

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 8 – Evidential, Jurisdictional and Procedural Matters

Section 61 – Citation other than by service of indictment or complaint

323. **Section 61** amends the Criminal Procedure (Scotland) Act 1995 to introduce more flexibility in the arrangements for serving an indictment or complaint by making provision for an alternative method of citation.
324. This is achieved by amending sections 66, 140 and 141 of the Criminal Procedure (Scotland) Act 1995 to provide that in addition to the existing methods of service of an indictment or complaint, police may affix a notice on the door of an accused's home or place of business that states the date upon which the notice was left, that a complaint or indictment can be collected from a specified police station and calling upon the accused to appear and answer the indictment or complaint. The effect of such a notice is that the accused has been lawfully and properly cited to appear at court.
325. Section 66 of the 1995 Act makes provision concerning service of an indictment upon the accused in solemn proceedings. Section 66(4) provides that the accused shall be served with a copy of the indictment and of the list of the names and addresses of the witnesses to be cited by the prosecution. Section 61(1) amends section 66(4) of the 1995 Act by re-enacting the previous provisions for service but with new provision to permit service to be effected by the police leaving a notice attached to the door of the accused's dwelling-house or place of business. The notice must specify the date on which it was left, inform the accused that a copy of his or her indictment and list of witnesses may be uplifted from a specified police station and call on the accused to attend at the diet at which his or her case shall be called. It also provides that the form of such notice shall be specified by Act of Adjournal.
326. Under new subsection (4A), the date upon which the notice is left on the accused's door is deemed to be the date on which service was effected. Under new subsection (4B), the date upon which service is effected using the new procedure of citation must be in accordance with the rules in section 66(6) of the 1995 Act. That is, the notice attached to the door must call on the accused to attend at a case to be tried in the sheriff court at a first diet not less than 15 days after service or at a trial diet in the High Court not less than 29 days after service.
327. Thereafter section 61(1) amends subsections (7), (8), (11), (13) and (14) of section 66 of the 1995 Act to make reference to the new form of citation. The amendment to subsection (7) permits service of the new form of citation by any officer of law. The amendment to subsection (8) provides that no objection to the new form of citation can be upheld on the basis that the officer was not in possession of the warrant of citation and that it is not necessary to produce the execution of citation of the indictment. The amendment to subsection (11) provides that there may be no objection to the evidence of the officer who served the new form of citation on the grounds that the officer's name is not on the list of witnesses. The amendment to subsection (13) permits any

*These notes relate to the Criminal Justice (Scotland) Act
2003 (asp 7) which received Royal Assent on 26 March 2003*

deletion or correction to the new form of citation to be authenticated or signed by the procurator fiscal or the person serving the notice on the accused. The amendments to subsection (14) permits the deletion or correction of the new form of citation to be authenticated by the initials of the person serving the notice.

328. **Section 61(2)** of the Act amends section 140(2) of the 1995 Act by inserting a reference to the new section 141(2A) inserted by section 61(3) of the Act. Section 140 makes provision for the form and *induciae* (the period of notice of the hearing date that the accused is entitled to receive) of citation of accused persons and witnesses in summary proceedings. Section 141 makes provision for the procedure of citation in summary proceedings. The effect of the amendment to section 140(2) is to permit the new form of citation to operate alongside the provisions for citation set out in sections 140 and 141.
329. **Section 61(3)** inserts new subsections (2A) and (2B) into section 141 of the 1995 Act. New subsection (2A) sets out the mechanism of the new form of citation in summary proceedings by permitting a citation to be attached to the accused's dwelling-house door or to the door of his or her place of business, in the form to be specified by Act of Adjournal. The notice must specify the date on which it was attached, informing the accused from which specified police station the complaint may be uplifted and requiring him or her to appear and answer the complaint at a specified diet. New subsection (2B) makes provision that the date of the notice is to be deemed to be the date on which service is effected and the date from which the *induciae* is to run.
330. **Section 61(3)** also amends subsections (3), (5) and (7) of section 141 of the 1995 Act. The effect of the amendment to subsection (3) is to insert a reference to the new form of citation as being an effective form of citation. Subsection (5) is amended to permit a reference to the new form of citation so that the production of any letter or communication in writing, purporting to be from or on behalf of the accused cited in the new way, infers that the accused received the citation and that such evidence may be relied upon where the accused fails to attend the relevant court diet, as specified in section 144(4). Subsection (7) is amended to permit an execution of the new form of citation to be used in evidence, to prove to the court that service has been effected.