



Criminal Proceedings etc. (Reform) (Scotland) Act 2007

2007 asp 6

PART 2

PROCEEDINGS

Solemn cases

26 Pre-trial time limits

In section 65(3)(b) (prevention of delay in trials) of the 1995 Act, for the words “the period of” there is substituted “either or both of the periods of 11 and”.

27 Obstructive witnesses

(1) In section 90B of the 1995 Act, after subsection (2) there is inserted—

“(2A) Whenever the court makes an order under subsection (1) above, it shall state the reasons for the terms of the order.”.

(2) In section 90C (breach of bail under section 90B(1)(b)) of that Act, after subsection (2) there is inserted—

“(2A) In any proceedings in relation to an offence under subsection (1) above, the fact that (as the case may be) a person—

- (a) was on bail;
- (b) was subject to any particular condition of bail;
- (c) failed to appear at a diet;
- (d) was cited to a diet,

shall, unless challenged by giving notice of a preliminary objection in accordance with section 71(2) or 72(6)(b)(i) of this Act, be held as admitted.”.

(3) In section 90D (review of orders under section 90B(1)(a) or (b)) of that Act—

- (a) in subsection (1), the words “, on cause shown” are repealed,
- (b) in subsection (2)(a), the words “and on cause shown” are repealed,

- (c) in subsection (3), for the words “(2)(b) above unless the” there is inserted
- “(1) or (2) above unless—
- (a) in the case of an application by the witness, the circumstances of the witness have changed materially; or
 - (b) in that or any other any case, the witness or”.

28 Proceedings against bodies corporate

In section 70 (proceedings against bodies corporate) of the 1995 Act, for subsection (8) there is substituted—

- “(8) In subsection (4) above, “representative” means—
- (a) in the case of a body corporate (other than a limited liability partnership), the managing director, secretary or other person in charge, or locally in charge, of its affairs;
 - (b) in the case of a limited liability partnership, a member of the partnership;
 - (c) in either case, an employee of the body duly appointed by it for the purpose of the proceedings.
- (9) For the purposes of subsection (8)(c) above, a statement—
- (a) in the case of a body corporate (other than a limited liability partnership), purporting to be signed by an officer of the body;
 - (b) in the case of a limited liability partnership, purporting to be signed by a member of the partnership,
- to the effect that the person named in the statement has been appointed as the representative for the purposes of any proceedings to which this section applies is sufficient evidence of such appointment.”.

29 Jury citation

In section 85 (juries: citation and attendance of jurors) of the 1995 Act, after subsection (4) there is inserted—

- “(4A) Citation of a juror may also be effected by an electronic citation which is sent—
- (a) by or on behalf of the sheriff clerk; and
 - (b) by means of electronic communication,
- to the home or business email address of the juror.
- (4B) Citation under subsection (4A) above is a legal citation if the sheriff clerk possesses a legible version of an electronic communication which—
- (a) is signed by electronic signature by the person who signed the citation;
 - (b) includes the citation; and
 - (c) bears to have been sent to the home or business email address of the juror being cited.
- (4C) In subsection (4A) above, an “electronic citation” is a citation in electronic form which—
- (a) is capable of being kept in legible form; and
 - (b) is signed by electronic signature by or on behalf of the sheriff clerk.”.

30 Duty to seek agreement of evidence

In section 257 (duty to seek agreement of evidence) of the 1995 Act, in subsection (4)

- (a) for the words “in the case of proceedings in the High Court” there is substituted “in relation to proceedings on indictment”,
- (b) for the words “by that subsection are identified and taken before the preliminary hearing” there is substituted “are identified and taken—
 - (a) in the case of the High Court, before the preliminary hearing;
 - (b) in the case of the sheriff court, before the first diet”.

31 Petition proceedings outwith sheriffdom

After section 34 of the 1995 Act there is inserted—

“Petition proceedings outwith sheriffdom

34A Petition proceedings outwith sheriffdom

- (1) Where the prosecutor believes—
 - (a) that, because of exceptional circumstances (and without an order under subsection (3) below), it is likely that there would be an unusually high number of accused persons appearing from custody for the first calling of cases on petition in the sheriff courts in the sheriffdom; and
 - (b) that it would not be practicable for those courts to deal with all the cases involved,the prosecutor may apply to the sheriff principal for the order referred to in subsection (2) below.
- (2) For the purposes of subsection (1) above, the order is for authority for petition proceedings against some or all of the accused persons to be—
 - (a) taken at a sheriff court in another sheriffdom; and
 - (b) maintained—
 - (i) there; or
 - (ii) at any of the sheriff courts referred to in subsection (1) above as may at the first calling of the case be appointed for further proceedings.
- (3) On an application under subsection (1) above, the sheriff principal may make the order sought with the consent of the sheriff principal of the other sheriffdom.
- (4) An order under subsection (3) above may be made by reference to a particular period or particular circumstances.
- (5) This section does not confer jurisdiction for any subsequent proceedings on indictment.”.

32 Failure of accused to appear

After section 102 of the 1995 Act there is inserted—

“Failure of accused to appear

102A Failure of accused to appear

- (1) In proceedings on indictment, an accused person who without reasonable excuse fails to appear at a diet of which the accused has been given due notice (apart from a diet which the accused is not required to attend) is—
 - (a) guilty of an offence; and
 - (b) liable on conviction on indictment to a fine or to imprisonment for a period not exceeding 5 years or to both.
- (2) In proceedings on indictment, where an accused person fails to appear at a diet of which the accused has been given due notice (apart from a diet which the accused is not required to attend), the court may grant a warrant to apprehend the accused.
- (3) It is not, otherwise than under subsection (2) above, competent in any proceedings on indictment for a court to grant a warrant for the apprehension of an accused person for failure to appear at a diet.
- (4) However, it remains competent for a court to grant a warrant on petition (as referred to in section 34 of this Act) in respect of an offence under—
 - (a) subsection (1) above;
 - (b) section 27(1)(a) of this Act,whether or not a warrant has been granted under subsection (2) above in respect of the same failure to appear to which that offence relates.
- (5) Where a warrant to apprehend an accused person is granted under subsection (2) above, the indictment falls as respects that accused.
- (6) Subsection (5) above is subject to any order to different effect made by the court when granting the warrant.
- (7) An order under subsection (6) above—
 - (a) for the purpose of proceeding with the trial in the absence of the accused under section 92(2A) (where the warrant is granted at a trial diet), may be made on the motion of the prosecutor;
 - (b) for any other purpose, may be made on the motion of the prosecutor or of the court’s own accord.
- (8) A warrant granted under subsection (2) above shall be in such form as may be prescribed by Act of Adjournal or as nearly as may be in such form.
- (9) A warrant granted under subsection (2) above (in the form mentioned in subsection (8) above) shall imply warrant to officers of law—
 - (a) to search for and apprehend the accused;
 - (b) to bring the accused before the court;
 - (c) in the meantime, to detain the accused in a police station, police cell or other convenient place; and
 - (d) so far as is necessary for the execution of the warrant, to break open shut and lockfast places.

- (10) An accused apprehended under a warrant granted under subsection (2) above shall wherever practicable be brought before the court not later than in the course of the first day on which the court is sitting after the accused is taken into custody.
- (11) Where the accused is brought before the court in pursuance of a warrant granted under subsection (2) above, the court shall make an order—
- (a) detaining the accused until liberated in due course of law; or
 - (b) releasing the accused on bail.
- (12) For the purposes of subsection (11) above, the court is to have regard to the terms of the indictment in relation to which the warrant was granted even if that indictment has fallen.
- (13) In a case where a warrant is granted under subsection (2) above, any period of time during which the accused was detained in custody—
- (a) as regards that case; and
 - (b) prior to the making of an order under subsection (11) above,
- does not count towards any time limit applying in that case by virtue of section 65(4) of this Act.
- (14) For the purposes of subsection (13) above—
- (a) detention as regards a case includes, in addition to detention as regards the indictment in relation to which the warrant was granted (whether or not that indictment has fallen), detention as regards any preceding petition;
 - (b) it is immaterial whether or not further proceedings are on a fresh indictment.
- (15) At any time before the trial of an accused person on indictment, it is competent—
- (a) to amend the indictment so as to include an additional charge of an offence under subsection (1) above;
 - (b) to include, in the list of witnesses or productions associated with the indictment, witnesses or productions relating to that offence.
- (16) In this section, “the court” means—
- (a) where the accused failed to appear at the High Court—
 - (i) for the purposes of subsections (10) to (12) above, that Court (whether or not constituted by a single judge);
 - (ii) otherwise, a single judge of that Court;
 - (b) where the accused failed to appear at a sheriff court, any sheriff court with jurisdiction in relation to the proceedings.”.