

The Trial

Indictment

(pronounced 'inditement')

This is the formal written accusation or charge made out in the name of the Lord Advocate. Since the Criminal Procedure (Scotland) Act 1995, the defence lodge any special defence at least 10 days before the trial. These documents are lodged in the hands of the Clerk of Justiciary in matters referring to the High Court.

High Court

Murder and culpable homicide charges are always heard in the High Court by a Judge and jury of 15 people chosen at random from the community.

The evidence for the prosecution is presented by an Advocate Depute. A Defence Counsel will act for each accused person. Counsel will speak on behalf of the accused at the trial and before sentence is passed.

The accused person will state their plea of 'guilty' or 'not guilty'.

If the accused person pleads guilty, there is no need for anyone to give evidence in court. The Advocate Depute will tell the Judge the facts of the case and the Judge may then pass sentence or may choose to do so at a later date. If sentencing is deferred (to be passed at a later date), VIA will inform the family when and where this will happen.

If the accused person pleads not guilty, then a trial will take place and witnesses will be called to give evidence. As explained above, a 'preliminary hearing' may be held before the trial to deal with issues (such as the availability of witnesses) that might otherwise delay the trial.

Family members are entitled to attend the preliminary hearing if they wish. Witnesses are advised not to attend as this may prejudice the case. The trial should go ahead on the date fixed at the preliminary hearing.

The High Courts are in Edinburgh, Glasgow and Aberdeen. High Court cases are also heard in Sheriff Court buildings across Scotland. Your case may not be heard in the court closest to you. Preliminary hearings are only held in Glasgow and Edinburgh.

Attending Court

Family and friends can attend all court proceedings except when the accused

- First appears in court (“appears on petition”)
- Appears for “full committal” (if remanded in custody at their first appearance)

Both of these hearings are held in the Sheriff Court in private.

There may be times when the Judge may clear the court (except for legal staff) for example when there are legal arguments that need to be discussed in private, or a child witness is giving evidence.

Witnesses in the case, will not be able to sit in the public gallery of the courtroom until after they have given evidence. Witnesses are also asked not to attend the preliminary hearing as this could harm the case.

Witness will not be able to discuss the case or statements with other witnesses, or listen to court proceedings, until they have given evidence.

The Judge can ask anyone to leave the court if their behaviour is disruptive. They can also restrict movement to and from the courtroom during their “charge to the jury”.

Verdicts

The accused may be found guilty or not guilty. Alternatively, the jury may reach a 'not proven' verdict which is also a verdict of acquittal. For the accused to be found guilty of a charge, a majority of the jury (at least 8) must choose this verdict.

For verdicts of not guilty and not proven, a majority (at least 8), must choose this verdict. These verdicts have the same effect and mean that the accused is free to go and cannot be tried on the same charges again.

It is worth noting that

- If someone is found guilty of murder, the court must impose a sentence of life imprisonment
- The Judge has to state the minimum period to be served before the person can apply for parole (early release from a prison sentence). This minimum period is called the 'punishment part'
- If someone is found guilty of culpable homicide, the maximum penalty open to the court is life imprisonment. But the court rarely imposes the maximum sentence and may impose a much lower penalty
- Sometimes courts find the accused not guilty of a serious charge but guilty of a lesser charge, such as assault

Double Jeopardy

The Double Jeopardy (Scotland) Bill was introduced to Parliament on October 2010 and was passed by Parliament on March 2011.

The Bill aims to clarify in statute the established principle of double jeopardy - that a person should not be prosecuted for the same offence twice. However, it also proposes a number of exceptions to this principle, including where the original trial was "tainted", where an acquitted person subsequently admits to the offence, and where new evidence emerges.