



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 or coercion as if it were a special defence.
- (3) A plea or notice is lodged and intimated in accordance with this subsection—
 - (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.

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.