

CRIMINAL PROCEDURE (AMENDMENT) (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 - Solemn Proceedings Generally

Section 11 - Obstructive witnesses

New section 90C – breach of bail under section 90B(1)(b)

104. Section 90C introduces sanctions for those witnesses who, having been granted bail, fail to comply with any of the conditions attached to the order granting bail.
105. Subsections (1) and (2) make provision analogous to that provided in section 27 of the 1995 Act in relation to accused in solemn cases who breach bail. Subsection (1) provides that any witness on bail who fails to appear at any diet to which he has been cited or who fails to comply with any condition imposed in the order shall be guilty of an offence and subsection (2) sets out the penalties which may be imposed in the event of a conviction under the preceding section. These penalties - a fine and imprisonment not exceeding two years - are the same as those which apply under section 27(7) of the 1995 Act where an accused in a solemn case fails to appear at a diet to which he has been cited.
106. Subsections (3) to (6) provide that evidence of an offence under subsection (1)(b) where the condition breached is a movement restriction condition or a requirement not to tamper with or intentionally damage the device may be given by production of documents automatically produced by a device specified in regulations made under section 24D(4) of the 1995 Act and a certificate signed by a person nominated by the Scottish Ministers that the statement relates to either the whereabouts of the witness or any tampering with or damage to the device. Subsection (7) provides for service of statement and certificate on the witness and subsection (8) allows the court to adjourn the trial if it considers that the witness has had insufficient notice of the statement or certificate.
107. Subsection (10) applies section 28 of the 1995 Act (which provides for the arrest and court appearance of an accused who has breached bail) to witnesses who have been granted bail. It allows a constable to arrest without warrant a witness who he has reasonable grounds for suspecting has broken or is likely to break the conditions imposed and to bring him to court. Once before the court, the court may recall or vary the bail order made or release the witness on the original order.