

Scottish Community & Activist Legal Project

Guide to Going to Court

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scalp.org.uk

activists_legal@protonmail.com

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1 Introduction

This guide is designed to support anyone in the process of being prosecuted in Scotland. Being taken to court can be a confusing and intimidating experience. This guide sets out what you can expect at each stage in this process and how you can put yourself in the strongest possible position as an accused person. Most of the law that covers how the courts are run is found in the [Criminal Procedure \(Scotland\) Act 1995](#) but the way this is implemented in practice is detailed in the [The Criminal Procedure Rules](#). There is a lot of confusing jargon and strange wording in the criminal legal system, which we hope to make as clear as possible: **Key words are coloured in green** and are explained [in our Jargon Buster](#).

A note on grammar and phrasing: this guide addresses the accused person or people as 'you' throughout, although obviously this information will also be useful for your supporters and others not currently being prosecuted.

We have written this as if you are represented by a solicitor. If you are representing yourself ('**self-repping**') then you act as your own solicitor and mostly do the same things that they would do. There is more guidance for preparing for and appearing in court as a self-repper in [Appendix 1](#).

This guide was written by SCALP with a lot of helpful input from [The Climate Action Support Pathway \(CASP\)](#) - thank you friends!

1.1 Support for those facing the criminal legal system

The court system and the criminal legal system in general is designed around punishment. It can be isolating and stressful. We encourage you to try and get the

support you need from any groups you are part of, your friends and family as well as dedicated legal guidance and advice where appropriate. Court support can involve having a group of people who attend the court or keep a presence outside, supporting in practical ways such as taking notes of the proceedings and being alongside you as moral and emotional support. Having a good support system and organising defence in solidarity with your co-accused can make a huge difference to your experience of the process as well as the outcomes.

1.2 Feedback

SCALP relies on your feedback to keep our guidance relevant and up to date. If you are arrested, charged or sentenced in Scotland, **we want to hear from you**, even (especially!) if the charges were dropped or you got off! If you have any experience that differs from what's in this guide, or additional information that might be useful to someone else going through the court system, [please be in touch!](#) If you had a good or bad experience with a solicitor, we can use that to suggest who others might ask for representation or should avoid.

2 The Legal Process Post-Arrest

If you are arrested and taken into custody the police, often in consultation with the Procurator Fiscal (PF), have a number of options about what happens next.

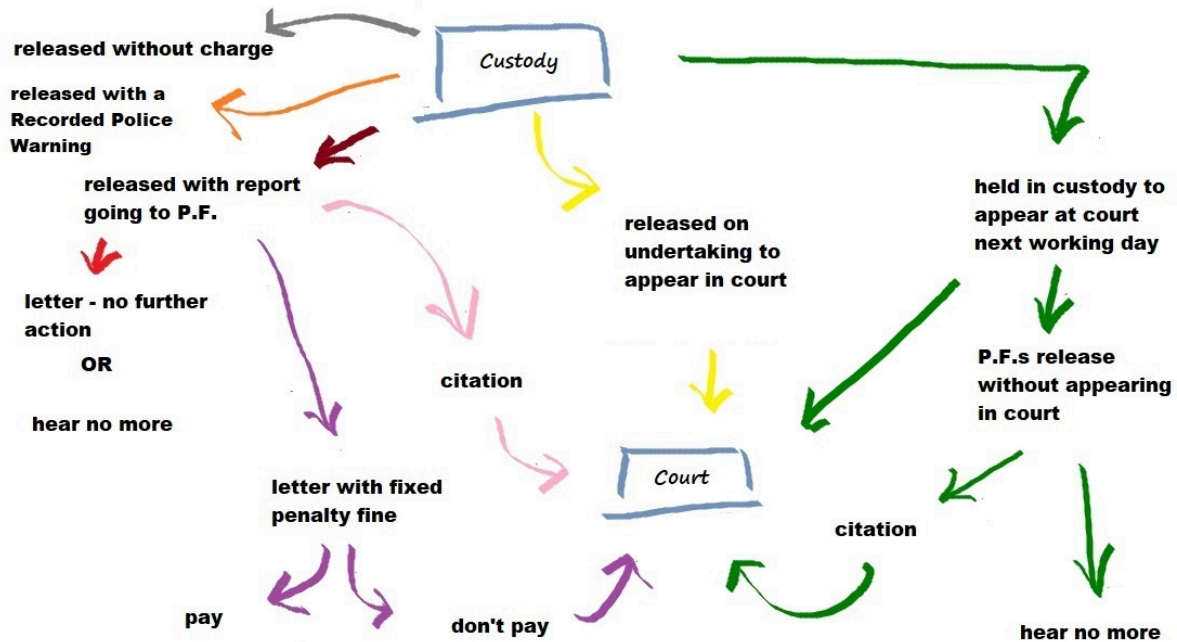


Image 1: Visual overview of the steps between your arrest and going to court.

If you are released on an **undertaking** this means you are on police bail and have signed a form agreeing to conditions, including appearing at court on a certain date, not interfering with witnesses, not committing any further offences and potentially restrictions on where you can go and what you can do while on bail.

You could be held over in the police station and taken to court the next working day or just released without signing an undertaking.

The Procurator Fiscal (PF) is the representative of the **Crown** Office and Procurator Fiscal Service (COPFS) in Scotland. Once the PF has received a report from the police they decide whether you are to be prosecuted and if so the charge against you, which court you will appear in and, if you are pleading 'not guilty', whether you will be tried by a jury.

If you plead 'not guilty' a trial will be months away so you will have time to plan your defence, but it's best not to leave it to the last minute. Because it's always possible that you could be held by the police and taken to court the next working day, it's a good idea to know what happens at the [first appearance at court](#) before taking part in an action/protest. Likewise, if you are at risk of being held in prison until your trial (**remanded** in custody), it's a good idea to have an understanding of the whole process in advance.

2.1. Being Held by the Police for Court

You are entitled to have a person of your choice informed of your arrest, sometimes referred to by the police as family or friend, but it doesn't have to be one of these. If you are arrested during an event for which [SCALP legal support](#) is organised, then ask the police to contact Jo Hill on our **Back Office** at the number on a bust card. Remember SCALP is your friend! If your group is organising its own legal support, you should have the name and number of someone who is running your Back Office. If you are held to appear in court the next working day, the SCALP Back Office or your own legal support should be able to find that out (but only if you have asked them to be informed) and they can try to arrange supporters to be at the court for you.

2.1.1 Legal Representation in Police Custody

When you are in police custody the other person the police should inform is a solicitor of your choice to tell them which police station you are in, why you are being held and whether you are to be released or held for court. We don't recommend using the **duty solicitor** as it's a lottery, and they may not know much about the laws used against activists. Ask for a solicitor experienced in protest law – there will be the name of one on a bust card for any action or protest supported by SCALP – or you may have your own. Don't worry if you don't know their number, the police will have it. If you don't know the name of a solicitor then the duty solicitor could be better than not having one at all and you can always change to a different solicitor or decide to represent yourself once you are out of custody. It is also an option to not have a solicitor contacted at all if, for example, you are confident about saying 'no comment' during a police interview and you expect to be released. You can always change your mind later in your custody if something comes up that you want legal advice about or a solicitor to advocate for you. Your solicitor will either visit you in the police station or speak to you on the phone. Sometimes if the police have told your solicitor you are going to be released shortly they don't think it is necessary to speak to you but if you are concerned about the conditions of the undertaking or anything else you should insist. **Attendance and advice from a**

solicitor while in police custody is always free and doesn't commit you to them beyond that.

If you are held in custody for a court appearance, the solicitor you have asked for will come to the court to speak to you before your case is called and represent you during your first hearing. If you are released then you will need to contact a solicitor before your first court appearance if you want them to represent you.

3 The Prosecution Process

3.1 Court Strategy

This guide explains the procedure for being prosecuted in a Scottish Sheriff court. You and your co-accused have to decide how you chart your way through the court system to get the best - or the least worst - outcome.

If you were arrested for something you didn't do you could be looking for an acquittal. If you were taking part in a protest you might want to draw attention to the issue while minimising the sentence.

Or you might want to go all out to raise the issue you care about at any opportunity regardless of the personal consequences.

This is ultimately a personal decision and will depend on many different factors, but it is worthwhile thinking carefully about this and discussing it with your co-accused, campaign organisers or trusted others.

Whether you are represented by a solicitor or represent yourself can impact all these strategies in different ways. Either way, the more informed and engaged you are the more you can protect yourself from the dehumanising, unfathomable system that has very little to do with justice.

3.2 Charges

The **offences** cited by officers during your arrest may be different to the ones listed on an undertaking. Charges may change again by the time of the case going to court. It is important that you understand the charges you are facing and what evidence the Crown requires to prove them, as well as the possible consequences. See the CASP Support Pathway for Scottish Law [here](#) for information on the more common charges used against protesters. You can ask SCALP or your solicitor to help explain them.

3.3 Appearing at Court

If you are brought to a court from police custody, you will probably have been woken up ridiculously early, given some sort of breakfast and if you are lucky been offered a chance to wash and brush your teeth. You will be transported by a private security company and be handcuffed to one of their employees between the police station and the vehicle and again from the vehicle to the court. At the court you will likely have to share a holding cell with a number of other people where feelings can run high and the waiting can seem endless. If you've asked for a solicitor, they should come and see you before you are taken to the courtroom.

If you are not in custody and turn up to a court building you will generally be asked to empty your pockets, take off your outer layer of clothing, pass through a metal detector, and potentially officers will conduct a pat-down search on you to check for weapons or prohibited items. Think carefully about what you need to take with you to court and make sure that you don't have anything on you that could be misconstrued as a weapon. It is worth arriving at court early as all this can take time. Once inside court you should ask at the clerks desk which courtroom your case will be in and make your way there. If you have a solicitor they should come and find you there and be able to speak with you before your case is called. Sometimes you can wait outside the courtroom until your name is called, sometimes you are expected to sit in the public gallery of the court. You are not allowed to film, take photos or record audio in the court but you are allowed to take written notes of proceedings. Eating or drinking in the courtroom is not allowed and you may be prevented access if they think you are under the influence of drugs and/or alcohol. Switch off or mute your phone before entering the courtroom and keep it like that throughout proceedings. They tell everyone to remove their hats but you can argue to keep your head covered if you have religious, cultural or health reasons.

It is worth considering how you will respond when given instructions – such as to stand up – by court officials, police officers and the Sheriff in the court room. Getting on the wrong side of a sheriff or court official can lead to serious consequences. If your behaviour is considered to be inappropriate or disrespectful you could find yourself being held in contempt of court. This could result in you being fined or sent to prison in extreme cases.

You can find more information about the courts and find the address of a specific court on the [Scottish Courts and Tribunals website](#).

3.4 Types of court proceedings

There are three different kinds of criminal courts in Scotland: **Justice of the Peace** (JP), **Sheriff** or **High Court**. It depends on how serious the case is. There are also two different procedures in Scottish law:

- **Summary proceedings** for less serious criminal offences where you would appear on a **complaint** (the legal document that lays out what offences you are accused of). These cases call before a lay magistrate (a JP) or a Sheriff sitting without a jury.
- **Solemn proceedings** for more serious criminal offences. Initially you will be served with a **petition** that lays out the charges that you face at that time. You may not be given your next court date until investigations have been made. You will then be told your court date and served with an **indictment**. Trials are heard before a judge and a jury of 15 people either in the Sheriff Court or the High Court. High Court solemn procedure usually starts off calling in the Sheriff Court.

Most protest cases will be heard at a Sheriff Court with or without a jury.

There is also an Appeal Court which deals with appeals against verdict, sentence and many procedural matters.

Procedure	Summary		Solemn	
Process	Appear on Complaint		Appear on Indictment	
Court	Justice of the Peace	Sheriff without Jury	Sheriff with Jury	High Court
Judge	Lay Magistrate	Sheriff	Sheriff	Judge (senator of the College of Justice.)
	Summary Sheriff			
Verdict decided by	Justice of the Peace	Sheriff	Jury	Jury
Sentence decided by	Justice of the Peace	Sheriff	Sheriff	Judge
Maximum Fine	Up to £2500	Up to £10,000	Unlimited	Unlimited
Maximum imprisonment	Up to 60 days	Up to 1 year	Up to 5 years	Up to life

Court hearings in Scotland are called **diets**. If you are given further dates to appear you should make a note of these because the court won't notify them to you, although your solicitor should.

3.5 Legal Costs and Legal Aid

Having a solicitor represent you in court beyond appearing at the first hearing if you have been held in police custody costs money. If you cannot afford the cost of legal representation, the state may pay part or all of your fees via a scheme known as **Legal Aid**. Whether you qualify for legal aid or not depends on your financial circumstances and the seriousness and complexity of your case.

Generally, anyone over the age of 16 can apply for legal aid. There are different forms of legal aid: **advice and assistance** is a scheme that allows people on low incomes to get free advice and assistance from a solicitor – this usually does not mean that representation by a solicitor will be paid for, but it can mean you have help to prepare your case. **Criminal legal aid** covers costs of representation at court or bail applications – this legal aid depends on whether it is 'in the interest of justice' that the accused is legally represented and it is means tested: i.e. if the expenses of the case would cause 'undue hardship' to you or your dependants. Sadly, due to cuts to legal aid fewer cases now qualify and the fees received by solicitors are so low that they can't devote as much time to your case as you might hope for.

More information on eligibility for legal aid is available from [Citizens' Advice Scotland](#) and the [Scottish Legal Aid Board](#). Other sources of legal aid may be available, such as your trade union, which sometimes offer free or fixed-fee interviews, or free legal support for a certain period of time.

Solicitors' bills and fines are not the only costs you might face if you are prosecuted – travelling to and from court can be a costly business, particularly if you have to travel a long way and cases are often adjourned for one reason or another after you have turned up.

In Scotland, multiple accused people from the same case **must have different solicitors** to avoid a conflict of interest. However, if one of your co-accused is represented and funded by legal aid their solicitor may be willing to give you advice and step in to help you with procedural issues during the case if you are representing yourself. You can also adopt any legal argument they have put forward. Many activists have represented themselves in all levels of courts over the years and found it much more empowering than using solicitors. See [Appendix 1](#).

3.6 Being Prepared for Court

Write your own account of what happened before and during your arrest while it's fresh in your mind. Take care to write down any future dates that are mentioned in the court – they won't give you written notice of these times that you need to return.

Even if you do end up being represented by a solicitor, this does not mean you should simply let them get on with it without any input from you. It is important for you to:

- Keep in contact with them. Solicitors are renowned for not getting back to you and leaving things until the last minute. Keep phoning until you get an answer.
- If you are eligible for legal aid, be quick to give your solicitor the information they need about your personal situation so they can apply for it.
- If you are refused legal aid but intend to pay for a solicitor, find out what the cost will be before they do any work on your behalf.
- Assist your solicitor in building a strong defence case by gathering evidence (e.g. film footage) and contacting witnesses.

If you have to represent yourself because you can't get legal aid or you choose to do it to have control over your legal defence you have to prepare to do all the things that a solicitor would do. See additional information on representing yourself in [Appendix 1](#).

3.7 Possible Outcomes

If you are prosecuted for a criminal offence, there are a number of possible outcomes:

- The PF may **drop the case** against you altogether – this can happen at any stage of the proceedings, even on the day of the trial itself or actually during the trial if the evidence is not stacking up.
- The sheriff may force the PF to drop the case if they refuse them an adjournment and they aren't able to go ahead right then because, for instance, they don't have all the witnesses or the evidence they need.
- The trial may proceed to its end and you may **be found not guilty** of the alleged offence.
- You may decide to **plead guilty** or you may **be found guilty** at the end of a trial. You will then be sentenced. For information about sentencing see [Appendix 4](#).

The process for [summary](#) and [solemn](#) cases is roughly the same but there are some very important differences.

4 The Court Process for Summary cases

4.1 First appearance at court – Plea and Bail Diet

If you are appearing on an undertaking before your case is called, you will be served with a **complaint** which sets out the offences you are accused of. This will be the document that any subsequent trial will be based upon, regardless of what you were initially charged with when you were arrested. If you are being prosecuted jointly with other people their names will also appear on the complaint. There will be a summary of the evidence against you and any items seized by the police. A list of any previous convictions for you or your co-accused will be attached too.

If you were released on an undertaking and don't turn up in person for this first diet a warrant for your arrest will very likely be issued.

If you are not answering to an undertaking to appear at court but were sent a **citation** in the post you may not have to appear in person for the first diet. A solicitor can represent you or you can reply by post on the form provided if this option is given.

4.1.1 Entering a plea

At this first hearing, you will be asked how you plead.

If you want more time to consider the charges and discuss it with your co-accused your solicitor can ask for the case to be 'continued without plea'. This will put the plea hearing off for a number of weeks.

There are many personal and political considerations in deciding how to plead but it is worth thinking in advance about what you might do if you are held for court and also discussing it with any others involved in the protest in advance. Knowing the potential consequences makes that decision less stressful. There are good practical reasons to plead 'not guilty' at the first hearing and you can always change your plea later. Activists are sometimes keen to plead 'guilty' to an offence simply to get legal proceedings over and done with as quickly as possible, particularly when their supposed offence is a minor one only likely to result in a fine. However, it is worth giving serious consideration to pleading 'not guilty'. Many things can and do go wrong with prosecution cases and sometimes the evidence brought against activists is so flimsy that the PF and the police seem to just be hoping that people will automatically accept their own guilt. In Scotland there needs to be **corroboration** from at least two sources to get a conviction. This usually means two police witnesses telling at least a pretty similar version of events, but corroboration can also come from CCTV, forensics, expert witness or circumstantial evidence. The facts need to be proven beyond a reasonable doubt.

There are also some practical reasons to plead 'guilty' in certain situations:

- If the PF is opposing bail and there is a chance that the Sheriff will agree and remand you to prison if you plead 'not guilty'* but you are unlikely to be sentenced to prison time if you plead guilty.
- You can't/don't want to have to return to the court for a trial at a future date and don't want to risk a warrant for your arrest being issued.
- The court is likely to impose bail conditions that you are not willing to accept.
- Early plea discount: you can get up to one-third off your sentence by pleading 'guilty' early on.**

* If you try and change your plea to 'guilty' after the Sheriff has decided to remand you it may not be accepted as it's considered a 'plea of convenience'.

** If you change your plea to 'guilty' midway through proceedings the discount is around 25% and a late plea (e.g. just before trial) can possibly get a 10% reduction.

If you plead 'guilty' then the PF will read out a brief summary of what the police said you did, including any estimates they have of the cost of any damage or of other loss to the place where you protested. You can disagree with details of this but if you contest anything fundamental the court can decide to record a 'not guilty' plea and set a date for a trial.

Your solicitor will explain your reasons for taking action and anything that is favourable about what you did and how you did it (called a **plea of mitigation**). Be sure to give them clear instructions about what you do or don't want them to say but be aware they will be unlikely to be able to say anything more than the briefest of statements about the real issues.

The PF will show you a copy of any previous convictions and if you agree that this is accurate will hand them to the Sheriff. Look carefully because sometimes the records are inaccurate and include convictions that are not yours.

The Sheriff will ask about your financial circumstances. If you choose not to answer this they may make assumptions about how much you can afford to pay if you are fined.

Then the Sheriff will announce the [sentence](#).

If you have co-accused who are pleading Not Guilty instead of sentencing you right away the court might continue your case to their next date and keep doing that until they are sentenced and deal with you altogether.

If you plead 'not guilty' then several things will happen:

- The clerk of the court will give dates for the trial and the **intermediate diet**. They will be prepared to offer a different date if you have a good reason, for example a hospital appointment or a booked family holiday.
- The sheriff will decide whether to simply **ordain** you to appear at the next court date, grant you bail to appear or remand you in custody.

4.1.2 Bail

At the initial hearing the court could, in theory, ordain you to appear at future hearings. This means you should just turn up on the dates they give you.

In practice, most protesters are released on bail with conditions.

The standard bail conditions are that:

- You must attend court on the date the case is to call.
- You must not interfere with witnesses or do anything to obstruct the conduct of the case.
- You must not do anything that can cause distress or alarm to witnesses.
- You must make yourself available to aid court enquiries or reports.
- You must not commit any further offences while on bail.

Sometimes special conditions are imposed such as banning you from the location where the alleged offence occurred, saying you have to live in a particular place or comply with a curfew. These conditions can be challenged by your solicitor or yourself, if you are self-representing, especially if they are disproportionately onerous such as excluding you from an entire city. [Breaking bail](#) is an offence.

4.2 Pre-Intermediate Diet Meeting

The Pre-Intermediate Diet Meeting (PIDM) is a new process for summary cases that was introduced initially in 2020 to reduce face-to-face contact during the Covid pandemic and then continued indefinitely. In October 2022 in a set of instructions in this ['Practice Note'](#). The solicitors and the PF meet 14 days before the intermediate diet to try and reduce the time the court spends on a trial or even eliminate the need for one. Your solicitor should take full instructions from you before the meeting. The accused don't attend – even if they are self-repping.

At this meeting the PF and the defence lawyers can:

- Review and confirm their readiness for trial.

- Discuss the scope for resolution (i.e. any plea deals – see [Appendix 3](#)) and the scope for the agreement of evidence.
- Confirm that there are no known difficulties with outstanding **disclosure** of evidence.
- Identify whether the trial will require more than one day.
- Identify whether there are any outstanding applications for special measures for vulnerable witnesses that require to be brought to the court's attention.

At this PIDM it might be agreed that they don't need an intermediate diet and are all ready for trial, or that the accused don't need to attend the intermediate diet.

The PIDM has the advantage of making it less likely that the trial will get adjourned because either the PF or your solicitor have not prepared properly. [Scottish Court rules state](#) 'failure by either side to prepare adequately for summary criminal proceedings will not normally be condoned by the court by the postponement of a trial' – so make sure you are helping your solicitor prepare a good defence by liaising with them as suggested above: [Being Prepared for Court](#).

From what we have heard, these PIDMs don't work quite as well as they are supposed to and often the disclosures from the PF are very late in arriving – if at all and trials have to be moved at the intermediate diet or even on the trial diet itself. It also looks like self-reppers are an afterthought and this whole process cuts them out from being able to engage in an equal way to people who are being represented by solicitors.

4.3 The Intermediate Diet



Image 2: Forward Intelligence officers surveilling a crowd outside Edinburgh Sheriff Court.

Unless the PIDM has deemed it unnecessary, there is usually another hearing about four weeks before the trial – an intermediate diet – to check if both the defence and the Crown are ready for the trial itself. If it goes ahead it is usually very short and if you have a solicitor representing you then you may be excused from attendance. If self-representing, you may be able to write to the court in advance to say if you are ready for trial but this is less likely if you are on bail.

Issues that can be brought up at the intermediate diet include:

- Whether your solicitor has been given copies of statements and other evidence to be used against you (this is called 'disclosure').
- Whether your solicitor has secured legal aid funding or needs more time to do so.

- Whether you intend to call any witnesses.
- Whether there is any evidence that both you and the prosecution can agree to in advance.
- Whether you need the court to provide facilities to show a video.

If both sides have all the evidence they need and the witnesses are **cited** and you are maintaining your 'not guilty' plea then the process will continue to the trial diet.

4.4 Summary Trial

Before your trial starts, any witnesses you want to call should be out of the courtroom. The court officer will show them a room to go to.

1. When your name is called you take your seat in the dock. If you have co-accused you must sit in the order your names appear on the citation. Whenever you speak or are being spoken to you are expected to stand up (if you are unable to stand you or your solicitor will need to explain this to the court)!

2. The clerk asks you to confirm your name and your plea. If you have a solicitor they will introduce themselves to the court. Sometimes at this point they ask you to sit at the back of the court again, because they were just checking who has turned up and will then decide the order of business.

3. When the trial begins the PF starts by making a case against you by calling witnesses one at a time. They ask them about what happened to provide evidence of your guilt. This is called the examination in chief.

4. After the PF has finished with each witness your solicitor can ask them questions in a process called cross-examination. If you disagree with anything the witness has said and your solicitor has not brought this up you can call them over to speak quietly to them so they can raise it. Then the PF has a second chance to question them. This is called re-examination. Your solicitor can also introduce evidence such as documents, photos, videos etc. at this stage by asking the witness to comment on them.

Joint Minutes of Agreement (agreed facts that there is no need to call witnesses to speak to) is read aloud to the jury at the close of the Crown case.

5. When the PF has finished leading all the evidence against you, if there isn't enough to prove your guilt your solicitor can put in a submission that there is **no case to answer** before you give evidence. The argument will be that even if you 'take the Crown's case at its highest' (i.e. believe every single word that every Crown witness has said) there is

'insufficient' evidence to convict you of a particular charge (or charges). It is a question of quantity of evidence, as opposed to quality of evidence.

In Scotland, there must be two sources of evidence to support a charge before an accused can be convicted of it. In other words, nobody can be convicted solely on the word of another without any supporting evidence. This is known as the requirement for **corroboration**. Corroborating evidence can come in many shapes and forms. It could be a second witness seeing or overhearing something as the alleged crime is being committed. It could be individual pieces of circumstantial evidence that combine to become stronger, like strands in a rope. It could be CCTV footage, an accused's admission to the police or forensic evidence such as fingerprints or footprints.

If the sheriff agrees with the 'no case to answer' submission they can throw the whole thing out, or they can tell the PF to drop some of the charges or even bits of charges. Yes! They can change the wording in the middle of the case!

If the sheriff thinks there is a case to answer, the trial continues.

6. Now it's your turn. Your solicitor calls witnesses and introduces evidence in your defence.

7. You can go in the witness box yourself, but don't have to. If you want the court to hear about the facts of what you did – for example, to counter misinformation from the police about your behaviour – you have to attest to this from the witness box on oath. You can swear a religious oath, or you can ask to 'affirm', which goes something like: 'I truly declare and affirm that the evidence that I give will be the truth, the whole truth and nothing but the truth.' (Note: in a Scottish court you are asked to raise your right hand to take the oath but there is no Bible or other religious book. You can object to raising your hand if it feels wrong for you, but the sheriff may insist.)

Your solicitor will ask you questions. If there are things you want to bring up as part of your defence later on, e.g. reports, letters, photographs, etc., you have to submit them as evidence now. When you are finished, the PF can question you. Your solicitor can then further clarify anything the PF raised.

8. Your witnesses are now called and your solicitor asks them questions. After each of your witnesses speaks, the PF can question them. After this your solicitor can question them again, but only on issues related to the questions the PF asked.

9. The PF then sums up their case by referring to the evidence against you and any legislation and relevant previous cases.

10. Your solicitor then sums up your case saying why you are not guilty and why the PF is wrong.

11. The Sheriff then gives the verdict. They may adjourn for some minutes, hours or days first to consider the evidence.

If you are found 'not guilty' you are free to go!

If you are found 'guilty' you might be sentenced there and then, in which case your solicitor will explain your reasons for taking action and anything that is favourable about what you did and how you did it (a **plea of mitigation**). Be sure to give them clear instructions about what you do or don't want them to say but be aware they will be unlikely to be able to say anything more than the briefest of statements about the real issues.

The PF will show you a copy of any previous convictions and if you agree that this is accurate will hand them to the sheriff. Look carefully because sometimes the records are inaccurate and include convictions that are not yours.

The sheriff will ask about your financial circumstances. If you choose not to answer this they may make assumptions about how much you can afford to pay if you are fined.

Then the sheriff will announce [the sentence](#).

After a 'guilty' verdict your case could be adjourned to a sentencing diet and a [Criminal Justice Social Work Report](#) requested. If your case is adjourned and you are on bail you will remain so until the sentencing diet, but you could ask for the bail conditions to be varied.



Image 3: Flow diagram of the summary trial procedure

5 The Court Process for Solemn cases

Solemn procedure usually begins when, having been arrested by the police on suspicion of committing a crime, you are served with a petition. In most cases, this will be done in the Sheriff Court cells, where you have been transferred from the police station. Occasionally, though, when you attend court on an undertaking you will be served with a petition when you arrive at the court building.

Proceedings can also begin by the grant of a 'petition warrant' so the police can arrest you and then serve the petition, and in some cases by the [service of an indictment on you](#), without your having appeared on petition in the first place. This latter scenario can take place when the decision is taken to charge you as co-accused alongside someone who has previously appeared on petition and has already been served with an indictment.

A petition specifies (where known) your name, address and date of birth. It also sets out the charges that you face at that particular point in time. However, unlike a summary complaint, the charges on a petition can significantly differ from the charges which you may later face at trial. This is because, at such an early stage of proceedings, the full investigation into the alleged offence(s) will probably not have concluded. There is also scope for the factual position to significantly change. The petition only needs to state the nature of the charge against you.

The petition also contains requests for various warrants, such as to search your home, the citation of witnesses to be interviewed and production of evidence, and for your eventual 'committal' for further examination or until liberated.

The petition only needs to state the nature of the charge against you, but in practice, tends to provide a 'summary of evidence'.

5.1 First appearance at court – Bail Hearing

If you are on petition, the bail hearing will take place in private: the only people present are the sheriff, the prosecutor, the clerk of court, you and your co-accused and your solicitor(s), and court security staff. You don't make a plea at this first appearance. The prosecutor may or may not oppose you being released on bail. Whether bail is granted is up to the sheriff. In general, where an accused has no previous convictions, has a fixed address and employment and there is no indication of currently being engaged in a course of criminal conduct, bail will be granted.

The standard bail conditions are that:

- You must attend court on the date the case is to call.
- You must not interfere with witnesses or do anything to obstruct the conduct of the case.
- You must not do anything that can cause distress or alarm to witnesses.
- You must make yourself available to aid court enquiries or reports.
- You must not commit any further offences while on bail.

Sometimes special conditions are imposed such as banning you from the location where the alleged offence occurred, saying you have to live in a particular place or comply with a curfew. These conditions can be challenged by your solicitor or yourself, if you are self-representing, especially if they are disproportionately onerous such as excluding you from an entire city. Breaking bail is an offence, see [Appendix 5](#). You are not given another court date but are 'committed for further examination'. The next stage is being served with an indictment. Previously, if you were released on bail the prosecution would have to serve an indictment on you or your solicitor within 10 months of your first appearance at court. However, during the Covid pandemic this time limit was removed, and will remain lifted until November 2025. Your solicitor might have a better idea of how long it might actually take to be served with an indictment, but it could possibly be up to 2 years.

If you are remanded in custody things move much more quickly.

You are sent to a prison for what is colloquially known as the 'seven day lie down'. At the end of this period, there will be a hearing which is known as the 'full committal'.

5.2 The Full Committal (only if you are on remand)

The full committal presents a further opportunity for you to make an application for bail. It may be the case that, having had the benefit of a week's worth of investigations, the PF no longer opposes you being bailed.

If the PF wants you to remain in custody, then they will make a motion to 'fully commit' you. In order to do so, the Sheriff must be satisfied that the content of the petition is competent and relevant and that there is a **prima facie** ('on the face of it') case against you. This is decided by whether, on paper, there is sufficient evidence (in terms of quantity, rather than quality) to corroborate the charge(s). You can oppose full committal on the basis that the PFs summary of evidence does not disclose a *prima facie* case, although this is not a high bar for the Crown to clear. If you are successful, then you should be bailed.

If bail is refused, then you will be remanded in custody until you are served with an indictment, and eventually appear back at court to make a plea.

5.3 Being served with an indictment

In most cases if your initial appearance was on petition eventually you will be served with an indictment. It is open to the PF to decide to drop it down to a summary complaint instead, in which case you will be given notice to appear at court for a 'reduction to summary' hearing at which a summary complaint will be served on you, and the case will proceed as if it were a first appearance on summary complaint.

An indictment is the document that specifies the charges on which you are to face trial. It looks different to a summary complaint, but it will identify you by name, date of birth and address in the same way. Indictments introduce the charge(s) with the words, 'you are indicted at the instance of His Majesty's Advocate, and the charge(s) against you is/are that...'

An indictment is served on you along with a numbered list of witnesses who may be called by the PF at trial in order to prove the charges, and a numbered list of productions that may be used. Witnesses are identified by using their name and address, although, for obvious reasons, non-police witness addresses are usually given as 'care of Police Service of Scotland'. **Productions** are physical pieces of evidence, such as documents, that witnesses identify during the trial. Other items are known as **labels** because of the physical labels attached to an object specifying what it is, where it was seized and who seized it.

'Service' of an indictment means either 'any officer of law' handing over of a copy of an indictment to you in person (or your solicitor at their place of business), or a constable affixing to the door of your last known address a notice informing you that you may collect a copy of the indictment from a specified police station.

A date for your next court appearance – called the 'first diet' – will be given to you along with the service of the indictment.

5.4 Preparation of your case

During this time waiting for the next court appearance the PF carries out its preparation and must disclose their evidence to your solicitor. This will include any photographs, CCTV footage, invoices for repairing any damage, statements from witnesses.

Meanwhile you and your solicitor are preparing your defence. Send your solicitor anything that might help your case. This will depend on the kind of defence you want to run but if you didn't do the things you are accused of you need to be ready to prove this if the prosecution put forward evidence against you. If you want to talk about the issue that led to you taking part in a protest you might want to present photographs, articles or other information. The court may not allow this but better to be prepared. More on this under [Plea of Mitigation](#).

14 days prior to the first diet your solicitor needs to lodge a defence statement, see [Appendix 7](#). Further, at least 2 days before the first diet, the Defence need to lodge a Joint Written Record of Preparation which is where both defence and prosecution outline how ready they are to go to trial. Your solicitor will need to be getting this together.

5.5 The First Diet

The date of the first diet must be at least 29 **clear days** after the service of the indictment. If you are on remand, the first diet must be within 17 months of your first appearance. It takes place in a public court.

The Crown and defence should have already provided the court with written records of the state of preparation of their cases, which witnesses' evidence will need to be heard and which witnesses' evidence has been agreed and will be formally submitted. Each side must specify when and how they communicated with the other side and what steps have been taken to agree formal evidence.

You will be asked how you plead.

If you plead 'guilty' then the PF will read out a summary of what the police said you did including any evidence or estimates they have of the cost of any damage or of other loss to the place where you protested. This statement should have already been agreed between the PF and your solicitor.

You might be sentenced there and then in which case your solicitor will explain your reasons for taking action and anything that is favourable about what you did and how you did it (a plea of mitigation). Be sure to give them clear instructions about what you do or don't want them to say but be aware they will not be able to say anything more than the briefest of statements about the real issues.

The PF will show you a copy of any previous convictions and if you agree that this is accurate will hand them to the sheriff. Look carefully because sometimes the records are inaccurate and include convictions that are not yours.

The sheriff will ask about your financial circumstances. If you choose not to answer this they may make assumptions about how much you can afford to pay if you are fined.

Then the sheriff will announce the sentence.

Your case could be adjourned for a Criminal Justice Social Work Report. . If your case is adjourned and you are on bail you will remain so until the sentencing diet, but you could ask for the bail conditions to be varied.

If you plead 'not guilty' Unlike summary trials, which are always fixed for a specific day, solemn trials are often fixed as 'floating' trials, in the sense that they might start at some point within a range of days. This is to do with the vagaries of court scheduling and the requirement that solemn trials should be 'continuous' – run from one day to the next until they are finished. You, your solicitor and the witnesses are expected to drop everything and be in position to start trials at short notice – often less than 24 hours.

5.6. Pre-trial

On the day the trial is to begin, jurors assemble in accordance with their citations.

When your name is called you take your seat in the dock. If you have co-accused you must all sit in the order your names appear on the indictment. Whenever you speak or are being spoken to you are expected to stand up (if you are unable to stand you or your solicitor will need to explain this to the court).

You will be expected to confirm your plea in respect of the charges on the indictment. The pool of potential jurors (of whom there must be at least 30) will be whittled down to 15 who are **empanelled** as the jury. There is no convoluted system of jury questioning and selection; in Scotland juries are selected by way of a ballot (something like the clerk picking names out of a goldfish bowl!).

Jurors will then be expected to speak up if there is any reason why they cannot properly serve as a juror in the case. The indictment will be read to them and they will be asked if they have any prior knowledge of anyone named in the charges, or the incidents themselves. If any selected juror has to be removed from the jury, a new name is picked to replace them. After any issues with the jury are resolved, the remaining unselected jurors will be dismissed. Any notice of special defences that you may be relying on will usually be read to the jury.

Finally, the jury will be sworn in. During the trial, if jurors cannot continue to serve for any reason, the trial will simply continue without them, provided there are at least 12 remaining jurors.

5.7. Solemn Trial

A trial under solemn procedure runs more or less in the same way as a summary trial except there is a jury. There may be certain points when the jury is asked to leave, for instance if the PF and your solicitor want to make legal arguments about something. Once the sheriff has made a ruling about it the jury will come back. All this can prolong a trial.

Because solemn proceedings are audio-recorded, it is important for witnesses (often at the coaxing of the lawyers questioning them) to describe important gestures that they make when giving evidence.

1. When the trial begins the PF starts by making a case against you by calling witnesses one at a time. They ask them about what happened to provide evidence of your guilt. This is called the examination in chief.
2. After the PF has finished with each witness your solicitor can ask them questions in a process called cross-examination. If you disagree with anything the witness has said and your solicitor has not brought this up you can call them over to speak quietly to them so they can raise it. Then the PF has a second chance to question them. This is called re-examination. Your solicitor can also introduce documents, photos, videos etc. at this stage by asking the witness to comment on them.

Joint Minutes of Agreement (agreed facts that there is no need to call witnesses to speak to) is read aloud to the jury at the close of the Crown case.

3. When the PF has finished leading all the evidence against you, if there isn't enough to prove your guilt your solicitor can put in a submission that there is no case to answer before you give evidence. The argument will be that, even if you 'take the Crown's case at its highest' (i.e. believe every single word that every Crown witness has said) there is 'insufficient' evidence to convict you of a particular charge (or charges). It is a question of quantity of evidence, as opposed to quality of evidence.

In Scotland, there must be two sources of evidence to support a charge before an accused can be convicted of it. In other words, nobody can be convicted solely on the word of another, without any supporting evidence. This is known as the requirement for **corroboration**. Corroborating evidence can come in many shapes and forms. It could be a second witness seeing or overhearing something as the alleged crime is being committed. It could be individual pieces of 'circumstantial evidence' that combine to become stronger, like strands in a rope. It could be CCTV footage, an

accused's admission to the police or forensic evidence such as fingerprints or footprints.

If the sheriff agrees with the 'no case to answer' submission they can throw the whole thing out, or they can tell the PF to drop some of the charges or even bits of charges. Yes! They can change the wording in the middle of the case!

If the sheriff thinks there is a case to answer, the trial continues.

4. **Now it's your turn.** Your solicitor calls witnesses and introduces evidence in your defence.
5. You can go in the witness box yourself, but don't have to. If you want the court to hear about the facts of what you did, say, to counter misinformation from the police about your behaviour you have to do this from the witness box on oath. You can swear a religious oath, or you can ask to 'affirm', which goes something like: 'I truly declare and affirm that the evidence that I give will be the truth, the whole truth and nothing but the truth.' (Note: in a Scottish court you are asked to raise your right hand to take the oath but there is no Bible or other religious book. You can object to raising your hand if it feels wrong for you, but the Sheriff may insist.)
6. Your solicitor will ask you questions. If there are things you want to bring up as part of your defence later on, e.g. reports, letters, photographs etc., you have to submit them as evidence now. When you are finished the PF can question you. Your solicitor can then further clarify anything the PF raised.
7. Your witnesses are now called and your solicitor asks them questions. After each of your witnesses speaks, the PF can question them. After this your solicitor can question them again, but only on issues related to the questions the PF asked.
8. The PF then sums up their case by referring to the evidence against you and any legislation and relevant previous cases and invites the jury to convict you.
9. Your solicitor then sums up your case saying why you are not guilty and why the PF is wrong and invites the jury to acquit you.
10. The sheriff then has to **charge the jury**. This means giving them directions on the law that they should apply in reaching their verdict. The content of every 'charge' is different, and there are any number of things that could be covered, depending on the nature of the evidence. Obviously, the jury will be reminded that they must be

satisfied beyond reasonable doubt as to the accused's guilt before they can return a guilty verdict on any charge.

11. They may adjourn for some minutes, hours, or days to consider the evidence. Juries consist of 15 people; if jurors drop out (e.g. because of illness) the trial can continue with a minimum of 12 jurors. Conviction is on the basis of a majority verdict, with 8 jurors required to decide that the accused is guilty. Should fewer than 8 jurors declare a 'guilty' verdict then the accused is acquitted. A hung jury is not possible in Scottish criminal law.
12. When the jury has decided their verdict they return to court and the foreman responds to each of the charges in turn for each accused. 3 verdicts are possible in all criminal trials in Scotland: 'guilty', 'not guilty' and 'not proven'. The latter two verdicts are verdicts of acquittal and have exactly the same effect. It is open for the jury to find you guilty under deletion of certain parts of the charge. There is also some scope for the jury to find you guilty of an alternative charge, or that you are guilty of acting, but under provocation.

If you are found 'not guilty' you are free to go!

If you are found 'guilty' you might be sentenced there and then in which case your solicitor will explain your reasons for taking action and anything that is favourable about what you did and how you did it (a plea of mitigation). Be sure to give them clear instructions about what you do or don't want them to say but be aware they will be unlikely to be able to say anything more than the briefest of statements about the real issues.

The PF will show you a copy of any previous convictions and if you agree that this is accurate will hand them to the sheriff. Look carefully because sometimes the records are inaccurate and include convictions that are not yours.

The sheriff will ask about your financial circumstances. If you choose not to answer this they may make assumptions about how much you can afford to pay if you are fined.

13. Then the sheriff will announce the [sentence](#).

For solemn procedure it's likely that after a 'guilty' verdict your case will be adjourned to a sentencing diet and a [Criminal Justice Social Work Report](#) requested. If your case is adjourned and you are on bail, you will continue to be so but you could ask for the bail conditions to be varied.

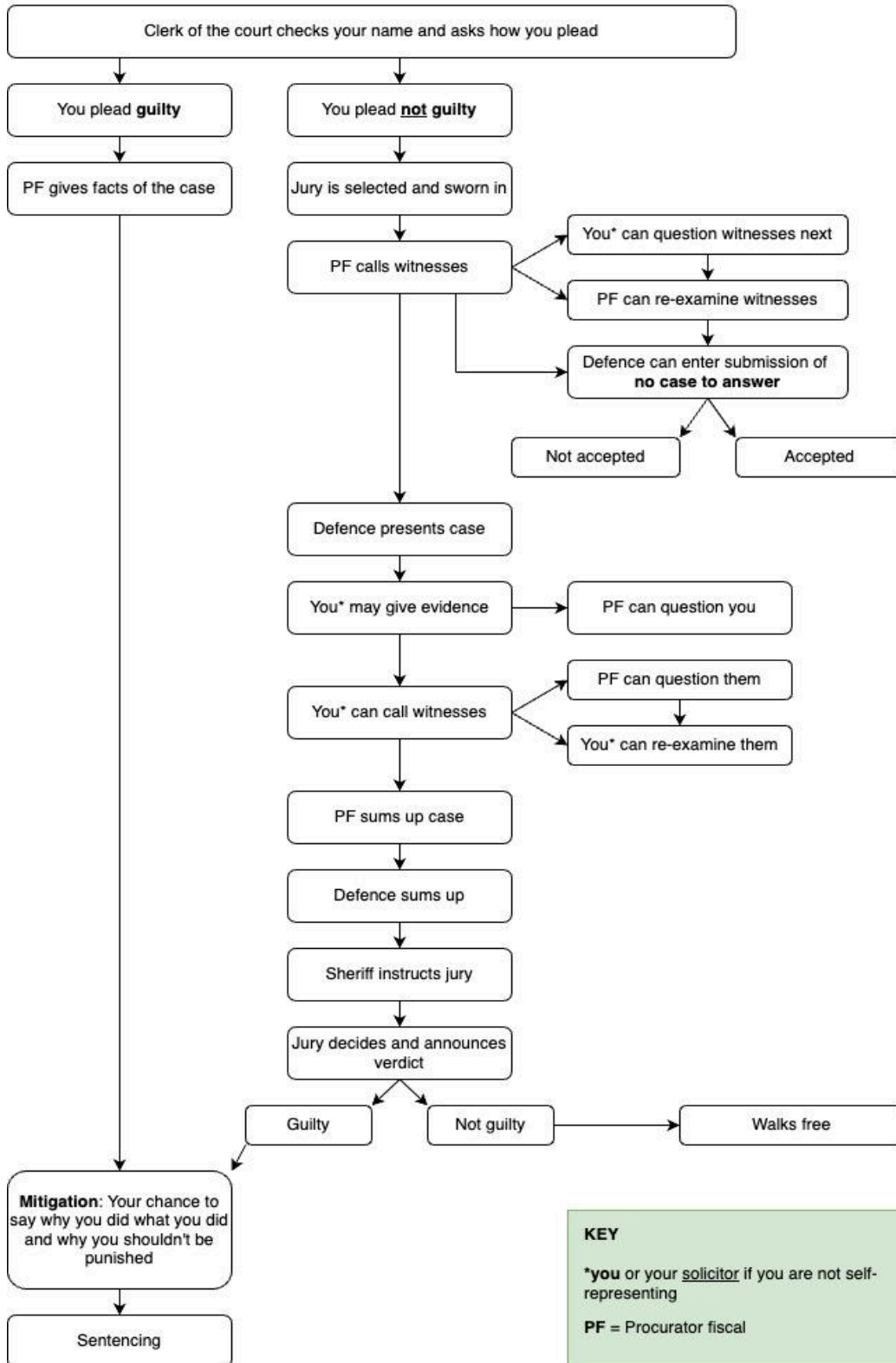


Image 4: Flow diagram of solemn court proceedings

6. Appeals

If you wish to appeal your sentence or your conviction or both, either speak to your solicitor or, if you are self-representing, [see the Scottish Courts website](#). There is a very short time limit for appeals. Appealing is a risk as it can result in an increasingly harsh sentence and set a precedent for future cases, as well as the chance of overturning a verdict against you.

You can't appeal a verdict by a jury.

7. Other resources & further reading

- [SCALP Jargon Buster](#) explanations of legal words
- [SCALP Resources](#) on the law and policing in Scotland
- [The Climate Action Support Pathway \(CASP\)](#) a UK-based, non-partisan entity, supporting those who take non-violent action for the climate.
- [Bang-Up and Smash: Women's Prisons, Bail Hostels and Probation](#) a guide written from experience
- [Help with legal costs - Citizens Advice Scotland](#)
- [Guide to legal advice and legal aid - Scottish Legal Aid Board](#)
- [Rebels in Prison](#) supports activists in prison in the UK.
- [Criminal cases - Legal aid ScotGov](#)
- [Criminal Procedure \(Scotland\) Act 1995](#)

Appendices

Appendix 1: Representing Yourself

If you cannot afford or do not want to be represented by a solicitor, you will need to represent yourself in court. The courts often refer to this as being unrepresented but you will need to do most of the things that a solicitor does and we prefer to call it self-representing or self-repping for short. You can do it in a very minimal way and just be guided by the court as to when you need to speak and keep it simple. However, with some preparation you can put forward a good defence and can get away with saying more than a solicitor who is bound by certain rules about what they are allowed to say. The court system doesn't make it easy and you might need to fight for your right to be treated equally to someone who has a solicitor.

If there is more than one person on trial together it can be a good combination to have some of them with solicitors and some without. If you have co-accused who are represented then make sure you have good lines of communication with them so they can keep you posted about anything they find out from their solicitor. The PF is used to engaging with defence solicitors and much less so with self-reppers.

This appendix gives information about the extra things you need to do as a self-repper but needs to be read in conjunction with the main guide above.

Custody

Even if you intend to self-rep at trial there might be good reasons to ask for a solicitor to be informed that you are in custody. They can push the police to release you. You can usually see them or speak to them on the phone if you have any concerns about your treatment in custody or special conditions the police are attaching to an undertaking. They can also pass messages to your family/supporters/SCALP Back Office. Legal advice from a solicitor is free in custody.

First preparations

- Write your own account of what happened before and during your arrest at the first opportunity while it's fresh in your mind.
- Think about whether there were any witnesses and gather their contact details. You might feel that your arrest was straightforward but when you see the police statements later on if they have been less than truthful about what you did or your behaviour you would need witnesses to back up your version of events.

- You or the organising group you are in might put a callout for photos or video footage of the protest and your arrest.
- If there were any particular things that motivated you to take action such as news items, articles, books, then collect them together in case you want to use them as evidence of your state of mind at the time.

Summary cases - Self-repping

First appearance at court - Plea and Bail Diet

If you are pleading Not Guilty you will need to apply for bail. The Sheriff will ask you about it at the appropriate time. Be ready to say that you will comply with the standard bail conditions which they always insist on. If the PF is opposing bail (wanting you to be remanded to prison) listen carefully and get ready to argue your case for being released. If bail is not opposed but special conditions are being proposed by the PF that you find very restrictive you can put forward reasons that the Sheriff should not impose those on you.

If you are pleading Guilty you need to prepare a [Plea of Mitigation](#). After the PF has given a summary of the police version of what you did including an estimate of the cost of any repairs to damage you can speak about what you did emphasising any positive things such as how peaceful it was and give the reasons you did it. The Sheriff won't let you speak at length but you will be able to give more personal testimony than a solicitor could.

You might also give information about your personal circumstances; employment, income, dependents etc

You will be asked to confirm any previous convictions.

Then you will be sentenced.

Pre-Intermediate Diet Meeting

This seems to be a closed meeting between the PF and defence solicitors. You might find out via your co-accused/their solicitors if there is any kind of plea deal on the table. At this solicitors discuss the evidence they are intending to use and what witnesses they will call.

Viewing Witness Statements

To view the police witness statements, body worn camera footage, CCTV evidence and any other evidence in advance of the trial, if you're self-repping, you need to contact the Crown Office and Procurator Fiscal Service (COPFS) on 0300 020 3000 They will

connect you with the nearest office so that you can view the evidence in person there. You will need to give them your Case Ref number and DoB when you phone.

You can't make copies of the evidence but you can take notes.

Witnesses can still say things in court that weren't in their statements, but the statements can help you work out what questions you could ask them and to find out if there is any evidence that you were not aware of and that you want to challenge. You can also see if there are any inconsistencies, and any evidence given which does not fit with what you know happened.

Deciding on your witnesses

Anyone who was a witness to the action can give evidence in your defence, but may be cross examined by the PF. If you have co-accused, you can also call each other as witnesses in your defence, and they can do the same with you. This will allow all of you to put forward from different angles your reasons for being there. When self representing in Scotland, most courts will allow you to say just before your trial goes ahead that you have one or two defence witnesses. However, extra time needs to be allowed for the questioning of witnesses, so to guarantee that you have given enough notice for you to have defence witnesses, then it is best to let the court know as soon as possible that you wish to call them. Each court is different, but it is usual to give the name and addresses of witnesses and the relationship to you with regards to the action (were they an eye witness or a friend who witnessed the events). Ideally you would let the court know at the Intermediate hearing or before.

The Intermediate Diet

You have to say if you are ready to proceed to trial.

If the PF has not made the **disclosures** available to you then tell the court.

The court needs to know if you intend to call witnesses and if you need the court to provide facilities to show a video.

If you have any cognitive or communication difficulties that need addressing for you not to be disadvantaged in following and/or understanding the trial, then bring these up at your Intermediate or before. This will give the court time to, for instance, allow a small amount of additional time for your trial. Similarly any other access needs, do let the court know as early as possible so that your needs can be addressed

Accused who represent themselves in court can – at the discretion of the Sheriff – have someone with them during proceedings called a **McKenzie Friend**. This is a non-legal

or legal person helping you during the trial (unpaid). They won't be able to speak on your behalf, but may sit beside or behind you in court, provide you with moral support, help you to manage your court documents and other paperwork, take notes for you in court and quietly make suggestions - for example questions to put to witnesses. Usually you would ask for this at the Intermediate diet, but if you've missed this stage, then you can try and ask to have a McKenzie Friend on the day of the trial and see if they allow it. Under the European Convention of Human Rights you are entitled to a fair trial and it is arguable that someone representing themselves should be allowed an assistant.

The Trial

If you are representing yourself, remember that you have all the same rights to speak as a solicitor would, including the right to object to irrelevant, or speculative questions the PF might ask and to hearsay evidence. If you are defending yourself and you have a lot of papers you can ask to sit at the lawyers table. It is up to the Sheriff to decide whether to allow this. You need a pen and paper to take notes.

If you defend yourself the Sheriff usually advises you as you go along as to the procedure. If you are in any doubt about the process, ask them. Remember just stay calm, take your time. Speak up so that everyone can hear you. (Including your supporters who are behind you - literally!!). The procedure is basically the same whether you have a solicitor or not: in the section on [summary trials](#), every step that the solicitor would do or say something, is your opportunity to do it.

During the trial, if you are feeling unwell at any point or need a minute's pause in the proceedings to gather your thoughts, do feel you can ask the Sheriff for this.

Case for the Prosecution

The Procurator Fiscal (PF) makes their case against you by calling police witnesses and other witnesses. They ask the witnesses about what happened, in order to present to the Sheriff the necessary evidence to prove you are guilty of the offence you are charged with.

After the PF has finished with questioning each witness, you can then cross examine each witness if you wish to do this. If you disagreed with anything they gave in evidence to the PF, then you should put your version to them, otherwise the court may assume you agree with what was said. If you want to hand in physical evidence to the court such as photographs or show a video you should consider presenting it now so you can ask the police or other witnesses about it. The PF has a second chance to question each witness after you have finished.

No case to answer

Once the PF has finished making the case against you, if you feel there isn't enough evidence to prove your guilt - for instance, if it does not reach the standards required for the particular offence you're charged with (remember two pieces of evidence are required in Scots law - see [Corroborating](#)), then you can put in a submission at this point that there is "no case to answer". The argument will be that even if you 'take the Crown's case at its highest' (i.e. believe every single word that every Crown witness has said) there is 'insufficient' evidence to convict you of a particular charge (or charges). It is a question of quantity of evidence, as opposed to quality of evidence.

If it's something really obvious like one of the two police witnesses not being able to identify you and there is no other identification evidence the PF should accept your not guilty plea at this stage without you having to say anything.

Corroborating Evidence

Have you been identified as being involved by two independent credible sources of evidence? Have the main facts of the case been supported by two reliable independent sources of corroborating evidence? This may be two eyewitnesses, or one eye witness and a piece of CCTV evidence, or forensic evidence, or injuries that have been verified by a medical professional as evidence of crucial facts of the case or other such reliable evidence. If there are not two sources of evidence identifying you, then the Sheriff should dismiss the case.

It has been known that when someone is representing themselves, and may not be sat in the dock, the police have identified the wrong person in the court! Especially as people can look quite different from when on an action. This can mean there is a lack of evidence to identify you as the accused.

If the Sheriff feels that even if all the evidence presented so far were true, that there is not enough evidence to find you guilty, then they can dismiss the case. Alternatively, they can drop some of the charges or parts of the charges.

Case for the Defence

Now it's your turn to make the case for your defence. Firstly, you can decide beforehand whether or not you want to take the witness box yourself. Taking the witness box allows you to get your testimony across, and for the court to hear about the facts of what you did. In giving your own account, you will also be addressing anything that you did not agree with that the police said or any inaccurate information.

You are asked to raise your right hand and affirm that what you say is the truth. Sometimes a Sheriff may stop you for trying to bring in all your reasons for what compelled you to take action. It is helpful to be prepared in case this happens, and to keep bringing in your legal defence if that's what you intend to do, and also to frame your statement so that it continually relates back to the day in question and how your actions on that particular date came about because of these things. This may help you give your statement without being stopped. If you are still stopped by the Sheriff you may want to explain that you wish to illustrate the context of your actions on that particular day. Or that you wish to show to the court that your actions were proportionate in this context. Or if you are on a Breach of the Peace charge that you wish to show how your actions do not fit with those that are genuinely alarming or disturbing in its context to any reasonable person.

You were there and can describe what happened and why you did what you did. You can bring in a little background about yourself, your family, your working life, your good works if you wish to, but you do not have to do this. It can sometimes help to personalise it though. How long you are given in the witness box is up to the Sheriff.

If there is anything that you wish to have submitted in evidence, such as written reports, then now is the time to give these. With documents or papers that you wish to refer to in your evidence, if they ask to see these, then do always ensure you have a full copy of what you are referring to and that you keep the original and only hand over copies to the Sheriff, the PF and defence solicitors.

Then the PF will be able to cross examine you afterwards, so this is something you may want to think about, in terms of what questions may be put to you, and how to answer these

You can now call your defence witnesses one at a time to take the dock, if you have any. If you have co-accused, you can call them as defence witnesses. This has its advantages in that you can keep questions really open and allow your co-accused to speak of what happened on the day.

After you've questioned each defence witness, the PF can cross examine them. Then you have another opportunity to ask them questions but only about things the PF has raised.

Summaries

Summing up from the PF - they will give the main points of the case as they see it - the basic evidence that proves you are guilty of the offence. They may quote the legislation

you are charged under. They may talk about other similar cases to persuade the Sheriff of your guilt.

Summing up from yourself - summarise here why the PF is wrong about your guilt. You can keep it simple and just refer to your testimony from the witness box. You can't refer to anything which wasn't given in evidence under oath or affirmation by you or your witnesses. You should point out any inconsistencies in the PFs evidence and the things that any witnesses said that back up your defence, e.g. that your behaviour was not threatening or alarming.

You can look at the legislation and find reasons why your action does not make you guilty of that. You can try to pick apart the wording of the charge. You can quote from other cases but you should have a copy of them with you to show to the court.

The Sheriff might adjourn for a while to consider the evidence and possibly read anything you have submitted.

Verdict

The Sheriff will announce the verdict. If you are found guilty and a community based sentence or a custodial sentence is being considered then your case may be adjourned for a [Criminal Justice Social Work Report](#) to be prepared and a sentencing diet set.

Sentencing

You will be asked by the Clerk of the court to check and admit to a list of previous convictions. Do not admit to any that are not yours! - and equally you do not need to admit to any that are missing! The list is then passed to the Sheriff.

Plea of Mitigation

This is your opportunity to explain your personal circumstances, such as in terms of if you have a low income or are on benefits etc. It may be difficult to say these things in court, but now is the time to explain (if relevant) the detrimental impact that a heavy fine or custodial sentence (if applicable) would have upon you and your family if you have any dependents. Fines are usually paid by instalments, but the court wants to be able to set the instalments at a level that you can pay. You can also use the opportunity in mitigation to very briefly summarise again the reasons why you felt compelled to take the action you did. Some people have included presenting character references at this point (usually only applies if no previous offences).

The Sheriff will then announce the [sentence](#) and give reasons for it.

Solemn cases - Self-repping

The extra things to be prepared for if you are self-repping at a trial at Solemn level are much the same as for Summary.

However there is a jury and remember they are the ones who decide if you are guilty or not. You need to try and keep them on your side. When you are talking to a Sheriff you don't need to explain the law - just why you haven't broken it - but for a jury it's worth saying what the legislation says about the elements necessary to find you guilty.

During both the Crown and the Defence evidence there may be times when the jury is sent out while arguments are made about what evidence can be put forward. You need to be prepared to speak up and make your case for the jury hearing what you have to say.

When you sum up you can tell the jury that they can make their own minds up whatever the Sheriff tells them and there have been plenty of examples when juries have gone against the judge's instructions. Appeal to their consciences.

In solemn procedure the Sheriff will explain to the jury about the law that applies and what verdicts the jury needs to consider. The jury will be asked to choose someone to act as spokesperson. After this, the jury will leave the courtroom and go to the jury room to decide on a verdict. When they return to the courtroom the Clerk of the court will ask them the verdict for each defendant and for each individual charge and whether this decision was unanimous or by majority. The jury can decide whether a person is guilty, not guilty or if the case is not proven. There are 15 jurors in criminal cases and 8 are required for a guilty verdict. Below 8, and the person is acquitted. Allowing that some jurors may have serious personal reasons why they may be unable to attend, there must be a minimum of 12 jurors

Appendix 2: Charges, Their Consequences and Potential Lines of Defence

[See this table](#) from the CASP Support Pathway for Scottish Law.

Appendix 3: Negotiated Pleas (or Plea Deals)

Sometimes the PF approaches your solicitor to offer a deal that if you plead 'guilty' to one (or more) charges then they will accept a 'not guilty' plea for other charges. Your solicitor could also suggest a deal to the PF.

With the pressure on the courts to reduce the backlog of cases there is now an expectation that solicitors from both sides will try to avoid the time and resources needed for a full trial, especially with a jury. The low legal aid fees can also make avoiding a trial attractive to defence solicitors.

However, this negotiation takes place without you present and has no transparency or accountability although it is worthless unless you accept it. If you are self-repping then you can't even engage with it at all although the offer may be communicated to you through your co-accused's solicitor.

While there may be an advantage in accepting a deal, don't be too quick to respond. This is often a difficult decision to make and it's important that you discuss this with your co-accused although you don't all have to decide the same thing.

Some things to consider are:

- What are the maximum and likely sentences for each charge?
- Will pleading 'guilty' reduce this and possibly reduce the chance of a custodial sentence?
- Could you be found 'not guilty' on some or all of the charges anyway?
- If you are charged with property damage how much are they saying it cost?
- By not having a trial are you losing an opportunity to speak your truth or to get more publicity for the action/issue?

There have been instances of the PF offering to accept a 'not guilty' plea from certain accused if other accused plead guilty. Again, this needs careful consideration and discussion to avoid it causing division within the group.

Pleading 'guilty' should result in a reduced sentence. Here's a rough breakdown according to the [sentencing council's guidelines](#):

- Early Plea (e.g. at the first opportunity): up to one-third reduction.
- Midway Through Proceedings: around 25% reduction.
- Late Plea (e.g. just before trial): possibly 10% reduction.

Appendix 4: Sentencing

If you plead 'guilty' or are found guilty the sheriff will decide on your sentence.

Possible sentences:

- **Admonishment**, which means that you get a conviction on your record but no penalty, although you can still be given a Compensation Order (see below).
- **Absolute discharge**, in which no punishment is given. In solemn proceedings, a conviction is still recorded, while in summary proceedings, it may not be considered as a conviction. This is quite rare.
- **Deferred sentence**, where the decision about your sentence is postponed to a later date to see if you can stay out of further 'trouble', usually 3-12 months. If you 'are of good behaviour' during this time, your sentence should be less.
- [Fine or Compensation order](#)
- [Community Payback Order](#) – e.g. unpaid work.
- [Restriction of Liberty Order](#)
- [Custodial \(prison\)](#)

If the sheriff is giving you any of the first 3 sentences, then this is likely to happen at the end of the trial.

A fine or Compensation order, Community Payback Order, Restriction of Liberty Order or Custodial sentence is likely to happen at a later court date and the sheriff could request a Criminal Justice Social Work Report. Your bail should be continued.

A [Criminal Justice Social Work Report](#) (CJSWR) is prepared by Social Workers and assists the court in determining what they decide to be the most appropriate sentencing for an individual. The report covers the following areas:

- Personal background and circumstances of the offender.
- Physical and mental health.
- Alcohol or drug use.
- History of offending and response to any previous sentencing.
- Attitude to current offence.
- Assessment of risk of re-offending.
- Whether to offer a preferred option such as a monetary fine, probation etc.

It is required before:

- A Community Payback Order can be imposed.

- A custodial sentence can be imposed on a person under 21 years of age.
- An individual can be sentenced to custody for the first time.
- An individual under current social work supervision can be sentenced for a further offence.

Although the Social Worker can be sympathetic to your activism and recommend lighter sentencing and the sheriff is supposed to follow the recommendations, they can and do ignore it.

The sheriff is also supposed to follow the [Scottish Sentencing Council Guidelines](#) to ensure that the sentence to be imposed is 'fair and proportionate', however they take very little notice of the reasons that political protesters take action.

The sheriff will determine the 'headline sentence' by assessing the seriousness of the offence(s), the range of sentences for that offence ([see here](#)) and any aggravating and mitigating factors. Then they take into account whether you are due any discount for pleading 'guilty' and if considering a custodial sentence whether you have already spent time in custody before announcing your sentence.

There is a lot more detail in the [Scottish Sentencing Council Guidelines](#). Look at Annex C Mitigating Factors before you see a Criminal Justice Social Worker and decide whether you want to mention any of these to potentially reduce your sentence. You can also tell your solicitor about these factors so they can be raised in a plea of mitigation.

When there is more than one offence on the same complaint or indictment, the court can give separate sentences for each offence, or it can impose what is known as a *cumulo* sentence, which is when the court imposes one sentence for all of the offences.

If you have no past convictions or arrests, you may argue that you are "a law abiding citizen". Previous convictions especially if they are recent and for the same offence will likely increase your sentence.

Pleading 'guilty' will result in a reduced sentence as it avoids going through a trial. Here's a rough breakdown according to the [sentencing council's guidelines](#):

- Early Plea (e.g. at the first opportunity): up to one third reduction.
- Midway Through Proceedings: around 25% reduction.
- Late Plea (e.g. just before trial): possibly 10% reduction.

Fines

A common sentence for less serious offences is a fine. It will depend on the offences you are convicted of and your personal and financial circumstances. Each offence under statutory law has a maximum fine which is generally reserved for the most serious cases and for repeat offenders.

You can pay in weekly instalments or be given a period of time to pay. There are a range of ways to [make the payment](#). You can ask for it to be transferred to your local court which means they are then responsible for collecting the fine and dealing with any failure to pay it.

The [victim surcharge](#) adds an additional fee to any fine you have to pay under a criminal conviction.

Note: in Scotland you don't have to pay court costs.

Compensation Orders

These are to pay compensation for an injury or distress or for damage you have caused to property. The sheriff sets the amount to be paid, which takes account of the crime and the offenders' ability to pay. For summary cases a compensation order cannot exceed the maximum fine for the offences. At solemn level there is no limit.

You pay the money to the court which then gives it to the 'victim' and any money you pay goes to this before a fine.

If you don't keep up with payments of fines or compensation orders an Enforcement Order can be made or you can be taken back to court and could be sent to prison.

Community Payback Order

You can be given a Community Payback Order (CPO) to run alongside another sentence such as a fine.

You need to consent to it and a pre-sentence assessment about your ability and willingness to successfully complete it would be made through a Criminal Justice Social Work Report.

A CPO must be for at least 6 months, but less than 3 years. You will be assigned a Criminal Justice Social Worker who you will have to attend appointments with.

You may be given a personal placement to do unpaid work, such as in a charity shop, working with a charity, or undertaking work such as litter picking, sanding benches, taking apart bikes to recycle etc. The number of hours that may be specified must be in

total at least 20 hours, and not more than 300 hours and it should be completed within 6 months. A personal placement has the benefit of normally getting more freedom when you do your hours although you won't be allowed to do it all in one block but spread across a number of weeks or months. You might also be able to do some of your hours in therapeutic, group work or vocational learning.

CPO's can involve one or more of the following requirements: an Offender Supervision Requirement, a Compensation requirement, an unpaid work or activity requirement (as described above) a programme requirement for addressing offending behaviour, a residence requirement (that you stay at an address that has been given the ok by social work), conduct requirement (addressing offending behaviour, so to refrain from doing specific things relating to offending behaviour) and where someone has mental health issues, drug or alcohol issues there can be requirements relating to these, and a restricted movement requirement

The court must not impose the order unless the offender has understood the requirements of the Order and is willing to comply with those requirements, after having had the requirements thoroughly explained to them

Although not a statutory requirement, if you have caring responsibilities every attempt should be made to accommodate such responsibilities in the case management plan so that they do not impede and are not impeded by your ability to comply with the CPO.

If you are found to [breach the CPO](#) then the court can then either issue a warrant for your arrest, or send you a citation through the post, ordering you to attend court to answer the allegation.

Restriction of Liberty Order (ROLO)

A ROLO is available to the court where a person is convicted of an offence punishable by imprisonment and requires an offender to be:

- Restricted to a specific place for a maximum period of 12 hours per day for up to a maximum of 12 months; and/or
- Restricted from a specified place or places for 24 hours a day for up to 12 months.

In other words, this is a curfew as a form of punishment. We are yet to see this being used for protest cases in Scotland. For more information see [CASP's guide to ROLOs](#).

Antisocial Behaviour Order (ASBO)

Instead of or in addition to imposing any sentence a court can make an antisocial behaviour order in respect of a person. This applies where a person has been convicted of an offence, where they engaged in what the court considers to be antisocial behaviour. For more information, see [CASP's Guide to ASBOs](#).

An ASBO is a civil court order. This means that it is not a criminal conviction and therefore does not give a person a criminal record. However, it is a crime to break the terms of an ASBO. Protesters have occasionally been given an ASBO.

Curfews and Electronic Tags

Although tags are used in England and Wales to monitor curfews and conditions of court bail, in Scotland we haven't seen the same use of tags for protest cases, except more recently for people on an early release from a custodial sentence. Instead, the curfew is handled by the police simply turning up whenever/wherever you should be and checking you are there. Many people never get a visit, but others get many (especially just after the curfew has been imposed and/or in the run up to, or during, known protests).

Those who have had a curfew in Scotland have experienced police turning up at all hours of the night – and even arresting one person for breaking bail as they slept through the doorbell going off. If it turns into police harassment we would advise at this point you seek legal help from a law firm. You may need to provide ID when the police show up at your door.

You can normally arrange a new court hearing after several weeks to negotiate different hours and/or a second (or occasionally even a third) bail address, which you would need to justify to the court. You might, for example, need to sleep at another address for the purposes of work or spending time with family. Also, you can get a late night job (even if just for a week) and use documented evidence of this to get your hours changed or lifted. You need to prove a change in circumstances to change your curfew hours – this could be declining mental or physical health if certified by a doctor, getting a job, starting a form of education, or moving house.

See above for information and documents on Restriction of Liberty Orders and ASBO's which can both involve electronic tagging.

Custodial (prison) sentences

If a custodial sentence is being considered, especially if you have not been to prison before, then a Community Justice Social Work Report should be requested, although for very serious charges or repeat offences they can send you straight to prison.

If a person is convicted of more than one charge, a Sheriff can give prison sentences on each charge separately. The sheriff can give sentences for each charge to run concurrently (at the same time) or consecutively (one after the other) or the sheriff can set a single sentence for all the charges taken together.

There is a lot more to consider in preparation for a prison sentence and it is important to get support from the group whose name you took action under as well as family and friends.

Rebels In Prison Support (RIPS) exists to support any nonviolent campaigners who find themselves in prison whilst fighting for a better world. Read about RIPS and more about Scottish prisons in [this briefing from CASP](#).

Appendix 5: Non-compliance

Breaking bail conditions

Breaching bail conditions is an offence: if you do break the conditions, you can be arrested and held for court on the next working day. If you break conditions relating to an imprisonable offence, you could be held in custody until your next court date to prevent you committing further offences. Sheriffs take failure to comply with conditions imposed by them – rather than the police – much more seriously and it is ultimately they who decide whether or not to remand you to prison.

Non-payment of fines

If you don't pay your fine the court can issue an Enforcement Order which gives a Fine Enforcement Officer power to:

- **Arrest your earnings**
<https://www.scotcourts.gov.uk/taking-action/pay-a-fine/earnings-arrestment-order>
- **Arrest your bank account** or building society account (including joint accounts) which may result in the funds held in your account being frozen. When this happens, you can sign a voluntary Mandate (Instruction) allowing your bank to release money to the court. The court then pays the money towards your fine. If

you do not sign a mandate the funds which have been frozen will automatically be released to the court by your bank after a period of 14 weeks has expired. The court will then pay this money towards your fine. There is no direct appeal to an Arrestment of Funds Order.

If you Breach Your Community Payback Order

If you commit another offence during a CPO, this is not a direct breach of the order in itself. However, if an offence is committed which results in a failure to comply with a requirement of the order, and evidence is provided to prove guilt, then this may result in the CPO being breached.

If you are found to breach the CPO then the court can then either issue a warrant for your arrest, or send you a citation through the post, ordering you to attend court to answer the allegation.

If breach is denied, evidence is put to the court. A single witness to give evidence that the CPO was breached is enough.

If breach is proved the requirements of the CPO can be varied, or the CPO revoked or discharged. If breached but not revoked the court has the power to fine you for the breach. The court can also impose a restricted movement requirement (like a ROLO, see below). The court cannot impose a restricted movement requirement when originally imposing the CPO.

If the CPO is revoked, the court can re-sentence you for the original offence. If the CPO was imposed as an alternative to imprisonment, then if the CPO is revoked, this will usually result in a prison sentence.

A restricted movement requirement can only be imposed when the court is considering the appropriate sanction to be applied in dealing with a proven breach of a CPO. However, there is provision to impose a concurrent restriction of liberty order along with a CPO at first instance if the court wishes to impose electronic monitoring.

Appendix 6: Criminal Justice Social Work Report

(Formerly known as Social Enquiry Reports)

If the court requests a Criminal Justice Social Work Report (CJSWR) you will be contacted with a date for an in person interview with a Social Worker. It will likely be a condition of your bail that you cooperate with this.

The report is to assist courts in determining what they decide to be the most appropriate sentencing for an individual. The report covers the following areas:

- personal background and circumstances of the offender;
- physical and mental health;
- alcohol or drug use;
- history of offending and response to any previous sentencing
- attitude to current offence;
- assessment of risk of re-offending; and
- Whether to offer a preferred option such as a monetary fine, probation etc,

A CJSWR is required before:

- a Community Payback Order can be imposed;
- a custodial sentence can be imposed on a person under 21 years of age;
- an individual can be sentenced to custody for the first time; and
- an individual under current social work supervision can be sentenced for a further offence.

As well as information to cover the topics above they will want to know if you have any regrets about the action you took and if you are likely to do it again. It's worth thinking about how you will answer these questions in advance. It could be helpful to look at the [template](#) that is used in writing the report although some parts may not apply to you.

You should be given an option to see the report before you go back to court for sentencing.

Appendix 7: Defence Statement

This must be lodged with the court 14 days before the First Diet in Solemn Proceedings

Section 9 of the [Criminal Procedure \(Scotland\) Act 1995](#) outlines what can be in a defence statement as follows:.

- (a) the nature of the accused's defence, including any particular defences on which the accused intends to rely,
- (b) any matters of fact on which the accused takes issue with the prosecution and the reason for doing so,
- (c) particulars of the matters of fact on which the accused intends to rely for the purposes of the accused's defence,
- (d) any point of law which the accused wishes to take and any authority on which the accused intends to rely for that purpose,
- (e) by reference to the accused's defence, the nature of any information that the accused requires the prosecutor to disclose, and
- (f) the reasons why the accused considers that disclosure by the prosecutor of any such information is necessary.]

However, a High Court Appeal found that 'while section 70A obliges an accused to lodge a defence statement, that statement need not advance a positive defence; the accused's position in his statement may simply be to deny the charge or charges and to put the Crown to its proof'.

Consequently, a defence statement may simply state that the accused is not guilty of the charge and there may be little more than that in the defence statement.

Your solicitor must let the Crown prosecution know in writing that they will be representing you. If you change solicitors they need to notify the Crown Office and Procurator Fiscal Service (COPFS) of these changes. This is so that any documents, such as disclosures of evidence, are sent to the correct people.