
# Criminal Procedure (Amendment) (Scotland) Act 2004

**2004 asp 5**

## PART 2

SOLEMN PROCEEDINGS GENERALLY

### 6 Time limits

(1) Section 65 (prevention of delay in trials) of the 1995 Act is amended as follows.

(2) In subsection (1), for the words from "the trial" to "that period" substitute—

"(a) where an indictment has been served on the accused in respect of the High Court, a preliminary hearing is commenced within the period of 11 months; and

(b) in any case, the trial is commenced within the period of 12 months,

of the first appearance of the accused on petition in respect of the offence.

(1A) If the preliminary hearing (where subsection (1)(a) above applies) or the trial is not so commenced,".

(3) In subsection (2), after "(1)" insert "or (1A)".

(4) In subsection (3), for the words from "the sheriff" to the end substitute—

"(a) where an indictment has been served on the accused in respect of the High Court, a single judge of that court may, on cause shown, extend either or both of the periods of 11 and 12 months specified in subsection (1) above; or

(b) in any other case, the sheriff may, on cause shown, extend the period of 12 months specified in that subsection.".

(5) In subsection (4)—

(a) in paragraph (a), for the words "liberated forthwith" substitute "entitled to be admitted to bail",

(b) after paragraph (a) insert—

"(aa) where an indictment has been served on the accused in respect of the High Court—

(i) 110 days, unless a preliminary hearing in respect of the case is commenced within that period, which failing he shall be entitled to be admitted to bail; or

(ii) 140 days, unless the trial of the case is commenced within that period, which failing he shall be entitled to be admitted to bail;",

(c) in paragraph (b)—

(i) at the beginning, insert "where an indictment has been served on the accused in respect of the sheriff court,",

(ii) for the words from "liberated" to the end substitute "entitled to be admitted to bail".

(6) After subsection (4) insert—

"(4A) Where an indictment has been served on the accused in respect of the High Court, subsections (1)(a) and (4)(aa)(i) above shall not apply if the preliminary hearing has been dispensed with under section 72B(1) of this Act.".

(7) For subsection (5) substitute—

"(5) On an application made for the purpose—

(a) in a case where, at the time the application is made, an indictment has not been served on the accused, a single judge of the High Court; or

(b) in any other case, the court specified in the notice served under section 66(6) of this Act,

may, on cause shown, extend any period mentioned in subsection (4) above.

(5A) Before determining an application under subsection (3) or (5) above, the judge or, as the case may be, the court shall give the parties an opportunity to be heard.

(5B) However, where all the parties join in the application, the judge or, as the case may be, the court may determine the application without hearing the parties and, accordingly, may dispense with any hearing previously appointed for the purpose of considering the application.".

(8) Subsections (6) and (7) are repealed.

(9) After subsection (8) insert—

"(8A) Where an accused is, by virtue of subsection (4) above, entitled to be admitted to bail, the accused shall, unless he has been admitted to bail by the Lord Advocate, be brought forthwith before—

(a) in a case where an indictment has not yet been served on the accused, a single judge of the High Court; or

(b) in any other case, the court specified in the notice served under section 66(6) of this Act.

(8B) Where an accused is brought before a judge or court under subsection (8A) above, the judge or, as the case may be, the court shall give the prosecutor an opportunity to make an application under subsection (5) above.

(8C) If the prosecutor does not make such an application or, if such an application is made but is refused, the judge or, as the case may be, the court shall, after giving the prosecutor an opportunity to be heard, admit the accused to bail.

(8D) Where such an application is made but is refused and the prosecutor appeals against the refusal, the accused—

(a) may continue to be detained under the committal warrant for no more than 72 hours from the granting of bail under subsection (8C) above or for such longer period as the High Court may allow; and

(b) on expiry of that period, shall, whether the appeal has been disposed of or not, be released on bail subject to the conditions imposed.".

(10) In subsection (9), after "section," insert—

"(a) where the accused is cited in accordance with subsection (4)(b) of section 66 of this Act, the indictment shall be deemed to have been served on the accused;

(b) a preliminary hearing shall be taken to commence when it is called; and

(c)".

(11) In subsection (10), for "period of" substitute "periods of 11 and".

**7 Citation**

(1) Section 66 (service and lodging of indictment, etc.) of the 1995 Act is amended as follows.

(2) For subsection (1) substitute—

"(1) This Act shall be sufficient warrant for—

(a) the citation of the accused and witnesses to—

(i) any diet of the High Court to be held on any day, and at any place, the Court is sitting;

(ii) any diet of the sheriff court to be held on any day the court is sitting; or

(iii) any adjournment of a diet specified in sub-paragraph (i) or (ii) above; and

(b) the citation of jurors for any trial to be held—

(i) in the High Court; or

(ii) under solemn procedure in the sheriff court.".

(3) In subsection (4), in paragraph (b)—

(a) at the beginning insert "if the accused, at the time of citation, is not in custody,", and

(b) for "accused's dwelling-house or place of business" substitute "relevant premises".

(4) After subsection (4) insert—

"(4ZA) In subsection (4)(b) above, "the relevant premises" means—

(a) where the accused, at the time of citation, has been admitted to bail, his proper domicile of citation as specified for the purposes of section 25 of this Act; or

(b) in any other case, any premises which the constable reasonably believes to be the accused's dwelling-house or place of business.".

(5) After subsection (6B) insert—

"(6C) An accused shall be taken to be served with—

(a) the indictment and lists of witnesses and productions; and

(b) the notice referred to in subsection (6) above,

if they are served on the solicitor specified in subsection (6D) below at that solicitor's place of business.

(6D) The solicitor referred to in subsection (6C) above is any solicitor who—

(a) has notified in writing the procurator fiscal for the district in which the charge against the accused was being investigated that he is engaged by the accused for the purposes of his defence; and

(b) has not informed that procurator fiscal that he has been dismissed by, or has withdrawn from acting for, the accused.

(6E) It is the duty of a solicitor who has, before service of an indictment, notified a procurator fiscal that he is engaged by the accused for the purposes of his defence to inform that procurator fiscal in writing forthwith if he is dismissed by, or withdraws from acting for, the accused.".

(6) Subsection (8) is repealed.

## 8 Engagement, dismissal and withdrawal of solicitor representing accused

After section 72E of the 1995 Act (as inserted by section 2 of this Act), insert—

"**72F Engagement, dismissal and withdrawal of solicitor representing accused**

(1) In any proceedings on indictment, it is the duty of a solicitor who is engaged by the accused for the purposes of his defence at any part of the proceedings to notify the court and the prosecutor of that fact forthwith in writing.

(2) A solicitor is to be taken to have complied with the duty under subsection (1) to notify the prosecutor of his engagement if, before service of the indictment, he—

(a) notified in writing the procurator fiscal for the district in which the charge against the accused was then being investigated that he was then engaged by the accused for the purposes of his defence; and

(b) had not notified that procurator fiscal in writing that he had been dismissed by the accused or had withdrawn from acting.

(3) Where any such solicitor as is referred to in subsection (1) above—

(a) is dismissed by the accused; or

(b) withdraws,

it is the duty of the solicitor to inform the court and the prosecutor of those facts forthwith in writing.

(4) The prosecutor shall, for the purposes of subsections (1) and (3), be taken to be notified or informed of any fact in accordance with those subsections if—

(a) in proceedings in the High Court, the Crown Agent; or

(b) in proceedings on indictment in the sheriff court, the procurator fiscal for the district in which the trial diet is to be held,

is so notified or, as the case may be, informed of the fact.

(5) On being informed in accordance with subsection (3) above of the dismissal or withdrawal of the accused's solicitor in any case to which subsections (6) and (7) below apply, the court shall order that, before the trial diet, there shall be a further pre-trial diet under this section.

(6) This subsection applies to any case—

(a) where the accused is charged with an 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.

(7) This subsection applies to any case in which—

(a) the solicitor was engaged for the purposes of the defence of the accused—

(i) in the case of proceedings in the High Court, at the time of a preliminary hearing or, if a preliminary hearing was dispensed with under section 72B(1) of this Act, at the time it was so dispensed with;

(ii) in the case of solemn proceedings in the sheriff court, at the time of a first diet;

(iii) at the time of a diet under this section; or

(iv) in the case of a diet which, under subsection (11) below, is dispensed with, at the time when it was so dispensed with; and

(b) the court is informed as mentioned in subsection (3) above after that time but before the trial diet.

(8) At a diet under this section, the court shall ascertain whether or not the accused has engaged another solicitor for the purposes of his defence at the trial.

(9) A diet under this section shall be not less than 10 clear days before the trial diet.

(10) A court may, at a diet under this section, postpone the trial diet for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.

(11) The court may dispense with a diet under this section previously ordered, but only if a solicitor engaged by the accused for the purposes of the defence of the accused at the trial has, in writing—

(a) confirmed his engagement for that purpose; and

(b) requested that the diet be dispensed with.".

**9 Procedure where trial diet does not proceed**

For section 81 (procedure where trial diet does not proceed) of the 1995 Act substitute—

"**81 Procedure where trial diet does not proceed**

(1) The prosecutor shall not raise a fresh libel in a case in which the court has deserted the trial *simpliciter* unless the court's decision has been reversed on appeal.

(2) Where a trial diet in any proceedings on indictment is deserted *pro loco et tempore* the court may appoint a further trial diet for a later date and the accused shall appear and answer the indictment at that diet.

(3) In appointing a further trial diet under subsection (2) above, the court—

(a) shall have regard to the state of preparation of the prosecutor and the accused with respect to their cases and, in particular, to the likelihood of the case being ready to proceed to trial on the date to be appointed for the trial diet; and

(b) may, if it appears to the court that there are any preliminary pleas, preliminary issues or other matters which require to be, or could with advantage be, disposed of or ascertained before the trial diet, appoint a diet to be held before the trial diet for the purpose of disposing of or, as the case may be, ascertaining them.

(4) Subsection (5) below applies where, in any proceedings on indictment in which a trial diet has been appointed—

(a) the diet has been deserted *pro loco et tempore* for any reason and no further trial diet has been appointed under subsection (2) above; or

(b) the indictment falls or is for any other reason not brought to trial and the diet has not been continued, adjourned or postponed.

(5) Where this subsection applies, the prosecutor may, at any time within the period of two months after the relevant date, give notice to the accused on another copy of the indictment to appear and answer the indictment—

(a) where the trial diet referred to in subsection (4) above was in the High Court—

(i) at a further preliminary hearing in that Court not less than seven clear days after service of the notice; or

(ii) where the charge is one that can lawfully be tried in the sheriff court, at a first diet not less than 15 clear days after service of the notice and not less than 10 clear days before the trial diet and at a trial diet not less than 29 clear days after service of the notice; or

(b) where the trial diet referred to in subsection (4) was in the sheriff court—

(i) at a further trial diet in that court not less than seven clear days after service of the notice; or

(ii) at a preliminary hearing in the High Court not less than 21 clear days after service of the notice.

(6) Where notice is given to the accused under paragraph (a)(ii) or (b)(ii) of subsection (5) above, then for the purposes of section 65(4) of this Act—

(a) the giving of the notice shall be taken to be service of an indictment in respect of—

(i) in the case of a notice under paragraph (a)(ii) of subsection (5) above, the sheriff court; or

(ii) in the case of a notice under paragraph (b)(ii) of that subsection, the High Court; and

(b) the previous service of the indictment in respect of—

(i) in the case of a notice under paragraph (a)(ii) of subsection (5), the High Court; or

(ii) in the case of a notice under paragraph (b)(ii) of that subsection, the sheriff court,

shall be disregarded.

(7) A notice under subsection (5) above shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form.

(8) In subsection (5) above, "the relevant date" means—

(a) where paragraph (a) of subsection (4) applies, the date on which the trial diet was deserted as mentioned in that paragraph; or

(b) where paragraph (b) of that subsection applies, the date of the trial diet referred to in that subsection.".

**10 Trial in absence of accused**

(1) In subsection (1) of section 92 (trial in presence of accused) of the 1995 Act, for "subsection (2)" substitute "subsections (2) and (2A)".

(2) In subsection (2) of that section, the words "counsel or" are repealed.

(3) After subsection (2) of that section insert—

"(2A) If—

(a) after evidence has been led which substantially implicates the accused in respect of the offence charged in the indictment or, where two or more offences are charged in the indictment, any of them, the accused fails to appear at the trial diet; and

(b) the failure to appear occurred at a point in proceedings where the court is satisfied that it is in the interests of justice to do so,

then the court may, on the motion of the prosecutor and after hearing the parties on the motion, proceed with the trial and dispose of the case in the absence of the accused.

(2B) Where a motion is made under subsection (2A) above, the court shall—

(a) if satisfied that there is a solicitor with authority to act for the purposes of—

(i) representing the accused's interests at the hearing on the motion; and

(ii) if the motion is granted, the accused's 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.

(2C) It is the duty of a solicitor appointed under subsection (2) or (2B)(b) above to act in the best interests of the accused.

(2D) 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.

(2E) Where the court is satisfied that—

(a) a solicitor allowed to act under subsection (2B)(a) above no longer has authority to act; or

(b) a solicitor appointed under subsection (2) or (2B)(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 (2) or, as the case may be, (2B) above.

(2F) Subsections (2B)(b) and (2E) above shall not apply in the case of proceedings—

(a) in respect of a sexual offence to which section 288C of this Act applies; or

(b) in which an order has been made under section 288E(2) of this Act.".

(4) After subsection (3) of that section insert—

"(4) In this section—

(a) references to a solicitor appointed under subsection (2) or (2B)(b) above include references to a solicitor appointed under subsection (2E) above;

(b) "counsel" includes, in relation to the High Court of Justiciary, a solicitor who has a right of audience in that Court under section 25A of the Solicitors (Scotland) Act 1980 (c. 46).".

(5) After subsection (6A) of section 66 (service and lodging of indictment etc.) of the 1995 Act insert—

"(6AA) A notice affixed under subsection (4)(b) above or served under subsection (6) above shall, where the accused is a body corporate, also contain intimation to the accused—

(a) where the indictment is in respect of the High Court, that, if it does not appear as mentioned in section 70(4) of this Act or by counsel or a solicitor at the preliminary hearing—

(i) the hearing may proceed; and

(ii) a trial diet may be appointed,

in its absence; and

(b) in any case (whether the indictment is in respect of the High Court or the sheriff court), that if it does not appear as mentioned in paragraph (a) above at the trial diet, the trial may proceed in its absence.".

(6) In section 70 (proceedings against bodies corporate) of the 1995 Act—

(a) in subsection (5), for the words from "shall" to "hear" substitute "may—

(a) on the motion of the prosecutor; and

(b) if satisfied as to the matters specified in subsection (5A) below,

proceed with the trial",

(b) after that subsection insert—

"(5A) The matters referred to in subsection (5)(b) above are—

(a) that the body corporate was cited in accordance with section 66 of this Act as read with subsection (2) above; and

(b) that it is in the interests of justice to proceed as mentioned in subsection (5) above.".

(7) In section 22 (automatic availability of criminal legal aid) of the Legal Aid (Scotland) Act 1986 (c. 47), in subsection (1)(dd), after "person)" insert "or section 92(2), (2B)(b) or (2E) of that Act (appointment of solicitor for accused where the trial is to proceed in his absence)".

(8) In section 31 of that Act, in subsection (1A) (exceptions to provision entitling a person receiving legal aid or advice and assistance to select a solicitor and counsel), in paragraph (f), for "section" substitute "sections 92(2), (2B)(b), (2D) and (2E) and".

## 11 Obstructive witnesses

After section 90 (death or illness of jurors) of the 1995 Act insert—

*"Obstructive witnesses*

### 90A Apprehension of witnesses in proceedings on indictment

(1) In any proceedings on indictment, 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 inquiry 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 is necessary for the execution of the warrant, to break open shut and lockfast places.

(8) It shall not be competent, in any proceedings on indictment, for a court to issue a warrant for the apprehension of a witness otherwise than in accordance with this section.

(9) A person apprehended under a warrant issued under this section shall wherever practicable be brought before the court not later than in the course of the first day on which—

(a) in the case of a warrant issued by a single judge of the High Court, that Court;

(b) in any other case, the court,

is sitting after he is taken into custody.

(10) In this section and section 90B, "the court" means, except where the context requires otherwise—

(a) where the witness is to give evidence in proceedings in the High Court, a single judge of that Court; or

(b) where the witness is to give evidence in proceedings on indictment in the sheriff court, any sheriff court with jurisdiction in relation to the proceedings.

**90B Orders in respect of witnesses apprehended under section 90A**

(1) Where a witness is brought before the court in pursuance of a warrant issued under section 90A 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) 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.

(4) 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.

(5) 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.

(6) 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.

(7) Where the court makes an order under subsection (1)(a) above in respect of a witness, the court shall, on the application of the witness—

(a) consider whether the imposition of a remote monitoring requirement would enable it to make an order under subsection (1)(b) above releasing the witness on bail subject to a movement restriction condition; and

(b) if so—

(i) make an order under subsection (1)(b) above releasing the witness on bail subject to such a condition (as well as such other conditions required to be imposed under subsection (5) above); and

(ii) in the order, impose, as a further condition under subsection (5) above, a remote monitoring requirement.

(8) Subsections (7) to (19) of section 24A of this Act apply in relation to remote monitoring requirements imposed under subsection (7)(b)(ii) above and to the imposing of such requirements as they apply to remote monitoring requirements imposed under section 24A(1) or (2) of this Act and the imposing of such requirements, but with the following modifications—

(a) references to a remote monitoring requirement imposed under section 24A(1) or (2) of this Act shall be read as if they included references to a remote monitoring requirement imposed under subsection (7)(b)(ii) above;

(b) 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.

(9) The powers conferred and duties imposed by sections 24B to 24D of this Act are exercisable in relation to remote monitoring requirements imposed under subsection (7)(b)(ii) above as they are exercisable in relation to remote monitoring requirements imposed under subsection (1) or (2) of section 24A of this Act; and—

(a) references in those sections to remote monitoring requirements shall be read accordingly; and

(b) references to the imposition of any requirement as a further condition of bail shall be read as if they were references to the imposition of the requirement as a further condition under subsection (5) above.

(10) Section 25 of this Act (which makes provision for an order granting bail to specify the conditions imposed on bail and the accused's proper domicile of citation) 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".

(11) In this section—

(a) "a movement restriction condition" means, in relation to a witness released on bail under subsection (1)(b) above, a condition imposed under subsection (5) above restricting the witness's movements, including such a condition requiring the witness to be, or not to be, in any place or description of place for, or during, any period or periods or at any time; and

(b) "a remote monitoring requirement" means, in relation to a movement restriction condition, a requirement that compliance with the condition be remotely monitored.

**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.

(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—

(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;

(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".

**90D Review of orders under section 90B(1)(a) or (b)**

(1) Where a court has made an order under subsection (1)(a) of section 90B of this Act, the court may, on the application of the witness in respect of whom the order was made, on cause shown 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 90B 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 and on cause shown—

(i) review the conditions imposed under subsection (5) 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 (5) of that section;

(b) on the application of the party who made the application under section 90A(1) of this Act in respect of the witness, review the order and the conditions imposed under subsection (5) of that section 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

(ii) make a new order under subsection (1)(b) of that section and impose different conditions under subsection (5) of that section.

(3) The court may not review an order by virtue of subsection (2)(b) above unless the 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 90B(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 90B(1).

**90E Appeals in respect of orders under section 90B(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 90B of this Act; or

(b) where an order is made under subsection (1)(b) of that section—

(i) the order;

(ii) any of the conditions imposed under subsection (5) 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 Lord Advocate 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 inquiry 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 or sentence.".

**12 Service etc. on accused through a solicitor**

After section 72F of the 1995 Act (as inserted by section 8 of this Act) insert—

"**72G Service etc. on accused through a solicitor**

(1) In any proceedings on indictment, anything which is to be served on or given, notified or otherwise intimated to, the accused 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—

(i) has notified the prosecutor under subsection (1) of section 72F of this Act that he is engaged by the accused for the purposes of his defence; and

(ii) has not informed the prosecutor under subsection (3) of that section that he has been dismissed by, or has withdrawn from acting for, the accused; or

(b) who—

(i) has been appointed to act for the purposes of the accused's defence at the trial under section 92 or 288D of this Act; and

(ii) has not been relieved of the appointment by the court.".

## 13 Preliminary pleas and preliminary issues

(1) For section 79 (preliminary pleas) of the 1995 Act, substitute—

"**79 Preliminary pleas and preliminary issues**

(1) Except by leave of the court on cause shown, no preliminary plea or preliminary issue shall be made, raised or submitted in any proceedings on indictment by any party unless his intention to do so has been stated in a notice under section 71(2) or, as the case may be, 72(3) or (6)(b)(i) of this Act.

(2) For the purposes of this section and those sections—

(a) the following are preliminary pleas, namely—

(i) a matter relating to the competency or relevancy of the indictment;

(ii) an objection to the validity of the citation against a party, on the ground of any discrepancy between the record copy of the indictment and the copy served on him, or on account of any error or deficiency in such service copy or in the notice of citation; and

(iii) a plea in bar of trial; and

(b) the following are preliminary issues, namely—

(i) an application for separation or conjunction of charges or trials;

(ii) a preliminary objection under section 27(4A)(a), 255 or 255A of this Act;

(iii) an application under section 278(2) of this Act;

(iv) an objection by a party to the admissibility of any evidence;

(v) an assertion by a party that there are documents the truth of the contents of which ought to be admitted, or that there is any other matter which in his view ought to be agreed; and

(vi) any other point raised by a party, as regards any matter not mentioned in sub-paragraphs (i) to (v) above, which could in his opinion be resolved with advantage before the trial.

(3) No discrepancy, error or deficiency such as is mentioned in subsection (2)(a)(ii) above shall entitle an accused to object to plead to the indictment unless the court is satisfied that the discrepancy, error or deficiency tended substantially to mislead and prejudice the accused.

(4) Where the court, under subsection (1) above, grants leave for a party to make, raise or submit a preliminary plea or preliminary issue (other than an objection to the admissibility of any evidence) without his intention to do so having been stated in a notice as required by that subsection, the court may—

(a) if it considers it appropriate to do so, appoint a diet to be held before the trial diet for the purpose of disposing of the plea or issue; or

(b) appoint the plea or issue to be disposed of at the trial diet.".

(2) After section 87 of the 1995 Act insert—

"**87A Disposal of preliminary matters at trial diet**

Where—

(a) any preliminary plea or issue; or

(b) in a case to be tried in the High Court, any application, notice or other matter referred to in section 72(6)(b)(iii) or (iv) of this Act,

is to be disposed of at the trial diet, it shall be so disposed of before the jury is sworn, unless, where it is a preliminary issue consisting of an objection to the admissibility of any evidence, the court at the trial diet considers it is not capable of being disposed of before then.".

## 14 Objections to admissibility of evidence raised without due notice

(1) In section 71 (first diet) of the 1995 Act—

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

"(2YA) At a first diet, the court shall also ascertain whether there is any objection to the admissibility of any evidence which any party wishes to raise despite not having given the notice referred to in subsection (2) above, and—

(a) if so, decide whether to grant leave under section 79(1) of this Act for the objection to be raised; and

(b) if leave is granted, dispose of the objection unless it considers it inappropriate to do so at the first diet.

(2ZA) Where the court, having granted leave for the objection to be raised, decides not to dispose of it at the first diet, the court may—

(a) appoint a further diet to be held before the trial diet for the purpose of disposing of the objection; or

(b) appoint the objection to be disposed of at the trial diet.",

(b) in subsection (3), for the words "or (2)" substitute ", (2) or (2YA)".

(2) After section 79 of the 1995 Act (as inserted by section 13 of this Act) insert—

"**79A Objections to admissibility of evidence raised after first diet or preliminary hearing**

(1) This section applies where a party seeks to raise an objection to the admissibility of any evidence after—

(a) in proceedings in the High Court, the preliminary hearing; or

(b) in proceedings on indictment in the sheriff court, the first diet.

(2) The court shall not, under section 79(1) of this Act, grant leave for the objection to be raised if the party seeking to raise it has not given written notice of his intention to do so to the other parties.

(3) However, the court may, where the party seeks to raise the objection after the commencement of the trial, dispense with the requirement under subsection (2) above for written notice to be given.

(4) Where the party seeks to raise the objection after the commencement of the trial, the court shall not, under section 79(1) of this Act, grant leave for the objection to be raised unless it considers that it could not reasonably have been raised before that time.

(5) Where the party seeks to raise the objection before the commencement of the trial and the court, under section 79(1), grants leave for it to be raised, the court shall—

(a) if it considers it appropriate to do so, appoint a diet to be held before the commencement of the trial for the purpose of disposing of the objection; or

(b) dispose of the objection at the trial diet.

(6) In appointing a diet under subsection (5)(a) above, the court may postpone the trial diet for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.

(7) The accused shall appear at any diet appointed under subsection (5)(a) above.

(8) For the purposes of this section, the trial shall be taken to commence when the jury is sworn.".

## 15 Alteration of diets

After section 75 of the 1995 Act insert—

*"Adjournment and alteration of diets*

### 75A Adjournment and alteration of diets

(1) This section applies where any diet has been fixed in any proceedings on indictment.

(2) The court may, if it considers it appropriate to do so, adjourn the diet.

(3) However—

(a) in the case of a trial diet, the court may adjourn the diet under subsection (2) above only if the indictment is not brought to trial at the diet;

(b) if the court adjourns any diet under that subsection by reason only that, following enquiries for the purpose of ascertaining whether the accused has engaged a solicitor for the purposes of the conduct of his defence at or for the purposes of a preliminary hearing or at a trial, it appears to

the court that he has not done so, the adjournment shall be for a period of not more than 48 hours.

(4) A trial diet in the High Court may be adjourned under subsection (2) above to a diet to be held at a sitting of the Court in another place.

(5) The court may, on the application of any party to the proceedings made at any time before commencement of any diet—

(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.

(6) Before determining an application under subsection (5) above, the court shall give the parties an opportunity to be heard.

(7) However, where all the parties join in an application under that subsection, the court may determine the application without hearing the parties and, accordingly, may dispense with any hearing previously appointed for the purpose of subsection (6) above.

(8) Where there is a hearing for the purpose of subsection (6) above, the accused shall attend it unless the court permits the hearing to proceed notwithstanding the absence of the accused.

(9) In appointing a new trial diet under subsection (5)(b) above, the court—

(a) shall have regard to the state of preparation of the prosecutor and the accused with respect to their cases and, in particular, to the likelihood of the case being ready to proceed to trial on the date to be appointed for the trial diet; and

(b) may, if it appears to the court that there are any preliminary pleas, preliminary issues or other matters which require to be, or could with advantage be, disposed of or ascertained before the trial, appoint a diet to be held before the trial diet for the purpose of disposing of or, as the case may be, ascertaining them.

(10) A date for a new diet may be fixed under subsection (5)(b) above notwithstanding that the holding of the diet on that date would result in any provision of this Act as to the minimum or maximum period within which the diet is to be held or to commence not being complied with.

(11) In subsections (5) to (9) above, "the court" means—

(a) in the case of proceedings in the High Court, a single judge of that Court; and

(b) in the case of proceedings in the sheriff court, that court.

(12) For the purposes of subsection (5) above—

(a) a diet other than a trial diet shall be taken to commence when it is called; and

(b) a trial diet shall be taken to commence when the jury is sworn.".

## 16 Uncontroversial evidence

In section 258 (uncontroversial evidence) of the 1995 Act, after subsection (4) insert—

"(4A) Where a notice is served under subsection (3) above in any solemn proceedings, the court may, on the application of any party to the proceedings made not less than 48 hours before the relevant diet, direct that any challenge in the notice to any fact is to be disregarded for the purposes of subsection (4) above if the court considers the challenge to be unjustified.

(4B) In subsection (4A) above, "the relevant diet" means—

(a) in proceedings in the High Court, the preliminary hearing; and

(b) in proceedings in the sheriff court, the first diet.

(4C) In proceedings in the High Court, the Court may, on cause shown, allow an application under subsection (4A) above to be made after the time limit specified in that subsection.".