

## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

### **THE ACT**

3. An intermediate diet is a hearing set by a court, in summary criminal proceedings, for the purpose of ascertaining, so far as is reasonably practicable, whether the case is likely to proceed to trial on the date assigned as a trial diet. If an accused does not appear as required for an intermediate diet, the court may grant a warrant for his or her arrest. In the case of *Reynolds v Procurator Fiscal Linlithgow*, the Appeal Court held that where such a warrant was issued, it did not, by implication, discharge the trial diet. If this was not done explicitly and the case was not called on the day for the trial diet, the instance would fall. It would not then be competent for the court to hear further proceedings in relation to the complaint in question.
4. The Act provides that the issue of a warrant following the failure of an accused to appear at an intermediate diet will automatically discharge the trial diet, unless otherwise ordered by the court. The Act is retrospective in effect.

### **COMMENTARY ON SECTIONS**

#### **Section 1 Effect of grant of arrest warrant at an intermediate diet**

5. Section 1(1) of the Act amends section 150 of the Criminal Procedure (Scotland) Act 1995 (c.46) so as to provide that where an accused fails to appear at an intermediate diet fixed under section 148 of that Act and the court grants a warrant under section 150(3) of that Act then, in the absence of any other order of the court in relation to the trial diet, the grant of such warrant has the effect of discharging that diet.
6. Section 1(2) makes the amendment of section 150 of the 1995 Act retrospective by providing that section 150 is to be regarded as always having had effect as amended by section 1(1) of the Act. Therefore, all warrants granted under section 150(3) of the 1995 Act before the date on which section 1 comes into force will, on and after that date, be treated as having the effect of discharging the trial diet unless the court provides to the contrary.
7. Intermediate diets were introduced in 1981 following amendment made to the Criminal Procedure (Scotland) Act 1975 (c.21) by section 15 of the Criminal Justice (Scotland) Act 1980

*These notes refer to the Criminal Procedure (Amendment) (Scotland) Act 2002 (asp 4) which received Royal Assent on 8th March 2002*

(c.62). Section 1(3) of the Act therefore provides that section 338(1) of the 1975 Act (which was re-enacted by section 150 of the 1995 Act) is to be regarded as having provided that any warrants granted under section 338(1)(c) have the effect of discharging the trial diet. The provision is to be regarded as having had that effect since the coming into force of section 15 of the 1980 Act (on 1 February 1981).

8. Section 1(4) provides that the Act will not render incompetent any proceedings in cases that have been called or completed.

## **Section 2 Short title and commencement**

9. This section sets out the title by which the Act may be cited once it has been enacted. Section 1 of the Act will come into force on the day after Royal Assent.

## ***Parliamentary History***

10. The Bill for the Act was introduced in the Scottish Parliament on 25 February 2002. On 27 February 2002 the Parliament agreed that the Bill be treated as an Emergency Bill. Stages 1, 2 and 3 were completed on that day (Official Report: cols 9701-9717 and 9733-9741).

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