

# **CRIMINAL PROCEDURE (AMENDMENT) (SCOTLAND) ACT 2004**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 2 - Solemn Proceedings Generally**

##### ***Section 11 - Obstructive witnesses***

#### **New section 90A: apprehension of witnesses in proceedings on indictment**

92. Section 90A deals with the apprehension of witnesses in proceedings on indictment, and replaces existing law on the matter (subsection (8)). Subsections (2) and (3) set out the circumstances in which a warrant may be issued for the apprehension of a witness. These are:
- where the witness has been duly cited and has deliberately and obstructively failed to appear, and
  - where the court is satisfied by evidence on oath that the witness is being deliberately obstructive and is not likely to attend without compulsion.
93. Subsection (4) creates a presumption, in the absence of evidence to the contrary, that a witness who, having been duly cited, fails to appear has done so deliberately and obstructively.
94. Subsection (5) provides that an application for a warrant under subsection (1) may be made either orally or in writing and may be dealt with in chambers or in court with or without a hearing. Provision for the application to be made in writing means that it can be supported by a sworn affidavit by an officer of law attesting to the fact of citation without requiring that officer to attend the court. Under subsection (6) the warrant shall be as prescribed in an Act of Adjournal
95. Subsection (7) authorises officers of law in possession of the warrant to search for and apprehend the witness and take him to the appropriate court and grants authority to detain him meantime in a police cell or station or other convenient place. The warrant authorises the breaking open of shut and lockfast places for the purposes of executing the warrant.
96. Subsections (9) and (10) provide that a witness apprehended under a warrant should be brought before either a single judge of the High Court or the sheriff court no later than the first sitting day after he is apprehended.