination made on such application.
- (4) For the purposes of this section, a trial shall be taken to commence when the first witness is sworn.”.

15 Intermediate diet in summary procedure

After section 337 of the 1975 Act there shall be added the following section—

“337A Intermediate diet.

- (1) The court may, at any time, as respects a case which is adjourned for trial, fix a diet (to be known as an intermediate diet) for the purpose of ascertaining—

- (a) the state of preparation of the prosecutor and of the accused with respect to their cases; and
 - (b) whether the accused intends to adhere to the plea of not guilty.
- (2) At an intermediate diet, the court may ask the prosecutor and the accused any question for the purposes mentioned in subsection (1) above.
- (3) The accused shall attend an intermediate diet of which he has received intimation or to which he has been cited.
- (4) A plea of guilty may be tendered at the intermediate diet; and section 336 of this Act shall apply accordingly.”.

16 Procedure where accused desires to plead guilty under solemn procedure

For section 102 of the 1975 Act there shall be substituted the following section—

“102 Procedure where accused desires to plead guilty.

- (1) Where an accused intimates in writing to the Crown Agent that he intends to plead guilty and desires to have his case disposed of at once, the accused may be served with an indictment (unless one has already been served) and a notice to appear at a diet of the appropriate court not less than four clear days after the date of the notice; and it shall not be necessary to lodge or give notice of any list of witnesses or productions.
- (2) In subsection (1) above, "appropriate court" means—
 - (a) in a case where at the time of the intimation mentioned in that subsection an indictment had not been served, either the High Court or the sheriff court; and
 - (b) in any other case, the court specified in the notice served under section 75 of this Act on the accused.
- (3) If at any such diet the accused pleads not guilty to the charge or pleads guilty only to a part of the charge, and the prosecutor declines to accept such restricted plea, the diet shall be deserted *pro loco et tempore*, and thereafter the cause may proceed in accordance with the other provisions of this Part of this Act except that in a case mentioned in paragraph (b) of subsection (2) above the court may postpone the trial diet and the period of such postponement shall not count towards any time limit applying in respect of the case.”.

17 Failure of accused to attend diet in summary procedure

In section 338 of the 1975 Act (failure of accused to appear) the existing words shall be subsection (1) of that section and after that subsection there shall be inserted the following subsections—

- “(2) An accused who without reasonable excuse fails to attend any diet of which he has been given due notice, shall be guilty of an offence and liable on summary conviction—
 - (a) to a fine not exceeding £200 ; and
 - (b) to a period of imprisonment not exceeding—
 - (i) in the district court, 60 days ; or

(ii) in the sheriff court, 3 months.

- (3) The penalties provided for in subsection (2) above may be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.
- (4) An accused may be dealt with for an offence under subsection (2) above either at his diet of trial for the original offence or at a separate diet.”.

18 Desertion of trial diet

- (1) In section 127 of the 1975 Act (procedure where trial does not take place) after subsection (1) there shall be inserted the following subsection—

“(1A) The prosecutor shall not raise a fresh libel in a case where the court has deserted the trial diet simpliciter (and its decision in that regard has not been reversed on appeal).”.

- (2) After section 338 of the said Act there shall be added the following section—

“338A Desertion of trial diet.

- (1) It shall be competent at the diet of trial, at any time before the first witness is sworn, for the court, on the application of the prosecutor, to desert the diet *pro loco et tempore*.
- (2) If, at a diet of trial, the court refuses an application by the prosecutor to adjourn the trial or to desert the diet *pro loco et tempore*, and the prosecutor is unable or unwilling to proceed with the trial, the court shall desert the diet simpliciter.
- (3) Where the court has deserted a diet simpliciter under subsection (2) above (and the court's decision in that regard has not been reversed on appeal), it shall not be competent for the prosecutor to raise a fresh libel.”.

19 No case to answer

- (1) After section 140 of the 1975 Act there shall be inserted the following section—

“140A No case to answer.

- (1) Immediately after the close of the evidence for the prosecution, the accused may intimate to the court his desire to make a submission that he has no case to answer both—
 - (a) on an offence charged in the indictment; and
 - (b) on any other offence of which he could be convicted under the indictment were the offence charged the only offence so charged.
- (2) Such a submission shall be heard by the judge in the absence of the jury.
- (3) If, after hearing both parties, the judge is satisfied that the evidence led by the prosecution is insufficient in law to justify the accused being convicted of the offence charged in respect of which the submission has been made or of such other offence as is mentioned, in relation to that offence, in paragraph (b) of

subsection (1) above, he shall acquit him of the offence charged in respect of which the submission has been made and the trial shall proceed only in respect of any other offence charged in the indictment.

- (4) If, after hearing both parties, the judge is not satisfied as is mentioned in subsection (3) above, he shall reject the submission and the trial shall proceed, with the accused entitled to give evidence and call witnesses, as if such submission had not been made.”.

(2) After section 345 of the 1975 Act there shall be inserted the following section—

“345A No case to answer.

- (1) Immediately after the close of the evidence for the prosecution, the accused may intimate to the court his desire to make a submission that he has no case to answer both—
- (a) on an offence charged in the complaint; and
 - (b) on any other offence of which he could be convicted under the complaint were the offence charged the only offence so charged.
- (2) If, after hearing both parties, the court is satisfied that the evidence led by the prosecution is insufficient in law to justify the accused being convicted of the offence charged in respect of which the submission has been made or of such other offence as is mentioned, in relation to that offence, in paragraph (b) of subsection (1) above, it shall acquit him of the offence charged in respect of which the submission has been made, and the trial shall proceed only in respect of any other offence charged in the complaint.
- (3) If, after hearing both parties, the court is not satisfied as is mentioned in subsection (2) above, it shall reject the submission and the trial shall proceed, with the accused entitled to give evidence and call witnesses, as if such submission had not been made.”

20 Correction of entries

After section 227 of the 1975 Act there shall be inserted the following provision—

“227A Correction of entries.

- (1) Subject to the provisions of this section, it shall be competent to correct an entry in—
- (a) the record of proceedings in a solemn prosecution ; or
 - (b) the extract of a sentence passed or an order of court made in such proceedings,
- in so far as that entry constitutes an error of recording or is incomplete.
- (2) Such entry may be corrected—
- (a) by the clerk of the court, at any time before either the sentence (or order) of the court is executed or, on appeal, the proceedings are transmitted to the Clerk of Justiciary;
 - (b) by the clerk of the court, under the authority of the court which passed the sentence or made the order, at any time after the execution of the

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- sentence (or order) of the court but before such transmission as is mentioned in paragraph (a) above; or
- (c) by the clerk of the court under the authority of the High Court in the case of a remit under subsection (4)(b) below.
- (3) A correction in accordance with paragraph (b) or (c) of subsection (2) above shall be intimated to the prosecutor and to the former accused or his solicitor.
- (4) Where, during the course of an appeal, the High Court becomes aware of an erroneous or incomplete entry, such as is mentioned in subsection (1) above, the court
- (a) may consider and determine the appeal as if such entry were corrected ; and
- (b) either before or after the determination of the appeal, may remit the proceedings to the court of first instance for correction in accordance with subsection (2)(c) above.
- (5) Any correction under subsections (1) and (2) above by the clerk of the court shall be authenticated by his signature and, if such correction is authorised by a court, shall record the name of the judge or judges authorising such correction and the date of such authority.”;
- and the same provision shall (with the appropriate section number) be substituted for section 439 of the 1975 Act, except that, in paragraph (a) of subsection (1) of the provision, for the word " solemn " there shall be substituted the word " summary ".

21 Trial may proceed in accused's absence if he misconducts himself

In section 145(1) of the 1975 Act (trial in open court), at the end there shall be added the following proviso—

“: Provided that, if during the course of his trial an accused so misconducts himself that in the view of the court a proper trial cannot take place unless he is removed, the court may order him to be removed for so long as his conduct may make necessary and the trial to proceed in his absence; but if he is not legally represented the court shall appoint counsel or a solicitor to represent his interests during such absence.”.

22 Restrictions on report of proceedings involving person under 16

For section 169 of the 1975 Act there shall be substituted the following provision—

“169 Restrictions on report of proceedings involving person under 16.

- (1) No newspaper report of any proceedings in a court shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any person under the age of 16 years concerned in the proceedings, either—
- (a) as being a person against or in respect of whom the proceedings are taken ; or
- (b) as being a witness therein ;

nor shall any picture which is, or includes, a picture of a person under the age of 16 years so concerned in the proceedings be published in any newspaper in a context relevant to the proceedings :

Provided that, in any case—

- (i) where the person is concerned in the proceedings as a witness only and no one against whom the proceedings are taken is under the age of 16 years, the foregoing provisions of this subsection shall not apply unless the court so directs ;
- (ii) the court may at any stage of the proceedings if satisfied that it is in the public interest so to do, direct that the requirements of this section (including such requirements as applied by a direction under paragraph (i) above) shall be dispensed with to such extent as the court may specify;
- (iii) the Secretary of State may, after completion of the proceedings, if so satisfied by order dispense with the said requirements to such extent as may be specified in the order.

(2) This section shall, with the necessary modifications, apply in relation to sound and television broadcasts as it applies in relation to newspapers.

(3) A person who publishes matter in contravention of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding £500.

(4) In this section, references to a court shall not include a court in England, Wales or Northern Ireland.”;

and the same provision shall (with the appropriate section number) be substituted for section 374 of the 1975 Act.

23 Peremptory challenge of jurors

The number of peremptory challenges allowed to each accused, and to the prosecutor, as respects the jurors in any trial shall be reduced from five to three; and accordingly for subsection (1) of section 130 of the 1975 Act (challenges and objections to jurors) there shall be substituted the following subsection :

“(1) In any trial each accused may challenge three jurors, as may the prosecutor, without giving any reason.”.

24 Seclusion of jury after retiral

(1) In section 153 of the 1975 Act (seclusion of jury after retiral)—

- (a) in subsection (2), after the word " and " there shall be inserted the words " , except in so far as is provided for, or is made necessary, by an instruction under subsection (3A) below, "; and
- (b) for subsection (3) there shall be substituted the following subsections—

“(3) Except in so far as is provided for, or is made necessary, by an instruction under subsection (3A) below, until the jury intimate that they are ready to return their verdict—

- (a) no person shall visit the jury and no person (save the judge—
 - (i) in giving a direction, whether or not sought under paragraph (b) below; or

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

(ii) in response to a request made under that paragraph), shall communicate with them:

Provided that the judge may, for the purposes of this subsection, authorise a person to act on his behalf; and

- (b) no juror shall come out of the jury room other than to receive or seek a direction from the judge or to make a request—
 - (i) for an instruction under subsection (3A) (a), (c) or (d) below ; or
 - (ii) regarding any matter in the cause (as, for example, to have made available for examination by them any production).

(3A) The judge may give such instructions as he considers appropriate as regards—

- (a) the provision of meals and refreshments for the jury;
- (b) the making of arrangements for overnight accommodation for the jury and for their continued seclusion if such accommodation is provided;
- (c) the communication of a personal or business message, unconnected with any matter in the cause, from a juror to another person (or *vice versa*); or
- (d) the provision of medical treatment, or other assistance, immediately required by a juror.”.

- (2) In section 154 of the 1975 Act (oral verdicts), the words from " ; and provided also " to the end shall cease to have effect.

25 Interpretation of 1975 Act

In section 462(1) of the 1975 Act (interpretation)—

- (a) for the definition of " officer of law " there shall be substituted the following definition—

“" officer of law" includes, in relation to the service and execution of any warrant, citation, petition, indictment, complaint, list of witnesses, order, notice, or other proceeding or document—

 - (i) any macer, messenger-at-arms, sheriff officer or other person having authority to execute a warrant of the court;
 - (ii) any constable within the meaning of the Police (Scotland) Act 1967 ;
 - (iii) where the person upon whom service or execution is effected is in prison at the time of service on him, any prison officer; and
 - (iv) any person (or class of persons) authorised in that regard for the time being by the Lord Advocate or by the Secretary of State;”;
- (b) for the definition of " probationer" there shall be substituted the following definition—

“" probationer" means a person who is under supervision by virtue of a probation order or who was under such supervision at the time of the commission of any relevant offence or failure to comply with such order;”.

Evidence

26 Routine evidence

- (1) For the purposes of any proceedings for an offence under any of the enactments specified in column 1 of Schedule 1 to this Act, a certificate purporting to be signed by a person or persons specified in column 2 thereof, and certifying the matter specified in column 3 thereof shall, subject to subsection (3) below, be sufficient evidence of that matter and of the qualification or authority of that person or those persons.

- (2) For the purposes of any summary criminal proceedings, a report purporting to be signed by two authorised forensic scientists shall, subject to subsection (3) below, be sufficient evidence of any fact (or conclusion as to fact) contained in the report and of the authority of the signatories.

In the foregoing provisions of this subsection, " authorised " means authorised by the Secretary of State to make a report to which this subsection shall apply.

- (3) Subsections (1) and (2) above shall not apply to a certificate, or as the case may be report, tendered on behalf of the prosecution—
- (a) unless a copy has been served on the accused not less than fourteen days before his trial; or
 - (b) where the accused, not less than six days before his trial, or by such later time before his trial as the court may in special circumstances allow, has served notice on the prosecutor that the accused challenges the matter, qualification or authority mentioned in subsection (1) above or as the case may be the fact, conclusion or authority mentioned in subsection (2) above.
- (4) A copy of a certificate, or as the case may be report, required by subsection (3) above, or of a conviction or extract conviction required by subsection (8) below, to be served on the accused or of a notice required by either of those subsections or by subsection (6) or (7) below to be served on the prosecutor may either be personally served on the accused or the prosecutor (as the case may be) or sent to him by registered post or by the recorded delivery service; and a written execution purporting to be signed by the person who served such certificate or notice, together with, where appropriate, a post office receipt for the relative registered or recorded delivery letter shall be sufficient evidence of service of such a copy.
- (5) At any trial of an offence under summary procedure it shall be presumed that the person who appears in answer to the complaint is the person charged by the police with the offence unless the contrary is alleged.
- (6) Where in a trial an autopsy report is lodged as a production by the prosecutor it shall be presumed that the body of the person identified in that report is the body of the deceased identified in the indictment or complaint, unless the accused not less than six days before the trial, or by such later time before the trial as the court may in special circumstances allow, gives notice that the contrary is alleged.
- (7) At the time of lodging an autopsy or forensic science report as a production the prosecutor may intimate to the accused that it is intended that only one of the pathologists or forensic scientists (whom the prosecutor shall specify) purporting to have signed the report shall be called to give evidence in respect thereof ; and the evidence of that pathologist or forensic scientist shall be sufficient evidence of any fact (or conclusion as to fact) contained in the report and of the qualifications of the signatories, unless the accused, not less than six days before the trial, or by such later

time before the trial as the court may in special circumstances allow, serves notice on the prosecutor that he requires the attendance at the trial of the other pathologist or forensic scientist also.

- (8) In any proceedings for an offence under section 99 (b) of the Road Traffic Act 1972 (driving while disqualified) a conviction or an extract conviction—

- (i) of which a copy has been served on the accused not less than fourteen days before his trial;
- (ii) which purports to be signed by the clerk of court; and
- (iii) which shows that the person named therein is disqualified for holding or obtaining a driving licence,

shall be sufficient evidence of the application of that disqualification to the accused, unless, not less than six days before his trial, he serves notice on the prosecutor that he denies such application.

27 **Parties may examine each other's witnesses etc.**

After section 82 of the 1975 Act there shall be inserted the following section—

“82A Parties may examine each other's witnesses etc.

It shall be competent for the prosecutor to examine any witness or put in evidence any production included in any list or notice lodged by the accused, and it shall be competent for an accused to examine any witness or put in evidence any production included in any list or notice lodged by the prosecutor or by a co-accused.”.

28 **Co-accused competent witness for defence**

In each of sections 141 and 346 of the 1975 Act (accused and spouse competent witnesses for defence)—

- (a) in paragraph (a) of the proviso, at the end there shall be added the words—
“or in accordance with subsection (2) or (3) below”;
- (b) the provisions of the section as so amended shall be subsection (1) of the section ; and
- (c) after that subsection there shall be added the following subsections—

“(2) The accused may—

- (a) with the consent of a co-accused, call that other accused as a witness on the accused's behalf; or
- (b) ask a co-accused any question in cross-examination if that co-accused gives evidence,

but he may not do both in relation to the same co-accused.

- (3) The prosecutor or the accused may call as a witness a co-accused who has pleaded guilty to all charges against him which remain before the court (whether or not he has been sentenced); and the party calling such co-accused as a witness shall not require to give notice thereof, but the court may grant any other party such adjournment or postponement of the trial as may seem just.”.

29 Spouse to be competent witness

For each of sections 143 and 348 of the 1975 Act there shall be substituted the following section (with the appropriate section number)—

Spouse to be competent witness.

- (1) The spouse of a person charged with an offence may be called as a witness—
 - (a) by that person ;
 - (b) by a co-accused or by the prosecutor without the consent of that person.
- (2) Nothing in this section shall—
 - (a) make the spouse of an accused a compellable witness for a co-accused or for the prosecutor in a case where such spouse would not be so compellable at common law;
 - (b) compel a spouse to disclose any communication made between the spouses during the marriage.
- (3) The failure of the spouse of an accused to give evidence shall not be commented on by the defence or the prosecutor.”.

30 Additional evidence and evidence in replication

- (1) For section 149 of the 1975 Act (witness may be recalled) there shall be substituted the following sections—

“149 Additional evidence.

- (1) The judge may, on a motion of the prosecutor or defence made after the close of that party's evidence and before the commencement of the speeches to the jury, permit him to lead additional evidence; but such permission shall only be granted where the judge—
 - (a) considers that the additional evidence is *prima facie* material; and
 - (b) accepts that at the time the party's evidence was closed either—
 - (i) the additional evidence was not available and could not reasonably have been made available ; or
 - (ii) the materiality of such additional evidence could not reasonably have been foreseen by the party.
- (2) The judge may permit the additional evidence to be led notwithstanding that—
 - (a) a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 81 and 82(2) of this Act has not been given ; or
 - (b) a witness must be recalled.
- (3) The judge may, when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.

149A Evidence in replication.

- (1) The judge may, on a motion of the prosecutor made after the close of the defence evidence and before the commencement of the speeches to the jury, permit the prosecutor to lead additional evidence for the purpose of—
 - (a) contradicting evidence, led by the defence, which could not reasonably have been anticipated by the prosecutor ; or
 - (b) providing such proof as is mentioned in section 147 of this Act.
 - (2) The judge may permit the additional evidence to be led notwithstanding that—
 - (a) a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 81 and 82(2) of this Act has not been given; or
 - (b) a witness must be recalled.
 - (3) The judge may when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.”.
- (2) For section 350 of the 1975 Act (witness may be recalled) there shall be substituted the following sections—

“350 Additional evidence.

- (1) The judge may, on a motion of the prosecutor or defence made after the close of that party's evidence and before the prosecutor proceeds to address the judge on the evidence, permit that party to lead additional evidence; but such permission shall only be granted where the judge—
 - (a) considers that the additional evidence is *prima facie* material; and
 - (b) accepts that at the time the party's evidence was closed either—
 - (i) the additional evidence was not available and could not reasonably have been made available; or
 - (ii) the materiality of such additional evidence could not reasonably have been foreseen by the party.
- (2) The judge may permit the additional evidence to be led notwithstanding that a witness must be recalled.
- (3) The judge may, when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.

350A Evidence in replication.

- (1) The judge may, on a motion of the prosecutor made after the close of the defence evidence and before the prosecutor proceeds to address the judge on the evidence, permit the prosecutor to lead additional evidence, for the purpose of—
 - (a) contradicting evidence, led by the defence, which could not reasonably have been anticipated by the prosecutor; or
 - (b) providing such proof as is mentioned in section 349 of this Act.
- (2) The judge may permit the additional evidence to be led notwithstanding that a witness must be recalled.

- (3) The judge may, when granting a motion in terms of this section, adjourn or postpone the trial before permitting the additional evidence to be led.”.

31 Offences in connection with lights, reflectors, obstruction, etc., to be provable by one witness

In section 80 of the Road Traffic Regulation Act 1967 (enforcement of certain traffic laws) there shall be inserted after subsection (9) the following subsection—

“(9A) In any proceedings in Scotland for an offence to which this section applies committed in respect of a vehicle to which any of paragraphs (a) to (d) and (f) of subsection (1) above is applicable, it shall be lawful to convict the accused on the evidence of one witness.”.

32 Evidence by letter of request or on commission

- (1) In any criminal proceedings in the High Court or the sheriff court the prosecutor or the defence may, at an appropriate time, apply to a judge of the court in which the trial is to take place (or, if that is not yet known, to a judge of the High Court) for—
 - (a) the issue of a letter of request to a court, or tribunal, exercising jurisdiction in a country or territory outside the United Kingdom, Channel Islands and Isle of Man for the examination of a witness resident in the said country or territory ; or
 - (b) the appointment of a commissioner to examine, at any place in the United Kingdom, Channel Islands, or Isle of Man, a witness who by reason of being ill or infirm is unable to attend the trial diet.
- (2) A hearing, as regards any application under subsection (1) above by a party, shall be conducted in chambers but may be dispensed with if the application is not opposed. The application may be granted only if the judge is satisfied that—
 - (a) the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial; and
 - (b) there would be no unfairness to the other party were such evidence to be received in the form of the record of an examination conducted by virtue of that subsection.
- (3) Any such record as is mentioned in paragraph (b) of subsection (2) above shall, without being sworn to by witnesses, be received in evidence in so far as it either accords with the averment mentioned in paragraph (a) of that subsection or can be so received without unfairness to either party.
- (4) The procedure as regards the foregoing provisions of this section shall be prescribed by Act of Adjournal under the 1975 Act.
- (5) In subsection (1) above, " appropriate time " means as regards—
 - (a) solemn proceedings, any time before the oath is administered to the jury;
 - (b) summary proceedings, any time before the first witness is sworn,
 or (but only in relation to an application under paragraph (b) of that subsection) any time during the course of the trial if the circumstances on which the application is based had not arisen, or would not have merited such application, within the period mentioned in paragraph (a), or as the case may be (b), of this subsection.

- (6) This section is without prejudice to any existing power at common law to adjourn a trial diet to the place where a witness is.

Appeals

33 Solemn appeals

The provisions of the 1975 Act relating to appeals in solemn proceedings shall have effect as amended by Schedule 2 to this Act.

34 Summary appeals

The provisions of the 1975 Act relating to appeals in summary proceedings shall have effect as amended by Schedule 3 to this Act.

35 Prosecution appeal by bill of advocacy

After section 280 of the 1975 Act there shall be inserted the following section—

“280A Prosecution appeal by bill of advocacy.

- (1) Without prejudice to section 76A of this Act, the prosecutor's right to bring a decision under review of the High Court by way of bill of advocacy in accordance with existing law and practice shall extend to the review of a decision of any court of solemn jurisdiction.
- (2) Where a decision to which a bill of advocacy relates is reversed on the review of the decision the prosecutor may, whether or not there has already been a trial diet at which evidence has been led, proceed against the accused by serving him with an indictment containing the charge or charges which were affected by the decision (the wording of which charge or charges shall be as it was immediately before the decision appealed against).”.

36 Appeals from decisions on competency and relevancy in summary proceedings

In section 334 of the 1975 Act (procedure at first diet), after subsection (2) (as substituted by paragraph 54(6) of Schedule 7 to this Act) there shall be inserted the following subsections—

- “(2A) Without prejudice to any right of appeal under section 442 or 453A of this Act, a party may, with the leave of the court (granted either on the motion of that party or *ex proprio motu*) and in accordance with such procedure as may be prescribed by Act of Adjournal under this Act, appeal to the High Court against a decision of the court of first instance (other than a decision not to grant leave under this subsection) which relates to such objection or denial as is mentioned in subsection (1) above; but such appeal must be taken not later than two days after such decision.
- (2B) Where an appeal is taken under subsection (2A) above, the High Court may postpone the trial diet (if one has been fixed) for such period as appears to them to be appropriate and may, if they think fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.

- (2C) If leave to appeal under subsection (2A) above is granted by the court it shall not proceed to trial at once under paragraph (a) of section 337 of this Act; and paragraph (b) of that section shall be construed as requiring sufficient time to be allowed for the appeal to be taken.
- (2D) In disposing of an appeal under subsection (2A) above the High Court may affirm the decision of the court of first instance or may remit the case to it with such directions in the matter as they think fit; and where the court of first instance had dismissed the complaint, or any part of it, may reverse that decision and direct that the court of first instance fix a trial diet (if it has not already fixed one as regards so much of the complaint as it has not dismissed.)”.

37 Lord Advocate's reference

After section 263 of the 1975 Act there shall be inserted the following section—

“263A Lord Advocate's reference.

- (1) Where a person tried on indictment is acquitted of a charge, the Lord Advocate may refer a point of law which has arisen in relation to that charge to the High Court for their opinion; and the Clerk of Justiciary shall send to the person and to any solicitor who acted for the person at the trial, a copy of the reference and intimation of the date fixed by the Court for a hearing.
- (2) The person may, not later than seven days before the date so fixed, intimate in writing to the Clerk of Justiciary and to the Lord Advocate either—
 - (a) that he elects to appear personally at the hearing; or
 - (b) that he elects to be represented thereat by counsel;
 but, except by leave of the Court on cause shown, (and without prejudice to his right to attend), he shall not appear or be represented at the hearing other than by and in conformity with an election under this subsection.
- (3) Where there is no intimation under subsection (2) (b) above, the High Court shall appoint counsel to act at the hearing as *amicus curiae*.
- (4) The costs of representation elected under subsection (2) (b) above or of an appointment under subsection (3) above shall, after being taxed by the Auditor of the Court of Session, be paid by the Lord Advocate.
- (5) The opinion on the point referred under subsection (1) above shall not affect the acquittal in the trial.”

Miscellaneous

38 Summary trial of wilful fire-raising

In section 291(3) of the 1975 Act (trial of certain offences), after the word " of " there shall be inserted the words " wilful fire-raising, ".

39 Procedure and evidence in trials for treason

The procedure and rules of evidence in proceedings for treason and misprision of treason shall be the same as in proceedings according to the law of Scotland for murder.