



Criminal Justice (Scotland) Act 1995

1995 CHAPTER 20

PART I

THE COURSE OF JUSTICE

The trial

30 Death, illness or absence of trial judge.

- (1) Section 128 of the 1975 Act (death or illness of judge in solemn proceedings) shall be amended in accordance with subsections (2) and (3) below.
- (2) For subsection (1) of that section there shall be substituted the following subsections—
- “(1) Where the court is unable to proceed owing to the death, illness or absence of the presiding judge, the clerk of court may convene the court (if necessary) and—
- (a) in a case where no evidence has been led, adjourn the diet and any other diet appointed for that sitting to—
 - (i) a time later the same day, or a date not more than seven days later, when he believes a judge will be available; or
 - (ii) a later sitting not more than two months after the date of the adjournment; or
 - (b) in a case where evidence has been led—
 - (i) adjourn the diet and any other diet appointed for that sitting to a time later the same day, or a date not more than seven days later, when he believes a judge will be available; or
 - (ii) with the consent of the parties, desert the diet *pro loco et tempore*.
- (1A) Where a diet has been adjourned under sub-paragraph (i) of either paragraph (a) or paragraph (b) of subsection (1) above the clerk of court may, where the conditions of that subsection continue to be satisfied, further

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adjourn the diet under that sub-paragraph; but the total period of such adjournments shall not exceed seven days.

(1B) Where a diet has been adjourned under subsection (1)(b)(i) above the court may, at the adjourned diet—

- (a) further adjourn the diet; or
- (b) desert the diet pro loco et tempore.”.

(3) In subsection (2) of that section, for the words “(1)(c)” there shall be substituted “ (1)(b)(ii) or (1B)(b) ”.

(4) After section 331A of that Act there shall be inserted the following section—

“331B Death, illness or absence of judge.

(1) Where the court is unable to proceed owing to the death, illness or absence of the presiding judge, it shall be lawful for the clerk of court—

- (a) where the diet has not been called, to convene the court and adjourn the diet;
- (b) where the diet has been called but no evidence has been led, to adjourn the diet; and
- (c) where the diet has been called and evidence has been led—
 - (i) with the agreement of the parties, to desert the diet pro loco et tempore; or
 - (ii) to adjourn the diet.

(2) Where, under subsection (1)(c)(i) above, a diet has been deserted pro loco et tempore, any new prosecution charging the accused with the same or any similar offence arising out of the same facts shall be brought within two months of the date on which the diet was deserted notwithstanding that any other time limit for the commencement of such prosecution has elapsed.

(3) For the purposes of subsection (2) above, a new prosecution shall be deemed to commence on the date on which a warrant to apprehend or to cite the accused is granted, if such warrant is executed without undue delay.”.

31 Removal of accused from court.

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

“337B Removal of accused from court.

(1) Without prejudice to section 338 of this Act, and subject to subsection (2) below, no part of a trial shall take place outwith the presence of the accused.

(2) 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—

- (a) that he is removed from the court for so long as his conduct makes it necessary; and
- (b) that the trial proceeds 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.”.

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32 Comment by prosecutor on accused's failure to give evidence.

Sections 141(1)(b) (prosecutor may not comment on failure of accused to give evidence in solemn proceedings) and 346(1)(b) (corresponding provision in relation to summary proceedings) of the 1975 Act shall cease to have effect.

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