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

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 8 – Evidential, Jurisdictional and Procedural Matters

Section 54 – Certificates relating to physical data: sufficiency of evidence

290. Section 54 amends section 284 of the Criminal Procedure (Scotland) Act 1995 to provide an express right of challenge against the certificate provided for in the latter section.

291. Section 284(1) of the 1995 Act, as amended by section 47 of the Crime and Punishment Act 1997, allows a certificate to be served on an accused signed by an authorised person, stating that fingerprints or other physical data were taken from a named individual at a specified time, date and place. The certificate is then deemed to be sufficient evidence of the facts contained in it. Section 284(2) gives the accused no right to challenge the certificate.

292. Section 54 amends section 284(2) to provide a right of challenge where the defence give notice to the prosecution within seven days of service of the certificate that they do not accept the evidence contained in it.

Section 55 – Taking samples by swabbing

293. Section 55 amends the Criminal Procedure (Scotland) Act 1995 to remove the requirement to obtain authorisation from an inspector before a police constable can exercise compulsory powers to take a DNA sample by mouth swab, without force.

294. This is achieved by amending sections 18, 19, 19A and 19B of the 1995 Act which contain the statutory powers to obtain samples for DNA purposes. Section 18 applies where a person has been arrested and is in custody, or has been detained under section 14 of the 1995 Act. Sections 19 and 19A apply where a person has been convicted of an offence, although 19A covers only those offenders convicted of a sexual or violent offence as defined in subsection (6). Section 19B details circumstances where a constable may use reasonable force when obtaining samples.

295. Subsection (2) amends section 18 of the 1995 Act to:

- repeal subsection (6)(d) which includes mouth swabs among the methods of taking DNA samples that require the authorisation of an officer of at least the rank of inspector; and
- insert a subsection (6A) which provides a new power for a constable or police custody and security officer (at a constable's direction) to take a DNA sample by mouth swab, without the need for authorisation by a more senior officer.

296. Subsection (3) amends sections 19 and 19A of the 1995 Act to:

- remove mouth swabs from the methods of taking DNA samples that require the authorisation of at least an inspector; and
- insert in both sections a new subsection allowing a constable, or police custody and security officer (at a constable's direction) to take DNA samples by way of mouth swab when these sections apply, without the need for authorisation by a more senior officer.

297. Subsection (4) amends section 19B of the 1995 Act to insert a new subsection (2) which provides that the authority of an officer of at least the rank of inspector is required before a constable may use force to take a DNA sample by mouth swab under sections 18, 19 or 19A of that Act.

Section 56 – Retaining samples or relevant physical data where given voluntarily

298. Section 56 provides a statutory basis for the police to take, retain and use fingerprints, other prints and impressions and samples, with the written consent of an individual, either for the investigation of a particular offence or for any offence, depending on the consent given. It also makes provision for the withdrawal of such written consent.

299. Subsection (1) provides that these arrangements only apply when samples or prints cannot be taken under any other power, such as section 18 of the Criminal Procedure (Scotland) Act 1995, or a court warrant or other statutory power. This is designed to ensure that the arrangements will only be used when the police have no other power to take samples or prints and the consent of the individual is required.

300. Subsection (2) allows the police to use such samples and prints, taken with consent, in the investigation of an offence or offences. This puts on a statutory footing the current practice where the police take samples or prints with consent and check them against evidence from a scene of crime, for example mass DNA screenings in a geographical area. It also provides the police with authority, in certain circumstances, to retain the samples and prints for use in subsequent investigations whereas presently they would be destroyed at the conclusion of the investigation in connection with which they were obtained.

301. Subsection (3) provides that the police can only use samples and prints taken with consent in the investigation of offences when the person giving the consent has agreed in writing to their use, and that this consent can be limited to the investigation of the actual offence for which the sample or print was taken. A written consent limited in this way would be analogous to the current situation where the police will use samples or prints taken with consent to investigate a particular offence and then destroy them. The wider consent will allow the police to avoid taking samples or prints repeatedly from certain people by retaining them for future investigations with the consent of the individual concerned.

302. Subsection (4) lays out how a person may withdraw consent to the sample or print being used to investigate offences. It provides that consent may be withdrawn by:

- giving notice in writing to the chief constable of the police force on whose behalf the print or sample was taken; or
- visiting any police station in that area and giving notice, either orally or in writing, to a constable or another authorised person.

303. It also provides that the person who receives the notice of withdrawal of consent must provide the person who gave the prints or sample with a written acknowledgement of receipt of the notice of withdrawal. This is intended to provide proof of the fact of withdrawal and its time and date if this becomes significant.

304. Subsection (5) provides that the withdrawal takes effect from the point when notice under subsection (4) is received. Subject to subsection (6) the sample or print, and

information derived from it, is to be destroyed as soon as possible after notice of withdrawal is given.

305. Subsection (6) provides that subsections (4) and (5) do not affect the use of such samples or prints in evidence if checks made against any other sample or print were undertaken before consent was withdrawn, whether in the prosecution of the offence for which they were taken or for any other offence, depending on the consent the person has given under subsection (3). Subsection (6) makes clear that withdrawal of consent does not affect the admissibility of any evidence the police have uncovered during the course of their investigations prior to withdrawal taking effect, or the admissibility of evidence in respect of the taking of the sample and the giving and withdrawal of consent.

306. Subsection (7) defines when a check will fall within subsection (6).

307. Subsection (8) makes clear the meanings of "sample" and "relevant physical data" in the section, which are the same as the existing meanings in the 1995 Act.

Section 57 - Convictions in other Member States of the European Union

308. Section 57 enables previous convictions in European Union Member States to be libelled and taken into account in criminal proceedings in Scotland in a similar way as previous domestic convictions. Under the existing provisions in the Criminal Procedure (Scotland) Act 1995 (the 1995 Act), previous foreign convictions cannot be taken into account by the courts because section 307 of the 1995 Act provides that previous convictions or sentences are to be construed as those laid down by courts in the United Kingdom only.

309. The provisions implement the European Union Framework Decision (FD) 2001/888 JHA adopted on 6 December 2002, which amended FD 2000/383/JHA of 29 May 2000, on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the Euro. The FD requires every Member State to recognise the principle of the recognition of previous convictions in relation to offences involving counterfeiting the Euro under the conditions prevailing under its domestic law, and, under those same conditions to recognise for the purposes of establishing habitual criminality final sentence sentences handed down in other Member States. The provisions in section 57 go further than the FD because they allow any previous conviction to be taken into account, not just those that relate to counterfeiting the Euro.

310. Subsections (1) to (4) make provision for the situation where it is necessary to prove a previous foreign conviction.

311. Subsection (4) inserts section 286A into the 1995 Act. It provides that a certificate with the official seal of a Minister of the Member State in question containing particulars relating to a conviction extracted from the criminal records of that State, including copies of fingerprints that are certified as appearing from those records to have been taken from the person convicted on the occasion of the conviction, or the occasion of his last conviction, and which would be admissible in evidence in criminal proceedings in the State in question as a record of the skin of that person's fingers, will be sufficient evidence of the conviction and all preceding convictions. Such information as is provided can then be received in evidence in a similar way to that provided for by section 285 of the 1995 Act for UK previous convictions. Subsection 4(4) applies section 285(9) to this new section. Section 285(9) provides that the methods of proving a previous conviction authorised by the section are to be in addition to any other method of proof.

312. Subsection (5) amends the definition of previous conviction in section 307 (1) and (5) of the 1995 Act to enable previous foreign convictions to be taken into account. It also provides that, with regard to section 69(2) and section 166 of the 1995 Act, which deal with the situation where it is intended to draw to the court's attention a previous

conviction in solemn and summary cases respectively, that references to previous convictions include those handed down by courts in EU Member States.

Section 58 – Transfer of sheriff court proceedings

313. Section 58 amends sections 83 and 137 of the Criminal Procedure (Scotland) Act 1995 to allow cases to be transferred from one sheriffdom to another as well as within a sheriffdom. Transfer between sheriffdoms will only be with the consent of the sheriff principals of both sheriffdoms.

314. Section 83 of the 1995 Act currently allows the transfer of cases from one sheriff to another within a sheriffdom, in relation to trials in solemn proceedings.

315. Section 58(1) amends subsection (1), inserts new subsections (1A), (2A) and (2B) and amends subsection (3) of section 83 of the 1995 Act to provide that:

- the sheriff may transfer a solemn case within the sheriffdom at any stage in the proceedings to a sitting of a sheriff court in any other district in that sheriffdom. The prosecutor may apply to the sheriff for an order to transfer it to a sitting of another sheriff court which shall be taken to be appointed under Section 66(1) of the 1995 Act;
- under subsection (1A) of section 83 the sheriff principal may transfer a solemn case outwith the sheriffdom at any stage in the proceedings where, due to exceptional circumstances it is not practicable for a case to be held in the respective sheriff court or any other in the sheriffdom. The prosecutor may apply to the sheriff principal for an order to transfer it to a sitting of a sheriff court, which shall be taken to be appointed under Section 66(1) of the 1995 Act, in another sheriffdom, providing the sheriff principal of the other sheriffdom consents;
- where an application is made under subsection (1A) in relation to a solemn trial, the sheriff principal may make such an order on joint motion or after giving the accused or the accused's counsel an opportunity to be heard by the sheriff, provided the sheriff hearing parties and the sheriff principal of the other sheriffdom consent; and
- the provisions in subsection (3) shall apply to subsection (2A).

316. Section 58(2) inserts new sections 137A and 137B into the 1995 Act. New section 137A provides that in summary proceedings, the prosecutor may, at any stage in a criminal case, apply to the sheriff to transfer it to a sitting of a sheriff court in any other district in that sheriffdom.

317. New section 137B provides that where, due to exceptional circumstances it is not practicable for a case to be held in the respective sheriff court or any other in the sheriffdom, the prosecutor may at any stage in the case apply to the sheriff principal for an order to transfer it to a sitting of a sheriff court in another sheriffdom provided the sheriff principal of the other sheriffdom agrees.

Section 59 – Competence of the justice's acting outwith jurisdiction

318. Section 59 inserts a new section 9A into the Criminal Procedure (Scotland) Act 1995 to provide that a justice may sign a warrant, judgement, interlocutor or other document relating to proceedings within that jurisdiction, while they are outwith their jurisdiction, as long as they are within Scotland. A "justice" in this context will include any sheriff. This power will extend to processing of electronic warrants as provided for by section 64A of this Act.

Section 60 – Unified citation provisions

319. Section 60 amends the Criminal Procedure (Scotland) Act 1995 and the Prisoners and Criminal Proceedings (Scotland) Act 1993 to apply the citation procedure set out in

sections 216(3) and (5) of the 1995 Act to breach and ancillary proceedings in relation to community based disposals, restriction of liberty orders and drug treatment and testing orders.

320. Section 216 of the 1995 Act enables the clerk of the court to sign and issue a citation to attend court to the offender *in lieu* of the procurator fiscal.

321. This section amends the Criminal Procedure (Scotland) Act 1995 and the Prisoners and Criminal Proceedings (Scotland) Act 1993 to create a unified citation procedure in relation to breach and ancillary proceedings in those disposals already specified above. This will be achieved by inserting into section 307 of the 1995 Act a definition of a unified citation procedure which is as set out in section 216 of the Act and applying it to the following sections of the Act:

- section 232 – probation orders: failure to comply with requirement;
- section 233 – probation orders: commission of further offence;
- section 234E – amendment of drug treatment and testing order;
- section 234G – breach of drug treatment and testing order;
- section 239 – community service orders: requirements;
- section 240 – community service orders: amendment and revocation etc;
- section 245E – variation of restriction of liberty order;
- section 245F – breach of restriction of liberty order;
- Schedule 6 – discharge of and amendment to probation orders; and
- Schedule 7 – supervised attendance orders: further provisions.

322. The definition in section 307 of the 1995 Act is similarly applied to sections 15 and 18 of the 1993 Act which deal with the variation and breach of a supervised release order.

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 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.

Section 62 - Leave to appeal: extension of time limit for application under section 107(4) of 1995 Act

331. Section 62 amends section 107 of the 1995 Act to give the High Court of Justiciary the power to extend the time limit in which a convicted person may apply to the High Court for leave to appeal against conviction or sentence or both following the decision by a single judge of the High Court to refuse leave to appeal.

332. At present a convicted person who is refused leave to appeal against conviction or sentence or both by a single High Court judge must apply to the High Court within

14 days of receiving notification of the refusal of leave to appeal. That time limit is not capable of extension. The new provision gives the High Court the discretion to extend the 14-day time limit notwithstanding that the application for leave to appeal is presented outwith the 14 day period and whether or not the 14 day period for lodging an application expired prior to the commencement of the new provision. This enables a convicted person who has not applied within the 14-day period for leave to appeal to rely upon the new provision as well as those cases where the 14 day period expired after the commencement of the new provision.

Section 63 – Adjournment at first diet in summary proceedings

333. Section 63 amends sections 144 and 145 of the Criminal Procedure (Scotland) Act 1995 and introduces a new section 145A into that Act. Section 144 makes provision for the procedure to be followed at the first diet, or calling, of a case in summary proceedings. This section of the Act amends section 144(9) to permit a reference to section 145A and designates a diet adjourned under section 145A as a first calling of a case and hence, subject to the provisions of section 144.

334. Section 145 of the 1995 Act makes provision for the court to adjourn a case, where the accused in not present at the first or pleading diet, to allow the accused to appear in person to answer the complaint; to allow for time for enquiry into the case or for any other cause that the court thinks reasonable subject to the limits in subsections (2) and (3). Section 145(2) restricts the total period that an accused may be held in custody under this section to 21 days, with each particular adjournment being restricted to no more than seven days except on cause shown. Section 145(3) restricts the period to which a case may be adjourned in any one period to twenty-eight days, where the accused is released on bail or ordained to appear.

335. The new section 145A permits the court to adjourn the case at the first calling, where the accused is not present and irrespective of whether the procurator fiscal is able to provide evidence that the accused has been cited to attend court, subject to the restrictions provided in subsections (2) and (3). Subsection (2) specifies that the court may permit the adjournment where the purpose is to allow the accused the opportunity of answering the complaint or for further time for enquiry into the case or for any other reasonable cause. Subsection (3) restricts any one adjournment granted under this subsection to a period of 28 days, irrespective of whether the accused is in custody or at liberty.

336. The effect of the introduction of section 145A is to permit the court to continue the case in the absence of the accused or where the prosecutor is unable to provide evidence to the court that the accused has been cited to appear at the diet. In addition, section 145A permits adjournments of up to 28 days in order to allow the accused to answer the complaint, for further time for enquiry or for any other reasonable cause. The new provision does not detract from the sheriff's power to grant a warrant for the arrest of the accused where the accused has been lawfully cited and has failed to appear or where it is expedient to do so under section 139(1)(b) of the 1995 Act.

Section 64 – Review hearing of drug treatment and testing order

337. Section 64 amends section 234F of the Criminal Procedure (Scotland) Act 1995 to provide that a review hearing of a drug treatment and testing order can take place in the absence of the procurator fiscal.

338. A drug treatment and testing order is an order made under section 234B of the Criminal Procedure Scotland Act 1995 (as inserted by section 89 of the Crime and Disorder Act 1998). Section 234F of Criminal Procedure (Scotland) Act 1995 provides for the periodic review of this order.

339. Though section 234F does not specify that the procurator fiscal is required to be present at the review hearing of a drug treatment and testing order, in practice the courts have shown a reluctance to deal with the review in the absence of the procurator

fiscal. However, in order to clarify the law section 53 provides that a review hearing can be held whether or not the procurator fiscal is present.

Section 65 - Transcript of record

340. Section 65 amends section 94 of the 1995 Act to give the High Court of Justiciary the power to regulate the transcription of the record of a trial under solemn procedure where the transcription is required for the purposes of an appeal. Section 65 amends subsection (2) and inserts subsections(2A) to (2F) into section 94 of the 1995 Act. The new provision in subsection (2) requires both the Crown and the defence to seek the approval of the High Court to the production of a transcript of a trial under solemn procedure for the purposes of an appeal and to show cause to the court why such an application should be granted.

341. New subsection (2A) provides that if a judge of the High Court so orders, the Clerk of Justiciary shall direct that a transcript of a record of the trial be made and sent to the appellant. The appellant must apply in writing, have been granted leave to appeal, and must show cause for requiring the transcript to comply with the provisions of section 94(2A) of the 1995 Act. Subsection (2C) requires the appellant to apply in writing to the High Court for a transcript of evidence within 14 days of being granted leave to appeal. The High Court has discretion to extend that period on cause shown. The applicant must also inform the prosecutor of the application. Subsection (2D) gives the prosecutor the right to make written representations about the application to the High Court within 7 days of receiving notification of the application.

342. New subsection (2B) provides that where the Crown Agent has received notification of the grant of leave to appeal to a person and wishes a transcript of evidence of that person's trial, the prosecutor will not be entitled to request a transcript under section 94(2)(a) of the 1995 Act. However, if the prosecutor applies in writing and shows cause, a High Court judge may order that the Clerk of Justiciary direct that a transcript be made and sent to the prosecutor. Where the prosecutor wishes a transcript to be made under section 94 (2B), subsection(2E) requires the prosecutor to apply in writing within 14 days of receiving notification of the grant of leave to appeal. The High Court has discretion to extend that period on cause shown. The prosecutor must also inform the person granted leave to appeal of his/her application. Subsection (2F) gives the person granted leave to appeal the right to make written representations about the application to the High Court within 7 days of receiving notification of the application.

Section 66 - Bail and Related matters

343. Section 66 makes a number of amendments to sections 103, 105 and 112 of the Criminal Procedure (Scotland) Act 1995 and inserts a new section 105A into the 1995 Act. These amendments give the prosecutor a right to be heard in bail applications by convicted persons in solemn proceedings and a right to appeal against the grant of appeal.

344. Section 103 of the Criminal Procedure (Scotland) Act 1995 covers appeals from solemn proceedings. Full appeals may be heard only by the full court (a three judge bench) but certain procedures - including admitting an appellant to bail - may be carried out by a single judge under Section 103(5)(c). In practice bail courts before a single judge usually consider a mix of pre and post conviction bail applications. Section 103(6) gives the convicted person a right to appeal to the full court where his or her application for bail is refused.

345. Section 66(2) inserts a new subsection (6A) in Section 103 which ensures that where a judge has granted bail, the prosecutor also has a right of appeal to the full court (technically expressed as a right 'to have the application determined by the High Court'). The detail of how this will work is spelled out in new Section 105A (below). It also ensures that Section 103(7) (which allows preliminary proceedings and incidental proceedings for a full appeal to be dealt with by a single judge) applies to an appeal

(or 'application for determination') by a prosecutor under the new section 103(6A) as it applies to an appeal by a convicted person under section 103(6).

346. Section 105 of the 1995 Act covers the procedure to be followed once a single judge has dealt with applications in relation to pending appeals, including applications for bail.

347. Section 66(3) inserts a new subsection 4(A)in that section. This ensures that any application by a convicted person for his bail request to be determined by the full court is notified immediately to the Crown Agent, to allow the Crown to prepare for the hearing before the full court.

348. Section 66(4) inserts a new Section 105A in the 1995 Act. This sets out in some detail the procedure to be followed where the prosecutor seeks to appeal against the grant of bail by a single judge.

349. It provides that the prosecutor shall appeal against the grant of bail (technically, apply to the judge for a determination by the full Court) immediately after the judge has granted bail under section 103(5)(c). The Crown therefore has to be ready to appeal immediately after the bail decision but before the hearing concludes.

350. Once the prosecutor has lodged such an appeal, new section 105A provides that bail is suspended pending the full High Court hearing, but that hearing must take place within 7 days. This is to ensure that a convicted person who has in principle been granted bail does not have long to wait for a final determination of his or her bail application.

351. Under the new section 105A the convicted person's right to attend the full determination of his or her case by the High Court will be the same when the prosecutor appeals as it is when the convicted person him or herself does so.

- Where they are not legally represented, the convicted person may appear;
- Where they **are** legally represented, their lawyer will be present, and they must seek the further leave of the court to be personally present as well. This is done by filling in and returning the form issued by the Clerk of Justiciary. When the form is returned, the application is considered by the court and the Clerk then informs the applicant and other interested parties of the outcome.

352. Finally, new section 105A simply replicates in relation to an application (appeal) by the prosecutor the existing provisions of section 105(6) in relation to an appeal by a convicted person, confirming that a judge who has taken the decision which is being appealed by the prosecutor may sit as a member of the bench which considers the prosecutor’s application.

353. Section 112 of the 1995 Act sets out the procedure to be followed when a person seeks bail pending appeal. Section 112(1) - (5) covers applications for bail following solemn conviction. Section 112(6) - (8) set out the procedure to be followed when in solemn **or summary** proceedings a devolution appeal is lodged under paragraph 13 (a) of Schedule 6 to the Scotland Act 1998. (section 177(8) of the 1995 Act, which covers post conviction summary appeals in general, specifies that the provisions of section 112 on post conviction devolution appeals apply to summary appeals as they do to solemn ones).

354. Section 66(5) makes the changes necessary to section 112 to provide for a right for the prosecutor to be heard when the court is considering an application for bail by a convicted person pending appeal.

355. Sub-paragraph (b) (new subsections (2) and (2A) of section 112) ensures that reasons for granting bail are stated in all applications for bail, whether or not the note of appeal has been lodged. At present, reasons are required only where the convicted person is the appellant and he or she has lodged a note of appeal or where the Lord Advocate is the appellant The issues covered in the note of appeal can be quite different to those

which might justify bail It also provides that the prosecutor has the right to be heard before the judge decides whether bail should be granted

356. In new subsection (2A), the amendment simply ensures that the 'exceptional circumstances' test (bail not to be granted unless there are exceptional circumstances) continues to apply as it does at present - to cases where no note of appeal has been lodged and to cases where the Lord Advocate is appealing a sentence he or she considers too lenient.

357. Sub-paragraphs (c) and (d) make the provision necessary to ensure that the prosecutor's new right to be heard is carried over to applications for bail pending devolution appeals -, where the appeal relates to a conviction on indictment. Such applications must continue to state the reasons for granting bail and the 'exceptional circumstances' test will also continue to apply in all such cases

358. Sub-paragraph (e) ensures that where a person convicted on indictment makes an application for bail pending an appeal (whether that is an appeal against conviction and/or sentence under section 112(1) or a devolution appeal under Section 112(6)) that application must be notified immediately and in writing to the Crown Agent. The hearing must take place not less than 7 days later, to give the Crown time to prepare.

Section 67 – Adjournment of case before sentence

359. Section 67 amends section 201 of the Criminal Procedure (Scotland) Act which deals with the power of the court to adjourn following conviction pending sentence. Usually this is to obtain further reports which will help the judge to determine what the sentence should be.

360. Section 67 provides that when a court adjourns a case, the maximum period for which an adjournment can last before a further court hearing should be ‘four weeks, or on cause shown, eight weeks’ in **all** cases, whether the convicted person is remanded in custody or given bail.

361. Previously a shorter period of three weeks was prescribed for those in custody. If reports or information were not available by the end of that period, the convicted person had to be brought back to court for a further three-week adjournment.