Criminal Procedure (Amendment) (Scotland) Act 2004

2004 asp 5

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Section

Criminal Procedure (Amendment) (Scotland) Act 2004

2004 asp 5

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 28th April 2004 and received Royal Assent on 4th June 2004

An Act of the Scottish Parliament to make provision, in connection with proceedings in the High Court of Justiciary, for the holding of preliminary hearings prior to the trial diet; to make new provision as to the continuation of the trial diet in proceedings in the High Court; to amend the time limit for commencement of the trial in proceedings in the High Court; in connection with solemn criminal proceedings generally, to amend the consequences of failure to comply with time limits, to make further provision as to citation of the accused, witnesses and jurors, to require any solicitor engaged by the accused to notify the court and the prosecutor of his engagement, withdrawal and dismissal, to make new provision as to the procedure where the trial diet does not proceed, to enable the trial to be conducted in the absence of the accused in certain circumstances, to provide for the apprehension, detention and release on bail of obstructive witnesses, to enable notices and other documents to be served on the accused through his solicitor, to restate with modifications certain provisions in relation to the raising of preliminary pleas and issues and to make new provision as to the adjournment and alteration of diets; to enable persons to be released on bail subject to a requirement that their compliance with conditions of bail restricting their movements be remotely monitored; to make provision entitling the prosecutor to be heard on certain applications relating to bail; to make further provision as to the matters to be dealt with by the sheriff court at a first diet in solemn proceedings; to make new provision as to the procedure to be followed by the court in sentencing offenders who have pled guilty; to increase from three to five years the maximum extended sentence that may be imposed by a sheriff on persons convicted on indictment of certain violent and sexual offences; to make new provision as to the citation of witnesses for precognition by the prosecutor; to clarify when criminal proceedings are finally determined for the purposes of section 10 of the Protection of Children (Scotland) Act 2003 (asp 5); and for connected purposes.

PART 1

PROCEEDINGS IN THE HIGH COURT

Preliminary hearings

1 Preliminary hearings

(1) In subsection (6) of section 66 (service and lodging of indictment etc.) of the Criminal Procedure (Scotland) Act 1995 (c.46) (referred to in this Act as "the 1995 Act")—

(a) in paragraph (a)—

(i) after "court" insert—

"(i)",

(ii) at the end insert "; and

(ii) at a trial diet not less than 29 clear days after service of the indictment,", and

(b) for paragraph (b) substitute—

"(b) where the indictment is in respect of the High Court, at a diet not less than 29 clear days after the service of the indictment (such a diet being referred to in this Act as a "preliminary hearing").".

(2) In subsection (6A) of that section, paragraph (b) and the word "and" immediately preceding it are repealed.

(3) For sections 72 to 73A of the 1995 Act substitute—

"**72 Preliminary hearing: procedure up to appointment of trial diet**

(1) A preliminary hearing shall be conducted in accordance with this section and section 72A.

(2) The court shall—

(a) where the accused is charged with an offence to which section 288C of this Act applies; or

(b) in any case—

(i) in respect of which section 288E of this Act applies; or

(ii) in which an order has been made under section 288F(2) of this Act,

before taking any further step under this section, ascertain whether the accused has engaged a solicitor for the purposes of the conduct of his case at or for the purposes of the preliminary hearing.

(3) After complying with subsection (2) above, the court shall dispose of any preliminary pleas (within the meaning of section 79(2)(a) of this Act) of which a party has given notice not less than 7 clear days before the preliminary hearing to the court and to the other parties.

(4) After disposing of any preliminary pleas under subsection (3) above, the court shall require the accused to state how he pleads to the indictment.

(5) If the accused tenders a plea of guilty, section 77 of this Act shall apply.

(6) After the accused has stated how he pleads to the indictment, the court shall, unless a plea of guilty is tendered and accepted—

(a) in any case—

(i) where the accused is charged with an offence to which section 288C of this Act applies;

(ii) in respect of which section 288E of this Act applies; or

(iii) in which an order has been made under section 288F(2) of this Act,

ascertain whether the accused has engaged a solicitor for the purposes of his defence at the trial;

(b) unless it considers it inappropriate to do so at the preliminary hearing, dispose of—

(i) any preliminary issues (within the meaning of section 79(2)(b) of this Act) of which a party has given notice not less than 7 clear days before the preliminary hearing to the court and to the other parties;

(ii) any child witness notice under section 271A(2) or vulnerable witness application under section 271C(2) appointed to be disposed of at the preliminary hearing;

(iii) subject to subsection (8) below, any application under section 275(1) or 288F(2) of this Act made before the preliminary hearing; and

(iv) any other matter which, in the opinion of the court, could be disposed of with advantage before the trial;

(c) 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 paragraph (b)(i) above, and—

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

(ii) if leave is granted, dispose of the objection unless it considers it inappropriate to do so at the preliminary hearing;

(d) ascertain which of the witnesses included in the list of witnesses are required by the prosecutor or the accused to attend the trial;

(e) ascertain whether subsection (7) below applies to any person who is to give evidence at or for the purposes of the trial or to the accused and, if so, consider whether it should make an order under section 271A(7) or 271D(2) of this Act in relation to the person or, as the case may be, the accused; and

(f) ascertain, so far as is reasonably practicable—

(i) the state of preparation of the prosecutor and the accused with respect to their cases; and

(ii) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of this Act.

(7) This subsection applies—

(a) to a person who is to give evidence at or for the purposes of the trial if that person is, or is likely to be, a vulnerable witness;

(b) to the accused if, were he to give evidence at or for the purposes of the trial, he would be, or would be likely to be, a vulnerable witness.

(8) Where any application or notice such as is mentioned in subsection (6)(b)(iii) above is required by the provision under which it is made or lodged, or by any other provision of this Act, to be made or lodged by a certain time, the court—

(a) shall not be required under that subsection to dispose of it unless it has been made or lodged by that time; but

(b) shall have power to dispose of it to the extent that the provision under which it was made, or any other provision of this Act, allows it to be disposed of notwithstanding that it was not made or lodged in time.

(9) Where the court decides not to dispose of any preliminary issue, application, notice, objection or other matter referred to in subsection (6)(b) or (c) above at the preliminary hearing, it may—

(a) appoint a further diet, to be held before the trial diet appointed under section 72A of this Act, for the purpose of disposing of the issue, application, notice, objection or matter; or

(b) appoint the issue, application, notice, objection or other matter to be disposed of at the trial diet.

72A Preliminary hearing: appointment of trial diet

(1) In any case in which subsection (6) of section 72 of this Act applies, the court shall, at the preliminary hearing—

(a) after complying with that subsection;

(b) having regard to earlier proceedings at the preliminary hearing; and

(c) subject to subsections (3) to (7) below,

appoint a trial diet.

(2) In appointing a trial diet under subsection (1) above, the court may, if satisfied that it is appropriate to do so, indicate that the diet is to be a floating diet for the purposes of section 83A of this Act.

(3) In any case in which the 12 month period applies (whether or not the 140 day period also applies in the case)—

(a) if the court considers that the case would be likely to be ready to proceed to trial within that period, it shall, subject to subsections (5) to (7) below, appoint a trial diet for a date within that period; or

(b) if the court considers that the case would not be likely to be so ready, it shall give the prosecutor an opportunity to make an application to the court under section 65(3) of this Act for an extension of the 12 month period.

(4) Where paragraph (b) of subsection (3) above applies—

(a) if such an application as is mentioned in that paragraph is made and granted, the court shall, subject to subsections (5) to (7) below, appoint a trial diet for a date within the 12 month period as extended; or

(b) if no such application is made or if one is made but is refused by the court—

(i) the court may desert the preliminary hearing *simpliciter* or *pro loco et tempore*; and

(ii) where the accused is committed until liberated in due course of law, he shall be liberated forthwith.

(5) Subsection (6) below applies in any case in which—

(a) the 140 day period as well as the 12 month period applies; and

(b) the court is required, by virtue of subsection (3)(a) or (4)(a) above, to appoint a trial diet within the 12 month period.

(6) In such a case—

(a) if the court considers that the case would be likely to be ready to proceed to trial within the 140 day period, it shall appoint a trial diet for a date within that period as well as within the 12 month period; or

(b) if the court considers that the case would not be likely to be so ready, it shall give the prosecutor an opportunity to make an application under section 65(5) of this Act for an extension of the 140 day period.

(7) Where paragraph (b) of subsection (6) above applies—

(a) if such an application as is mentioned in that paragraph is made and granted, the court shall appoint a trial diet for a date within the 140 day period as extended as well as within the 12 month period;

(b) if no such application is made or if one is made but is refused by the court—

(i) the court shall proceed under subsection (3)(a) or, as the case may be, (4)(a) above to appoint a trial diet for a date within the 12 month period; and

(ii) the accused shall then be entitled to be admitted to bail.

(8) Where an accused is, by virtue of subsection (7)(b)(ii) above, entitled to be admitted to bail, the court shall, before admitting him to bail, give the prosecutor an opportunity to be heard.

(9) On appointing a trial diet under this section in a case where the accused has been admitted to bail (otherwise than by virtue of subsection (7)(b)(ii) above), the court, after giving the parties an opportunity to be heard—

(a) shall review the conditions imposed on his bail; and

(b) having done so, may, if it considers it appropriate to do so, fix bail on different conditions.

(10) In this section—

"the 12 month period" means the period specified in subsection (1)(b) of section 65 of this Act and, in any case in which that period has been extended under subsection (3) of that section, includes that period as so extended; and

"the 140 day period" means the period specified in subsection (4)(aa)(ii) of that section and, in any case in which that period has been extended under subsection (5) of that section, includes that period as so extended.

72B Power to dispense with preliminary hearing

(1) The court may, on an application made to it jointly by the parties, dispense with a preliminary hearing and appoint a trial diet if the court is satisfied on the basis of the application that—

(a) the state of preparation of the prosecutor and the accused with respect to their cases is such that the case is likely to be ready to proceed to trial on the date to be appointed for the trial diet;

(b) there are no preliminary pleas, preliminary issues or other matters which require to be, or could with advantage be, disposed of before the trial; and

(c) there are no persons to whom section 72(7) of this Act applies.

(2) An application under subsection (1) above shall identify which (if any) of the witnesses included in the list of witnesses are required by the prosecutor or the accused to attend the trial.

(3) Where a trial diet is to be appointed under subsection (1) above, it shall be appointed in accordance with such procedure as may be prescribed by Act of Adjournal.

(4) Where a trial diet is appointed under subsection (1) above, the accused shall appear at the diet and answer the indictment.

(5) The fact that a preliminary hearing in any case has been dispensed with under subsection (1) above shall not affect the calculation in that case of any time limit for the giving of any notice or the doing of any other thing under this Act, being a time limit fixed by reference to the preliminary hearing.

(6) Accordingly, any such time limit shall have effect in any such case as if it were fixed by reference to the date on which the preliminary hearing would have been held if it had not been dispensed with.

72C Procedure where preliminary hearing does not proceed

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

(2) Where a preliminary hearing is deserted *pro loco et tempore*, the court may appoint a further preliminary hearing for a later date and the accused shall appear and answer the indictment at that hearing.

(3) Subsection (4) below applies where, at a preliminary hearing—

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

(b) the indictment is for any reason not proceeded with and the hearing has not been adjourned or postponed.

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

(b) at—

(i) a first diet not less than 15 clear days after the service of the notice and not less than 10 clear days before the trial diet; and

(ii) a trial diet not less than 29 clear days after the service of the notice,

in the sheriff court where the charge is one that can lawfully be tried in that court.

(5) Where notice is given to the accused under subsection (4)(b) 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 the sheriff court; and

(b) the previous service of the indictment in respect of the High Court shall be disregarded.

(6) In subsection (4) above, "the relevant date" means—

(a) where paragraph (a) of subsection (3) above applies, the date on which the diet was deserted as mentioned in that paragraph; or

(b) where paragraph (b) of that subsection applies, the date of the preliminary hearing referred to in that paragraph.

(7) A notice referred to in subsection (4) above shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form.

72D Preliminary hearing: further provision

(1) The court may, on cause shown, allow a preliminary hearing to proceed notwithstanding the absence of the accused.

(2) Where—

(a) the accused is a body corporate;

(b) it fails to appear at a preliminary hearing;

(c) the court allows the hearing to proceed in its absence under subsection (1) above; and

(d) no plea is entered on its behalf at the hearing,

it shall be treated for the purposes of proceedings at the preliminary hearing as having pled not guilty.

(3) Where, at a preliminary hearing, a trial diet is appointed, the accused shall appear at the trial diet and answer the indictment.

(4) At a preliminary hearing, the court—

(a) shall take into account any written record lodged under section 72E of this Act; and

(b) may ask the prosecutor and the accused any question in connection with any matter which it is required to dispose of or ascertain under section 72 of this Act.

(5) The proceedings at a preliminary hearing shall be recorded by means of shorthand notes or by mechanical means.

(6) Subsections (2) to (4) of section 93 of this Act shall apply for the purposes of the recording of proceedings at a preliminary hearing in accordance with subsection (5) above as they apply for the purposes of the recording of proceedings at the trial in accordance with subsection (1) of that section.

(7) The Clerk of Justiciary shall prepare, in such form and manner as may be prescribed by Act of Adjournal, a minute of proceedings at a preliminary hearing, which shall record, in particular, whether any preliminary pleas or issues were disposed of and, if so, how they were disposed of.

(8) In this section, references to a preliminary hearing include an adjourned preliminary hearing.

(9) In this section and sections 72 to 72C, "the court" means the High Court.".

2 Written record of state of preparation in certain cases

After section 72D of the 1995 Act (as inserted by section 1(3) of this Act) insert—

"**72E Written record of state of preparation in certain cases**

(1) This section applies where, in any proceedings in the High Court, a solicitor has notified the Court under section 72F(1) of this Act that he has been engaged by the accused for the purposes of the conduct of his case at the preliminary hearing.

(2) The prosecutor and the accused's legal representative shall, not less than two days before the preliminary hearing—

(a) communicate with each other with a view to jointly preparing a written record of their state of preparation with respect to their cases (referred to in this section as "the written record"); and

(b) lodge the written record with the Clerk of Justiciary.

(3) The High Court may, on cause shown, allow the written record to be lodged after the time referred to in subsection (2) above.

(4) The written record shall—

(a) be in such form, or as nearly as may be in such form;

(b) contain such information; and

(c) be lodged in such manner,

as may be prescribed by Act of Adjournal.

(5) The written record may contain, in addition to the information required by virtue of subsection (4)(b) above, such other information as the prosecutor and the accused's legal representative consider appropriate.

(6) In this section—

"the accused's legal representative" means—

(a) the solicitor referred to in subsection (1) above; or

(b) where the solicitor has instructed counsel for the purposes of the conduct of the accused's case at the preliminary hearing, either the solicitor or that counsel, or both of them; and

"counsel" includes a solicitor who has a right of audience in the High Court of Justiciary under section 25A (rights of audience in various courts including the High Court of Justiciary) of the Solicitors (Scotland) Act 1980 (c.46).".

3 Appeals

(1) Section 74 (appeals in connection with preliminary diets) of the 1995 Act is amended in accordance with this section.

(2) In subsection (1), for the word "diet" where it secondly occurs, substitute "hearing".

(3) In subsection (2)—

(a) in paragraph (a)—

(i) after the word "first" insert "diet",

(ii) for the word "diet" where it first occurs, substitute "hearing",

(b) in paragraph (aa), in sub-paragraph (ii), for the words "diet, section 73(3A)" substitute "hearing, section 72(6)(e)",

(c) after paragraph (aa) insert—

"(ab) may not be taken against a decision at a preliminary hearing, in appointing a trial diet, to appoint or not to appoint it as a floating diet for the purposes of section 83A(2) of this Act;".

(4) In subsection (3), for the words "the trial diet" substitute "any trial diet that has been appointed".

(5) After that subsection insert—

"(3A) Where an appeal is taken under subsection (1) above against a decision at a preliminary hearing, the High Court may adjourn, or further adjourn, the preliminary hearing 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.".

(6) In subsection (4)(b), after "fix" insert—

"(i) where the indictment is in respect of the High Court, a further preliminary hearing; or

(ii) where the indictment is in respect of the sheriff court,".

4 Prohibition on accused conducting case in person in certain cases

(1) In section 288C(1) of the 1995 Act (prohibition of personal conduct of defence in cases of certain sexual offences), after "conducting" insert—

"(a) his case in person at or for the purposes of a preliminary hearing; and

(b)".

(2) In section 288D(2)(a) of that Act (appointment by the court of a solicitor in such cases), after "of" insert—

"(i) the conduct of his case at or for the purposes of a preliminary hearing; or

(ii)".

(3) In section 288E of that Act (prohibition of personal conduct of defence in certain cases involving child witnesses under the age of 12)—

(a) in subsection (1), after "conducting" insert—

"(a) his case in person at or for the purposes of a preliminary hearing; and

(b)",

(b) in subsection (6)—

(i) before paragraph (a) insert—

"(za) where he is indicted to the High Court in respect of the offence, that his case at or for the purposes of the preliminary hearing may be conducted only by a lawyer,",

(ii) in paragraph (c), after the word "of" insert "the conduct of his case at or for the purposes of the preliminary hearing (if he is indicted to the High Court in respect of the offence) or".

(4) In section 288F of that Act (power to prohibit personal conduct of defence in cases involving vulnerable witnesses), after subsection (4) insert—

"(4A) Where, in any proceedings in the High Court, an order is made under subsection (2) above before or at the preliminary hearing, the accused is also prohibited from conducting or, as the case may be, continuing to conduct, his case in person at or for the purposes of the preliminary hearing.".

Continuation of trial diet

5 Continuation of trial diet

After section 83 (transfer of sheriff court solemn proceedings) of the 1995 Act insert—

"Continuation of trial diet in the High Court

83A Continuation of trial diet in the High Court

(1) Where, in any case which is to be tried in the High Court, the trial diet does not commence on the day appointed for the holding of the diet, the indictment shall fall.

(2) However, where, in appointing a day for the holding of the trial diet, the Court has indicated that the diet is to be a floating diet, the diet and, if it is adjourned, the adjourned diet may, without having been commenced, be continued from sitting day to sitting day—

(a) by minute, in such form as may be prescribed by Act of Adjournal, signed by the Clerk of Justiciary; and

(b) up to such maximum number of sitting days after the day originally appointed for the trial diet as may be so prescribed.

(3) If such a trial diet or adjourned diet is not commenced by the end of the last sitting day to which it may be continued by virtue of subsection (2)(b) above, the indictment shall fall.

(4) For the purposes of this section, a trial diet or adjourned trial diet shall be taken to commence when it is called.

(5) In this section, "sitting day" means any day on which the court is sitting, but does not include any Saturday or Sunday or any day which is a court holiday.".

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.".

PART 3

BAIL

17 Bail conditions: remote monitoring of restrictions on movements

After section 24 (bail and bail conditions) of the 1995 Act insert—

"**24A Bail conditions: remote monitoring of restrictions on movements**

(1) Where a court has refused to admit a person to bail, the court shall, on the application of that person—

(a) consider whether the imposition of a remote monitoring requirement would enable it to admit the person to bail subject to a movement restriction condition; and

(b) if so—

(i) admit the person to bail subject to such a condition (as well as such other conditions required to be imposed under section 24(4) of this Act); and

(ii) impose, as a further condition of bail, a remote monitoring requirement.

(2) Where a court—

(a) grants bail to any person charged with or convicted of murder or rape; and

(b) in doing so, imposes a movement restriction condition,

the court may, at its own hand, impose, as a further condition of bail, a remote monitoring requirement.

(3) Where a court, in granting bail to a person convicted of murder or rape—

(a) imposes a movement restriction condition; but

(b) does not impose a remote monitoring requirement,

the court shall state reasons for not imposing such a requirement.

(4) In deciding whether to grant bail to a person referred to in paragraph (a) of subsection (2) above, the court shall disregard the availability of the power conferred by that subsection.

(5) Where—

(a) a remote monitoring requirement has been imposed under subsection (2) above on a person charged with murder or rape; and

(b) subsequently, the charge against the person is reduced,

the court shall, on the application of the person, revoke the remote monitoring requirement unless it considers that there are exceptional circumstances justifying the continued imposition of the requirement.

(6) An application under subsection (5) above shall be intimated immediately and in writing to the Crown Agent and the court shall, before determining it, give the prosecutor an opportunity to be heard.

(7) Before considering whether to impose a remote monitoring requirement under subsection (1) or (2) above, the court shall give the accused and the prosecutor an opportunity to be heard.

(8) Before imposing a remote monitoring requirement under subsection (1) or (2) above, the court shall explain to the accused in ordinary language—

(a) the effect—

(i) of the requirement; and

(ii) of any requirement to be imposed under section 24D(3) of this Act; and

(b) the consequences which may follow any failure by the accused to comply with—

(i) the movement restriction condition in respect of which the remote monitoring requirement is to be imposed; and

(ii) any such requirement as is referred to in paragraph (a)(ii) above.

(9) The court shall not impose a remote monitoring requirement under subsection (1) or (2) above unless the accused, after the court has explained to him the matters referred to in paragraphs (a) and (b) of subsection (8) above, has confirmed that he understands those matters.

(10) Subsection (11) below applies where the court is proposing—

(a) to impose under subsection (1) or (2) above a remote monitoring requirement where the movement restriction condition in relation to which the requirement is proposed to be imposed will require the accused to remain in a specified place or places; or

(b) to vary the movement restriction condition in relation to which the requirement is imposed so as to specify a different place or different places.

(11) Before imposing the requirement or, as the case may be, varying the condition, the court shall—

(a) obtain and consider a report by an officer of a local authority about—

(i) the place or places proposed to be specified; and

(ii) the attitude of persons likely to be affected by the requirement that the accused remain there; and

(b) if it considers it necessary, hear the officer who prepared the report.

(12) The court may, for the purposes of subsection (11) above, adjourn the proceedings.

(13) Where a court—

(a) imposes a remote monitoring requirement under subsection (1) or (2) above;

(b) revokes such a requirement; or

(c) varies or revokes a movement restriction condition in respect of which such a requirement has been imposed,

the clerk of the court shall cause a copy of the order containing the requirement, revocation or, as the case may be, variation to be sent immediately to the monitor.

(14) Where, in the course of monitoring in pursuance of a remote monitoring requirement imposed under subsection (1) or (2) above a person's compliance with a condition imposed on bail restricting the person's movements, the monitor becomes aware that the person has breached the condition, the monitor shall immediately notify a constable of the breach.

(15) Where a constable arrests a person under section 28(1) of this Act on the ground that the constable suspects the person of having breached a movement restriction condition in respect of which a remote monitoring requirement has been imposed the constable shall, as soon as possible, notify the monitor of the arrest.

(16) Nothing in subsection (1) above affects any right which a person has to appeal against a decision refusing to admit the person to bail.

(17) However, where in a case in which an application has been made under subsection (1) above following a decision of a court to refuse to admit the applicant to bail—

(a) an appeal is taken against the decision; and

(b) the applicant is refused bail under subsection (1) above,

any appeal against the refusal of bail under that subsection shall be conjoined with the appeal referred to in paragraph (a) above.

(18) In this section and sections 24B to 24E of this Act—

(a) "a movement restriction condition" means, in relation to a person admitted to bail, a condition of bail imposed under section 24(4)(b) of this Act restricting the person's movements, including such a condition requiring the person to be, or not to be, in any place or description of place for, or during, any period or periods or at any time;

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

(c) references to the "accused" are references to any person in relation to whom a remote monitoring requirement is imposed or to be imposed under subsection (1) or (2) above.

(19) In this section, "monitor" means, in relation to an order under this section, any person who is, or is to be, responsible for the remote monitoring of the compliance of the person in respect of whom the order is made with the condition imposed in the order restricting the person's movements.

24B Regulations as to power to impose remote monitoring requirements under section 24A

(1) The Scottish Ministers may by regulations prescribe—

(a) which courts, or description or descriptions of courts, may impose remote monitoring requirements under section 24A(1) or (2) of this Act;

(b) what method or methods of monitoring compliance with a movement restriction condition may be specified in any such requirement by any such court; and

(c) the description or descriptions of persons in respect of whom such requirements may be imposed.

(2) Regulations under subsection (1) above may make different provision in relation to the matters mentioned in paragraphs (b) and (c) of that subsection in relation to different courts or descriptions of courts.

(3) Without prejudice to the generality of subsection (1) above, in relation to district courts, regulations under that subsection may make provision as respects such courts by reference to whether the court is constituted by a stipendiary magistrate or by one or more justices.

(4) Regulations under subsection (1) above may make such transitional and consequential provisions, including provision in relation to the continuing effect of any remote monitoring requirements imposed under section 24A(1) or (2) in force when new regulations are made, as the Scottish Ministers consider appropriate.

(5) Regulations under subsection (1) above shall be made by statutory instrument and a statutory instrument containing any such regulations (other than the first such regulations) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(6) The first regulations under subsection (1) above shall not be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Parliament.

24C Monitoring of compliance in pursuance of requirements imposed under section 24A

(1) Where the Scottish Ministers, in regulations under section 24B(1) of this Act, empower a court or a description of court to impose remote monitoring requirements under section 24A(1) or (2) of this Act they shall notify the court or, as the case may be, each court of that description of the person or description of persons who may be designated by that court for the purpose of monitoring the compliance with any movement restriction condition of the person in respect of whom the requirement is imposed.

(2) A court which imposes a remote monitoring requirement under section 24A(1) or (2) of this Act shall include provisions in the requirement for making a person notified by the Scottish Ministers under subsection (1) above or a description of persons so notified responsible for monitoring the compliance of the person in respect of whom it is imposed with the movement restriction condition in respect of which it is imposed.

(3) Where the Scottish Ministers change the person or description of persons notified by them under subsection (1) above, any court which has imposed a remote monitoring requirement under 24A(1) or (2) of this Act shall, if necessary, vary the requirement accordingly and shall notify the variation to the person in respect of whom the order was made.

24D Remote monitoring

(1) The Scottish Ministers may make such arrangements, including contractual arrangements, as they consider appropriate with such persons, whether legal or natural, as they think fit for the remote monitoring, in pursuance of remote monitoring requirements imposed under section 24A(1) or (2), of the compliance of persons in respect of whom such requirements are imposed with the movement restriction conditions in respect of which they are imposed.

(2) Different arrangements may be made under subsection (1) above in relation to different areas or different forms of remote monitoring.

(3) A court imposing a remote monitoring requirement under section 24A(1) or (2) of this Act shall include in the requirement, as a further condition of bail, a requirement that the person in respect of whom it is imposed—

(a) shall, either continuously or for such periods as may be specified, wear or carry a device for the purpose of enabling the remote monitoring of his compliance with the movement restriction condition in respect of which it is imposed to be carried out; and

(b) shall not tamper with or intentionally damage the device or knowingly allow it to be tampered with or intentionally damaged.

(4) The Scottish Ministers shall by regulations specify devices which may be used for the purpose of remotely monitoring the compliance of persons in respect of whom remote monitoring requirements have been imposed under section 24A(1) or (2) of this Act with the movement restriction conditions in respect of which they are imposed.

(5) Regulations under subsection (4) above shall be made by statutory instrument and a statutory instrument containing such regulations shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

24E Documentary evidence in proceedings for breach of bail conditions being remotely monitored

(1) This section applies in proceedings against a person (referred to in this section as "the accused") for an offence under subsection (1)(b) of section 27 of this Act (failure to comply with a condition imposed on bail) where the condition referred to in that subsection is—

(a) a movement restriction condition in respect of which a remote monitoring requirement has been imposed under section 24A(1) or (2); or

(b) a requirement imposed under section 24D(3)(b) of this Act.

(2) Evidence of—

(a) in the case referred to in subsection (1)(a) above, the presence or absence of the accused at a particular place at a particular time; or

(b) in the case referred to in subsection (1)(b) above, any tampering with or damage to a device worn or carried by the accused for the purpose of remotely monitoring his whereabouts,

may, subject to subsections (5) and (6) below, be given by the production of the document or documents referred to in subsection (3) below.

(3) 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) of this Act, by which the accused'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 (1)(a) above, the whereabouts of the accused at the dates and times shown in the statement; or

(ii) in the case referred to in subsection (1)(b) above, any tampering with or damage to the device.

(4) The statement and certificate mentioned in subsection (3) above shall, when produced in the proceedings, be sufficient evidence of the facts set out in them.

(5) Neither the statement nor the certificate mentioned in subsection (3) above shall be admissible in evidence unless a copy of both has been served on the accused prior to the trial.

(6) Without prejudice to subsection (5) above, where it appears to the court that the accused 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.".

18 Bail review: rights of prosecutor to be heard etc.

(1) The 1995 Act is amended as follows.

(2) In section 25 (bail conditions: supplementary), after subsection (2) insert—

"(2A) Where an application is made under subsection (2) above—

(a) the application shall be intimated by the accused immediately and in writing to the Crown Agent; and

(b) the court shall, before determining the application, give the prosecutor an opportunity to be heard.".

(3) In section 30 (bail review), after subsection (2) insert—

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

(2B) Subsection (2C) below applies where an application is made under subsection (2) above by a person convicted on indictment pending the determination of—

(a) his appeal;

(b) any relevant appeal by the Lord Advocate under section 108 or 108A of this Act; or

(c) the sentence to be imposed on, or other method of dealing with, him.

(2C) Where this subsection applies the application shall be—

(a) intimated by the person making it immediately and in writing to the Crown Agent; and

(b) heard not less than 7 days after the date of that intimation.".

(4) In section 31 (bail review on prosecutor's application), after subsection (2) insert—

"(2A) Subsection (2B) below applies to an application under subsection (1) above where the person granted bail—

(a) was convicted on indictment; and

(b) was granted bail pending the determination of—

(i) his appeal;

(ii) any relevant appeal by the Lord Advocate under section 108 or 108A of this Act; or

(iii) the sentence to be imposed on, or other method of dealing with, him.

(2B) Where this subsection applies, the application shall be heard not more than 7 days after the day on which it is made.".

PART 4

MISCELLANEOUS AND GENERAL

Miscellaneous

19 First diet in sheriff court solemn proceedings: witnesses and bail

(1) Section 71 (first diet) of the 1995 Act is amended as follows.

(2) After subsection (1B) insert—

"(1C) At a first diet, the court—

(a) shall ascertain which of the witnesses included in the list of witnesses are required by the prosecutor or the accused to attend the trial; and

(b) shall, where the accused has been admitted to bail, review the conditions imposed on his bail and may—

(i) after giving the parties an opportunity to be heard; and

(ii) if it considers it appropriate to do so,

fix bail on different conditions.".

(3) In subsection (2), for "and (1A)" substitute ", (1A) and (1C)".

(4) In subsection (3), after "(1A)" insert ", (1C)".

20 Sentence following guilty plea

(1) Section 196 (sentence following guilty plea) of the 1995 Act is amended as follows.

(2) In subsection (1), for "may" substitute "shall".

(3) After subsection (1) insert—

"(1A) In passing sentence on an offender referred to in subsection (1) above, the court shall—

(a) state whether, having taken account of the matters mentioned in paragraphs (a) and (b) of that subsection, the sentence imposed in respect of the offence is different from that which the court would otherwise have imposed; and

(b) if it is not, state reasons why it is not.".

21 Increase in extended sentence which may be passed by sheriff court in certain cases

In section 210A(6) of the 1995 Act (which provides for the maximum extended sentence which may be imposed by the sheriff on sex and violent offenders), for "three years" substitute "five years".

22 Citation of witnesses for precognition

After section 267 of the 1995 Act there is inserted—

"**267A Citation of witnesses for precognition**

(1) This Act shall be sufficient warrant for the citation of witnesses for precognition by the prosecutor, whether or not any person has been charged with the offence in relation to which the precognition is taken.

(2) Such citation shall be in the form prescribed by Act of Adjournal or as nearly as may be in such form.

(3) A witness who, having been duly cited—

(a) fails without reasonable excuse, after receiving at least 48 hours notice, to attend for precognition by a prosecutor at the time and place mentioned in the citation served on him; or

(b) refuses when so cited to give information within his knowledge regarding any matter relative to the commission of the offence in relation to which the precognition is taken,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to a term of imprisonment not exceeding 21 days.".

23 Admissibility of prior statements of witnesses

In section 260 (admissibility of prior statements of witnesses) of the 1995 Act, after subsection (4) insert—

"(5) A prior statement made by a witness shall not, in any proceedings on indictment, be inadmissible by reason only that it is not included in any list of productions lodged by the parties.".

24 Protection of Children (Scotland) Act 2003: references following conviction

(1) In section 10 (referral of person convicted of offence against a child for inclusion on list of persons considered unsuitable to work with children) of the Protection of Children (Scotland) Act 2003 (asp 5)—

(a) for "proposed reference", where it appears in subsections (5) and (6), substitute "reference proposed under subsection (1) above",

(b) for paragraphs (a) and (b) of subsection (6) substitute—

"(a) the period during which an appeal against the proposed reference may be brought has expired without an appeal being brought; or

(b) where an appeal is brought within that period, it is dismissed or abandoned.".

(2) In subsection (1) of section 110 (note of appeal) of the 1995 Act, after "Act", where second occurring, insert "or, in the case of an appeal under section 106(1)(db) or (dc) of this Act, the date on which the proposal to make a reference is made".

(3) After subsection (2) of section 111 (extension of period during which an appeal may be brought in solemn proceedings) insert—

"(3) Subsection (2) above does not allow the High Court to extend any such period which relates to an appeal under section 106(1)(db), (dc) or (f)(ii) or (iii) of this Act.".

(4) After subsection (3) of section 181 (extension of period during which an appeal may be brought in summary proceedings) insert—

"(4) Subsection (1) above does not allow the High Court to make a direction in relation to an appeal under section 175(2)(cb) or (d)(ii) or (iii) of this Act.".

(5) In subsection (2)(a) of section 186 (appeals against sentence) of the 1995 Act—

(a) the word "or", which immediately precedes sub-paragraph (ii) is repealed,

(b) after that sub-paragraph insert "; or

(iii) in the case of an appeal under section 175(2)(cb), the date on which it is proposed that a reference be made".

General

25 Further modifications of the 1995 Act

The schedule makes further modifications of the 1995 Act, including modifications of a minor and consequential nature.

26 Ancillary provision

(1) The Scottish Ministers may by order made by statutory instrument make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act.

(2) An order under this section may modify any enactment (including this Act), instrument or document.

(3) A statutory instrument containing an order under this section (except where subsection (4) applies) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) No order under this section containing provisions which add to, replace or omit any part of the text of an Act is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Parliament.

27 Commencement and short title

(1) This Act (except section 26 and this section) comes into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.

(2) An order under subsection (1) may—

(a) appoint different days for different purposes,

(b) include such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient in connection with the coming into force of the provisions brought into force.

(3) This Act may be cited as the Criminal Procedure (Amendment) (Scotland) Act 2004.

SCHEDULE
(introduced by section 25)

FURTHER MODIFICATIONS OF THE 1995 ACT

1 The 1995 Act is amended as follows.

2 In section 2 (fixing of High Court sittings)—

(a) in subsection (3)—

(i) for the words "attend a" substitute ", or otherwise required to attend, a diet to be held at any",

(ii) for "his trial" substitute "the diet or, in the case of a trial diet, the trial",

(iii) for "another sitting of the High Court" substitute "a diet to be held at a sitting of the Court in another place",

(b) after subsection (3) insert—

"(3C) The judge may proceed under subsection (3) above on a joint application of the parties without hearing the parties and, accordingly, he may dispense with any hearing previously appointed for the purpose of considering the application.",

(c) in subsection (4), for "cases have been indicted for" substitute "diets have been appointed to be held at",

(d) in subsection (5), for "any case remains indicted for" substitute "in any case a diet remains appointed to be held at",

(e) after that subsection insert—

"(6) For the purposes of subsection (3) above—

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

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

3 In section 17A(1) (right of person accused of sexual offence to be told about restriction on conduct of defence: arrest)—

(a) before paragraph (a) insert—

"(za) that, if he is indicted to the High Court in respect of the offence, his case at or for the purposes of the preliminary hearing may be conducted only by a lawyer;",

(b) in paragraph (c), after the word "of" insert "the conduct of his case at or for the purposes of the preliminary hearing (if he is indicted to the High Court in respect of the offence) or".

4 In section 23A (bail and liberation where person already in custody), in both subsections (1) and (4), for "or 23" substitute ", 23 or 65(8C)".

5 In section 24 (bail and bail conditions)—

(a) in subsection (5)(a), at the end insert "or at which he is required by this Act to appear",

(b) after subsection (6) insert—

"(6A) Subsection (6) above does not apply in relation to an accused admitted to bail under section 65(8C) of this Act.".

6 In section 25 (bail conditions: supplementary), after subsection (3) insert—

"(4) In this section, references to the court (other than in subsection (2A)) shall, in relation to a person who has been admitted to bail by the Lord Advocate, be read as if they were references to the Lord Advocate.".

7 After section 25 insert—

"**25A Failure to accept conditions of bail under section 65(8C): continued detention of accused**

An accused who—

(a) is, by virtue of subsection (4) of section 65 of this Act, entitled to be admitted to bail; but

(b) fails to accept any of the conditions imposed by the court on bail under subsection (8C) of that section,

shall continue to be detained under the committal warrant for so long as he fails to accept any of those conditions.".

8 In section 27 (breach of bail conditions: offences)—

(a) in subsection (1)(a), after "notice" insert "or at which he is required by this Act to appear",

(b) in subsection (4A)(a), for the words from "under" in the first place where it occurs to "71(2)" substitute "in accordance with section 71(2) or 72(6)(b)(i)".

9 In section 28 (breach of bail conditions: arrest of offender etc.), after subsection (4) insert—

"(4A) In the case of an accused released on bail by virtue of section 65(8C) of this Act—

(a) subsection (2) above shall have effect as if the reference to the court to which his application for bail was first made were a reference to the court or judge which admitted him to bail under that section; and

(b) subsection (4) above shall not apply and subsection (4B) below shall apply instead.

(4B) Where an accused referred to in subsection (4A) above is, under subsection (2) or (3) above, brought before the court or judge which admitted him to bail under section 65(8C)—

(a) the court or judge shall give the prosecutor an opportunity to make an application under section 65(5) of this Act; and

(b) if the prosecutor does not make such an application, or if such an application is made but is refused, the court or judge may—

(i) release the accused under the original order granting bail; or

(ii) vary the order granting bail so as to contain such conditions as the court or judge thinks necessary to impose to secure that the accused complies with the requirements of paragraphs (a) to (d) of section 24(5) of this Act.".

10 In section 31 (bail review on prosecutor's application), after subsection (3) insert—

"(3A) In relation to an accused admitted to bail under section 65(8C) of this Act—

(a) an application may be made under subsection (1) above only in relation to the conditions imposed on bail; and

(b) paragraph (a) of subsection (3) above shall not apply in relation to any such application.".

11 In section 32 (bail appeal)—

(a) after subsection (2) insert—

"(2A) The public prosecutor may, in relation to an accused admitted to bail under section 65(8C) of this Act, appeal under subsection (2) above only in relation to the conditions imposed on bail.",

(b) in subsection (7), after "granted" insert "(other than an accused to whom subsection (7B) below applies)",

(c) after that subsection insert—

"(7B) Where, in relation to an accused admitted to bail under section 65(8C) of this Act, the public prosecutor appeals against the conditions imposed on bail, the accused—

(a) may continue to be detained under the committal warrant for no more than 72 hours from the granting of bail or for such longer period as 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.".

12 In section 35(4A) (right of person accused of sexual offence to be told about restriction on conduct of defence: judicial examination)—

(a) before paragraph (a) insert—

"(za) that, if he is indicted to the High Court in respect of the offence, his case at or for the purposes of the preliminary hearing may be conducted only by a lawyer;",

(b) in paragraph (c), after the word "of" insert "the conduct of his case at or for the purposes of the preliminary hearing (if he is indicted to the High Court in respect of the offence) or".

13 In section 54 (insanity in bar of trial), in subsection (1)(b), after "diet" in the first place where it occurs insert "or, in proceedings on indictment where the finding is made at or before the first diet (in the case of proceedings in the sheriff court) or the preliminary hearing (in the case of proceedings in the High Court), that diet or, as the case may be, hearing".

14 In section 56 (examination of facts: supplementary provisions)—

(a) in subsection (1)—

(i) after "diet" in the first place where it occurs insert "or, in proceedings on indictment, at the first diet (in the case of proceedings in the sheriff court) or the preliminary hearing (in the case of proceedings in the High Court)",

(ii) after "diet" in the second place where it occurs insert ", first diet or, as the case may be, preliminary hearing",

(b) subsection (2) is repealed.

15 In section 66 (service and lodging of indictment etc.)—

(a) in subsection (4)—

(i) in paragraph (a), at the end insert "and of the list of productions (if any) to be put in evidence by the prosecution",

(ii) in paragraph (b), for the words "list as is" substitute "lists as are",

(b) after subsection (4B), insert—

"(4C) Where—

(a) the accused is cited in accordance with subsection (4)(b) above; and

(b) the charge in the indictment is of committing a sexual offence to which section 288C of this Act applies,

the accused shall, on collecting the indictment, be given a notice containing intimation of the matters specified in subsection (6A)(a) below.",

(c) in subsection (6A)(a)—

(i) before sub-paragraph (i) insert—

"(zi) where the case is to be tried in the High Court, that his case at or for the purposes of the preliminary hearing may be conducted only by a lawyer;",

(ii) in sub-paragraph (iii), after the word "of" insert "the conduct of his case at or for the purposes of the preliminary hearing or",

(d) in subsection (6B)—

(i) for "(6A)" substitute "(4C), (6A) or (6AA)",

(ii) for "such notice" substitute "notice affixed under subsection (4)(b) above or served under subsection (6) above",

(e) subsection (10) is repealed.

16 In section 67 (witnesses)—

(a) in subsection (3)—

(i) for "ten" substitute "seven",

(ii) for "trial diet" in the first place where the expression occurs substitute "preliminary hearing",

(iii) the words "at the trial diet" are repealed,

(b) after subsection (4) insert—

"(4A) The prosecutor shall have a duty to cite a witness included in the list only if—

(a) it has been ascertained under—

(i) in the case of proceedings in the High Court, section 72(6)(d); or

(ii) in the case of proceedings in the sheriff court, section 71(1C)(a),

of this Act that the witness is required by the prosecutor or the accused to attend the trial; or

(b) where, in the case of proceedings in the High Court, the preliminary hearing has been dispensed with under subsection (1) of section 72B of this Act, the witness was identified in the application under that subsection as being required by the prosecutor or the accused to attend the trial.",

(c) in subsection (5), after "accused" insert "by the relevant time.

(5A) In subsection (5) above, "the relevant time" means—

(a) where the case is to be tried in the High Court—

(i) not less then seven clear days before the preliminary hearing; or

(ii) such later time, before the jury is sworn to try the case, as the court may, on cause shown, allow;

(b) where the case is to be tried in the sheriff court,".

17 Section 67A is repealed.

18 In section 68 (productions)—

(a) in subsection (3)—

(i) after "lodged" insert ", where the case is to be tried in the sheriff court,",

(ii) after "diet" in the first place where it occurs insert "or, where the case is to be tried in the High Court, at least 14 days before the preliminary hearing,",

(iii) after "accused," insert "where the case is to be tried in the sheriff court,",

(iv) after "diet" in the second place where it occurs insert "or, where the case is to be tried in the High Court, at least seven days before the preliminary hearing,",

(b) in subsection (4)—

(i) in paragraph (a), for the words from "the accused" to "diet" substitute "the case is to be tried in the High Court",

(ii) in paragraph (b), for the words from "he" to "diet" substitute "the case is to be tried in the sheriff court".

19 In section 69 (intimation of objection to any conviction specified in the notice of previous convictions), in subsection (3), for the words from "cited" in paragraph (a) to the end of the subsection, substitute "indicted to the High Court, to the Crown Agent not less than seven clear days before the preliminary hearing;

(b) where the accused is indicted to the sheriff court, to the procurator fiscal at least five clear days before the first day of the sitting in which the trial diet is to be held.".

20 In section 71 (first diet)—

(a) in subsection (2), for the words from "matter" to "Act" substitute "preliminary plea or preliminary issue (within the meanings given to those terms in section 79(2) of this Act)",

(b) subsections (8) and (8A) are repealed.

21 Section 71A is repealed.

22 In section 74 (appeals in connection with preliminary diets), in subsection (2)(a), before "postpone" insert "accelerate or".

23 In section 75 (computation of certain periods), "72" is repealed.

24 In section 76 (procedure where accused desires to plead guilty), in subsection (3), after "diet" in the third place where it occurs insert "or, where the accused has been indicted to the High Court, the preliminary hearing".

25 In section 78 (special defences, incrimination and notice of witnesses etc.)—

(a) in subsection (1), in paragraph (a), the words from—

"(i) where"

to the end are repealed,

(b) in subsection (3)—

(i) in paragraph (a)—

(A) for "the accused is cited to the High Court for the trial diet" substitute "the case is to be tried in the High Court",

(B) for "10 clear days before the trial diet" substitute "seven clear days before the preliminary hearing",

(ii) in paragraph (b), for "accused is cited to the sheriff court for the trial diet" substitute "case is to be tried in the sheriff court",

(c) in subsection (4)(a)(ii), for the words from "ten" to the end substitute "seven clear days before the preliminary hearing",

(d) in subsection (5), for the words "the trial diet, for the use of the court" substitute—

"(a) where the case is to be tried in the High Court, the preliminary hearing;

(b) where the case is to be tried in the sheriff court, the trial diet,

for the use of the court.".

26 Section 80 (alteration and postponement of trial diet) is repealed.

27 In section 82 (desertion or postponement where accused in custody)—

(a) in paragraph (b), after "is" insert "continued, accelerated,",

(b) in paragraph (c), at the end insert "or, in the case of proceedings in the High Court, originally appointed by the Court,".

28 In section 83 (transfer of sheriff court solemn proceedings)—

(a) in subsection (1)—

(i) for the word "sitting" in both places where it occurs substitute "diet",

(ii) the words from "(that" to "Act)" are repealed,

(b) in subsection (1A)—

(i) for the word "sitting" in both places where it occurs substitute "diet",

(ii) in sub-paragraph (ii), the words from "(that" to "Act)" are repealed,

(c) after subsection (2B) insert—

"(2C) The sheriff may proceed under subsection (2) above on a joint application of the parties without hearing the parties and, accordingly, he may dispense with any hearing previously appointed for the purposes of considering the application.",

(d) subsection (3) is repealed.

29 In section 84 (juries: returns of jurors and preparations of lists)—

(a) in subsection (8)—

(i) for the words "sittings of the High Court" substitute "trials in the High Court sitting at a particular place on a particular day",

(ii) the words "to be signed by the judge" are repealed,

(b) in subsection (9)—

(i) for the words "at a sitting of the High Court" substitute "in the High Court sitting at a particular place on a particular day",

(ii) the words "shall be authenticated by the signature of a judge of the Court, and" are repealed,

(iii) for the words "the trial of all parties cited to that particular sitting" substitute "all trials to be held in the High Court sitting in that particular place on that particular day",

(iv) for the words "the trials of all the accused cited to the sitting" substitute "all such trials",

(c) in subsection (10), paragraph (c) is repealed.

30 In section 85 (juries: citation and attendance of jurors)—

(a) for subsection (2) substitute—

"(2) A list of jurors shall—

(a) be prepared and kept in such form and manner; and

(b) contain such minimum number of names,

as may be prescribed by Act of Adjournal.",

(b) in subsection (4), for the words "a sitting of the High Court is to be held" substitute "the High Court is to sit",

(c) in subsection (5)—

(i) for the words "a sitting of the High Court is to be held" substitute "the High Court is to sit on any particular day",

(ii) for the words "the sitting" substitute "trials to be held in the High Court sitting in the sheriffdom on that day".

31 In section 87 (non-availability of judge)—

(a) in subsection (1)(a)—

(i) for the words "that sitting" substitute "the same day",

(ii) in sub-paragraph (ii), for "sitting" substitute "date",

(b) in subsection (1)(b)(i), for the words "that sitting" substitute "the same day".

32 In section 119 (provision where High Court authorises new prosecution), in subsection (8), for paragraphs (a) and (b) substitute—

"(a) in a case where a warrant to apprehend the accused is granted—

(i) on the date on which the warrant is executed; or

(ii) if it is executed without unreasonable delay, on the date on which it is granted;

(b) in any other case, on the date on which the accused is cited.".

33 In section 140 (citation in summary proceedings), in subsection (1), paragraph (a) is repealed.

34 In section 156 (apprehension of witnesses), in each of subsections (1), (2) and (3), after "a witness" insert "in a summary prosecution".

35 In section 245A (restriction of liberty orders), in subsection (6)—

(a) after "shall" insert "—

(a)",

(b) for the words from "information" in the first place where it first occurs to "to" in the second place where it second occurs substitute "a report by an officer of a local authority about—

(i) the place or places proposed to be specified; and

(ii)", and

(c) at the end insert "; and

(b) if it considers it necessary, hear the officer who prepared the report."

36 In section 245C (remote monitoring), in subsection (2)—

(a) after "offender" insert "—

(a)", and

(b) at the end insert ", and

(b) shall not tamper with or intentionally damage the device or knowingly allow it to be tampered with or intentionally damaged.".

37 In section 245E (variation of restriction of liberty order)—

(a) after subsection (4) insert—

"(4A) Before varying a restriction of liberty order so as to require the offender to remain in a specified place or places or so as to specify a different place or different places in which the offender is to remain, the court shall—

(a) obtain and consider a report by an officer of a local authority about—

(i) the place or places proposed to be specified, and

(ii) the attitude of persons likely to be affected by any enforced presence there of the offender; and

(b) if it considers it necessary, hear the officer who prepared the report.", and

(b) in subsection (6)(a)—

(i) after "places" in the first place where it occurs insert "—

(i)",

(ii) for the words from "information" in the first place where it occurs to "to" in the second place where it occurs substitute "a report by an officer of a local authority about the place or places proposed to be specified and",

(iii) after "offender;" insert "and

(ii) if it considers it necessary, hear the officer who prepared the report;".

38 In section 255 (special capacity), in paragraph (a), for the words from "under" in the first place where it occurs to "71(2)" substitute "in accordance with section 71(2) or 72(6)(b)(i)".

39 In section 255A (proof of age), in paragraph (a), for the words from "under" in the first place where it occurs to "71(2)" substitute "in accordance with section 71(2) or 72(6)(b)(i)".

40 In section 257 (duty to seek agreement of evidence), after subsection (3) insert—

"(4) Without prejudice to subsection (3) above, in the case of proceedings in the High Court, 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, by that subsection are identified and taken before the preliminary hearing.".

41 In section 258 (uncontroversial evidence)—

(a) in subsection (2), for "trial" substitute "relevant",

(b) after that subsection, insert—

"(2A) In subsection (2) above, "the relevant diet" means—

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

(b) in any other case, the trial diet.".

42 In section 259 (exceptions to the rule that hearsay evidence is inadmissible)—

(a) in subsection (5), for "before the trial diet" substitute "by the relevant time",

(b) after that subsection insert—

"(5A) In subsection (5) above, "the relevant time" means—

(a) in the case of proceedings in the High Court—

(i) not less than 7 days before the preliminary hearing; or

(ii) such later time, before the trial diet, as the judge may on cause shown allow;

(b) in any other case, before the trial diet.".

43 In section 271A (special measures for child witnesses)—

(a) in subsection (2), for the words "no later than 14 clear days before the trial diet" substitute "by the required time",

(b) in subsection (4), for the words "the time limit specified in subsection (2) above" substitute "the required time",

(c) in subsection (5), for the words from "that" where last occurring to the end substitute "under subsection (5A) below.",

(d) after that subsection insert—

"(5A) That order is an order—

(a) in the case of proceedings in the High Court where the preliminary hearing is yet to be held, appointing the child witness notice to be disposed of at that hearing;

(b) in the case of proceedings on indictment in the sheriff court where the first diet is yet to be held, appointing the child witness notice to be disposed of at that diet; or

(c) in any other case, appointing a diet to be held before the trial diet and requiring the parties to attend the diet.",

(e) in subsection (7), for paragraph (b) substitute—

"(b) where the court does not so order—

(i) in the case of proceedings on indictment where this subsection applies at or before the preliminary hearing or, as the case may be, the first diet, at that hearing or diet make an order under subsection (9) below; or

(ii) in any other case, make an order appointing a diet to be held before the trial diet and requiring the parties to attend the diet.",

(f) in subsection (8), for "(5)(c) or (7)(b)" substitute "(5A)(c) or (7)(b)(ii)",

(g) after subsection (8) insert—

"(8A) Subsection (9) below applies to—

(a) a preliminary hearing or first diet, so far as the court is—

(i) by virtue of an order under subsection (5A)(a) or (b) above, disposing of a child witness notice at the hearing or diet; or

(ii) by virtue of subsection (7)(b)(i) above, to make an order under subsection (9) above at the hearing or diet; and

(b) a diet appointed under subsection (5A)(c) or (7)(b)(ii) above.",

(h) in subsection (9), for the words "diet under this subsection" substitute "hearing or diet to which this subsection applies",

(i) in subsection (11), for the words "diet under subsection (9) above" substitute "hearing or diet to which subsection (9) above applies",

(j) in subsection (12) for the words from "under" to the end substitute "appointed under subsection (5A)(c) or (7)(b)(ii) above in any case may be conjoined with any other diet to be held before the trial diet in the case.",

(k) after subsection (13) insert—

"(13A) In subsections (2) and (4) above, "the required time" means—

(a) in the case of proceedings in the High Court, no later than 14 clear days before the preliminary hearing;

(b) in the case of proceedings on indictment in the sheriff court, no later than 7 clear days before the first diet;

(c) in any other case, no later than 14 clear days before the trial diet.".

44 In section 271C (special measures for vulnerable witnesses other than child witnesses)—

(a) in subsection (2), for the words "not later than 14 clear days before the trial diet" substitute "by the required time",

(b) in subsection (4), for the words "the time limit specified in subsection (2) above" substitute "the required time",

(c) in subsection (5)(b), for the words from "order" to the end substitute "make an order under subsection (5A) below.",

(d) after subsection (5) insert—

"(5A) That order is an order—

(a) in the case of proceedings in the High Court where the preliminary hearing is yet to be held, appointing the vulnerable witness application to be disposed of at that hearing,

(b) in the case of proceedings on indictment in the sheriff court where the first diet is yet to be held, appointing the vulnerable witness application to be disposed of at that diet, or

(c) in any other case, appointing a diet to be held before the trial diet and requiring the parties to attend the diet.",

(e) in subsection (6), for "(5)(b)" substitute "(5A)(c)",

(f) after that subsection insert—

"(6A) Subsection (7) below applies to—

(a) a preliminary hearing or first diet so far as the court is, by virtue of an order under subsection (5A)(a) or (b) above disposing of a vulnerable witness application at the hearing or diet, and

(b) a diet appointed under subsection (5A)(c) above.",

(g) in subsection (7), for the words "diet under this subsection" substitute "hearing or diet to which this subsection applies",

(h) in subsection (9), for the words "diet under subsection (7) above" substitute "hearing or diet to which subsection (7) above applies",

(i) in subsection (10), for the words from "under" to the end substitute "appointed under subsection (5A)(c) above in any case may be conjoined with any other diet to be held before the trial diet in the case.",

(j) after subsection (11) insert—

"(12) In subsections (2) and (4) above, "the required time" means—

(a) in the case of proceedings in the High Court, no later than 14 clear days before the preliminary hearing,

(b) in the case of proceedings on indictment in the sheriff court, no later than 7 clear days before the first diet,

(c) in any other case, no later than 14 clear days before the trial diet.".

45 In section 275B (provisions supplementary to sections 275 and 275A), in subsection (1), after "made" insert—

"(a) in the case of proceedings in the High Court, not less than 7 clear days before the preliminary hearing; or

(b) in any other case,".

46 In section 277(2) (transcript of police interview sufficient evidence)—

(a) in paragraph (a), after "before" insert—

"(i) in the case of proceedings in the High Court, the preliminary hearing;

(ii) in any other case,",

(b) in paragraph (b), for "six days before his trial, or" substitute—

"(i) in the case of proceedings in the High Court, seven days before the preliminary hearing;

(ii) in any other case, six days before his trial;

or (in either case)".

47 In section 278 (record of proceedings at examination as evidence), in subsection (2)(a), for "72(1)(b)(iv)" substitute "79(1)".

48 In section 280(6)(a) (routine evidence), after "before" insert—

"(i) in the case of proceedings in the High Court, the preliminary hearing;

(ii) in any other case,".

49 In section 281 (routine evidence: autopsy and forensic science reports)—

(a) in subsection (1), for "six days before the trial, or" substitute—

"(i) in the case of proceedings in the High Court, seven days before the preliminary hearing;

(ii) in any other case, six days before the trial;

or (in either case)",

(b) in subsection (2)—

(i) the words "(whom the prosecutor shall specify)" are repealed,

(ii) after "and" in the first place where it occurs insert ", where such intimation is given,",

(iii) for the words "that pathologist or forensic scientist" substitute "one of those pathologists or forensic scientists",

(iv) for "six days before the trial or" substitute—

"(i) in the case of proceedings in the High Court, seven days before the preliminary hearing;

(ii) in any other case, six days before the trial;

or (in either case)".

50 In section 281A (routine evidence: reports of identification prior to trial)—

(a) in subsection (2)(a), for "not less than 14 clear days before the trial" substitute "by the required time",

(b) after subsection (2) insert—

"(3) In subsection (2)(a) above, "the relevant time" means—

(a) in the case of proceedings in the High Court—

(i) not less than 14 clear days before the preliminary hearing; or

(ii) such later time, being not less than 14 clear days before the trial, as the court may, in special circumstances, allow;

(b) in any other case, not less than 14 clear days before the trial.".

51 In section 282 (evidence as to controlled drugs and medicinal products)—

(a) in subsection (3), for "trial" substitute "relevant",

(b) after that subsection, insert—

"(3A) In subsection (3) above, "the relevant diet" means—

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

(b) in any other case, the trial diet.".

52 In section 283 (evidence as to time and place of video surveillance recordings)—

(a) in subsection (2), for "trial" substitute "relevant",

(b) after that subsection, insert—

"(2A) In subsection (2) above, "the relevant diet" means—

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

(b) in any other case, the trial diet.".

53 In section 284 (evidence in relation to fingerprints)—

(a) in subsection (2), for "trial" substitute "relevant",

(b) after subsection (2A), insert—

"(2B) In subsection (2) above, "the relevant diet" means—

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

(b) in any other case, the trial diet.".

54 In section 286 (previous convictions: proof in support of substantive charge)—

(a) in subsection (1)(b), for "trial" substitute "relevant",

(b) after subsection (1), insert—

"(1A) In subsection (1)(b) above, "the relevant diet" means—

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

(b) in any other case, the trial diet.".

55 In section 288C (prohibition of personal conduct of defence in cases of certain sexual offences)—

(a) in subsection (1)(b), for the words from "or" to the end substitute "and in any victim statement proof relating to any such offence",

(b) after subsection (7) insert—

"(8) In subsection (1)(b) above, "victim statement proof" means any proof ordered in relation to—

(a) a victim statement made by virtue of subsection (2) (or by virtue of that subsection and subsection (6)) of section 14 of the Criminal Justice (Scotland) Act 2003 (asp 7); or

(b) a statement made by virtue of subsection (3) of that section in relation to such a victim statement.".

56 In section 288D (appointment of solicitor by court in cases to which section 288C applies), in subsection (2)(a)(ii)—

(a) for the words "proof ordered" substitute "victim statement proof",

(b) for "288C(1)" substitute "288C(1)(b)".

57 In section 307(1) (interpretation), insert at the appropriate place the following definitions—

""preliminary hearing" shall be construed in accordance with section 66(6)(b) of this Act and, where in any case a further preliminary hearing is held or to be held under this Act, includes the diet consisting of that further preliminary hearing;"

""preliminary issue" shall be construed in accordance with section 79(2)(b) of this Act;"

""preliminary plea" shall be construed in accordance with section 79(2)(a) of this Act;".

58 In Schedule 9, in column 1, in the entry relating to sections 24(3) to (8), 25 and 27 to 29 of the 1995 Act, for "25 and 27 to 29" substitute "25, 27 to 29 and 90C(1)".

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