

CRIMINAL PROCEEDINGS ETC. (REFORM) (SCOTLAND) ACT 2007

EXPLANATORY NOTES

INTRODUCTION

Part 2 - Proceedings

Police functions

Section 7: Liberation on undertaking

53. Section 22 of the 1995 Act makes provision for suspected offenders to be released from custody on the undertaking that they will appear in court on a specified day. The use of undertakings is currently limited to cases in which the suspected offender has been arrested and is consequently held at a police station. It is only open to an officer in charge of the police station to liberate the arrested person on such an undertaking. Section 22 only applies to offences which can be tried summarily.
54. **Section 7(2)(a)** removes the need for a suspected offender to be arrested before being released on an undertaking. Provision is now made to allow the officer who charged the person to release that person on undertaking; the need for this to be done by an officer in charge of a police station is removed. Similar provisions is made for persons who have been arrested under section 21 (Schedule 1 offences: power of constable to take offender into custody) and section 135 (Warrants of apprehension and search) of the 1995 Act.
55. **Section 7(2)(b)** inserts a number of provisions into section 22 of the 1995 Act. Section 22(1A) will now allow for the arresting officer to liberate a person on an undertaking. The officer in charge of the police station retains the power to liberate a person on undertaking. Section 22(1B) permits liberation on undertaking of an accused who has been apprehended under a summary warrant. This can be done by the apprehending officer, or the officer in charge of a police station. The section provides that the person undertakes to appear at a specified court on a specified date and time and under specified conditions.
56. Section 22(1D) allows additional conditions to be imposed upon the person who signs the undertaking. These are both conditions in similar terms as a standard bail order, and further conditions considered to be necessary to secure compliance with those conditions. The latter, however, must be authorised by a police officer of the rank of inspector or above, in terms of new section 22(1E).
57. Section 22(1F) of the 1995 Act provides that the procurator fiscal is not bound by the terms of the undertaking and may rescind the undertaking, or vary the date, time and court to which the person is to attend. The procurator fiscal may also revoke or relax any of the conditions which have been imposed in relation to the undertaking.
58. Section 22(1G) of the 1995 Act sets out the lifespan of conditions attached to an undertaking. If not rescinded, they expire at the end of the day on which the accused's

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Act 2007 (asp 6) which received Royal Assent on 22 February 2007*

case is due to call in court; alternatively, if a warrant is granted, they expire at the end of the day on which the accused appears in court in answer to the warrant. It follows that in every circumstance other than where a warrant is granted the conditions fall at the end of the day on which the undertaking is due to call. The court can, of course, consider anew the imposition of bail conditions if the accused appears in answer to an undertaking.

59. The maximum penalty for a breach of the undertaking when prosecuted in the sheriff court is increased from 3 months imprisonment to 12 months imprisonment by amending section 22(2)(b)(ii) of the 1995 Act. New subsection (4A), as inserted, provides that, unless challenged by a preliminary objection, an accused who breaches an undertaking by failing to appear or by contravening a particular condition will be held to have admitted the failure to appear or breach of condition
60. [Section 7\(3\)](#) makes a minor amendment to section 135 of the 1995 Act. This amendment makes it clear that the accused who is apprehended on a warrant, and released on undertaking, does not require to be brought before a court in the course of the first day after apprehension.