



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART IX

SUMMARY PROCEEDINGS

Pre-trial procedure

147 Prevention of delay in trials

- (1) Subject to subsections (2) and (3) below, a person charged with an offence in summary proceedings shall not be detained in that respect for a total of more than 40 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.

148 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, so far as is reasonably practicable, whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular—
 - (a) the state of preparation of the prosecutor and of the accused with respect to their cases;
 - (b) whether the accused intends to adhere to the plea of not guilty; and
 - (c) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of this Act.
- (2) Where at an intermediate diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—
 - (a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and
 - (b) may fix a further intermediate diet.
- (3) Subject to subsection (2) above, the court may, if it considers it appropriate to do so, adjourn an intermediate diet.
- (4) At an intermediate diet, the court may ask the prosecutor and the accused any question for the purposes mentioned in subsection (1) above.
- (5) The accused shall attend an intermediate diet of which he has received intimation or to which he has been cited unless—
 - (a) he is legally represented; and
 - (b) the court considers that there are exceptional circumstances justifying him not attending.
- (6) A plea of guilty may be tendered at the intermediate diet.
- (7) The foregoing provisions of this section shall have effect as respects any court prescribed by the Secretary of State by order, in relation to proceedings commenced after such date as may be so prescribed, with the following modifications—
 - (a) in subsection (1), for the word “may” there shall be substituted “shall, subject to subsection (1A) below,”; and
 - (b) after subsection (1) there shall be inserted the following subsections—
 - “(1A) If, on a joint application by the prosecutor and the accused made at any time before the commencement of the intermediate diet, the court considers it inappropriate to have such a diet, the duty under subsection (1) above shall not apply and the court shall discharge any such diet already fixed.
 - (1B) The court may consider an application under subsection (1A) above without hearing the parties.”.
- (8) An order under subsection (7) above shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

149 Alibi

It shall not be competent for the accused in a summary prosecution to found on a plea of alibi unless he gives, at any time before the first witness is sworn, notice to the prosecutor of the plea with particulars as to time and place and of the witnesses by whom it is proposed to prove it; and, on such notice being given, the prosecutor shall be entitled, if he so desires, to an adjournment of the case.