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## EXPLANATORY NOTE

*(This note is not part of the Order)*

The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (“the 2007 Act”) received Royal Assent on 22nd February 2007.

Article 3 of this Order brings into force various sections of the 2007 Act on 10th December 2007. The sections coming into force on that date together with the relevant subject matter are listed in the Schedule to the Order.

Articles 4 to 14 of the Order make savings and transitional provisions in relation to some of the provisions which are commenced by this Order.

The provisions of Part 1 (bail) of the 2007 Act are brought into force on 10th December 2007. Article 4 makes transitional provisions primarily to clarify how the commencement of this Part of the Act will apply to ongoing cases in which bail has been granted prior to the commencement date.

Article 4(1) confirms that certain provisions of the 2007 Act will only apply to bail orders which have been granted after the commencement date. The provisions listed could lend themselves to application to bail orders which are already in existence at the time of commencement. The inclusion of article 4(1) puts beyond doubt that this is not the case.

Similarly, the provisions listed in article 4(1) will not apply in circumstances where a bail order is continued on or after 10th December 2007. This is because, in the absence of any indication to the contrary, a bail order continues in force until a case is finally disposed of. A continuation of bail, therefore, does not constitute a new decision on whether or not to grant bail (see *Walker v. Lockhart* 1994 S.L.T. 209, *Fitzpatrick v. Normand* 1994 J.C. 128, *Mayo v. Neizer* 1994 S.L.T. 931, *McGinn v. H.M. Advocate* 1990 J.C. 269 and *Jamieson v. H.M. Advocate* 1990 J.C. 256).

Section 3(1)(b) of the 2007 Act creates new evidential provisions in relation to certain breach of bail offences. New provision is inserted into section 27 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). It provides that, where the defence does not challenge the prosecution’s assertion that the accused: was on bail, was subject to a particular bail condition, failed to appear at a diet or was given due notice of a diet, that assertion shall be held as admitted. The transitional provision at article 4(2) means that these presumptions will not apply if a case has already reached the stage where a person could no longer object to those presumptions.

Article 4(3) makes transitional provision which means that the changes to bail appeals to be inserted into section 32 the 1995 Act (by section 4(2) of the 2007 Act) will only have effect in cases where the decision to be appealed is taken on or after 10th December 2007.

Section 7(2)(c) of the 2007 Act increases the maximum penalty available in the sheriff court for a person breaching an undertaking given under section 22 (liberation by police) of the 1995 Act. The maximum penalty is increased from 3 months to 12 months. Article 5 makes transitional provision to ensure that this higher penalty level will only apply where a person has given such an undertaking on or after 10th December 2007.

Section 15 of the 2007 Act amends section 150 (failure of accused to appear) of the 1995 Act and provides for a new regime of penalties in cases where the accused fails to attend court. It also makes new provision as to how that failure to appear can be proved. Article 6 provides that these new provisions will only apply in cases where a person failed to appear at a diet in circumstances where the court had assigned that diet on or after 10th December 2007. For example: on 8th December 2007 a court assigns a trial diet for 22nd December 2007. The accused subsequently fails to appear at that trial diet. The provisions of section 15 (as it amends section 150 of the 1995 Act) will not

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apply to this case because the court assigned the diet to which the accused failed to attend before 10th December 2007.

Article 7 makes transitional provision in relation to sections 19 (notice of defences) and 20 (proof of uncontroversial evidence) of the 2007 Act. Paragraph 28 of the schedule to the 2007 Act relates to section 19, and is also caught by this transitional provision. The changes brought about by those sections (and that paragraph) will only apply to proceedings where, on or after 10th December 2007, the court has adjourned the case (under section 146(3) of the 1995 Act) for a trial to take place at a later date.

Section 21 (service of documents through solicitor etc.) of the 2007 Act introduces a new requirement on solicitors engaged by an accused to intimate that fact to the procurator fiscal and the court. Article 8 makes transitional provision so that any notification which would comply with the new requirements but was given prior to the commencement of section 21 will be taken as satisfying the new requirements. If no such notice has been given then the appropriate notification is to be given forthwith.

Article 9 makes similar transitional provision to that found in article 4(2) but in the context of the changes made to section 90C (breach of bail under section 90B(1)(b)) of the 1995 Act by section 27(2) of the 2007 Act. Again, this transitional provision ensures that presumptions as to certain factors pertaining to bail cannot be made if a case has reached a stage where a person would not be able to exercise their right to object to those presumptions.

Article 10 makes savings provisions in relation to the power of the High Court of Justiciary to grant production orders and orders for commission and diligence. The article confirms that the new provisions of section 37 (recovery of documents) do not apply to any petition which has been lodged prior to 10th December 2007. This provision will allow the High Court to deal with any extant petitions at the time of commencement of section 37 of the 2007 Act.

The savings provision in article 11 confirms that the provisions of section 40 (power of the court to excuse procedural irregularities) of the 2007 Act will not apply to irregularities which arise before 10th December 2007.

Sections 43 to 48 of the 2007 Act make provision in respect of sentencing powers. The transitional arrangements found in article 12 mean that the specified provisions will apply only to cases where a first calling took place after 10th December 2007, or where a “initiating warrant” (i.e. a warrant granted under section 135 or 139(1)(b) of the 1995 Act) has been granted after 10th December 2007.

Article 13 makes saving provision in relation to changes made to section 245F (breach of restriction of liberty orders) of the 1995 Act by section 58 of the 2007 Act. These changes mean that the evidence of one witness will be sufficient to establish a breach of a restriction of liberty order. By virtue of the savings provision in article 13, breaches of such orders which take place before 10th December 2007 will not be affected by this change.

Paragraph 16(6) of the schedule to the 2007 Act rectifies an omission in section 119(11) of the 1995 Act by substituting new cross references in that section to parts of section 65 (prevention of delay in trials) of the 1995 Act. The effect is that where the High Court grants authority to bring a new prosecution under section 118(1)(c) of the 1995 Act when disposing of an appeal, and the accused is remanded in custody pending trial, the custody time limits in section 65 in both sheriff court and High Court solemn proceedings will apply. By virtue of this transitional provision those time limits will not apply to cases where the High Court granted authority for re-trial before 10th December 2007.