

Status: Point in time view as at 01/04/2006.

Changes to legislation: There are currently no known outstanding effects for the Criminal Procedure (Amendment) (Scotland) Act 2004. (See end of Document for details)

SCHEDULE

(introduced by section 25)

FURTHER MODIFICATIONS OF THE 1995 ACT

1 The 1995 Act is amended as follows.

Commencement Information

- I1** Sch. para. 1 in force at 4.10.2004 for specified purposes, 4.12.2004 for specified purposes and 1.2.2005 for specified purposes by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))
- I2** Sch. para. 1 in force at 4.12.2004 for specified purposes by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))
- I3** Sch. para. 1 in force at 1.2.2005 for specified purposes by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))
- I4** Sch. para. 1 in force at 1.4.2005 for specified purposes, 1.4.2006 for specified purposes, 1.4.2007 for specified purposes, 2.7.2007 for specified purposes and 1.4.2008 for specified purposes by [S.S.I. 2004/405](#), [art. 2\(2\)](#), [sch. 2](#) (with [arts. 3-5](#)) (see [S.S.I. 2005/168](#), [S.S.I. 2006/59](#), [S.S.I. 2007/101](#), [S.S.I. 2007/329](#) and [S.S.I. 2008/57](#))
- I5** Sch. para. 1 in force at 1.4.2006 for specified purposes by [S.S.I. 2004/405](#), [art. 2\(2\)](#), [sch. 2](#) (with [arts. 3-5](#)) (see [S.S.I. 2005/168](#), [S.S.I. 2006/59](#), [S.S.I. 2007/101](#), [S.S.I. 2007/329](#) and [S.S.I. 2008/57](#))

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.”.

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- I6** Sch. para. 2 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

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

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- (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 ”.

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I7 Sch. para. 3 in force at 4.12.2004 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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) ”.

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I8 Sch. para. 4 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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.”.

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I9 Sch. para. 5 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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.”.

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I10 Sch. para. 6 in force at 4.10.2004 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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,

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

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I11 Sch. para. 7 in force at 1.2.2005 by S.S.I. 2004/405, art. 2(1), sch. 1 (with arts. 3-5)

- 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) ”.

Commencement Information

I12 Sch. para. 8 in force at 1.2.2005 by S.S.I. 2004/405, art. 2(1), sch. 1 (with arts. 3-5)

- 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.”.

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I13 Sch. para. 9 in force at 1.2.2005 by S.S.I. 2004/405, art. 2(1), sch. 1 (with arts. 3-5)

- 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

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

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I14 Sch. para. 10 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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.”.

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I15 Sch. para. 11 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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 ”.

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I16 Sch. para. 12 in force at 4.12.2004 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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 ”.

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I17 Sch. para. 13 in force at 1.2.2005 by S.S.I. 2004/405, art. 2(1), sch. 1 (with arts. 3-5)

- 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.

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I18 Sch. para. 14 in force at 1.2.2005 by S.S.I. 2004/405, art. 2(1), sch. 1 (with arts. 3-5)

- 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.

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I19 Sch. para. 15 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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 than 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.”.

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I20 Sch. para. 16 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 17 Section 67A is repealed.

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I21 Sch. para. 17 in force at 4.10.2004 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 18 In section 68 (productions)—
- (a) in subsection (3)—

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- (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 ”.

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I22 Sch. para. 18 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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.”.

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I23 Sch. para. 19 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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.

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I24 Sch. para. 20 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 21 Section 71A is repealed.

Commencement Information

I25 Sch. para. 21 in force at 4.12.2004 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

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

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I26 Sch. para. 22 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

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

Commencement Information

I27 Sch. para. 23 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

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 ”.

Commencement Information

I28 Sch. para. 24 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

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. ”.

Commencement Information

I29 Sch. para. 25 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

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

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I30 Sch. para. 26 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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, ”.

Commencement Information

I31 Sch. para. 27 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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.

Commencement Information

I32 Sch. para. 28 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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 ”,

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

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I33 Sch. para. 29 in force at 1.2.2005 by S.S.I. 2004/405, art. 2(1), sch. 1 (with arts. 3-5)

- 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 ”.

Commencement Information

I34 Sch. para. 30 in force at 1.2.2005 by S.S.I. 2004/405, art. 2(1), sch. 1 (with arts. 3-5)

- 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 ”.

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I35 Sch. para. 31 in force at 1.2.2005 by S.S.I. 2004/405, art. 2(1), sch. 1 (with arts. 3-5)

- 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.”.

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I36 Sch. para. 32 in force at 1.2.2005 by S.S.I. 2004/405, art. 2(1), sch. 1 (with arts. 3-5)

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

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I37 Sch. para. 33 in force at 4.10.2004 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

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

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I38 Sch. para. 34 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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.”

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I39 Sch. para. 35 in force at 4.10.2004 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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.”.

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I40 Sch. para. 36 in force at 4.10.2004 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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

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- (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;”.

Commencement Information

I41 Sch. para. 37 in force at 4.10.2004 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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) ”.

Commencement Information

I42 Sch. para. 38 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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) ”.

Commencement Information

I43 Sch. para. 39 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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.”.

Commencement Information

I44 Sch. para. 40 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 41 In section 258 (uncontroversial evidence)—
- (a) in subsection (2), for “trial” substitute “ relevant ”,
 - (b) after that subsection, insert—

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- “(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.”.

Commencement Information

I45 Sch. para. 41 in force at 1.2.2005 by S.S.I. 2004/405, art. 2(1), sch. 1 (with arts. 3-5)

- 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.”.

Commencement Information

I46 Sch. para. 42 in force at 1.2.2005 by S.S.I. 2004/405, art. 2(1), sch. 1 (with arts. 3-5)

- 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

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- 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.”.

Commencement Information

- I47** Sch. para. 43 in force at 1.4.2005 for specified purposes, 1.4.2006 for specified purposes, 1.4.2007 for specified purposes, 2.7.2007 for specified purposes and 1.4.2008 for specified purposes by [S.S.I. 2004/405, art. 2\(2\), sch. 2](#) (with [arts. 3-5](#)) (see S.S.I. 2005/168, S.S.I. 2006/59, S.S.I. 2007/101, S.S.I. 2007/329 and S.S.I. 2008/57)
- I48** Sch. para. 43 in force at 1.4.2006 for specified purposes by [S.S.I. 2004/405, art. 2\(2\), sch. 2](#) (with [arts. 3-5](#)) (see S.S.I. 2005/168, S.S.I. 2006/59, S.S.I. 2007/101, S.S.I. 2007/329 and S.S.I. 2008/57)

- 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 ”,

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- (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.”.

Commencement Information

I49 Sch. para. 44 in force at 1.4.2005 for specified purposes, 1.4.2006 for specified purposes, 1.4.2007 for specified purposes, 2.7.2007 for specified purposes and 1.4.2008 for specified purposes by [S.S.I. 2004/405](#), [art. 2\(2\)](#), [sch. 2](#) (with [arts. 3-5](#)) (see S.S.I. 2005/168, S.S.I. 2006/59, S.S.I. 2007/101, S.S.I. 2007/329 and S.S.I. 2008/57)

I50 Sch. para. 44 in force at 1.4.2006 for specified purposes by [S.S.I. 2004/405](#), [art. 2\(2\)](#), [sch. 2](#) (with [arts. 3-5](#)) (see S.S.I. 2005/168, S.S.I. 2006/59, S.S.I. 2007/101, S.S.I. 2007/329 and S.S.I. 2008/57)

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- 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,”.

Commencement Information

I51 Sch. para. 45 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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) ”.

Commencement Information

I52 Sch. para. 46 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

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

Commencement Information

I53 Sch. para. 47 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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,”.

Commencement Information

I54 Sch. para. 48 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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) ”,

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- (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) ”.

Commencement Information

I55 Sch. para. 49 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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, “[^{F1}the required 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.”.

Textual Amendments

F1 Words in sch. para. 50(b) substituted (31.1.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(Incidental, Supplemental and Consequential Provisions\) Order 2005 \(S.S.I. 2005/40\)](#), [arts. 1\(2\)](#), [3\(5\)](#)

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I56 Sch. para. 50 in force at 1.4.2005 by [S.S.I. 2004/405](#), [art. 2\(2\)](#), [sch. 2](#) (with [arts. 3-5](#)) (see [S.S.I. 2005/168](#))

- 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.”.

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I57 Sch. para. 51 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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.”.

Commencement Information

I58 Sch. para. 52 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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.”.

Commencement Information

I59 Sch. para. 53 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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.”.

Commencement Information

I60 Sch. para. 54 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

- 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—

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“(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.”.

Commencement Information

I61 Sch. para. 55 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

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) ”.

Commencement Information

I62 Sch. para. 56 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

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;”.

Commencement Information

I63 Sch. para. 57 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

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) ”.

Commencement Information

I64 Sch. para. 58 in force at 1.2.2005 by [S.S.I. 2004/405](#), [art. 2\(1\)](#), [sch. 1](#) (with [arts. 3-5](#))

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