

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

EXPLANATORY NOTES

INTRODUCTION

Part 2 - Proceedings

Summary procedure

Section 16: Obstructive witnesses

93. This section introduces new provisions for dealing with obstructive witnesses. The purpose is to bring the procedures in summary procedure into line with those in solemn procedure by substituting a new section 156 and inserting four new sections, 156A to 156D, into the 1995 Act. Previous requirements for a witness to pay sums of money as security for his or her appearance are repealed.
94. New subsections (1) & (2) of section 156 as substituted provide that where a witness has been cited to appear at a diet and deliberately and obstructively fails to do so, the court, on the motion of any of the parties, may grant a warrant to apprehend the witness. Subsection (3) provides that where the court is satisfied by evidence on oath that a witness will not attend unless compelled to do so the court may grant a warrant for the apprehension of that witness.
95. Subsection (4) of new section 156 provides that where a witness fails to attend after being duly cited the fact that s/he failed to appear will be presumed to be deliberate and obstructive unless there is evidence to the contrary.
96. Subsection (5) provides that any application for the apprehension of a witness may be made orally or in writing and may be disposed of in open court or in chambers.
97. Subsection (7) provides that officers of law may apprehend the witness and bring him to court and outlines the powers available to them in executing the warrant.
98. Subsection (8) provides that this procedure is the only competent way of applying for a warrant for the apprehension of a witness in summary proceedings.
99. Subsection (9) refers to section 135(3) of the 1995 Act which, as discussed above in relation to section 6 of this Act, makes provision for persons arrested on warrant to be brought to court.

New section 156A

100. Section 156A as inserted provides for orders which the court may make in relation to any witness apprehended under a warrant granted under section 156.
101. Subsection (1) provides that where a witness has been apprehended and brought before a court the court may detain the witness in custody until the conclusion of the diet at which the witness is to give evidence, release the witness on bail, or liberate the witness.

102. Subsection (2) provides that an order detaining the witness or an order placing the witness on bail may only be made if the court is satisfied that such a course of action is necessary to secure the attendance of the witness and that it is appropriate to do so. Subsection (3) provides that the court shall state the reasons for making an order under section 156A(1).
103. Subsection (4) provides that, notwithstanding these powers, the court may deal with the witness for any contempt of court which the court considers to have been committed and dispose of the case accordingly.
104. Subsection (5) provides that where the witness has been ordered to be detained in custody the court, if it decides to excuse the witness from the diet at which s/he was to give evidence, may recall the order and liberate the witness.
105. Subsections (6) & (7) provide that the court, when granting the witness bail, may impose such conditions, other than a requirement to deposit a sum of money, as the court considers necessary to secure the attendance of the witness.
106. Subsection (8) applies with modifications to section 25 (Bail conditions: supplementary) of the 1995 Act to orders made under section 156A(1)(b) (i.e. where the court releases an apprehended witness on bail). Section 25, amongst other things, provides that the requirement of an accused to give details of his address at which s/he may be cited to attend court when liberated on bail. This requirement will apply to a witness liberated under these provisions.

New section 156B

107. Section 156B as inserted makes provision for dealing with witnesses who are liberated on bail and who breach that bail. The penalties for a witness who breaches conditions of bail are similar to those for an accused who breaches bail.
108. Subsections (1) & (2) provide that if a witness who has been released on bail fails to attend at court or breaches any other condition of bail the witness is guilty of an offence. The penalties differ depending on whether the bail order was issued by the justice of the peace court (JP court) or the sheriff court, and are the same as for a standard breach of bail.
109. Subsection (3) provides that, in proceedings for breach of bail, the fact that the witness was on bail, or was subject to a particular condition of bail, or that s/he failed to appear at a diet to which s/he had been cited, shall be held to be admitted unless challenged by a preliminary objection.
110. Subsection (4) provides that the provisions of section 28 (Breach of bail conditions: arrest of offender, etc) of the 1995 Act which relate to the breaching of bail by an accused shall apply with modifications to a witness who is in breach of bail under these provisions.

New section 156C

111. Section 156C as inserted provides for the review of orders detaining the witness in custody or releasing the witness on bail.
112. Subsection (1) provides that where the court has made an order to detain the witness in custody it may, on the application of the witness and on cause shown, recall that order and release the witness on bail or liberate the witness. Parties to the case and the witness will be given an opportunity to be heard on the application.
113. Subsection (2) provides that where the witness has been liberated on bail the witness, or the party who made the application to apprehend the witness, may apply to the court to review the conditions imposed when making the bail order and to make a new bail order. The court has power to make a new order to liberate the witness on bail and impose

different conditions. Subsection (3) provides that court may only review a bail order if the circumstances of the witness have changed or if material information is presented to the court which was not available at the time that the original order was granted.

- 114. Subsection (4) provides for time limits in which applications for a review may be made.
- 115. Subsection (5) outlines the procedure the court must follow upon the receipt of any application for a review.
- 116. Subsection (6) preserves rights of appeal against decisions taken under section 156A(1).

New section 156D

- 117. Section 156D as inserted provides for appeals against any of the orders granted by the court in relation to a witness apprehended on a warrant.
- 118. Subsections (1) & (2) provide that the witness, the accused or the prosecutor may appeal to the High Court against any order detaining the witness in custody or liberating the witness or (where the witness has been granted bail) against that bail order, any of the conditions specified in the order or both.
- 119. Subsections (3) & (4) provide for the intimation and hearing of the appeal.
- 120. Subsection (5) applies the provision relating to the remand or committal of an accused person under the age of 21 years to a witness under that age.