



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART VII

SOLEMN PROCEEDINGS

Trial

92 Trial in presence of accused.

- (1) Without prejudice to section 54 of this Act, and subject to [^{F1}subsections (2) and (2A)] 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 ^{F2}. . . a solicitor to represent his interests during such absence.

[^{F3}(2A) If—

- (a) after evidence has been led which substantially implicates the accused in respect of the offence charged in the indictment or, where two or more offences are charged in the indictment, any of them, the accused fails to appear at the trial diet; and
- (b) the failure to appear occurred at a point in proceedings where the court is satisfied that it is in the interests of justice to do so,

then the court may, on the motion of the prosecutor and after hearing the parties on the motion, proceed with the trial and dispose of the case in the absence of the accused.

(2B) Where a motion is made under subsection (2A) above, the court shall—

- (a) if satisfied that there is a solicitor with authority to act for the purposes of—
 - (i) representing the accused's interests at the hearing on the motion; and

Changes to legislation: Criminal Procedure (Scotland) Act 1995, Section 92 is up to date with all changes known to be in force on or before 11 May 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

- (ii) if the motion is granted, the accused’s defence at the trial, allow that solicitor to act for those purposes; or
- (b) if there is no such solicitor, at its own hand appoint a solicitor to act for those purposes.
- (2C) It is the duty of a solicitor appointed under subsection (2) or (2B)(b) above to act in the best interests of the accused.
- (2D) In all other respects, a solicitor so appointed has, and may be made subject to, the same obligations and has, and may be given, the same authority as if engaged by the accused; and any employment of and instructions given to counsel by the solicitor shall proceed and be treated accordingly.
- (2E) Where the court is satisfied that—
- (a) a solicitor allowed to act under subsection (2B)(a) above no longer has authority to act; or
- (b) a solicitor appointed under subsection (2) or (2B)(b) above is no longer able to act in the best interests of the accused,
- the court may relieve that solicitor and appoint another solicitor for the purposes referred to in subsection (2) or, as the case may be, (2B) above.
- (2F) Subsections (2B)(b) and (2E) above shall not apply in the case of proceedings—
- (a) in respect of a sexual offence to which section 288C of this Act applies; or
- [^{F4}(aa) in respect of an offence to which section 288DC of this Act applies;]
- (b) in respect of which section 288E of this Act applies; or
- (c) in which an order has been made under section 288F(2) of this Act.]
- (3) From the commencement of the leading of evidence in a trial for rape or the like the judge may, if he thinks fit, cause all persons other than the accused and counsel and solicitors to be removed from the court-room.
- [^{F5}(4) In this section—
- (a) references to a solicitor appointed under subsection (2) or (2B)(b) above include references to a solicitor appointed under subsection (2E) above;
- (b) “ counsel ” includes, in relation to the High Court of Justiciary, a solicitor who has a right of audience in that Court under section 25A of the Solicitors (Scotland) Act 1980 (c. 46).]

Textual Amendments

- F1** Words in s. 92(1) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 10(1)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (with savings in arts. 3-5)
- F2** Words in s. 92(2) repealed (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 10(2)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (with savings in arts. 3-5)
- F3** S. 92(2A)-(2F) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 10(3)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (with savings in arts. 3-5) (as amended (31.1.2005) by S.S.I. 2005/40, **art. 3(3)** (subject to art. 1(3)))
- F4** S. 92(2F)(aa) inserted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\)](#), s. 15(2), **sch. para. 4(7)**; S.S.I. 2018/387, **reg. 2** (with **reg. 7**)
- F5** S. 92(4) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 10(4)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (with savings in arts. 3-5)

Changes to legislation:

Criminal Procedure (Scotland) Act 1995, Section 92 is up to date with all changes known to be in force on or before 11 May 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.

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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.)