

CRIMINAL PROCEDURE (AMENDMENT) (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 - Solemn Proceedings Generally

Section 10 - Trial in absence of accused

83. **Section 10** of the Act amends section 92 of the 1995 Act to give the court power to proceed with a solemn trial in the absence of the accused in certain cases. At present, section 92 provides that a trial cannot take place in the absence of the accused. This is subject to the exception in section 54 of the 1995 Act that applies where the accused is insane and there is an examination of facts or the exception in section 92(2) where the accused requires to be removed from court because of disruptive behaviour.
84. Subsection (1) amends section 92(1) to make it clear that the requirement for the trial to take place in the presence of the accused is subject to the further exception provided for in new subsection (2A) of section 92 inserted by section 10(3).
85. Subsection (2) amends the existing provision in section 92(2) which allows the court to proceed with a trial in absence because of disruptive behaviour by the accused and appoint a counsel or a solicitor to represent his interests. The amendment removes the reference to the court appointing counsel. This is to ensure consistency with the amendments that are being made in the remainder of section 11 in relation to legal representation of the accused where there is a trial in absence under the further exception that is provided for in new section 92(2A) (see below).
86. Subsection (3) creates a further exception to the requirement that the trial take place in the presence of the accused by inserting new subsections (2A) to (2F) into section 92. New subsection (2A) gives the court discretion to proceed with a trial in the absence of the accused on the motion of the prosecutor once evidence has been led, provided that evidence substantially implicates the accused and, taking into account the point in the proceedings where the failure to appear occurred, the court is satisfied that it is in the interests of justice to do so. Subsection (2B) makes provision for the court, where the prosecutor makes a motion under subsection (2A), if satisfied that there is a solicitor with authority to act for the purposes of representing the accused's interests at the hearing of the motion and for the purposes of the accused's defence at the trial, to allow that solicitor to act or if there is no such solicitor to appoint a solicitor to act for those purposes.
87. New subsections (2C) and (2D) relate to the duties of the solicitor appointed by the court and the engagement of Counsel. Subsection (2E) provides for the appointment of further solicitors by the court where the court is satisfied that a solicitor allowed to act under subsection (2B) no longer has authority to act or a solicitor appointed by the court under that subsection is no longer able to act in the best interests of the accused.

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

88. Subsection (2F) provides that the provisions in relation to legal representation for the accused when there is a trial in absence do not apply if the trial relates to a sexual offence or an offence in respect of which the court has made an order that there are vulnerable witnesses. This is because section 288D of the 1995 Act makes separate provision for the appointment of legal representation in those cases.
89. Subsection (5) amends section 66 of the 1995 Act to make provision to ensure that the accused if it is a body corporate is advised about the consequences of non-appearance when it is cited. The amendments provide that in a High Court case the notice must advise the body corporate that if it fails to appear as mentioned in section 70(4) of the 1995 at the preliminary hearing the hearing may proceed and a trial may be appointed in its absence and, in the case of the High Court or the sheriff court, if the body corporate fails to appear at the trial diet, that the trial may proceed in its absence. Subsection (6) amends section 70 of the 1995 Act by providing that the court requires to be satisfied that the body corporate was cited in accordance with section 66 of the Act and that it is in the interests of justice to do so before proceeding with the trial in the absence of the accused.
90. Subsections (7) and (8) amend the [Legal Aid \(Scotland\) Act 1986 \(c.47\)](#) to provide that accused persons are automatically entitled to legal aid for trials in absence and that the exception to the provision that an accused is entitled to choose a solicitor extends to these cases.