



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART IX

#### SUMMARY PROCEEDINGS

##### *Trial diet*

#### **152 Desertion of 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.

#### **153 Trial in presence of accused**

- (1) Without prejudice to section 150 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.

**154 Proof of official documents**

- (1) Any letter, minute or other official document issuing from the office or in the custody of any of the departments of state or government in the United Kingdom the production of which in evidence is required in any summary prosecution, and which according to the rules and regulations applicable to such departments may be competently produced, shall when produced be received as *prima facie* evidence of the matters contained in it without being produced or sworn to by any witness, and a copy thereof bearing to be certified by any person having authority to certify it shall be treated as equivalent to the original, and no proof of the signature of the person certifying such copy, or of his authority to certify it, shall be necessary.
- (2) Any order by any of the departments of state or government or any local authority or public body made under powers conferred by any statute, or a print or copy of such order, shall when produced in a summary prosecution be received in evidence of the due making, confirmation, and existence of the order without being sworn to by any witness and without any further or other proof.
- (3) Subsection (2) above is without prejudice to any right competent to the accused to challenge any order such as is mentioned in that subsection as being *ultra vires* of the authority making it or on any other competent ground.
- (4) Where an order such as is mentioned in subsection (2) above is referred to in the complaint it shall not be necessary to enter it in the record of the proceedings as a documentary production.
- (5) The provisions of this section are in addition to, and not in derogation of, any powers of proving documents conferred by statute, or existing at common law.

**155 Punishment of witness for contempt**

- (1) If a witness in a summary prosecution—
  - (a) wilfully fails to attend after being duly cited; or
  - (b) unlawfully refuses to be sworn; or
  - (c) after the oath has been administered to him refuses to answer any question which the court may allow; or
  - (d) prevaricates in his evidence,he shall be deemed guilty of contempt of court and be liable to be summarily punished forthwith for such contempt by a fine not exceeding level 3 on the standard scale or by imprisonment for any period not exceeding 21 days.
- (2) Where punishment is summarily imposed as mentioned in subsection (1) above, the clerk of court shall enter in the record of the proceedings the acts constituting the contempt or the statements forming the prevarication.
- (3) Subsections (1) and (2) above are without prejudice to the right of the prosecutor to proceed by way of formal complaint for any such contempt where a summary punishment, as mentioned in the said subsection (1), is not imposed.
- (4) Any witness who, having been duly cited in accordance with section 140 of this Act—
  - (a) fails without reasonable excuse, after receiving at least 48 hours' notice, to attend for precognition by a prosecutor at the time and place mentioned in the citation served on him; or

- (b) refuses when so cited to give information within his knowledge regarding any matter relative to the commission of the offence in relation to which such precognition is taken,
- shall be liable to the like punishment as is provided in subsection (1) above.

### **156 Apprehension of witness**

- (1) Where a witness, having been duly cited, fails to appear at the diet fixed for his attendance and no just excuse is offered by him or on his behalf, the court may, if it is satisfied that he received the citation or that its contents came to his knowledge, issue a warrant for his apprehension.
- (2) Where the court is satisfied by evidence on oath that a witness is not likely to attend to give evidence without being compelled so to do, it may issue a warrant for his apprehension.
- (3) A warrant of apprehension of a witness in the form mentioned in section 135(1) of this Act shall imply warrant to officers of law to search for and apprehend the witness, and to detain him in a police station, police cell, or other convenient place, until—
  - (a) the date fixed for the hearing of the case; or
  - (b) the date when security to the amount fixed under subsection (4) below is found,whichever is the earlier.
- (4) A witness apprehended under a warrant under subsection (1) or (2) above shall, wherever practicable, be brought immediately by the officer of law who executed that warrant before a justice, who shall fix such sum as he considers appropriate as security for the appearance of the witness at all diets.

### **157 Record of proceedings**

- (1) Proceedings in a summary prosecution shall be conducted summarily *viva voce* and, except where otherwise provided and subject to subsection (2) below, no record need be kept of the proceedings other than the complaint, or a copy of the complaint certified as a true copy by the procurator fiscal, the plea, a note of any documentary evidence produced, and the conviction and sentence or other finding of the court.
- (2) Any objection taken to the competency or relevancy of the complaint or proceedings, or to the competency or admissibility of evidence, shall, if either party desires it, be entered in the record of the proceedings.

### **158 Interruption of summary proceedings for verdict in earlier trial**

Where the sheriff is sitting in summary proceedings during the period in which the jury in a criminal trial in which he has presided are retired to consider their verdict, it shall be lawful, if he considers it appropriate to do so, to interrupt those proceedings—

- (a) in order to receive the verdict of the jury and dispose of the cause to which it relates;
  - (b) to give a direction to the jury on any matter on which they may wish one from him, or to hear a request from them regarding any matter,
- and the interruption shall not affect the validity of the proceedings nor cause the instance to fall in respect of any person accused in the proceedings.

**159 Amendment of complaint**

- (1) It shall be competent at any time prior to the determination of the case, unless the court see just cause to the contrary, to amend the complaint or any notice of previous conviction relative thereto by deletion, alteration or addition, so as to—
  - (a) cure any error or defect in it;
  - (b) meet any objection to it; or
  - (c) cure any discrepancy or variance between the complaint or notice and the evidence.
- (2) Nothing in this section shall authorise an amendment which changes the character of the offence charged, and, if it appears to the court that the accused may in any way be prejudiced in his defence on the merits of the case by any amendment made under this section, the court shall grant such remedy to the accused by adjournment or otherwise as appears to the court to be just.
- (3) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of the court.

**160 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 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 complaint.
- (3) If, after hearing both parties, the judge is not satisfied as is mentioned in subsection (2) 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.

**161 Defence to speak last**

In any trial the accused or, where he is legally represented, his counsel or solicitor shall have the right to speak last.