



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VII

#### SOLEMN PROCEEDINGS

#### *[<sup>F1</sup>Failure of accused to appear*

#### **[<sup>F1</sup>102A Failure of accused to appear**

- (1) In proceedings on indictment, an accused person who without reasonable excuse fails to appear at a diet of which the accused has been given due notice (apart from a diet which the accused is not required to attend) is—
  - (a) guilty of an offence; and
  - (b) liable on conviction on indictment to a fine or to imprisonment for a period not exceeding 5 years or to both.
- (2) In proceedings on indictment, where an accused person fails to appear at a diet of which the accused has been given due notice (apart from a diet which the accused is not required to attend), the court may grant a warrant to apprehend the accused.
- (3) It is not, otherwise than under subsection (2) above, competent in any proceedings on indictment for a court to grant a warrant for the apprehension of an accused person for failure to appear at a diet.
- (4) However, it remains competent for a court to grant a warrant on petition (as referred to in section 34 of this Act) in respect of an offence under—
  - (a) subsection (1) above;
  - [<sup>F2</sup>(b) section 27(7) of this Act,]whether or not a warrant has been granted under subsection (2) above in respect of the same failure to appear to which that offence relates.
- (5) Where a warrant to apprehend an accused person is granted under subsection (2) above [<sup>F3</sup>at any stage prior to conviction], the indictment falls as respects that accused.

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*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Section 102A is up to date with all changes known to be in force on or before 17 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) View outstanding changes*

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- (6) Subsection (5) above is subject to any order to different effect made by the court when granting the warrant.
- (7) An order under subsection (6) above—
- (a) for the purpose of proceeding with the trial in the absence of the accused under section 92(2A) (where the warrant is granted at a trial diet), may be made on the motion of the prosecutor;
  - (b) for any other purpose, may be made on the motion of the prosecutor or of the court's own accord.
- (8) A warrant granted under subsection (2) above shall be in such form as may be prescribed by Act of Adjournal or as nearly as may be in such form.
- (9) A warrant granted under subsection (2) above (in the form mentioned in subsection (8) above) shall imply warrant to officers of law—
- (a) to search for and apprehend the accused;
  - (b) to bring the accused before the court;
  - (c) in the meantime, to detain the accused in a police station, police cell or other convenient place; and
  - (d) so far as is necessary for the execution of the warrant, to break open shut and lockfast places.
- (10) An accused apprehended under a warrant granted under subsection (2) above shall wherever practicable be brought before the court not later than in the course of the first day on which the court is sitting after the accused is taken into custody.
- (11) Where the accused is brought before the court in pursuance of a warrant granted under subsection (2) above, the court shall make an order—
- (a) detaining the accused until liberated in due course of law; or
  - (b) releasing the accused on bail.
- (12) For the purposes of subsection (11) above, the court is to have regard to the terms of the indictment in relation to which the warrant was granted even if that indictment has fallen.
- (13) In a case where a warrant is granted under subsection (2) above, any period of time during which the accused was detained in custody—
- (a) as regards that case; and
  - (b) prior to the making of an order under subsection (11) above,
- does not count towards any time limit applying in that case by virtue of section 65(4) of this Act.
- (14) For the purposes of subsection (13) above—
- (a) detention as regards a case includes, in addition to detention as regards the indictment in relation to which the warrant was granted (whether or not that indictment has fallen), detention as regards any preceding petition;
  - (b) it is immaterial whether or not further proceedings are on a fresh indictment.
- (15) At any time before the trial of an accused person on indictment, it is competent—
- (a) to amend the indictment so as to include an additional charge of an offence under subsection (1) above;
  - (b) to include, in the list of witnesses or productions associated with the indictment, witnesses or productions relating to that offence.

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**Changes to legislation:** *Criminal Procedure (Scotland) Act 1995, Section 102A is up to date with all changes known to be in force on or before 17 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) View outstanding changes*

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- (16) In this section, “ the court ” means—
- (a) where the accused failed to appear at the High Court—
    - (i) for the purposes of subsections (10) to (12) above, that Court (whether or not constituted by a single judge);
    - (ii) otherwise, a single judge of that Court;
  - (b) where the accused failed to appear at a sheriff court, any sheriff court with jurisdiction in relation to the proceedings.]

#### Textual Amendments

- F1** S. 102A inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 32, 84**; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S. I. 2007/527)
- F2** S. 102A(4)(b) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), **sch. 7 para. 50**; S.S.I. 2011/178, art. 2, sch.
- F3** Words in s. 102A(5) inserted (10.3.2008) by [The Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(Supplemental Provisions\) Order 2008 \(S.S.I. 2008/109\)](#), **art. 2(b)**

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5A inserted by [2010 asp 13 Sch. 7 para. 26](#)
- s. 13(1B)(1C) inserted by [2006 asp 10 s. 82\(2\)](#)
- s. 13(2)(aa) inserted by [2006 asp 10 s. 82\(3\)\(b\)](#)
- s. 13(3A) inserted by [2006 asp 10 s. 82\(4\)](#)
- s. 13(5)(ba) inserted by [2006 asp 10 s. 82\(5\)\(a\)](#)
- s. 13(6)(a)(iii) and word inserted by [2006 asp 10 s. 82\(6\)\(b\)](#)
- s. 13(8) inserted by [2006 asp 10 s. 82\(7\)](#)
- s. 22(5A) inserted by [2007 asp 6 s. 7\(2\)\(g\)](#)
- s. 22A(1A) inserted by [2023 asp 4 s. 1\(2\)](#)
- s. 23B(1)(1A) substituted for s. 23B(1) by [2023 asp 4 s. 2\(2\)\(a\)](#)
- s. 23B(6A) inserted by [2023 asp 4 s. 1\(3\)\(c\)](#)
- s. 23B(8)-(10) inserted by [2023 asp 4 s. 2\(2\)\(c\)](#)
- s. 23C(1A) inserted by [2023 asp 4 s. 2\(3\)\(b\)](#)
- s. 23C(3) inserted by [2023 asp 4 s. 2\(3\)\(c\)](#)
- s. 24(2C) inserted by [2023 asp 4 s. 4\(4\)](#)
- s. 24(2AA) inserted by [2023 asp 4 s. 4\(2\)](#)
- s. 73A inserted by [2004 asp 3 s. 2\(3\)](#)
- s. 167(7D)(7E) inserted by [2007 asp 17 sch. 4 para. 1\(3\)](#)
- s. 167(7D) words substituted by [2010 asp 13 Sch. 3 para. 16\(2\)](#)
- s. 167(7E) words substituted by [2010 asp 13 Sch. 3 para. 16\(3\)](#)
- s. 194ZA repealed by [2014 asp 18 sch. 3 para. 25](#)
- s. 200A inserted by [2016 asp 1 s. 85](#)
- s. 205A added by [1997 c. 48 s. 1\(1\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)
- s. 210ZA inserted by [2023 asp 4 s. 5](#)
- s. 249(4A)-(4D) inserted by [2014 asp 1 s. 24](#)
- s. 271D(4A) inserted by [2019 asp 8 s. 6\(4\)](#)
- s. 271F(2)(aa) inserted by [2019 asp 8 s. 10\(4\)](#)
- s. 271AA inserted by [2019 asp 8 s. 6\(2\)](#)
- s. 271BZD inserted by [2019 asp 8 s. 3\(2\)](#)
- s. 288AB288AC inserted by [2024 asp 1 s. 32\(3\)](#)
- Sch. 5A added by [1997 c. 48 s. 1\(2\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)