



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART VII

SOLEMN PROCEEDINGS

f¹ Obstructive witnesses

[^{f1}90C Breach of bail under section 90B(1)(b)

- (1) A witness who, having been released on bail by virtue of an order under subsection (1) (b) of section 90B 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 (5) of that section,shall be guilty of an offence and liable on conviction on indictment to the penalties specified in subsection (2) below.
- (2) Those penalties are—
 - (a) a fine; and
 - (b) imprisonment for a period not exceeding two years.

[In any proceedings in relation to an offence under subsection (1) above, the fact that ^{f2}(2A) (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) Subsection (4) below applies in proceedings against a witness for an offence under paragraph (b) of subsection (1) above where the condition referred to in that paragraph is—

Status: Point in time view as at 11/07/2014.

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- (a) a movement restriction condition (within the meaning of section 90B(11) of this Act) in respect of which a remote monitoring requirement has been imposed under section 90B(7)(b)(ii) of this Act; or
 - (b) a requirement imposed under section 24D(3)(b)(as extended by section 90B(9)) of this Act.
- (4) In proceedings in which this subsection applies, evidence of—
- (a) in the case referred to in subsection (3)(a) above, the presence or absence of the witness at a particular place at a particular time; or
 - (b) in the case referred to in subsection (3)(b) above, any tampering with or damage to a device worn or carried by the witness for the purpose of remotely monitoring his whereabouts,
- may, subject to subsections (7) and (8) below, be given by the production of the document or documents referred to in subsection (5) below.
- (5) That document or those documents is or are a document or documents bearing to be—
- (a) a statement automatically produced by a device specified in regulations made under section 24D(4)(as extended by section 90B(9)) of this Act by which the witness's whereabouts were remotely monitored; and
 - (b) a certificate signed by a person nominated for the purpose of this paragraph by the Scottish Ministers that the statement relates to—
 - (i) in the case referred to in subsection (3)(a) above, the whereabouts of the witness at the dates and times shown in the statement; or
 - (ii) in the case referred to in subsection (3)(b) above, any tampering with or damage to the device.
- (6) The statement and certificate mentioned in subsection (5) above shall, when produced in the proceedings, be sufficient evidence of the facts set out in them.
- (7) Neither the statement nor the certificate mentioned in subsection (5) above shall be admissible in evidence unless a copy of both has been served on the witness prior to the trial.
- (8) Without prejudice to subsection (7) above, where it appears to the court that the witness has had insufficient notice of the statement or certificate, it may adjourn the trial or make an order which it thinks appropriate in the circumstances.
- (9) In subsections (7) and (8), “the trial” means the trial in the proceedings against the witness referred to in subsection (3) above.
- (10) 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 90B(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 90B(1)(b) of this Act in respect of the witness; and
 - (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 90B(1)(b) and the original such order respectively;

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- (ii) paragraph (a) shall be read as if at the end there were inserted “and make an order under section 90B(1)(a) or (c) of this Act in respect of the witness”; and
- (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”.]

Textual Amendments

- F1** Ss. 90A-90E inserted (1.2.2005 for specified purposes and otherwise prosp.) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5), **ss. 11, 27(1)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (with transitional provision in arts. 3-5)
- F2** S. 90C(2A) inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), **ss. 27(2), 84**; S.S.I. 2007/479, **art. 3(1)**, Sch. (subject to art. 9) (as amended by S.S. I. 2007/527)

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