

EXECUTIVE NOTE

THE CRIMINAL PROCEEDINGS ETC. (REFORM) (SCOTLAND) ACT 2007 (SUPPLEMENTAL PROVISIONS) ORDER 2008 SSI 2008/109

1. The above Order was made in exercise of the powers conferred by section 82(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (“the 2007 Act”). The instrument is subject to affirmative resolution procedure under section 82(3)(a) of the 2007 Act.
2. The 2007 Act received Royal Assent on 22 February 2007.
3. This instrument makes changes to section 102A of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) (as inserted by section 32 of the 2007 Act) and section 7 of the 2007 Act. Section 7 (in part) and section 32, among others, were brought into force on 10 December 2007 by virtue of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Commencement No. 2 and Transitional Provisions and Savings) Order 2007 (SSI 2007/479). A third Commencement Order will be made that will bring the remainder of section 7, and the majority of the remaining provisions of the Act into force on 10 March 2008.

Policy Objectives

4. This Order makes provision which is supplemental to the provisions and policy aims of the 2007 Act.

Article 2 – failure of accused to appear

5. The failure of accused persons to appear at court causes significant delay to both summary and solemn courts. The 2007 Act increases the maximum penalties for failing to appear at court during both summary and solemn proceedings, allowing the courts to deal more robustly with persons who attempt to defeat the ends of justice by failing to attend court. These provisions, along with the other changes to procedures, is intended to reduce delays in the system, and therefore the inconvenience caused to victims and witnesses and the professionals working within the criminal justice system.
6. Section 32 of the 2007 Act inserts new section 102A (failure of accused to appear) into the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). An accused who fails to appear at a diet during solemn proceedings is guilty of an offence under section 102A(1) of the 1995 Act, in respect of which the court may grant a warrant under section 102A(2).
7. The failure to appear in solemn proceedings usually constitutes a breach of bail conditions, an offence under section 27(7) of the 1995 Act. Section 102A(4) provides that where a warrant has been granted under section 102A(2) for a failure to appear, the court may still grant a warrant on petition in respect of the same failure to appear under section 102A(1) or section 27(1)(a). A warrant on petition could be used to commence separate solemn proceedings for the failure to appear.
8. The wording of new section 102A(4)(b) means that the provisions of that paragraph will only apply to prosecutions under section 27(1)(a) of the 1995 Act. As a result, the court would not be able to grant a warrant on petition for failure to appear during solemn proceedings under section 27(7) if a warrant has already been granted under section 102A(2) of the 1995 Act.

9. Article 2 (a) of the Order adds to section 102(4)(b), supplementing the provision to include reference to an offence under section 27(7), ensuring that a warrant may be granted in respect of an offence under that section, whether or not a warrant has also been granted under section 102A(2).

10. Section 102A as well as providing for an offence introduces a statutory procedure for warrants for failure to appear. The section and procedure are intended to apply in cases pre-conviction. Therefore Section 102A provides at subsection (5) that when a warrant is granted under subsection (2) the indictment falls. Section 102A goes on to detail the procedure thereafter by reference to pre-conviction cases. The situation is different post-conviction when there is no purpose or reason for the indictment to fall and therefore it was not intended that section 102A should operate in that way for post conviction cases. Article 2(b) is intended to make clear that subsection (5) does not apply to those post conviction cases.

11. Article 2(b) provides additional wording of a narrative character for the sake of improvement and avoiding doubt in the application of subs (5).

12. These provisions will help to ensure the original policy objective: to reduce delays and inconveniences to those involved in the court process, by enabling the courts to deal effectively with those who fail to attend court and to clarify the interpretation of those provisions.

Article 3 - liberation on undertaking

13. Section 7 of the 2007 Act extends the use of police undertakings to assist the improvement of the flexibility, speed and effectiveness of the summary justice system.

14. Under new sections 22(1C) and (1D)(a) (inserted by section 7 of the 2007 Act), the police may liberate a person on an undertaking, with conditions in the same terms as the standard bail conditions under section 24(5)(b), (c) and (ca) of the 1995 Act. The condition under section 24(5)(b) provides that a person must not commit an offence while on “bail”. Article 3 of the Order supplements the new section 22(1D)(a) of the 1995 Act, so that it is clear beyond any doubt that the reference to bail should be interpreted to mean “the undertaking” for the purposes of section 22.

15. This provision makes it absolutely clear that an additional separate offence of breaching the undertaking is committed by a person, who is subject to the condition and who commits another offence while released on an undertaking. E.g. Mr A is released on an undertaking with conditions when arrested for offence 1. Before he appears in court he commits offence 2. By committing offence 2 he also commits a breach of undertaking i.e. offence 3.

16. This is in line with the original policy intention, to foster respect for, and compliance with, undertakings, by ensuring breaches can be dealt with robustly.

Consultation

General – The Criminal Proceedings etc. (Reform) (Scotland) Act 2007

17. Many of the provisions of the 2007 Act are based on the recommendations of the ‘McInnes Committee’ and subsequent consultation during 2004. The Scottish Executive published *Smarter Justice, Safer Communities – Summary Justice Reform Next Steps*¹, in March 2005 following extensive consultation on the recommendations of the report² of the Committee chaired by Sheriff Principal John McInnes. Details of the history of the Act, including the McInnes report, and the *Smarter Justice* paper are all available through the Scottish Government’s summary justice reform website.³

Article 2 – failure of accused to appear

18. The provisions relating to failure to appear were not specific recommendations by the McInnes report, and as such, were not consulted on as part of the consultation process. These changes do, however, constitute part of the commitment included in the *Smarter Justice* paper, and the *Bail and Remand Action Plan*⁴ (published by the then Scottish Executive in September 2005), which included commitments to improve the speed and efficiency of the system, and to “streamline the process by which breach of bail is reported and processed”, respectively.

Article 3 – liberation on undertaking

19. The proposal to make greater use of undertakings was recommended in Chapter 13 of the McInnes report. The Sentencing Commission for Scotland issued a consultation paper on the use of bail and remand⁵ in June 2004 and held a 2 month period of open consultation before producing its *Report on the use of Bail and Remand*⁶ in April 2005. The Commission recommended that police should have power to impose conditions on undertakings analogous to those which a court may impose when granting bail.

Financial Effects

20. The Order preserves the original policy intention of the relevant provisions of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. It therefore has no financial effects beyond those which were set out in the Financial Memorandum to the Bill.

Gerard Bonnar
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¹ Scottish Executive, *Smarter Justice, Safer Communities: Summary Justice Reform - Next Steps*, available at: <http://www.scotland.gov.uk/Publications/2005/03/20888/55016>

² Scottish Executive, *Report of the Summary Justice Review Committee*, available at: <http://www.scotland.gov.uk/Publications/2004/03/19042/34176>

³ The summary justice reform website can be found at: <http://www.scotland.gov.uk/Topics/Justice/criminal/criminalprocedure/19008>

⁴ Scottish Executive, *Bail and Remand Action Plan*, available at: <http://www.scotland.gov.uk/Resource/Doc/69582/0017987.pdf>

⁵ Sentencing Commission for Scotland, *Consultation Paper on the use of Bail and Remand*, available at: <http://www.scottishsentencingcommission.gov.uk/docs/consultationPaper.pdf>

⁶ Sentencing Commission for Scotland, *Report on the use of Bail and Remand*, available at: <http://www.scottishsentencingcommission.gov.uk/docs/scorubr.pdf>