

CRIMINAL PROCEDURE (AMENDMENT) (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 - Solemn Proceedings Generally

Section 6 - Time limits

49. **Section 6** amends section 65 of the 1995 Act, which contains the time limits for proceedings on indictment in the High Court and the sheriff court.
50. Subsection (1) of section 65 currently provides that where any trial on indictment is not commenced within 12 months of the first appearance of the accused on petition the current proceedings fall and no further indictment on those charges can be issued. Subsection (2) of section 6 amends section 65(1) so as to require that, in High Court cases, a preliminary hearing must commence within 11 months of the first appearance of the accused on petition. The same consequences apply if the new 11 month time limit is not met i.e. the accused cannot be tried again on these charges.
51. **Section 65(2)** currently provides that the 12 month period does not operate so as to prevent trial in the case of an accused for whom a warrant has issued for failure to appear at a diet in the case. Subsection (3) amends section 65(2) so as to provide that in those circumstances the 11 month time limit for the preliminary hearing also does not operate to prevent trial of the accused.
52. Subsection (4) amends section 65(3) so as to provide that a single judge of the High Court may on cause shown extend the periods of 11 and 12 months in High Court cases and that the sheriff on cause shown may extend 12 month period in any other case (ie cases indicted in the sheriff court and those cases where an indictment has not been served).
53. Subsection (5) amends section 65(4) (“custody time limits”) so as to-
 - provide that an accused may not be detained by virtue of the warrant committing him or her for trial for a period of more than 80 days without an indictment having been served and that where it is not served he or she shall be entitled to be admitted to bail. At present if the indictment is not served within that period the accused is simply liberated; and
 - provide that an accused indicted to the High Court may not be detained by virtue of the warrant committing him or her for trial for a period of more than 110 days without a preliminary hearing having commenced and that his or her trial must commence within a period of 140 days. The present time limit is that a trial must commence within the 110 day period. In addition, the subsection amends the present provision by giving the accused an entitlement to bail if these time limits are not complied with. At present if the 110 day period is not met the accused is liberated

*These notes relate to the Criminal Procedure (Amendment) (Scotland)
Act 2004 (asp 5) which received Royal Assent on 4th June 2004*

forthwith and is free from any further prosecution on the charges on the indictment;
and

- retain the 110 day period for cases in the sheriff court but provide that where that time limit cannot be met the accused shall be entitled to bail rather than (as at present) being liberated forthwith and free from any further prosecution on the charges on the indictment.
54. Subsection (6) inserts new provision that where a preliminary hearing is dispensed with under the provisions of new section 72B(8) the requirements to commence the hearing within the 11 month period (provided by the amendments made to section 65(1) by subsection (2)) and the 110 day period (provided by the amendment made to section 65(4) by subsection (5)(b)) do not apply.
 55. Subsection (7) substitutes for the present subsection (5) of section 65 new subsections (5) to (5B) modifying the powers of the courts to grant extensions to the custody time limits. At present all applications for extension of the custody time limits are heard by a judge of the High Court. Where a time limit is not met the accused is liberated. Under the revised provisions applications for extensions will be dealt with by the court to which the case has been indicted, although applications for extension of the 80 day time limit (when the indictment has not yet been served) will still be heard by a judge of the High Court. Parties have a right to be heard, although it will be possible for the judge to determine the application without a hearing where defence and prosecution make a joint application for an extension. The present provision excluding an extension of the 80 day period where but for some fault on the part of the prosecutor the indictment could have been served is repealed. So also are the specific grounds applicable to the present 110 day period namely, illness of the accused, absence or illness of any necessary witness or any other sufficient cause not attributable to fault on the part of the prosecutor. The sole ground for extension of the custody time limits is cause shown.
 56. Subsection (8) repeals section 65(6) and (7) which contain provision as to the grounds on which applications for extensions may be granted.
 57. Subsection (9) introduces new subsections (8A) to (8D) into section 65. Subsection (8A) provides that where an accused is entitled to be admitted to bail as a result of the custody time limits not being complied with he shall, where the indictment has not been served, be brought forthwith before a judge of the High Court or, where the indictment has been served, a judge of the court to which the case has been indicted.
 58. Subsection (8B) provides that where an accused has been brought before a judge under subsection (8A) the prosecutor shall be given an opportunity to make an application for extension of the time limit.
 59. Subsection (8C) provides that if no application is made by the prosecutor or if the application is refused the court, before admitting the accused to bail, shall give the prosecutor an opportunity to be heard. In effect, the prosecutor will have the opportunity to comment on bail conditions before they are set.
 60. Subsection (8D) provides that where an application to extend the time limit is refused and the prosecutor appeals against that refusal the accused may continue to be detained for a period of up to 72 hours from the granting of the bail, or for such longer period as the High Court may allow; and at the end of that period the accused must be released on bail whether the appeal has been disposed of or not.
 61. Subsection (10) provides that where an accused is cited by the affixing of a notice in the prescribed form to the door of the accused's dwelling-house or place of business the indictment shall be deemed to have been served on the accused. This takes account of the change to available methods of citation which was made by section 61 of the Criminal Justice (Scotland) Act 2003, which amended section 66 of the 1995 Act.