



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART VII

SOLEMN PROCEEDINGS

Notice by accused

78 Special defences, incrimination and notice of witnesses, etc.

- (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 and intimated in writing in accordance with subsection (3) below—
 - (i) where the accused is cited to the High Court for the trial diet, to the Crown Agent; and
 - (ii) where he is cited to the sheriff court for the trial diet, to the procurator fiscal,and to any co-accused not less than 10 clear days before the trial diet; or
 - (b) the court, on cause shown, otherwise directs.
- (2) Subsection (1) above shall apply to a defence of automatism [^{F1}, coercion or, in a prosecution for an offence to which section 288C of this Act applies, consent] as if it were a special defence.
- [^{F2}(2A) In subsection (2) above, the reference to a defence of consent is a reference to the defence which is stated by reference to the complainer's consent to the act which is the subject matter of the charge or the accused's belief as to that consent.
- (2B) In subsection (2A) above, "complainer" has the same meaning as in section 274 of this Act.]
- (3) A plea or notice is lodged and intimated in accordance with this subsection—

Status: Point in time view as at 01/11/2002. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Notice by accused is up to date with all changes known to be in force on or before 28 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)

- (a) where the accused is cited to the High Court for the trial diet, by lodging the plea or notice with the Clerk of Justiciary and by intimating the plea or notice to the Crown Agent and to any co-accused not less than 10 clear days before the trial diet;
 - (b) where the accused is cited to the sheriff court for the trial diet, by lodging the plea or notice with the sheriff clerk and by intimating it to the procurator fiscal and to any co-accused at or before the first diet.
- (4) It shall not be competent for the accused to examine any witnesses or to put in evidence any productions not included in the lists lodged by the prosecutor unless—
- (a) written notice of the names and addresses of such witnesses and of such productions has been given—
 - (i) where the case is to be tried in the sheriff court, to the procurator fiscal of the district of the trial diet at or before the first diet; and
 - (ii) where the case is to be tried in the High Court, to the Crown Agent at least ten clear days before the day on which the jury is sworn; or
 - (b) the court, on cause shown, otherwise directs.
- (5) A copy of every written notice required by subsection (4) above shall be lodged by the accused with the sheriff clerk of the district in which the trial diet is to be held, or in any case the trial diet of which is to be held in the High Court in Edinburgh with the Clerk of Justiciary, at or before the trial diet, for the use of the court.

Textual Amendments

- F1** Words in s. 78(2) substituted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 6(1)(a); S.S.I. 2002/443, art. 3 (with art. 4(4))
- F2** S. 78(2A)(2B) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 6(1)(b); S.S.I. 2002/443, art. 3 (with art. 4(4))

79 Preliminary pleas.

- (1) Except by leave of the court on cause shown, no application, matter or point mentioned in subsection (1) of section 72 of this Act or that subsection as applied by section 71 of this Act shall be made, raised or submitted by an accused unless his intention to do so has been stated in a notice under the said subsection (1) or, as the case may be, under subsection (2) of the said section 71.
- (2) No discrepancy, error or deficiency such as is mentioned in paragraph (a)(ii) of subsection (1) of the said section 72 or that subsection as applied by the said section 71 shall entitle the accused to object to plead to the indictment unless the court is satisfied that the discrepancy, error or deficiency tended substantially to mislead and prejudice the accused.

VALID FROM 01/02/2005

^{F3}79A Objections to admissibility of evidence raised after first diet or preliminary hearing

- (1) This section applies where a party seeks to raise an objection to the admissibility of any evidence after—

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- (a) in proceedings in the High Court, the preliminary hearing; or
 - (b) in proceedings on indictment in the sheriff court, the first diet.
- (2) The court shall not, under section 79(1) of this Act, grant leave for the objection to be raised if the party seeking to raise it has not given written notice of his intention to do so to the other parties.
- (3) However, the court may, where the party seeks to raise the objection after the commencement of the trial, dispense with the requirement under subsection (2) above for written notice to be given.
- (4) Where the party seeks to raise the objection after the commencement of the trial, the court shall not, under section 79(1) of this Act, grant leave for the objection to be raised unless it considers that it could not reasonably have been raised before that time.
- (5) Where the party seeks to raise the objection before the commencement of the trial and the court, under section 79(1), grants leave for it to be raised, the court shall—
 - (a) if it considers it appropriate to do so, appoint a diet to be held before the commencement of the trial for the purpose of disposing of the objection; or
 - (b) dispose of the objection at the trial diet.
- (6) In appointing a diet under subsection (5)(a) above, the court may postpone the trial diet for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.
- (7) The accused shall appear at any diet appointed under subsection (5)(a) above.
- (8) For the purposes of this section, the trial shall be taken to commence when the jury is sworn.]

Textual Amendments

- F3** S. 79A inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 14(2), 27(1); S.S.I. 2004/405, art. 2, Sch. 1

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