



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

2007 asp 6

## PART 2

### PROCEEDINGS

#### *Police functions*

#### 7 Liberation on undertaking

- (1) In section 21 (Schedule 1 offences: power of constable to take offender into custody) of the 1995 Act, subsections (2) to (5) are repealed.
- (2) In section 22 (liberation by police) of that Act—
  - (a) in subsection (1)—
    - (i) the words “arrested and” are repealed,
    - (ii) after the word “summarily,” there is inserted “the officer who charged the person or (if different)”,
    - (iii) for the words “terms of which the person undertakes to appear at a specified court at a specified time” there is substituted “the terms mentioned in subsection (1C) below”,
  - (b) after subsection (1) there is inserted—

“(1A) Where a person has been arrested under section 21 of this Act, the arresting officer or (if different) the officer in charge of a police station may—

    - (a) liberate the person upon a written undertaking, signed by him and certified by the officer, in the terms mentioned in subsection (1C) below;
    - (b) liberate him without any such undertaking; or
    - (c) refuse to liberate him.

---

*Status: This is the original version (as it was originally enacted).*

---

- (1B) Where a person has been apprehended under a summary warrant as mentioned in section 135(3) of this Act, the apprehending officer or (if different) the officer in charge of a police station may—
- (a) liberate the person upon a written undertaking, signed by him and certified by the officer, in the terms mentioned in subsection (1C) below; or
  - (b) refuse to liberate him.
- (1C) For the purposes of subsections (1) to (1B) above, the terms are that the person undertakes (subject to any modification made to those terms under subsection (1F)(b) below)—
- (a) to appear at a specified court on a specified day at a specified time; and
  - (b) in addition, to comply with any conditions imposed under subsection (1D) below.
- (1D) The conditions which may be imposed under this subsection are—
- (a) conditions in the same terms as the standard conditions mentioned in section 24(5)(b), (c) and (ca) of this Act;
  - (b) such further conditions as the officer who is certifying the undertaking considers are necessary to secure that the conditions referred to in paragraph (a) above are observed.
- (1E) For the imposition of conditions under subsection (1D)(b) above, the authority of an officer of a rank no lower than inspector is required.
- (1F) The procurator fiscal may by notice effected in the same manner as citation under section 141 of this Act—
- (a) rescind an undertaking given under subsection (1) or (1A) above (whether or not the person is to be prosecuted in connection with the matters to which the undertaking relates);
  - (b) in relation to an undertaking given under this section—
    - (i) revise the court, day or time specified under subsection (1C)(a) above;
    - (ii) revoke or relax any conditions imposed under subsection (1D) above.
- (1G) An undertaking given under this section—
- (a) if rescinded under subsection (1F)(a) above, expires at the end of the day on which the notice is sent;
  - (b) otherwise—
    - (i) subject to sub-paragraph (ii) below, expires at the end of the day on which the person who gave the undertaking is required to appear at court in accordance with the undertaking;
    - (ii) if that person breaches the undertaking by reason of failing to appear at court, and a warrant is granted in relation to the breach, expires, so far as relating to conditions, at the end of the day on which the person is brought before the court in pursuance of the warrant.

---

*Status: This is the original version (as it was originally enacted).*

---

- (1H) For the purpose of any proceedings in relation to an offence under this section, an undertaking whose terms are modified under subsection (1F)(b) above shall be regarded as if given in the terms as so modified.”
- (c) in subsection (2)—
- (i) for the words “subsection (1) above” there is substituted “this section”,
  - (ii) in paragraph (b)(ii), for the word “3” there is substituted “12”,
- (d) in subsection (3)—
- (i) for the words “the officer in charge” there is substituted “an officer”,
  - (ii) for the words “subsection (1)(c) above” there is substituted “this section”,
  - (iii) for the word “tried” there is substituted “heard”,
- (e) after subsection (4) there is inserted—
- “(4A) In any proceedings relating to an offence under this section, the fact that (as the case may be) a person—
- (a) breached an undertaking given by him under this section by reason of failing to appear at court in accordance with the undertaking; or
  - (b) was subject to a particular condition imposed under subsection (1D) above,
- shall, unless challenged by preliminary objection before the person’s plea is recorded, be held as admitted.”
- (f) in subsection (5)—
- (i) for the word “section,” there is substituted “section—
    - (a) a document purporting to be a notice or copy of a notice effected under subsection (1F) above shall be sufficient evidence of the terms of the notice;
    - (b)”,  - (ii) for the words “subsection (1)(a) above” there is substituted “this section”,
  - (iii) the words “by the arrested person” are repealed,
- (g) after subsection (5) there is inserted—
- “(5A) Regulations under subsection (1E)(a) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.”
- (3) In section 135 (warrants of apprehension and search) of that Act, in subsection (3), after the word “practicable” there is inserted “(if not liberated under section 22(1B) (a) of this Act)”.

### *Summary procedure*

## **8 Manner of citation**

- In section 141 (manner of citation) of the 1995 Act—
- (a) for subsection (1) there is substituted—

---

*Status: This is the original version (as it was originally enacted).*

---

- “(1) The citation of the accused or a witness in a summary prosecution to any ordinary sitting of the court or to any special diet fixed by the court or to any adjourned sitting or diet shall be effected by an officer of law or other person—
- (a) delivering the citation to him personally; or
  - (b) leaving it for him—
    - (i) at his dwelling-house or place of business with a resident or (as the case may be) employee there; or
    - (ii) where he has no known dwelling-house or place of business, at any other place in which he may be resident at the time.”
- (b) in subsection (3)(a), after the word “service” there is inserted “or by ordinary post”,
- (c) after subsection (3) there is inserted—
- “(3A) Subject to subsection (4) below and without prejudice to the effect of any other manner of citation, the citation of the accused or a witness to a sitting or diet or adjourned sitting or diet as mentioned in subsection (1) above shall also be effective if an electronic citation is sent—
- (a) by or on behalf of the prosecutor; and
  - (b) by means of electronic communication, to the home or business email address of the person.”
- (d) in subsection (5), after the word “communication” there is inserted “(including a legible version of an electronic communication)”,
- (e) after subsection (5) there is inserted—
- “(5ZA) The production in court of a legible version of an electronic communication which—
- (a) bears to have come from an accused’s email address; and
  - (b) is in such terms as to infer that the contents of an electronic citation sent as mentioned in subsection (3A) above came to the accused’s knowledge,
- shall (even if not purporting to be written by or on behalf of the accused) be admissible as evidence of those facts for the purposes of subsection (4) above.”
- (f) in subsection (5A), for the words from “if” in the first place where it occurs to the end there is substituted “if—
- (a) it is sent by or on behalf of the accused’s solicitor by ordinary post—
    - (i) to the dwelling-house or place of business of the witness; or
    - (ii) if he has no known dwelling-house or place of business, to any other place in which he may be resident at the time; or
  - (b) an electronic citation is sent by or on behalf of the accused’s solicitor by means of electronic communication to the home or business email address of the witness.”
- (g) after subsection (5A) there is inserted—

“(5B) Where a witness fails to appear at a diet or sitting or adjourned diet or sitting to which he has been cited in the manner provided by this section, subsection (2) of section 156 of this Act shall not apply unless it is proved to the court that he received the citation or that its contents came to his knowledge.”,

(h) after subsection (6) there is inserted—

“(6A) When the citation of any person is effected by electronic citation under subsection (3A) above, the induciae shall be reckoned from the end of the day on which the citation was sent.”,

(i) after subsection (7) there is added—

“(7A) It shall be sufficient evidence that citation has been effected electronically under subsection (3A) or (5A)(b) above if there is produced in court 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 person being cited.

(7B) In this section, 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—
  - (i) in the case of citation of the accused, by the prosecutor;
  - (ii) in the case of citation of a witness, by or on behalf of the prosecutor or the accused’s solicitor.”.

## **9 Procedure at first calling**

(1) In section 144 (procedure at first diet) of the 1995 Act—

- (a) in paragraph (a) of subsection (2), the words from “and” to the end are repealed,
- (b) after subsection (3) there is inserted—

“(3ZA) Where the prosecutor is not satisfied, in relation to a written intimation of a plea—

- (a) that the intimation of the plea has been made or authorised by the accused; or
  - (b) that the terms of the plea are clear,
- the court may continue the case to another diet.

(3ZB) The clerk of court may perform the functions of the court under—

- (a) subsections (2) and (3) above in relation to a plea of not guilty;
  - (b) subsection (3ZA) above,
- without the court being properly constituted.”.

(2) In section 145A (adjournment at first calling to allow accused to appear etc.) of that Act, after subsection (3) there is added—

“(4) The clerk of court may perform the functions of the court under subsection (1) above without the court being properly constituted.”.

## **10 Intimation of diets etc.**

In section 146 (plea of not guilty) of the 1995 Act, after subsection (3) there is inserted—

“(3ZA) Where a case is adjourned under subsection (3) above, the court shall intimate to the accused the trial diet assigned and any intermediate diet fixed.

(3ZB) When intimating a diet under subsection (3ZA) above, the court shall inform the accused that, if he fails to appear at any diet in the proceedings in respect of the case, the court might hear and dispose of the case in his absence.”.

## **11 Pre-trial time limits**

In section 147 (prevention of delay in trials) of the 1995 Act, for subsection (2) there is substituted—

“(2) On an application made for the purpose, the sheriff may, on cause shown—

- (a) extend the period mentioned in subsection (1) above; and
- (b) order the accused to be detained awaiting trial,

for such period as the sheriff thinks fit.

(2A) Before determining an application under subsection (2) above, the sheriff shall give the parties an opportunity to be heard.

(2B) However, where all the parties join in the application, the sheriff may determine the application without hearing the parties and, accordingly, may dispense with any hearing previously appointed for the purpose of considering the application.”.

## **12 Disclosure of convictions**

(1) In section 166 (previous convictions: summary proceedings) of the 1995 Act, in subsection (8)—

- (a) sub-paragraph (i) of paragraph (b), and
  - (b) the word “or” immediately following that sub-paragraph,
- are repealed.

(2) After that section there is inserted—

### **“166A Post-offence convictions**

Where a person is convicted of an offence on summary complaint, the court may, in deciding on the disposal of the case, have regard to any convictions which—

- (a) were imposed on the person between the date of the offence and the date of conviction in respect of the offence;
- (b) are specified in a notice laid before the court by the prosecutor; and
- (c) are—
  - (i) admitted by the person; or
  - (ii) proved by the prosecutor on evidence adduced then or at another diet.

### **166B Charges which disclose convictions**

- (1) Nothing in section 166 of this Act prevents—
  - (a) the prosecutor leading evidence of previous convictions where it is competent to do so as evidence in support of a substantive charge;
  - (b) the prosecutor proceeding with a charge—
    - (i) which discloses a previous conviction; or
    - (ii) in support of which evidence of a previous conviction may competently be led,on a complaint which includes a charge in relation to which the conviction is irrelevant; or
  - (c) the court trying a charge—
    - (i) which discloses a previous conviction; or
    - (ii) in support of which evidence of a previous conviction may competently be led,together with a charge on another complaint in relation to which the conviction is irrelevant.
- (2) But subsections (1)(b) and (c) above apply only if the charges are of offences which—
  - (a) relate to the same occasion; or
  - (b) are of a similar character and amount to (or form part of) a course of conduct.
- (3) The reference in subsection (1)(c) above to trying a charge together with a charge on another complaint means doing so under section 152A of this Act.”.

## **13 Complaints triable together**

After section 152 of the 1995 Act there is inserted—

### **“152A Complaints triable together**

- (1) Where—
  - (a) two or more complaints against an accused call for trial in the same court on the same day; and
  - (b) they each contain one or more charges to which the accused pleads not guilty,the prosecutor may apply to the court for those charges to be tried together at that diet despite the fact that they are not all contained in the one complaint.

- (2) On an application under subsection (1) above, the court is to try those charges together if it appears to the court that it is expedient to do so.
- (3) For the purposes of subsections (1) and (2) above, any other charges contained in the complaints are (without prejudice to further proceedings as respects those other charges) to be disregarded.
- (4) Where charges are tried together under this section, they are to be treated (including, in particular, for the purposes of and in connection with the leading of evidence, proof and verdict) as if they were contained in one complaint.
- (5) But the complaints mentioned in subsection (1)(a) above are, for the purposes of further proceedings (including as to sentence), to be treated as separate complaints.”.

#### **14 Proceedings in absence of accused**

- (1) In section 141 (manner of citation) of the 1995 Act, in subsection (4), for the words “subsections (3) and (5) to (7) of section 150” there is substituted “sections 143(7), 150(3) and 150A(1)”.
- (2) In section 145A (adjournment at first calling to allow accused to appear etc.) of that Act, in subsection (1), for the words “150(1) to (7)” there is substituted “150”.
- (3) In section 150 (failure of accused to appear) of that Act—
  - (a) after subsection (3B) there is inserted—
    - “(3C) An order under subsection (3B) above—
      - (a) for the purpose of having a trial in absence of the accused under section 150A of this Act, 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.”,
  - (b) subsections (5) to (7) are repealed.
- (4) After section 150 of that Act there is inserted—

##### **“150A Proceedings in absence of accused**

- (1) Where the accused does not appear at a diet (apart from a diet fixed for the first calling of the case), the court—
  - (a) on the motion of the prosecutor or, in relation to sentencing, of its own accord; and
  - (b) if satisfied as to the matters specified in subsection (2) below, may proceed to hear and dispose of the case in the absence of the accused in like manner as if the accused were present.
- (2) The matters referred in subsection (1)(b) above are—
  - (a) that citation of the accused has been effected or the accused has received other intimation of the diet; and
  - (b) that it is in the interests of justice to proceed as mentioned in subsection (1) above.



- (3) In subsection (1) above, the reference to proceeding to hear and dispose of the case includes, in relation to a trial diet, proceeding with the trial.
- (4) Where the court is considering whether to proceed in pursuance of subsection (1) above, it shall—
  - (a) if satisfied that there is a solicitor with authority to act—
    - (i) for the purposes of representing the accused’s interests at the hearing on whether to proceed that way; and
    - (ii) if it proceeds that way, for the purposes of representing the accused’s further interests at the diet (including, in relation to a trial diet, presenting a defence at the trial),  
allow that solicitor to act for those purposes; or
  - (b) if there is no such solicitor, at its own hand appoint a solicitor to act for those purposes if it considers that it is in the interests of justice to do so.
- (5) It is the duty of a solicitor appointed under subsection (4)(b) above to act in the best interests of the accused.
- (6) In all other respects, a solicitor so appointed has, and may be made subject to, the same obligations and has, and may be given, the same authority as if engaged by the accused; and any employment of and instructions given to counsel by the solicitor shall proceed and be treated accordingly.
- (7) Where the court is satisfied that—
  - (a) a solicitor allowed to act under subsection (4)(a) above no longer has authority to act; or
  - (b) a solicitor appointed under subsection (4)(b) above is no longer able to act in the best interests of the accused,  
the court may relieve that solicitor and appoint another solicitor for the purposes referred to in subsection (4) above.
- (8) Subsections (4)(b) and (7) above do not apply in the case of proceedings—
  - (a) in respect of a sexual offence to which section 288C of this Act applies;
  - (b) in respect of which section 288E of this Act applies; or
  - (c) in which an order has been made under section 288F(2) of this Act.
- (9) Reference in this section to a solicitor appointed under subsection (4)(b) above includes reference to a solicitor appointed under subsection (7) above.
- (10) Where the court proceeds in pursuance of subsection (1) above, it shall not in the absence of the accused pronounce a sentence of imprisonment or detention.
- (11) Nothing in this section prevents—
  - (a) a warrant being granted at any stage of proceedings for the apprehension of the accused;
  - (b) a case subsequently being adjourned (in particular, with a view to having the accused present at any proceedings).”.

- (5) In section 153 (trial in presence of accused) of that Act, in subsection (1), for the words “Without prejudice to section 150 of this Act, and subject to” there is substituted “Subject to section 150A of this Act and”.

## 15 Failure of accused to appear

In section 150 (failure of accused to appear) of the 1995 Act—

- (a) in subsection (8), in paragraph (b)(ii), for the word “3” there is substituted “12”,
- (b) in subsection (9), for the words “The penalties provided for in subsection (8) above may” there is substituted “A penalty under subsection (8) above shall”,
- (c) after subsection (9) there is inserted—

“(9A) The reference in subsection (9) above to a penalty being imposed in addition to another penalty means, in the case of sentences of imprisonment or detention—

- (a) where the sentences are imposed at the same time (whether or not in relation to the same complaint), framing the sentences so that they have effect consecutively;
- (b) where the sentences are imposed at different times, framing the sentence imposed later so that (if the earlier sentence has not been served) the later sentence has effect consecutive to the earlier sentence.

(9B) Subsection (9A)(b) above is subject to section 204A of this Act.

(9C) In any proceedings in relation to an offence under subsection (8) above, the fact that (as the case may be) an accused—

- (a) failed to appear at a diet; or
- (b) was given due notice of a diet,

shall, unless challenged by preliminary objection before his plea is recorded, be held as admitted.”.

## 16 Obstructive witnesses

For section 156 (apprehension of witness) of the 1995 Act there is substituted—

### “156 Apprehension of witnesses

- (1) In any summary proceedings, the court may, on the application of any of the parties, issue a warrant for the apprehension of a witness if subsection (2) or (3) below applies in relation to the witness.
- (2) This subsection applies if the witness, having been duly cited to any diet in the proceedings, deliberately and obstructively fails to appear at the diet.
- (3) This subsection applies if the court is satisfied by evidence on oath that the witness is being deliberately obstructive and is not likely to attend to give evidence at any diet in the proceedings without being compelled to do so.
- (4) For the purposes of subsection (2) above, a witness who, having been duly cited to any diet, fails to appear at the diet is to be presumed, in the absence of any evidence to the contrary, to have so failed deliberately and obstructively.

- (5) An application under subsection (1) above—
  - (a) may be made orally or in writing;
  - (b) if made in writing—
    - (i) shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form; and
    - (ii) may be disposed of in court or in chambers after such enquiry or hearing (if any) as the court considers appropriate.
- (6) A warrant issued under this section shall be in such form as may be prescribed by Act of Adjournal or as nearly as may be in such form.
- (7) A warrant issued under this section in the form mentioned in subsection (6) above shall imply warrant to officers of law—
  - (a) to search for and apprehend the witness in respect of whom it is issued;
  - (b) to bring the witness before the court;
  - (c) in the meantime, to detain the witness in a police station, police cell or other convenient place; and
  - (d) so far as necessary for the execution of the warrant, to break open shut and lockfast places.
- (8) It shall not be competent in summary proceedings for a court to issue a warrant for the apprehension of a witness otherwise than in accordance with this section.
- (9) Section 135(3) of this Act makes provision as to bringing before the court a person apprehended under a warrant issued under this section.
- (10) In this section and section 156A, “the court” means the court in which the witness is to give evidence.

#### **156A Orders in respect of witnesses apprehended under section 156**

- (1) Where a witness is brought before the court in pursuance of a warrant issued under section 156 of this Act, the court shall, after giving the parties and the witness an opportunity to be heard, make an order—
  - (a) detaining the witness until the conclusion of the diet at which the witness is to give evidence;
  - (b) releasing the witness on bail; or
  - (c) liberating the witness.
- (2) The court may make an order under subsection (1)(a) or (b) above only if it is satisfied that—
  - (a) the order is necessary with a view to securing that the witness appears at the diet at which the witness is to give evidence; and
  - (b) it is appropriate in all the circumstances to make the order.
- (3) Whenever the court makes an order under subsection (1) above, it shall state the reasons for the terms of the order.
- (4) Subsection (1) above is without prejudice to any power of the court to—
  - (a) make a finding of contempt of court in respect of any failure of a witness to appear at a diet to which he has been duly cited; and
  - (b) dispose of the case accordingly.

- (5) Where—
- (a) an order under subsection (1)(a) above has been made in respect of a witness; and
  - (b) at, but before the conclusion of, the diet at which the witness is to give evidence, the court in which the diet is being held excuses the witness, that court, on excusing the witness, may recall the order under subsection (1)(a) above and liberate the witness.
- (6) On making an order under subsection (1)(b) above in respect of a witness, the court shall impose such conditions as it considers necessary with a view to securing that the witness appears at the diet at which he is to give evidence.
- (7) However, the court may not impose as such a condition a requirement that the witness or a cautioner on his behalf deposit a sum of money in court.
- (8) Section 25 of this Act shall apply in relation to an order under subsection (1)(b) above as it applies to an order granting bail, but with the following modifications—
- (a) references to the accused shall be read as if they were references to the witness in respect of whom the order under subsection (1)(b) above is made;
  - (b) references to the order granting bail shall be read as if they were references to the order under subsection (1)(b) above;
  - (c) subsection (3) shall be read as if for the words from “relating” to “offence” in the third place where it occurs there were substituted “at which the witness is to give evidence”.

### **156B Breach of bail under section 156A(1)(b)**

- (1) A witness who, having been released on bail by virtue of an order under subsection (1)(b) of section 156A of this Act, fails without reasonable excuse—
- (a) to appear at any diet to which he has been cited; or
  - (b) to comply with any condition imposed under subsection (6) of that section,
- shall be guilty of an offence and liable on summary conviction to the penalties specified in subsection (2) below.
- (2) Those penalties are—
- (a) a fine not exceeding level 3 on the standard scale; and
  - (b) imprisonment for a period—
    - (i) where conviction is in the JP court, not exceeding 60 days;
    - (ii) where conviction is in the sheriff court, not exceeding 12 months.
- (3) 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,

---

*Status: This is the original version (as it was originally enacted).*

---

shall, unless challenged by preliminary objection before his plea is recorded, be held as admitted.

- (4) Section 28 of this Act shall apply in respect of a witness who has been released on bail by virtue of an order under section 156A(1)(b) of this Act as it applies to an accused released on bail, but with the following modifications—
- (a) references to an accused shall be read as if they were references to the witness;
  - (b) in subsection (2), the reference to the court to which the accused’s application for bail was first made shall be read as if it were a reference to the court which made the order under section 156A(1)(b) of this Act in respect of the witness;
  - (c) in subsection (4)—
    - (i) references to the order granting bail and original order granting bail shall be read as if they were references to the order under section 156A(1)(b) of this Act and the original such order respectively;
    - (ii) paragraph (a) shall be read as if at the end there were inserted “and make an order under section 156A(1)(a) or (c) of this Act in respect of the witness”;
    - (iii) paragraph (c) shall be read as if for the words from “complies” to the end there were substituted “appears at the diet at which the witness is to give evidence”.

#### **156C Review of orders under section 156A(1)(a) or (b)**

- (1) Where a court has made an order under subsection (1)(a) of section 156A of this Act, the court may, on the application of the witness in respect of whom the order was made and after giving the parties and the witness an opportunity to be heard—
- (a) recall the order; and
  - (b) make an order under subsection (1)(b) or (c) of that section in respect of the witness.
- (2) Where a court has made an order under subsection (1)(b) of section 156A of this Act, the court may, after giving the parties and the witness an opportunity to be heard—
- (a) on the application of the witness in respect of whom the order was made—
    - (i) review the conditions imposed under subsection (6) of that section at the time the order was made; and
    - (ii) make a new order under subsection (1)(b) of that section and impose different conditions under subsection (6) of that section;
  - (b) on the application of the party who made the application under section 156(1) of this Act in respect of the witness, review the order and the conditions imposed under subsection (6) of section 156A of this Act at the time the order was made, and—
    - (i) recall the order and make an order under subsection (1)(a) of that section in respect of the witness; or

---

*Status: This is the original version (as it was originally enacted).*

---

- (ii) make a new order under subsection (1)(b) of that section and impose different conditions under subsection (6) of that section.
- (3) The court may not review an order by virtue of subsection (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 case, the witness or party making the application puts before the court material information which was not available to it when it made the order which is the subject of the application.
- (4) An application under this section by a witness—
  - (a) where it relates to the first order made under section 156A(1)(a) or (b) of this Act in respect of the witness, shall not be made before the fifth day after that order is made;
  - (b) where it relates to any subsequent such order, shall not be made before the fifteenth day after the order is made.
- (5) On receipt of an application under subsection (2)(b) above the court shall—
  - (a) intimate the application to the witness in respect of whom the order which is the subject of the application was made;
  - (b) fix a diet for hearing the application and cite the witness to attend the diet; and
  - (c) where it considers that the interests of justice so require, grant warrant to arrest the witness.
- (6) Nothing in this section shall affect any right of a person to appeal against an order under section 156A(1).

#### **156D Appeals in respect of orders under section 156A(1)**

- (1) Any of the parties specified in subsection (2) below may appeal to the High Court against—
  - (a) any order made under subsection (1)(a) or (c) of section 156A of this Act;
  - (b) where an order is made under subsection (1)(b) of that section—
    - (i) the order;
    - (ii) any of the conditions imposed under subsection (6) of that section on the making of the order; or
    - (iii) both the order and any such conditions.
- (2) The parties referred to in subsection (1) above are—
  - (a) the witness in respect of whom the order which is the subject of the appeal was made;
  - (b) the prosecutor; and
  - (c) the accused.
- (3) A party making an appeal under subsection (1) above shall intimate it to the other parties specified in subsection (2) above; and, for that purpose, intimation to the Crown Agent shall be sufficient intimation to the prosecutor.

- (4) An appeal under this section shall be disposed of by the High Court or any Lord Commissioner of Justiciary in court or in chambers after such enquiry and hearing of the parties as shall seem just.
- (5) Where the witness in respect of whom the order which is the subject of an appeal under this section was made is under 21 years of age, section 51 of this Act shall apply to the High Court or, as the case may be, the Lord Commissioner of Justiciary when disposing of the appeal as it applies to a court when remanding or committing a person of the witness's age for trial and sentence.”.

## 17 Prosecution of companies etc.

In section 143 (prosecution of companies, etc.) of the 1995 Act, after subsection (3) there is added—

- “(4) A partnership, association, body corporate or body of trustees may, for the purpose of—
- (a) stating objections to the competency or relevancy of the complaint or proceedings;
  - (b) tendering a plea of guilty or not guilty;
  - (c) making a statement in mitigation of sentence,
- appear by a representative.
- (5) In subsection (4) above, “representative” means—
- (a) an individual representative as mentioned in subsection (3) above; or
  - (b) an employee of the partnership, association, body corporate or body of trustees duly appointed by it for the purpose of the proceedings.
- (6) For the purposes of subsection (5)(b) 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;
  - (c) in the case of a partnership (other than a limited liability partnership), purporting to be signed by a partner of the partnership;
  - (d) in the case of an association, purporting to be signed by an officer of the association,
- 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.
- (7) Where at a diet (apart from a diet fixed for the first calling of the case) a partnership, association, body corporate or body of trustees does not appear as mentioned in subsection (4) above, or by counsel or a solicitor, the court may—
- (a) on the motion of the prosecutor or, in relation to sentencing, of its own accord; and
  - (b) if satisfied as to the matters specified in subsection (8) below, proceed to hear and dispose of the case in the absence of the partnership, association, body corporate or (as the case may be) body of trustees.
- (8) The matters referred to in subsection (7)(b) above are—

- (a) that citation has been effected or other intimation of the diet has been received; and
  - (b) that it is in the interests of justice to proceed as mentioned in subsection (7) above.
- (9) The reference in subsection (7) above to proceeding to hear and dispose of the case includes, in relation to a trial diet, proceeding with the trial.”.

*Preparation for summary trial***18 Intermediate diets**

In section 148 (intermediate diet) of the 1995 Act—

- (a) after paragraph (b) of subsection (1) there is inserted—
  - “(ba) how many witnesses are required by—
    - (i) the prosecutor;
    - (ii) the accused,
 to attend the trial;”,
- (b) in paragraph (a) of subsection (2), for the words from the beginning to “so,” there is substituted “may”,
- (c) in subsection (3), for the words “Subject to subsection (2) above, the” there is substituted “The”,
- (d) for subsection (4) there is substituted—
  - “(4) At an intermediate diet, the court shall make such enquiry of the parties as is reasonably required for the purposes of subsections (1) and (3A) above.”.

**19 Notice of defences**

For sections 149 (alibi) and 149A (notice of defence plea of consent) of the 1995 Act there is substituted—

**“149B Notice of defences**

- (1) It is not competent for an accused in a summary prosecution to found on a defence to which this subsection applies unless—
  - (a) notice of the defence has been given to the prosecutor in accordance with subsection (5) below; or
  - (b) the court, on cause shown, allows the accused to found on the defence despite the failure so to give notice of it.
- (2) Subsection (1) above applies—
  - (a) to a special defence;
  - (b) to a defence which may be made out by leading evidence calculated to exculpate the accused by incriminating a co-accused;
  - (c) to a defence of automatism or coercion;
  - (d) in a prosecution for an offence to which section 288C of this Act applies, to a defence of consent.



- (3) In subsection (2)(d) above, the reference to a defence of consent is a reference to the defence which is stated by reference to the complainer's consent to the act which is the subject matter of the charge or the accused's belief as to that consent.
- (4) In subsection (3) above, "complainer" has the same meaning as in section 274 of this Act.
- (5) Notice of a defence is given in accordance with this subsection if it is given—
  - (a) where an intermediate diet is to be held, at or before that diet; or
  - (b) where such a diet is not to be held, no later than 10 clear days before the trial diet,together with the particulars mentioned in subsection (6) below.
- (6) The particulars are—
  - (a) in relation to a defence of alibi, particulars as to time and place; and
  - (b) in relation to that or any other defence, particulars of the witnesses who may be called to give evidence in support of the defence.
- (7) Where notice of a defence to which subsection (1) above applies is given to the prosecutor, the prosecutor is entitled to an adjournment of the case.
- (8) The entitlement to an adjournment under subsection (7) above may be exercised whether or not—
  - (a) the notice was given in accordance with subsection (5) above;
  - (b) the entitlement could have been exercised at an earlier diet."

## **20 Proof of uncontroversial matters**

- (1) In section 257 (duty to seek agreement of evidence) of the 1995 Act, after subsection (4) there is added—
  - "(5) Without prejudice to subsection (3) above, in relation to summary proceedings, the parties to the proceedings shall, in complying with the duty under subsection (1) above, seek to ensure that the facts to be identified, and the steps to be taken in relation to those facts, are identified and taken before any intermediate diet that is to be held."
- (2) In section 258 (uncontroversial evidence) of that Act—
  - (a) in subsection (2), for the words "14 days" there is substituted "the relevant period",
  - (b) after subsection (2) there is inserted—
    - "(2ZA) In subsection (2) above, the "relevant period" means—
      - (a) where the relevant diet for the purpose of that subsection is an intermediate diet in summary proceedings, 7 days;
      - (b) in any other case, 14 days."
  - (c) in subsection (2A), after paragraph (a) there is inserted—
    - "(aa) in summary proceedings in which an intermediate diet is to be held, that diet;"
  - (d) in subsection (4A), the words "in any solemn proceedings" are repealed,
  - (e) in subsection (4B)—

---

*Status: This is the original version (as it was originally enacted).*

---

- (i) the word “and” immediately following paragraph (a) is repealed,
- (ii) in paragraph (b), after the word “in” in the first place where it occurs there is inserted “solemn”,
- (iii) after paragraph (b) there is added—
  - “(c) in summary proceedings—
    - (i) in which an intermediate diet is to be held, that diet;
    - (ii) in which such a diet is not to be held, the trial diet.”.

## 21 Service of documents through solicitor etc.

After section 148B of the 1995 Act there is inserted—

### **“148C Engagement, dismissal and withdrawal of solicitor representing accused**

- (1) In summary proceedings, it is the duty of a solicitor who is engaged by the accused for the purposes of his defence at trial to notify the court and the prosecutor of that fact forthwith in writing.
- (2) The duty under subsection (1) above shall be regarded as having been complied with if the solicitor has represented the accused at the first calling of the case—
  - (a) by submitting a written intimation of the accused’s plea as described in subsection (2)(a) of section 144 of this Act; or
  - (b) by appearing on behalf of the accused—
    - (i) as described in subsection (2)(b) of that section; or
    - (ii) with the accused present,
 and has, when acting as described in paragraph (a) or (b) above, notified the court and the prosecutor orally or in writing that the solicitor is also engaged by the accused for the purposes of his defence at trial.
- (3) Where a solicitor referred to in subsection (1) above—
  - (a) is dismissed by the accused; or
  - (b) withdraws,
 it is the duty of the solicitor to notify the court and the prosecutor of that fact forthwith in writing.

### **148D Service etc. on accused through a solicitor**

- (1) In summary proceedings, anything which is to be served on or given, notified or otherwise intimated to, the accused (except service of a complaint) shall be taken to be so served, given, notified or intimated if it is, in such form and manner as may be prescribed by Act of Adjournal, served on or given, notified or intimated to (as the case may be) the solicitor described in subsection (2) below at that solicitor’s place of business.
- (2) That solicitor is any solicitor—
  - (a) who—

---

*Status: This is the original version (as it was originally enacted).*

---

- (i) has given notice under subsection (1) of section 148C of this Act that that solicitor is engaged by the accused for the purposes of the accused’s defence at the trial; and
- (ii) has not given notice under subsection (3) of that section;
- (b) who has represented the accused as mentioned in subsection (2) of that section; and—
  - (i) has given notice as mentioned in that subsection; and
  - (ii) has not given notice under subsection (3) of that section; or
- (c) who—
  - (i) has been appointed to act for the purposes of the accused’s defence at the trial under section 150A(4)(b) or (7) or 288D of this Act; and
  - (ii) has not been relieved of the appointment by the court.”.

### *Transfer of summary cases*

## **22 Transfer of proceedings**

- (1) In section 137A (transfer of sheriff court summary proceedings within sheriffdom) of the 1995 Act—
  - (a) in subsection (1), for the words “an accused person has been cited to attend a diet of the sheriff court” there is substituted “this subsection applies,”,
  - (b) after subsection (1) there is inserted—
    - “(1A) Subsection (1) above applies—
      - (a) where the accused person has been cited in summary proceedings to attend a diet of the court; or
      - (b) if the accused person has not been cited to such a diet, where summary proceedings against the accused have been commenced in the court.”.
- (2) In section 137B (transfer of sheriff court summary proceedings outwith sheriffdom) of that Act—
  - (a) for subsection (1) there is substituted—
    - “(1) Where the sheriff clerk informs the prosecutor that, because of exceptional circumstances which could not reasonably have been foreseen, it is not practicable for the sheriff court or any other sheriff court in the sheriffdom to proceed with some or all of the summary cases due to call at a diet, the prosecutor shall as soon as practicable apply to the sheriff principal for an order for—
      - (a) the transfer of the proceedings to a sheriff court in another sheriffdom; and
      - (b) adjournment to a diet of that court.”,
  - (b) after subsection (1) there is inserted—
    - “(1A) Where this subsection applies, the prosecutor may apply to the sheriff for an order for—
      - (a) the transfer of the proceedings to a sheriff court in another sheriffdom; and

(b) adjournment to a diet of that court,  
if there are also summary proceedings against the accused person in  
that court in the other sheriffdom.

(1B) Subsection (1A) above applies—

- (a) where the accused person has been cited in summary proceedings to attend a diet of the court; or
- (b) if the accused person has not been cited to such a diet, where summary proceedings against the accused have been commenced in the court.

(1C) Where the prosecutor intends to take summary proceedings against an accused person in the sheriff court, the prosecutor may apply to the sheriff for an order for authority for the proceedings to be taken at a sheriff court in another sheriffdom if there are also summary proceedings against the accused person in that court in the other sheriffdom.”

(c) after subsection (2) there is inserted—

“(2A) On an application under subsection (1A) or (1C) above, the sheriff is to make the order sought if—

- (a) the sheriff considers that it would be expedient for the different cases involved to be dealt with by the same court; and
- (b) a sheriff of the other sheriffdom consents.”

(d) after subsection (3) there is added—

“(4) On the application of the prosecutor, a sheriff who has made an order under subsection (2A) above may, if a sheriff of the other sheriffdom mentioned in paragraph (b) of that subsection consents—

- (a) revoke; or
- (b) vary so as to restrict the effect of,  
that order.”

(3) After section 137B of that Act there is inserted—

**“137C Custody cases: initiating 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 in summary prosecutions 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 summary 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.

### **137D Transfer of JP court proceedings to the sheriff court**

- (1) Where an accused person is due to be sentenced at a sheriff court for an offence, the prosecutor may apply to the sheriff for an order for—
  - (a) the transfer to the sheriff court of any case against the accused in respect of which sentencing is pending at any JP court in the sheriffdom; and
  - (b) the case to call at a diet of the sheriff court.
- (2) On an application under subsection (1) above, the sheriff is to make the order sought if the sheriff considers that it would be expedient for the different cases to be disposed of at the same court at the same time.
- (3) If, in a case transferred under subsection (1) above, the finding of guilt was before a justice of the peace, the sentencing powers of the sheriff in the case are restricted to those of the justice.”.

## **23 Time bar for transferred and related cases**

After section 136 of the 1995 Act there is inserted—

### **“136A Time limits for transferred and related cases**

- (1) This section applies where the prosecutor recommences proceedings by complaint containing both—
  - (a) a charge to which proceedings—
    - (i) transferred to a court by authority of an order made in pursuance of section 137A(1) of this Act; or
    - (ii) transferred to, or taken at, a court by authority of an order made in pursuance of section 137B(1), (1A) or (1C) of this Act, relate; and
  - (b) a charge to which previous proceedings at that court relate.
- (2) Where this section applies, proceedings for an offence charged in that complaint are, for the purposes of—
  - (a) section 136 of this Act (so far as applying to the offence);
  - (b) any provision of any other enactment for a time limit within which proceedings are to be commenced (so far as applying to the offence); and

- (c) any rule of law relating to delay in bringing proceedings (so far as applying to the offence),  
to be regarded as having been commenced when any previous proceedings for the offence were first commenced.”.

*Other provisions*

**24 Reports about supervised persons**

In section 203 (reports) of the 1995 Act, after subsection (1) there is inserted—

“(1A) However, if there is available to the court a report from a local authority—

- (a) of the kind described in subsection (1)(b) above; and
- (b) which was prepared in relation to the person not more than 3 months before the person was convicted of the offence,

the court need not obtain another report of that kind before disposing of the case unless it considers, following representations made by or on behalf of the person as to the person’s circumstances, that it is appropriate to obtain another report.

- (1B) Nothing in subsection (1) or (1A) above requires the court to obtain a report if the court is satisfied, having regard to its likely method of dealing with the case before it for disposal, that the report would not be of any material assistance.”.

**25 Summary appeal time limit**

(1) In section 180 (leave to appeal against conviction etc.) of the 1995 Act—

- (a) in subsection (3)—
  - (i) after the word “below” there is inserted “(and if that period is extended under subsection (4A) below before the period being extended expires, until the expiry of the period as so extended)”,
  - (ii) for the words “that subsection” there is substituted “subsection (4) below”,
- (b) after subsection (4) there is inserted—

“(4A) The High Court may, on cause shown, extend the period of 14 days mentioned in subsection (4) above, or that period as extended under this subsection, whether or not the period to be extended has expired (and if that period of 14 days has expired, whether or not it expired before section 25(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) came into force).”.

(2) In section 186 (appeals against sentence only) of that Act, in subsection (5), for the words from the beginning to “may” there is substituted “The sheriff principal of the sheriffdom in which the judgment was pronounced may, on cause shown,”.

(3) In section 187 (leave to appeal against sentence) of that Act—

- (a) in subsection (2)—
  - (i) after the word “below” there is inserted “(and if that period is extended under subsection (3A) below before the period being extended expires, until the expiry of the period as so extended)”,

- (ii) for the words “that subsection” there is substituted “subsection (3) below”,
- (b) after subsection (3) there is inserted—
  - “(3A) The High Court may, on cause shown, extend the period of 14 days mentioned in subsection (3) above, or that period as extended under this subsection, whether or not the period to be extended has expired (and if that period of 14 days has expired, whether or not it expired before section 25(3) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) came into force).”.
- (4) In section 194 (computation of time) of that Act, in subsection (2), for the words from the beginning to “may” there is substituted “The sheriff principal of the sheriffdom in which the judgment was pronounced may, on cause shown,”.

#### *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.”.

*Miscellaneous*

**33 Apprehension warrants**

After section 297 of the 1995 Act there is inserted—

**“297A Re-execution of apprehension warrants**

- (1) This section applies where a person has been apprehended under a warrant (the “original warrant”) granted under this Act in relation to any proceedings.
- (2) If the person absconds, the person may be re-apprehended under the original warrant (and as if that warrant had not been executed to any extent).
- (3) If, for any reason, it is not practicable to bring the person before the court as required under a provision of this Act applying in the case, the person is to be brought before the court as soon as practicable after the relevant reason ceases to prevail.
- (4) Despite subsection (3) above, if—
  - (a) the original warrant was granted in solemn proceedings; and
  - (b) the impracticability arises because the person needs medical treatment or care,
 the person may be released.
- (5) A person released under subsection (4) above may be re-apprehended under the original warrant (and as if that warrant had not been executed to any extent).
- (6) Subsection (3) above does not affect the operation of section 22(1B) of this Act (which relates to liberation on an undertaking of persons apprehended under warrant granted in summary proceedings).
- (7) Nothing in this section prevents a court from granting a fresh warrant for the apprehension of the person.
- (8) Subject to this section are—
  - (a) any rule of law as to bringing a person before a court in pursuance of a warrant granted on petition (as referred to in section 34 of this Act);
  - (b) section 102A(10) of this Act;
  - (c) section 135(3) (including as applying in relation to sections 22(1B) and 156) of this Act;
  - (d) section 90A(9) of this Act.”.

**34 Participation in identification procedures**

After section 267A of the 1995 Act there is inserted—

*“Identification procedures***267B Order requiring accused to participate in identification procedure**

- (1) The court may, on an application by the prosecutor in any proceedings, make an order requiring the accused person to participate in an identification parade or other identification procedure.
- (2) The application may be made at any time after the proceedings have been commenced.
- (3) The court—

- (a) shall (if the accused is present) allow the accused to make representations in relation to the application;
  - (b) may, if it considers it appropriate to do so (where the accused is not present), fix a hearing for the purpose of allowing the accused to make such representations.
- (4) Where an order is made under subsection (1) above, the clerk of court shall (if the accused is not present) have notice of the order effected as respects the accused without delay.
- (5) Notice under subsection (4) above shall (in relation to any proceedings) be effected in the same manner as citation under section 141 of this Act.
- (6) It is sufficient evidence that notice has been effected under subsection (5) above if there is produced a written execution—
  - (a) in the form prescribed by Act of Adjournal or as nearly as may be in such form; and
  - (b) signed by the person who effected notice.
- (7) In relation to notice effected by means of registered post or the recorded delivery service, the relevant post office receipt requires to be produced along with the execution mentioned in subsection (6) above.
- (8) A person who, having been given due notice of an order made under subsection (1) above, without reasonable excuse fails to comply with the order is—
  - (a) guilty of an offence; and
  - (b) liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 12 months or to both.
- (9) For the purpose of subsection (5) above, section 141 of this Act is to be read with such modifications as are necessary for its application in the circumstances.
- (10) In this section, “the court” means—
  - (a) in the case of proceedings in the High Court, a single judge of that Court;
  - (b) in any other case, any court with jurisdiction in relation to the proceedings.”.

### **35 Evidence on commission**

- (1) In section 66 (service and lodging of indictment, etc.) of the 1995 Act—
  - (a) in subsection (6A)—
    - (i) in paragraph (a)(i), after the word “defence” there is inserted “(including at any commissioner proceedings)”,
    - (ii) in paragraph (a)(iii), after the word “trial” there is inserted “(or at any related commissioner proceedings)”,
  - (b) after subsection (14) there is added—

---

*Status: This is the original version (as it was originally enacted).*

---

“(15) In subsection (6A) above, “commissioner proceedings” means proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act.”.

(2) In section 140 (citation) of that Act—

(a) in subsection (2A)—

(i) in paragraph (a), after the word “defence” there is inserted “(including at any commissioner proceedings)”,

(ii) in paragraph (c), after the word “trial” there is inserted “(or at any related commissioner proceedings)”,

(b) after subsection (2B) there is added—

“(2C) In subsection (2A) above, “commissioner proceedings” means proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act.”.

(3) In section 271I (taking of evidence by a commissioner) of that Act—

(a) after subsection (1) there is inserted—

“(1A) Proceedings before a commissioner appointed under subsection (1) above shall, if the court so directed when authorising such proceedings, take place by means of a live television link between the place where the commissioner is taking, and the place from which the witness is giving, evidence.”,

(b) in subsection (3)(a), for the words “present in the room where such proceedings are taking place” there is substituted “present—

(i) in the room where such proceedings are taking place;  
or

(ii) if such proceedings are taking place by means of a live television link, in the same room as the witness”,

(c) after subsection (4) there is added—

“(5) Sections—

(a) 274;

(b) 275;

(c) 275B except subsection (2)(b);

(d) 275C;

(e) 288C;

(f) 288E; and

(g) 288F,

of this Act apply in relation to proceedings before a commissioner appointed under subsection (1) above as they apply in relation to a trial.

(6) In the application of those sections in relation to such proceedings—

(a) the commissioner acting in the proceedings is to perform the functions of the court as provided for in those sections;

(b) references—

(i) in those sections, except section 275(3)(c) and (7)(c), to a trial or a trial diet;

---

*Status: This is the original version (as it was originally enacted).*

---

- (ii) in those sections, except sections 275(3)(e) and 288F(2), (3) and (4), to the court, shall be read accordingly;
  - (c) the reference in section 275B(1) to 14 days shall be read as a reference to 7 days.
- (7) In a case where it falls to the court to appoint a commissioner under subsection (1) above, the commissioner shall be a person described in subsection (8) below.
- (8) The persons are—
  - (a) where the proceedings before the commissioner are for the purposes of a trial in the High Court, a judge of the High Court; or
  - (b) in any other case, a sheriff.”.
- (4) In section 272 (evidence by letter of request or on commission) of that Act, after subsection (9) there is added—

“(10) Sections—

  - (a) 274;
  - (b) 275;
  - (c) 275B except subsection (2)(b);
  - (d) 275C; and
  - (e) 288C,

of this Act apply in relation to proceedings in which a commissioner examines a witness under subsection (1)(b) above as they apply in relation to a trial.
- (11) In the application of those sections in relation to such proceedings—
  - (a) the commissioner acting in the proceedings is to perform the functions of the court as provided for in those sections;
  - (b) references—
    - (i) in those sections, except section 275(3)(c) and (7)(c), to a trial or a trial diet;
    - (ii) in those sections, except section 275(3)(e), to the court, shall be read accordingly;
  - (c) the reference in section 275B(1) to 14 days shall be read as a reference to 7 days.
- (12) In a case where it falls to the court to appoint a commissioner for the purposes of subsection (1)(b) above, the commissioner shall be a person described in subsection (13) below.
- (13) The persons are—
  - (a) where the proceedings before the commissioner are for the purposes of a trial in the High Court, a judge of the High Court; or
  - (b) in any other case, a sheriff.”.
- (5) In section 275A(1) (disclosure of accused’s previous convictions where court allows questioning or evidence under section 275) of that Act, after the word “court” there is inserted “(or, in proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act, a commissioner)”.

- (6) In section 288D (appointment of solicitor by court in such cases) of that Act—
- (a) in subsection (2), after paragraph (a)(ii) there is inserted—
    - “(iii) the conduct of his case at any commissioner proceedings; or”,
  - (b) in subsection (6), after the word “trial” there is inserted “(or at any related commissioner proceedings)”,
  - (c) after that subsection there is inserted—
    - “(6A) Where, in relation to commissioner proceedings, the commissioner is satisfied that a solicitor so appointed is no longer able to act upon the instructions, or in the best interests, of the accused, the commissioner is (for the purpose of the application of subsection (6) above) to refer the case to the court.”,
  - (d) in subsection (7), for the word “(6)” in the first place where it occurs there is substituted “(6A)”,
  - (e) after subsection (8) there is added—
    - “(9) In this section, “commissioner proceedings” means proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act.”.

### 36 Victim notification scheme

In section 16 (victim’s right to receive information concerning release etc. of offender) of the Criminal Justice (Scotland) Act 2003 (asp 7)—

- (a) in subsection (5)(b)(ii), after the word “sub-paragraph” in the second place where it occurs there is inserted “and as if in paragraph (a)(ii) of the said section 14(6) (as it applies by virtue of that sub-paragraph) the words “, immediately before the offence (or apparent offence) was perpetrated, cared” were “cares””,
- (b) after subsection (6) there is added—
  - “(7) Where, but for section 14(8) (as it applies in relation to subsection (5) (a)), information would—
    - (a) under subsection (1) (as read with subsection (5)(a)); and
    - (b) by virtue of section 14(10)(c) to (e) and (g) to (i) (as it applies in relation to subsection (5)(a)),
 fall to be given to a child who has not attained the age of fourteen years, that information is to be given instead to a person who cares for the child.
  - (8) In subsection (7), the reference to a person who cares for the child is to be construed in accordance with section 2(28) of the Regulation of Care (Scotland) Act 2001 (asp 8).”.

### 37 Recovery of documents

After section 301 of the 1995 Act there is inserted—



*“Recovery of documents*

**301A Recovery of documents**

- (1) It is competent for the sheriff court to make, in connection with any criminal proceedings mentioned in subsection (2) below, the orders mentioned in subsection (3) below.
- (2) The proceedings are—
  - (a) solemn proceedings in that sheriff court;
  - (b) summary proceedings—
    - (i) in that sheriff court;
    - (ii) in any JP court in that sheriff court’s district.
- (3) The orders are—
  - (a) an order granting commission and diligence for the recovery of documents;
  - (b) an order for the production of documents.
- (4) An application for the purpose may not be made—
  - (a) in connection with solemn proceedings, until the indictment has been served on the accused or the accused has been cited under section 66(4) of this Act;
  - (b) in connection with summary proceedings, until the accused has answered the complaint.
- (5) A decision of the sheriff on an application for an order under subsection (1) above may be appealed to the High Court.
- (6) In an appeal under subsection (5) above, the High Court may uphold, vary or quash the decision of the sheriff.
- (7) The prosecutor is entitled to be heard in any—
  - (a) application for an order under subsection (1) above;
  - (b) appeal under subsection (5) above,even if the prosecutor is not a party to the application or (as the case may be) appeal.
- (8) The competence of the High Court to make, in connection with criminal proceedings, the orders mentioned in subsection (3) above is restricted to making them in connection with proceedings in that court.”.

**38 Intimation of certain applications to the High Court**

After section 298 of the 1995 Act there is inserted—

*“Intimation of certain applications to the High Court*

**298A Intimation of bills and of petitions to the nobile officium**

- (1) This subsection applies where the prosecutor requires to intimate to the respondent—
  - (a) a bill of advocacy;
  - (b) a petition to the nobile officium; or
  - (c) an order of the High Court relating to such a bill or (as the case may be) petition.
- (2) Where subsection (1) above applies, the requirement may be met by serving on the respondent or the respondent’s solicitor a copy of the bill, petition or (as the case may be) order.
- (3) Service under subsection (2) above may (in relation to any proceedings) be effected—
  - (a) on the respondent, in the same manner as citation under section 141 of this Act;
  - (b) on the respondent’s solicitor, by post.
- (4) This subsection applies where a person requires to intimate to the prosecutor—
  - (a) a bill of suspension or advocacy;
  - (b) a petition to the nobile officium; or
  - (c) an order of the High Court relating to such a bill or (as the case may be) petition.
- (5) Where subsection (4) above applies, the requirement may be met by serving on the prosecutor a copy of the bill, petition or (as the case may be) order.
- (6) Service under subsection (5) above may (in relation to any proceedings) be effected by post.
- (7) It is sufficient evidence that service has been effected under subsection (3) or (6) above if there is produced a written execution—
  - (a) in the form prescribed by Act of Adjournal or as nearly as may be in such form; and
  - (b) signed by the person who effected service.
- (8) In relation to service effected by means of registered post or the recorded delivery service, the relevant post office receipt requires to be produced along with the execution mentioned in subsection (7) above.
- (9) A party who has service effected under subsection (3) or (6) above must, as soon as practicable thereafter, lodge with the Clerk of Justiciary a copy of the execution mentioned in subsection (7) above.
- (10) For the purpose of subsection (3)(a) above, section 141 of this Act is to be read with such modifications as are necessary for its application in the circumstances.

- (11) This section is without prejudice to any rule of law or practice by virtue of which things of the kinds mentioned in subsections (1) and (4) above (including copies) may be intimated or served.”.

### **39 Refixing diets**

- (1) After section 75A (adjournment and alteration of diets) of the 1995 Act there is inserted—

#### **“75B Refixing diets**

- (1) This section applies where in any proceedings on indictment any diet has been fixed for a non-sitting day.
- (2) The court may at any time before the non-sitting day—
- (a) discharge the diet; and
  - (b) fix a new diet for a date earlier or later than that for which the discharged diet was fixed.
- (3) That is, by acting—
- (a) of the court’s own accord; and
  - (b) without the need for a hearing for the purpose.
- (4) In the case of a trial diet—
- (a) the prosecutor;
  - (b) the accused,
- shall be entitled to an adjournment of the new diet fixed if the court is satisfied that it is not practicable for that party to proceed with the case on that date.
- (5) The power of the court under subsection (1) above is not exercisable for the sole purpose of ensuring compliance with a time limit applying in the proceedings.
- (6) In subsections (1) and (2) above, a “non-sitting day” is a day on which the court is under this Act not required to sit.
- (7) In subsections (2) to (5) above, “the court” means—
- (a) in the case of proceedings in the High Court, a single judge of that Court;
  - (b) in the case of proceedings in the sheriff court, that court.”.

- (2) After section 137 (alteration of diets) of that Act there is inserted—

#### **“137ZA Refixing diets**

- (1) This section applies where in a summary prosecution any diet has been fixed for a non-sitting day.
- (2) The court may at any time before the non-sitting day—
- (a) discharge the diet; and
  - (b) fix a new diet for a date earlier or later than that for which the discharged diet was fixed.

- (3) That is, by acting—
  - (a) of the court’s own accord; and
  - (b) without the need for a hearing for the purpose.
- (4) In the case of a trial diet—
  - (a) the prosecutor;
  - (b) the accused,
 shall be entitled to an adjournment of the new diet fixed if the court is satisfied that it is not practicable for that party to proceed with the case on that date.
- (5) The power of the court under subsection (1) above is not exercisable for the sole purpose of ensuring compliance with a time limit applying in the proceedings.
- (6) In subsections (1) and (2) above, a “non-sitting day” is a day on which the court is under this Act not required to sit.”

#### **40 Power of court to excuse procedural irregularities**

After section 300 of the 1995 Act there is inserted—

##### *“Excusal of irregularities*

#### **300A Power of court to excuse procedural irregularities**

- (1) Any court may excuse a procedural irregularity—
  - (a) of a kind described in subsection (5) below; and
  - (b) which has occurred in relation to proceedings before that court,
 if the conditions mentioned in subsection (4) below are met.
- (2) In appeal proceedings, the High Court may excuse a procedural irregularity—
  - (a) of that kind; and
  - (b) which has occurred in relation to earlier proceedings in the case that is the subject of the appeal,
 if those conditions are met.
- (3) A court may proceed under subsection (1) or (2) above on the application of the prosecutor or an accused person (having given the other an opportunity to be heard).
- (4) The conditions are that—
  - (a) it appears to the court that the irregularity arose because of—
    - (i) mistake or oversight; or
    - (ii) other excusable reason; and
  - (b) the court is satisfied in the circumstances of the case that it would be in the interests of justice to excuse the irregularity.
- (5) A procedural irregularity is an irregularity arising at any stage of proceedings—
  - (a) from—
    - (i) failure to call or discharge a diet properly;

---

*Status: This is the original version (as it was originally enacted).*

---

- (ii) improper adjournment or continuation of a case;
    - (iii) a diet being fixed for a non-sitting day;
  - (b) from failure of—
    - (i) the court; or
    - (ii) the prosecutor or the accused,to do something within a particular period or otherwise comply with a time limit;
  - (c) from failure of the prosecutor to serve properly a notice or other thing;
  - (d) from failure of the accused to—
    - (i) intimate properly a preliminary objection;
    - (ii) intimate properly a plea or defence;
    - (iii) serve properly a notice or other thing;
  - (e) from failure of—
    - (i) the court; or
    - (ii) the prosecutor or the accused,to fulfil any other procedural requirement.
- (6) Subsection (1) above does not authorise a court to excuse an irregularity arising by reason of the detention in custody of an accused person for a period exceeding that fixed by this Act.
- (7) Subsection (1) above does not apply in relation to any requirement as to proof including, in particular, any matter relating to—
  - (a) admissibility of evidence;
  - (b) sufficiency of evidence; or
  - (c) any other evidential factor.
- (8) Where a court excuses an irregularity under subsection (1) above, it may make such order as is necessary or expedient for the purpose of—
  - (a) restoring the proceedings as if the irregularity had never occurred;
  - (b) facilitating the continuation of the proceedings as if it had never occurred, for example—
    - (i) altering a diet;
    - (ii) extending any time limit;
    - (iii) appointing a diet for further procedure or granting an adjournment or continuation of a diet;
  - (c) protecting the rights of the parties.
- (9) For the purposes of this section—
  - (a) a reference to an accused person, except the reference in subsection (6) above, includes reference to a person who has been convicted of an offence;
  - (b) something is done properly if it is done in accordance with a requirement of an enactment or any rule of law.
- (10) In subsection (5)(a)(iii) above, a “non-sitting day” is a day on which the court is under this Act not required to sit.
- (11) This section is without prejudice to any provision of this Act under which a court may—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) alter a diet; or
  - (b) extend—
    - (i) a period within which something requires to be done; or
    - (ii) any other time limit.
- (12) This section is without prejudice to any rule of law by virtue of which it may be determined by a court that breach, in relation to criminal proceedings—
- (a) of a requirement of an enactment; or
  - (b) of a rule of law,
- does not render the proceedings, or anything done (or purported to have been done) for the purposes of or in connection with proceedings, invalid.”.

*Electronic proceedings*

**41 Electronic proceedings**

- (1) After section 303A of the 1995 Act there is inserted—

*“Electronic proceedings*

**303B Electronic summary proceedings**

- (1) For the purposes of section 138(1) of this Act—
  - (a) institution of proceedings may be effected by electronic complaint;
  - (b) the requirement for signing is satisfied in relation to an electronic complaint by an electronic signature;
  - (c) the requirement for signing may be satisfied in relation to any other complaint by an electronic signature.
- (2) The references in the other provisions of this Act to a complaint include an electronic complaint unless the context otherwise requires.
- (3) Where proceedings are instituted by electronic complaint, in the event of any conflict between—
  - (a) the principal electronic complaint kept by the clerk of court for the purposes of the proceedings; and
  - (b) any other document (whether in electronic or other form) purporting to be the complaint,
 the principal electronic complaint prevails.
- (4) The requirement in section 85(4) of this Act for signing may be satisfied by electronic signature.
- (5) The requirement in section 136B(2) of this Act for signing may be satisfied by electronic signature.
- (6) The requirement in section 141(3)(a) of this Act for signing may be satisfied by electronic signature.

- (7) The requirement in section 159(3) of this Act for authentication by initials is satisfied in relation to an electronic complaint by authentication by electronic signature.
  - (8) The requirements in section 172(2) of this Act for signing by the clerk of court may be satisfied by electronic signature.
  - (9) The requirements in section 258(2) and (9) of this Act for signing may be satisfied in relation to summary proceedings by electronic signature.
  - (10) The requirement in section 299(5) of this Act for authentication by signature is satisfied in relation to—
    - (a) proceedings which are recorded in electronic form;
    - (b) any extract of sentence, or order made, which is recorded in electronic form,by authentication by electronic signature.”
- (2) After section 308 of the 1995 Act there is inserted—

**“308A Expressions relating to electronic proceedings**

- (1) In this Act, an “electronic complaint” is a complaint in electronic form which is capable of being—
  - (a) transmitted by means of electronic communication;
  - (b) kept in legible form.
- (2) In this Act, unless the context otherwise requires—
  - “electronic communication” is to be construed in accordance with section 15(1) of the Electronic Communications Act 2000 (c. 7);
  - “electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000, but includes a version of an electronic signature which is reproduced on a paper document.
- (3) The Scottish Ministers may by order modify the meaning of “electronic signature” provided for in subsection (2) above for the purpose of such provisions of this Act as are specified in the order.
- (4) An order under subsection (3) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

**42 Further provision for summary cases**

- (1) The Scottish Ministers may, in relation to summary criminal proceedings, by order make provision for the purposes of or in connection with—
  - (a) using electronic complaints and other documents in electronic form,
  - (b) keeping, in electronic form, records of proceedings,
  - (c) allowing requirements as to formality (and validity) of documents to be satisfied by electronic means,
  - (d) using electronic communication.
- (2) Provision in an order under subsection (1) may, in particular, relate to—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) the availability of documents and records in electronic or other form to specified persons or classes of person,
  - (b) the authentication of—
    - (i) documents and records,
    - (ii) information contained in documents and records,
  - (c) the use of electronic signatures in documents and records.
- (3) An order under subsection (1) may make provision by amending the 1995 Act or otherwise.
- (4) In subsection (1), the expressions “electronic complaint” and “electronic communication” are to be construed by reference to section 308A (expressions relating to electronic proceedings) of the 1995 Act.