Criminal Proceedings etc. (Reform) (Scotland) Act 2007

2007 asp 6

PART 1

BAIL

1 Determination of questions of bail

After section 23A of the 1995 Act there is inserted—

"**23B Entitlement to bail and the court's function**

(1) Bail is to be granted to an accused person—

(a) except where—

(i) by reference to section 23C of this Act; and

(ii) having regard to the public interest,

there is good reason for refusing bail;

(b) subject to section 23D of this Act.

(2) In determining a question of bail in accordance with subsection (1) above, the court is to consider the extent to which the public interest could, if bail were granted, be safeguarded by the imposition of bail conditions.

(3) Reference in subsections (1)(a)(ii) and (2) above to the public interest includes (without prejudice to the generality of the public interest) reference to the interests of public safety.

(4) The court must (without prejudice to any other right of the parties to be heard) give the prosecutor and the accused person an opportunity to make submissions in relation to a question of bail.

(5) The attitude of the prosecutor towards a question of bail (including as to bail conditions) does not restrict the court's exercise of its discretion in determining the question in accordance with subsection (1) above.

(6) For the purpose of so determining a question of bail (including as to bail conditions), the court may request the prosecutor or the accused person's solicitor or counsel to provide it with information relevant to the question.

(7) However, whether that party gives the court opinion as to any risk of something occurring (or any likelihood of something not occurring) is a matter for that party to decide.

23C Grounds relevant as to question of bail

(1) In any proceedings in which a person is accused of an offence, the following are grounds on which it may be determined that there is good reason for refusing bail—

(a) any substantial risk that the person might if granted bail—

(i) abscond; or

(ii) fail to appear at a diet of the court as required;

(b) any substantial risk of the person committing further offences if granted bail;

(c) any substantial risk that the person might if granted bail—

(i) interfere with witnesses; or

(ii) otherwise obstruct the course of justice,

in relation to himself or any other person;

(d) any other substantial factor which appears to the court to justify keeping the person in custody.

(2) In assessing the grounds specified in subsection (1) above, the court must have regard to all material considerations including (in so far as relevant in the circumstances of the case) the following examples—

(a) the—

(i) nature (including level of seriousness) of the offences before the court;

(ii) probable disposal of the case if the person were convicted of the offences;

(b) whether the person was subject to a bail order when the offences are alleged to have been committed;

(c) whether the offences before the court are alleged to have been committed—

(i) while the person was subject to another court order;

(ii) while the person was on release on licence or parole;

(iii) during a period for which sentence of the person was deferred;

(d) the character and antecedents of the person, in particular—

(i) the nature of any previous convictions of the person (including convictions outwith Scotland);

(ii) whether the person has previously contravened a bail order or other court order (by committing an offence or otherwise);

(iii) whether the person has previously breached the terms of any release on licence or parole (by committing an offence or otherwise);

(iv) whether the person is serving or recently has served a sentence of imprisonment in connection with a matter referred to in sub-paragraphs (i) to (iii) above;

(e) the associations and community ties of the person.

23D Restriction on bail in certain solemn cases

(1) Where subsection (2) or (3) below applies, a person is to be granted bail in solemn proceedings only if there are exceptional circumstances justifying bail.

(2) This subsection applies where the person—

(a) is accused in the proceedings of a violent or sexual offence; and

(b) has a previous conviction on indictment for a violent or sexual offence.

(3) This subsection applies where the person—

(a) is accused in the proceedings of a drug trafficking offence; and

(b) has a previous conviction on indictment for a drug trafficking offence.

(4) For the purposes of this section—

"drug trafficking offence" has the meaning given by section 49(5) of the Proceeds of Crime (Scotland) Act 1995 (c. 43);

"sexual offence" has the meaning given by section 210A(10) and (11) of this Act;

"violent offence" means any offence (other than a sexual offence) inferring personal violence.

(5) Any reference in this section to a conviction on indictment for a violent or sexual offence or a drug trafficking offence includes—

(a) a conviction on indictment in England and Wales or Northern Ireland for an equivalent offence;

(b) a conviction in a member State of the European Union (other than the United Kingdom) which is equivalent to conviction on indictment for an equivalent offence.

(6) Any issue of equivalence arising in pursuance of subsection (5) above is for the court to determine.

(7) This section is without prejudice to section 23C of this Act.".

2 Bail and bail conditions

(1) In section 24 (bail and bail conditions) of the 1995 Act—

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

"(2A) Whenever the court grants or refuses bail, it shall state its reasons.

(2B) Where the court—

(a) grants bail to a person accused of a sexual offence (having the meaning given by section 210A(10) and (11) of this Act); and

(b) does so without imposing on the accused further conditions under subsection (4)(b)(i) below,

the court shall also state why it considers in the circumstances of the case that such conditions are unnecessary.",

(b) in subsection (4), in paragraph (b)(ii), after the word "parade" there is inserted "or other identification procedure",

(c) in subsection (5), after paragraph (c) there is inserted—

"(ca) does not behave in a manner which causes, or is likely to cause, alarm or distress to witnesses;".

(2) In section 25 (bail conditions: supplementary) of that Act—

(a) before subsection (1) there is inserted—

"(A1) When granting bail, the court shall (if the accused is present) explain to the accused in ordinary language—

(a) the effect of the conditions imposed;

(b) the effect of the requirement under subsection (2B) below; and

(c) the consequences which may follow a breach of any of those conditions or that requirement.

(B1) The accused shall (whether or not the accused is present when bail is granted) be given a written explanation in ordinary language of the matters mentioned in paragraphs (a) to (c) of subsection (A1) above.

(C1) Such a written explanation may be contained in the copy of the bail order given to the accused or in another document.",

(b) in subsection (1), after paragraph (a) there is inserted—

"(aa) that breach of a condition imposed is an offence and renders the accused liable to arrest, prosecution and punishment under this Act;",

(c) after subsection (2A) there is inserted—

"(2B) Where the domicile of citation specified in an order granting bail ceases to be the accused's normal place of residence, the accused must make an application under subsection (2) above within 7 days of that happening.

(2C) A person who without reasonable excuse contravenes subsection (2B) above is guilty of an offence and is liable—

(a) on conviction in the JP court, to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 60 days or to both;

(b) in any other case, to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 12 months or to both.".

3 Breach of bail conditions

(1) In section 27 (breach of bail conditions: offences) of the 1995 Act—

(a) in subsection (2), in paragraph (b)(ii), for the word "3" there is substituted "12",

(b) after subsection (4A) there is inserted—

"(4B) In any proceedings in relation to an offence under subsection (1) above, the fact that (as the case may be) an accused—

(a) was on bail;
(b) was subject to any particular condition of bail;
(c) failed to appear at a diet; or
(d) was given due notice of a diet,

shall, unless challenged in the manner described in paragraph (a) or (b) of subsection (4A) above, be held as admitted.",

(c) after subsection (6) there is inserted—

"(6A) Where, despite the requirement to have regard to the matters specified in paragraphs (a) to (c) of subsection (3) above, the sentence or disposal in respect of the subsequent offence is not different from that which the court would have imposed but for that subsection, the court shall state (as appropriate, by reference to those matters) the reasons for there being no difference.",

(d) in subsection (7)(b), for the word "2" there is substituted "5",

(e) in subsection (9), for the words "The penalties provided for in subsection (2) above may" there is substituted "A penalty under subsection (2) or (7) above shall",

(f) after subsection (9) there is inserted—

"(9A) The reference in subsection (9) above to a penalty being imposed in addition to another penalty means, in the case of sentences of imprisonment or detention—

(a) where the sentences are imposed at the same time (whether or not in relation to the same complaint or indictment), framing the sentences so that they have effect consecutively;
(b) where the sentences are imposed at different times, framing the sentence imposed later so that (if the earlier sentence has not been served) the later sentence has effect consecutive to the earlier sentence.

(9B) Subsection (9A)(b) above is subject to section 204A of this Act.".

(2) In section 28 (breach of bail conditions: arrest of offender etc.) of that Act—

(a) after subsection (1) there is inserted—

"(1A) Where an accused who has been released on bail is arrested by a constable (otherwise than under subsection (1) above), the accused may be detained in custody under this subsection if the constable has reasonable grounds for suspecting that the accused has breached, or is likely to breach, any condition imposed on his bail.

(1B) Subsection (1A) above—

(a) is without prejudice to any other power to detain the accused;
(b) applies even if release of the accused would be required but for that subsection.",

(b) in subsection (2), for the words "this section" there is substituted "subsection (1) above, or is detained under subsection (1A) above,".

4 Bail review and appeal

(1) In section 30 (bail review) of the 1995 Act—

(a) after subsection (1) there is inserted—

"(1A) This section also applies where a person who has accepted the conditions imposed on his bail wants to have any of them removed or varied.",

(b) in subsection (2), for the words from "above" to the end there is substituted "or (1A) above, have power to review (in favour of the person) its decision as to bail, or its decision as to the conditions imposed, if—

(a) the circumstances of the person have changed materially; or

(b) the person puts before the court material information which was not available to it when its decision was made.".

(2) In section 32 (bail appeal) of that Act, after subsection (3) there is inserted—

"(3A) A notice of appeal under this section is to be lodged with the clerk of the court from which the appeal is to be taken.

(3B) When an appeal is made under this section, that clerk shall without delay—

(a) send a copy of the notice of appeal to the judge whose decision is the subject of the appeal; and

(b) request the judge to provide a report of the reasons for that decision.

(3C) The judge shall, as soon as is reasonably practicable, provide that clerk with the judge's report of those reasons.

(3D) The clerk of court (where not the Clerk of Justiciary) shall send the notice of appeal without delay to the Clerk of Justiciary.

(3E) That clerk (where not the Clerk of Justiciary) shall, before the end of the day after the day of receipt of the notice of appeal, send the judge's report (if provided by then) to the Clerk of Justiciary.

(3F) The Clerk of Justiciary shall, upon receipt of the notice of appeal, without delay fix a diet for the hearing of the appeal.

(3G) The Clerk of Justiciary shall send a copy of the judge's report to—

(a) the accused or his solicitor; and

(b) the Crown Agent.

(3H) Where the judge's report is not sent as mentioned in subsection (3E) above—

(a) the High Court may call for the report to be submitted to it within such period as it may specify; or

(b) if it thinks fit, hear and determine the appeal without the report.

(3I) Subject to subsection (3G) above, the judge's report shall be available only to the High Court, the parties and, on such conditions as may be prescribed by Act of Adjournal, such other persons or classes of person as may be so prescribed.".

5 Attitude of prosecutor after conviction

After section 32 of the 1995 Act there is inserted—

"**32A Bail after conviction: prosecutor's attitude**

(1) Where—

(a) a person has been convicted in any proceedings of an offence; and

(b) a question of bail (including as to bail conditions) subsequently arises in the proceedings (whether before sentencing or pending appeal or otherwise),

the prosecutor and the convicted person must be given an opportunity to make submissions in relation to the question.

(2) But the attitude of the prosecutor towards the question does not restrict the court's exercise of its discretion in determining the question in accordance with the rules applying in the case.

(3) Despite subsection (1) above, the prosecutor need not be given an opportunity to make submissions in relation to a question of bail arising under section 245J of this Act.

(4) This section is without prejudice to any other right of the parties to be heard.".

6 Time for dealing with applications

(1) In section 22A (consideration of bail on first appearance) of the 1995 Act—

(a) in subsection (1), the words "and within the period specified in subsection (2) below" are repealed,

(b) for subsection (2) there is substituted—

"(2) Admittance to or refusal of bail shall be determined before the end of the day (not being a Saturday or Sunday, or a court holiday prescribed for the court which is to determine the question of bail, unless that court is sitting on that day for the disposal of criminal business) after the day on which the person accused or charged is brought before the sheriff or judge.",

(c) in subsection (3), for the words "the end of that period" there is substituted "that time".

(2) In section 23 (bail applications) of that Act, in subsection (7), for the words "within 24 hours after" there is substituted "before the end of the day (not being a Saturday or Sunday, or a court holiday prescribed for the court which is to determine the question of bail, unless that court is sitting on that day for the disposal of criminal business) after the day of".

(3) In section 177 (procedure where applicant in custody) of that Act, in subsection (2), for the words "within 24 hours after such application has been" there is substituted "before the end of the day (not being a Saturday or Sunday, or a court holiday prescribed for the court which is to determine the question of bail, unless that court is sitting on that day for the disposal of criminal business) after the day on which the application is".

(4) In section 200 (remand for enquiry into physical or mental condition) of that Act—

(a) in subsection (9)—

(i) after the word "appeal" in the first and second places where it occurs there is inserted "to the High Court by note of appeal",

(ii) the words "by note of appeal presented to the High Court" are repealed,

(b) after that subsection there is added—

"(9A) A note of appeal under subsection (9) above is to be—

(a) lodged with the clerk of the court from which the appeal is to be taken; and

(b) sent without delay by that clerk (where not the Clerk of Justiciary) to the Clerk of Justiciary.".

(5) In section 201 (power of court to adjourn case before sentence) of that Act—

(a) in subsection (4)—

(i) after the word "appeal" in the first place where it occurs there is inserted "to the High Court",

(ii) the words "presented to the High Court" are repealed,

(b) after that subsection there is added—

"(5) A note of appeal under subsection (4) above is to be—

(a) lodged with the clerk of the court from which the appeal is to be taken; and

(b) sent without delay by that clerk (where not the Clerk of Justiciary) to the Clerk of Justiciary.".

(6) In section 245J (breach of certain orders: adjourning hearing and remanding in custody etc.) of that Act—

(a) in subsection (5), for the words "by note of appeal presented to the High Court, who" there is substituted "to the High Court by note of appeal, and the High Court",

(b) after that subsection there is added—

"(6) A note of appeal under subsection (5) above is to be—

(a) lodged with the clerk of the court from which the appeal is to be taken; and

(b) sent without delay by that clerk (where not the Clerk of Justiciary) to the Clerk of Justiciary.".

PART 2

PROCEEDINGS

Police functions

7 Liberation on undertaking

(1) In section 21 (Schedule 1 offences: power of constable to take offender into custody) of the 1995 Act, subsections (2) to (5) are repealed.

(2) In section 22 (liberation by police) of that Act—

(a) in subsection (1)—

(i) the words "arrested and" are repealed,

(ii) after the word "summarily," there is inserted "the officer who charged the person or (if different)",

(iii) for the words "terms of which the person undertakes to appear at a specified court at a specified time" there is substituted "the terms mentioned in subsection (1C) below",

(b) after subsection (1) there is inserted—

"(1A) Where a person has been arrested under section 21 of this Act, the arresting officer or (if different) the officer in charge of a police station may—

(a) liberate the person upon a written undertaking, signed by him and certified by the officer, in the terms mentioned in subsection (1C) below;

(b) liberate him without any such undertaking; or

(c) refuse to liberate him.

(1B) Where a person has been apprehended under a summary warrant as mentioned in section 135(3) of this Act, the apprehending officer or (if different) the officer in charge of a police station may—

(a) liberate the person upon a written undertaking, signed by him and certified by the officer, in the terms mentioned in subsection (1C) below; or

(b) refuse to liberate him.

(1C) For the purposes of subsections (1) to (1B) above, the terms are that the person undertakes (subject to any modification made to those terms under subsection (1F)(b) below)—

(a) to appear at a specified court on a specified day at a specified time; and

(b) in addition, to comply with any conditions imposed under subsection (1D) below.

(1D) The conditions which may be imposed under this subsection are—

(a) conditions in the same terms as the standard conditions mentioned in section 24(5)(b), (c) and (ca) of this Act;

(b) such further conditions as the officer who is certifying the undertaking considers are necessary to secure that the conditions referred to in paragraph (a) above are observed.

(1E) For the imposition of conditions under subsection (1D)(b) above, the authority of an officer of a rank no lower than inspector is required.

(1F) The procurator fiscal may by notice effected in the same manner as citation under section 141 of this Act—

(a) rescind an undertaking given under subsection (1) or (1A) above (whether or not the person is to be prosecuted in connection with the matters to which the undertaking relates);

(b) in relation to an undertaking given under this section—

(i) revise the court, day or time specified under subsection (1C)(a) above;

(ii) revoke or relax any conditions imposed under subsection (1D) above.

(1G) An undertaking given under this section—

(a) if rescinded under subsection (1F)(a) above, expires at the end of the day on which the notice is sent;

(b) otherwise—

(i) subject to sub-paragraph (ii) below, expires at the end of the day on which the person who gave the undertaking is required to appear at court in accordance with the undertaking;

(ii) if that person breaches the undertaking by reason of failing to appear at court, and a warrant is granted in relation to the breach, expires, so far as relating to conditions, at the end of the day on which the person is brought before the court in pursuance of the warrant.

(1H) For the purpose of any proceedings in relation to an offence under this section, an undertaking whose terms are modified under subsection (1F)(b) above shall be regarded as if given in the terms as so modified.",

(c) in subsection (2)—

(i) for the words "subsection (1) above" there is substituted "this section",

(ii) in paragraph (b)(ii), for the word "3" there is substituted "12",

(d) in subsection (3)—

(i) for the words "the officer in charge" there is substituted "an officer",

(ii) for the words "subsection (1)(c) above" there is substituted "this section",

(iii) for the word "tried" there is substituted "heard",

(e) after subsection (4) there is inserted—

"(4A) In any proceedings relating to an offence under this section, the fact that (as the case may be) a person—

(a) breached an undertaking given by him under this section by reason of failing to appear at court in accordance with the undertaking; or

(b) was subject to a particular condition imposed under subsection (1D) above,

shall, unless challenged by preliminary objection before the person's plea is recorded, be held as admitted.",

(f) in subsection (5)—

(i) for the word "section," there is substituted "section—

(a) a document purporting to be a notice or copy of a notice effected under subsection (1F) above shall be sufficient evidence of the terms of the notice;

(b)",

(ii) for the words "subsection (1)(a) above" there is substituted "this section",

(iii) the words "by the arrested person" are repealed,

(g) after subsection (5) there is inserted—

"(5A) Regulations under subsection (1E)(a) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.".

(3) In section 135 (warrants of apprehension and search) of that Act, in subsection (3), after the word "practicable" there is inserted "(if not liberated under section 22(1B)(a) of this Act)".

Summary procedure

8 Manner of citation

In section 141 (manner of citation) of the 1995 Act—

(a) for subsection (1) there is substituted—

"(1) The citation of the accused or a witness in a summary prosecution to any ordinary sitting of the court or to any special diet fixed by the court or to any adjourned sitting or diet shall be effected by an officer of law or other person—

(a) delivering the citation to him personally; or

(b) leaving it for him—

(i) at his dwelling-house or place of business with a resident or (as the case may be) employee there; or

(ii) where he has no known dwelling-house or place of business, at any other place in which he may be resident at the time.",

(b) in subsection (3)(a), after the word "service" there is inserted "or by ordinary post",

(c) after subsection (3) there is inserted—

"(3A) Subject to subsection (4) below and without prejudice to the effect of any other manner of citation, the citation of the accused or a witness to a sitting or diet or adjourned sitting or diet as mentioned in subsection (1) above shall also be effective if an electronic citation is sent—

(a) by or on behalf of the prosecutor; and

(b) by means of electronic communication,

to the home or business email address of the person.",

(d) in subsection (5), after the word "communication" there is inserted "(including a legible version of an electronic communication)",

(e) after subsection (5) there is inserted—

"(5ZA) The production in court of a legible version of an electronic communication which—

(a) bears to have come from an accused's email address; and

(b) is in such terms as to infer that the contents of an electronic citation sent as mentioned in subsection (3A) above came to the accused's knowledge,

shall (even if not purporting to be written by or on behalf of the accused) be admissible as evidence of those facts for the purposes of subsection (4) above.",

(f) in subsection (5A), for the words from "if" in the first place where it occurs to the end there is substituted "if—

(a) it is sent by or on behalf of the accused's solicitor by ordinary post—

(i) to the dwelling-house or place of business of the witness; or

(ii) if he has no known dwelling-house or place of business, to any other place in which he may be resident at the time; or

(b) an electronic citation is sent by or on behalf of the accused's solicitor by means of electronic communication to the home or business email address of the witness.",

(g) after subsection (5A) there is inserted—

"(5B) Where a witness fails to appear at a diet or sitting or adjourned diet or sitting to which he has been cited in the manner provided by this section, subsection (2) of section 156 of this Act shall not apply unless it is proved to the court that he received the citation or that its contents came to his knowledge.",

(h) after subsection (6) there is inserted—

"(6A) When the citation of any person is effected by electronic citation under subsection (3A) above, the induciae shall be reckoned from the end of the day on which the citation was sent.",

(i) after subsection (7) there is added—

"(7A) It shall be sufficient evidence that citation has been effected electronically under subsection (3A) or (5A)(b) above if there is produced in court a legible version of an electronic communication which—

(a) is signed by electronic signature by the person who signed the citation;

(b) includes the citation; and

(c) bears to have been sent to the home or business email address of the person being cited.

(7B) In this section, an "electronic citation" is a citation in electronic form which—

(a) is capable of being kept in legible form; and

(b) is signed by electronic signature—

(i) in the case of citation of the accused, by the prosecutor;

(ii) in the case of citation of a witness, by or on behalf of the prosecutor or the accused's solicitor.".

9 Procedure at first calling

(1) In section 144 (procedure at first diet) of the 1995 Act—

(a) in paragraph (a) of subsection (2), the words from "and" to the end are repealed,

(b) after subsection (3) there is inserted—

"(3ZA) Where the prosecutor is not satisfied, in relation to a written intimation of a plea—

(a) that the intimation of the plea has been made or authorised by the accused; or

(b) that the terms of the plea are clear,

the court may continue the case to another diet.

(3ZB) The clerk of court may perform the functions of the court under—

(a) subsections (2) and (3) above in relation to a plea of not guilty;

(b) subsection (3ZA) above,

without the court being properly constituted.".

(2) In section 145A (adjournment at first calling to allow accused to appear etc.) of that Act, after subsection (3) there is added—

"(4) The clerk of court may perform the functions of the court under subsection (1) above without the court being properly constituted.".

10 Intimation of diets etc.

In section 146 (plea of not guilty) of the 1995 Act, after subsection (3) there is inserted—

"(3ZA) Where a case is adjourned under subsection (3) above, the court shall intimate to the accused the trial diet assigned and any intermediate diet fixed.

(3ZB) When intimating a diet under subsection (3ZA) above, the court shall inform the accused that, if he fails to appear at any diet in the proceedings in respect of the case, the court might hear and dispose of the case in his absence.".

11 Pre-trial time limits

In section 147 (prevention of delay in trials) of the 1995 Act, for subsection (2) there is substituted—

"(2) On an application made for the purpose, the sheriff may, on cause shown—

(a) extend the period mentioned in subsection (1) above; and

(b) order the accused to be detained awaiting trial,

for such period as the sheriff thinks fit.

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

(2B) However, where all the parties join in the application, the sheriff may determine the application without hearing the parties and, accordingly, may dispense with any hearing previously appointed for the purpose of considering the application.".

12 Disclosure of convictions

(1) In section 166 (previous convictions: summary proceedings) of the 1995 Act, in subsection (8)—

(a) sub-paragraph (i) of paragraph (b), and
(b) the word "or" immediately following that sub-paragraph,

are repealed.

(2) After that section there is inserted—

"**166A Post-offence convictions**

Where a person is convicted of an offence on summary complaint, the court may, in deciding on the disposal of the case, have regard to any convictions which—

(a) were imposed on the person between the date of the offence and the date of conviction in respect of the offence;
(b) are specified in a notice laid before the court by the prosecutor; and
(c) are—
(i) admitted by the person; or
(ii) proved by the prosecutor on evidence adduced then or at another diet.

166B Charges which disclose convictions

(1) Nothing in section 166 of this Act prevents—
(a) the prosecutor leading evidence of previous convictions where it is competent to do so as evidence in support of a substantive charge;
(b) the prosecutor proceeding with a charge—
(i) which discloses a previous conviction; or
(ii) in support of which evidence of a previous conviction may competently be led,
on a complaint which includes a charge in relation to which the conviction is irrelevant; or
(c) the court trying a charge—
(i) which discloses a previous conviction; or
(ii) in support of which evidence of a previous conviction may competently be led,
together with a charge on another complaint in relation to which the conviction is irrelevant.

(2) But subsections (1)(b) and (c) above apply only if the charges are of offences which—
(a) relate to the same occasion; or
(b) are of a similar character and amount to (or form part of) a course of conduct.

(3) The reference in subsection (1)(c) above to trying a charge together with a charge on another complaint means doing so under section 152A of this Act.".

13 Complaints triable together

After section 152 of the 1995 Act there is inserted—

"**152A Complaints triable together**

(1) Where—

(a) two or more complaints against an accused call for trial in the same court on the same day; and

(b) they each contain one or more charges to which the accused pleads not guilty,

the prosecutor may apply to the court for those charges to be tried together at that diet despite the fact that they are not all contained in the one complaint.

(2) On an application under subsection (1) above, the court is to try those charges together if it appears to the court that it is expedient to do so.

(3) For the purposes of subsections (1) and (2) above, any other charges contained in the complaints are (without prejudice to further proceedings as respects those other charges) to be disregarded.

(4) Where charges are tried together under this section, they are to be treated (including, in particular, for the purposes of and in connection with the leading of evidence, proof and verdict) as if they were contained in one complaint.

(5) But the complaints mentioned in subsection (1)(a) above are, for the purposes of further proceedings (including as to sentence), to be treated as separate complaints.".

14 Proceedings in absence of accused

(1) In section 141 (manner of citation) of the 1995 Act, in subsection (4), for the words "subsections (3) and (5) to (7) of section 150" there is substituted "sections 143(7), 150(3) and 150A(1)".

(2) In section 145A (adjournment at first calling to allow accused to appear etc.) of that Act, in subsection (1), for the words "150(1) to (7)" there is substituted "150".

(3) In section 150 (failure of accused to appear) of that Act—

(a) after subsection (3B) there is inserted—

"(3C) An order under subsection (3B) above—

(a) for the purpose of having a trial in absence of the accused under section 150A of this Act, may be made on the motion of the prosecutor;

(b) for any other purpose, may be made on the motion of the prosecutor or of the court's own accord.",

(b) subsections (5) to (7) are repealed.

(4) After section 150 of that Act there is inserted—

"**150A Proceedings in absence of accused**

(1) Where the accused does not appear at a diet (apart from a diet fixed for the first calling of the case), the court—

(a) on the motion of the prosecutor or, in relation to sentencing, of its own accord; and

(b) if satisfied as to the matters specified in subsection (2) below,

may proceed to hear and dispose of the case in the absence of the accused in like manner as if the accused were present.

(2) The matters referred in subsection (1)(b) above are—

(a) that citation of the accused has been effected or the accused has received other intimation of the diet; and

(b) that it is in the interests of justice to proceed as mentioned in subsection (1) above.

(3) In subsection (1) above, the reference to proceeding to hear and dispose of the case includes, in relation to a trial diet, proceeding with the trial.

(4) Where the court is considering whether to proceed in pursuance of subsection (1) above, it shall—

(a) if satisfied that there is a solicitor with authority to act—

(i) for the purposes of representing the accused's interests at the hearing on whether to proceed that way; and

(ii) if it proceeds that way, for the purposes of representing the accused's further interests at the diet (including, in relation to a trial diet, presenting a 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 if it considers that it is in the interests of justice to do so.

(5) It is the duty of a solicitor appointed under subsection (4)(b) above to act in the best interests of the accused.

(6) 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.

(7) Where the court is satisfied that—

(a) a solicitor allowed to act under subsection (4)(a) above no longer has authority to act; or

(b) a solicitor appointed under subsection (4)(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 (4) above.

(8) Subsections (4)(b) and (7) above do not apply in the case of proceedings—

(a) in respect of a sexual 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.

(9) Reference in this section to a solicitor appointed under subsection (4)(b) above includes reference to a solicitor appointed under subsection (7) above.

(10) Where the court proceeds in pursuance of subsection (1) above, it shall not in the absence of the accused pronounce a sentence of imprisonment or detention.

(11) Nothing in this section prevents—

(a) a warrant being granted at any stage of proceedings for the apprehension of the accused;

(b) a case subsequently being adjourned (in particular, with a view to having the accused present at any proceedings).".

(5) In section 153 (trial in presence of accused) of that Act, in subsection (1), for the words "Without prejudice to section 150 of this Act, and subject to" there is substituted "Subject to section 150A of this Act and".

15 Failure of accused to appear

In section 150 (failure of accused to appear) of the 1995 Act—

(a) in subsection (8), in paragraph (b)(ii), for the word "3" there is substituted "12",

(b) in subsection (9), for the words "The penalties provided for in subsection (8) above may" there is substituted "A penalty under subsection (8) above shall",

(c) after subsection (9) there is inserted—

"(9A) The reference in subsection (9) above to a penalty being imposed in addition to another penalty means, in the case of sentences of imprisonment or detention—

(a) where the sentences are imposed at the same time (whether or not in relation to the same complaint), framing the sentences so that they have effect consecutively;

(b) where the sentences are imposed at different times, framing the sentence imposed later so that (if the earlier sentence has not been served) the later sentence has effect consecutive to the earlier sentence.

(9B) Subsection (9A)(b) above is subject to section 204A of this Act.

(9C) In any proceedings in relation to an offence under subsection (8) above, the fact that (as the case may be) an accused—

(a) failed to appear at a diet; or

(b) was given due notice of a diet,

shall, unless challenged by preliminary objection before his plea is recorded, be held as admitted.".

16 Obstructive witnesses

For section 156 (apprehension of witness) of the 1995 Act there is substituted—

"**156 Apprehension of witnesses**

(1) In any summary proceedings, 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 enquiry 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 necessary for the execution of the warrant, to break open shut and lockfast places.

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

(9) Section 135(3) of this Act makes provision as to bringing before the court a person apprehended under a warrant issued under this section.

(10) In this section and section 156A, "the court" means the court in which the witness is to give evidence.

156A Orders in respect of witnesses apprehended under section 156

(1) Where a witness is brought before the court in pursuance of a warrant issued under section 156 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) Whenever the court makes an order under subsection (1) above, it shall state the reasons for the terms of the order.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) Section 25 of this Act 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".

156B Breach of bail under section 156A(1)(b)

(1) A witness who, having been released on bail by virtue of an order under subsection (1)(b) of section 156A 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 (6) of that section,

shall be guilty of an offence and liable on summary conviction to the penalties specified in subsection (2) below.

(2) Those penalties are—

(a) a fine not exceeding level 3 on the standard scale; and

(b) imprisonment for a period—

(i) where conviction is in the JP court, not exceeding 60 days;

(ii) where conviction is in the sheriff court, not exceeding 12 months.

(3) In any proceedings in relation to an offence under subsection (1) above, the fact that (as the case may be) a person—

(a) was on bail;

(b) was subject to any particular condition of bail;

(c) failed to appear at a diet;

(d) was cited to a diet,

shall, unless challenged by preliminary objection before his plea is recorded, be held as admitted.

(4) 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 156A(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 156A(1)(b) of this Act in respect of the witness;

(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 156A(1)(b) of this Act 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 156A(1)(a) or (c) of this Act in respect of the witness";

(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".

156C Review of orders under section 156A(1)(a) or (b)

(1) Where a court has made an order under subsection (1)(a) of section 156A of this Act, the court may, on the application of the witness in respect of whom the order was made 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 156A 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—

(i) review the conditions imposed under subsection (6) 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 (6) of that section;

(b) on the application of the party who made the application under section 156(1) of this Act in respect of the witness, review the order and the conditions imposed under subsection (6) of section 156A of this Act 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 (6) of that section.

(3) The court may not review an order by virtue of subsection (1) or (2) above unless—

(a) in the case of an application by the witness, the circumstances of the witness have changed materially; or

(b) in that or any other case, the witness or 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 156A(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 156A(1).

156D Appeals in respect of orders under section 156A(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 156A of this Act;

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

(i) the order;

(ii) any of the conditions imposed under subsection (6) 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 Crown Agent 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 enquiry 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 and sentence.".

17 Prosecution of companies etc.

In section 143 (prosecution of companies, etc.) of the 1995 Act, after subsection (3) there is added—

"(4) A partnership, association, body corporate or body of trustees may, for the purpose of—
(a) stating objections to the competency or relevancy of the complaint or proceedings;
(b) tendering a plea of guilty or not guilty;
(c) making a statement in mitigation of sentence,

appear by a representative.

(5) In subsection (4) above, "representative" means—
(a) an individual representative as mentioned in subsection (3) above; or
(b) an employee of the partnership, association, body corporate or body of trustees duly appointed by it for the purpose of the proceedings.

(6) For the purposes of subsection (5)(b) above, a statement—
(a) in the case of a body corporate (other than a limited liability partnership), purporting to be signed by an officer of the body;
(b) in the case of a limited liability partnership, purporting to be signed by a member of the partnership;
(c) in the case of a partnership (other than a limited liability partnership), purporting to be signed by a partner of the partnership;
(d) in the case of an association, purporting to be signed by an officer of the association,

to the effect that the person named in the statement has been appointed as the representative for the purposes of any proceedings to which this section applies is sufficient evidence of such appointment.

(7) Where at a diet (apart from a diet fixed for the first calling of the case) a partnership, association, body corporate or body of trustees does not appear as mentioned in subsection (4) above, or by counsel or a solicitor, the court may—

(a) on the motion of the prosecutor or, in relation to sentencing, of its own accord; and

(b) if satisfied as to the matters specified in subsection (8) below,

proceed to hear and dispose of the case in the absence of the partnership, association, body corporate or (as the case may be) body of trustees.

(8) The matters referred to in subsection (7)(b) above are—

(a) that citation has been effected or other intimation of the diet has been received; and

(b) that it is in the interests of justice to proceed as mentioned in subsection (7) above.

(9) The reference in subsection (7) above to proceeding to hear and dispose of the case includes, in relation to a trial diet, proceeding with the trial.".

Preparation for summary trial

18 Intermediate diets

In section 148 (intermediate diet) of the 1995 Act—

(a) after paragraph (b) of subsection (1) there is inserted—

"(ba) how many witnesses are required by—

(i) the prosecutor;

(ii) the accused,

to attend the trial;",

(b) in paragraph (a) of subsection (2), for the words from the beginning to "so," there is substituted "may",

(c) in subsection (3), for the words "Subject to subsection (2) above, the" there is substituted "The",

(d) for subsection (4) there is substituted—

"(4) At an intermediate diet, the court shall make such enquiry of the parties as is reasonably required for the purposes of subsections (1) and (3A) above.".

19 Notice of defences

For sections 149 (alibi) and 149A (notice of defence plea of consent) of the 1995 Act there is substituted—

"**149B Notice of defences**

(1) It is not competent for an accused in a summary prosecution to found on a defence to which this subsection applies unless—

(a) notice of the defence has been given to the prosecutor in accordance with subsection (5) below; or

(b) the court, on cause shown, allows the accused to found on the defence despite the failure so to give notice of it.

(2) Subsection (1) above applies—

(a) to a special defence;

(b) to a defence which may be made out by leading evidence calculated to exculpate the accused by incriminating a co-accused;

(c) to a defence of automatism or coercion;

(d) in a prosecution for an offence to which section 288C of this Act applies, to a defence of consent.

(3) In subsection (2)(d) above, the reference to a defence of consent is a reference to the defence which is stated by reference to the complainer's consent to the act which is the subject matter of the charge or the accused's belief as to that consent.

(4) In subsection (3) above, "complainer" has the same meaning as in section 274 of this Act.

(5) Notice of a defence is given in accordance with this subsection if it is given—

(a) where an intermediate diet is to be held, at or before that diet; or

(b) where such a diet is not to be held, no later than 10 clear days before the trial diet,

together with the particulars mentioned in subsection (6) below.

(6) The particulars are—

(a) in relation to a defence of alibi, particulars as to time and place; and

(b) in relation to that or any other defence, particulars of the witnesses who may be called to give evidence in support of the defence.

(7) Where notice of a defence to which subsection (1) above applies is given to the prosecutor, the prosecutor is entitled to an adjournment of the case.

(8) The entitlement to an adjournment under subsection (7) above may be exercised whether or not—

(a) the notice was given in accordance with subsection (5) above;

(b) the entitlement could have been exercised at an earlier diet.".

20 Proof of uncontroversial matters

(1) In section 257 (duty to seek agreement of evidence) of the 1995 Act, after subsection (4) there is added—

"(5) Without prejudice to subsection (3) above, in relation to summary proceedings, 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, are identified and taken before any intermediate diet that is to be held.".

(2) In section 258 (uncontroversial evidence) of that Act—

(a) in subsection (2), for the words "14 days" there is substituted "the relevant period",

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

"(2ZA) In subsection (2) above, the "relevant period" means—

(a) where the relevant diet for the purpose of that subsection is an intermediate diet in summary proceedings, 7 days;

(b) in any other case, 14 days.",

(c) in subsection (2A), after paragraph (a) there is inserted—

"(aa) in summary proceedings in which an intermediate diet is to be held, that diet;",

(d) in subsection (4A), the words "in any solemn proceedings" are repealed,

(e) in subsection (4B)—

(i) the word "and" immediately following paragraph (a) is repealed,

(ii) in paragraph (b), after the word "in" in the first place where it occurs there is inserted "solemn",

(iii) after paragraph (b) there is added—

"(c) in summary proceedings—

(i) in which an intermediate diet is to be held, that diet;

(ii) in which such a diet is not to be held, the trial diet.".

21 Service of documents through solicitor etc.

After section 148B of the 1995 Act there is inserted—

"**148C Engagement, dismissal and withdrawal of solicitor representing accused**

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

(2) The duty under subsection (1) above shall be regarded as having been complied with if the solicitor has represented the accused at the first calling of the case—

(a) by submitting a written intimation of the accused's plea as described in subsection (2)(a) of section 144 of this Act; or

(b) by appearing on behalf of the accused—

(i) as described in subsection (2)(b) of that section; or

(ii) with the accused present,

and has, when acting as described in paragraph (a) or (b) above, notified the court and the prosecutor orally or in writing that the solicitor is also engaged by the accused for the purposes of his defence at trial.

(3) Where a solicitor referred to in subsection (1) above—

(a) is dismissed by the accused; or

(b) withdraws,

it is the duty of the solicitor to notify the court and the prosecutor of that fact forthwith in writing.

148D Service etc. on accused through a solicitor

(1) In summary proceedings, anything which is to be served on or given, notified or otherwise intimated to, the accused (except service of a complaint) 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 given notice under subsection (1) of section 148C of this Act that that solicitor is engaged by the accused for the purposes of the accused's defence at the trial; and

(ii) has not given notice under subsection (3) of that section;

(b) who has represented the accused as mentioned in subsection (2) of that section; and—

(i) has given notice as mentioned in that subsection; and

(ii) has not given notice under subsection (3) of that section; or

(c) who—

(i) has been appointed to act for the purposes of the accused's defence at the trial under section 150A(4)(b) or (7) or 288D of this Act; and

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

Transfer of summary cases

22 Transfer of proceedings

(1) In section 137A (transfer of sheriff court summary proceedings within sheriffdom) of the 1995 Act—

(a) in subsection (1), for the words "an accused person has been cited to attend a diet of the sheriff court" there is substituted "this subsection applies,",

(b) after subsection (1) there is inserted—

"(1A) Subsection (1) above applies—

(a) where the accused person has been cited in summary proceedings to attend a diet of the court; or

(b) if the accused person has not been cited to such a diet, where summary proceedings against the accused have been commenced in the court.".

(2) In section 137B (transfer of sheriff court summary proceedings outwith sheriffdom) of that Act—

(a) for subsection (1) there is substituted—

"(1) Where the sheriff clerk informs the prosecutor that, because of exceptional circumstances which could not reasonably have been foreseen, it is not practicable for the sheriff court or any other sheriff court in the sheriffdom to proceed with some or all of the summary

cases due to call at a diet, the prosecutor shall as soon as practicable apply to the sheriff principal for an order for—

(a) the transfer of the proceedings to a sheriff court in another sheriffdom; and

(b) adjournment to a diet of that court.",

(b) after subsection (1) there is inserted—

"(1A) Where this subsection applies, the prosecutor may apply to the sheriff for an order for—

(a) the transfer of the proceedings to a sheriff court in another sheriffdom; and

(b) adjournment to a diet of that court,

if there are also summary proceedings against the accused person in that court in the other sheriffdom.

(1B) Subsection (1A) above applies—

(a) where the accused person has been cited in summary proceedings to attend a diet of the court; or

(b) if the accused person has not been cited to such a diet, where summary proceedings against the accused have been commenced in the court.

(1C) Where the prosecutor intends to take summary proceedings against an accused person in the sheriff court, the prosecutor may apply to the sheriff for an order for authority for the proceedings to be taken at a sheriff court in another sheriffdom if there are also summary proceedings against the accused person in that court in the other sheriffdom.",

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

"(2A) On an application under subsection (1A) or (1C) above, the sheriff is to make the order sought if—

(a) the sheriff considers that it would be expedient for the different cases involved to be dealt with by the same court; and

(b) a sheriff of the other sheriffdom consents.",

(d) after subsection (3) there is added—

"(4) On the application of the prosecutor, a sheriff who has made an order under subsection (2A) above may, if a sheriff of the other sheriffdom mentioned in paragraph (b) of that subsection consents—

(a) revoke; or

(b) vary so as to restrict the effect of,

that order.".

(3) After section 137B of that Act there is inserted—

"**137C Custody cases: initiating proceedings outwith sheriffdom**

(1) Where the prosecutor believes—

(a) that, because of exceptional circumstances (and without an order under subsection (3) below), it is likely that there would be an

unusually high number of accused persons appearing from custody for the first calling of cases in summary prosecutions in the sheriff courts in the sheriffdom; and

(b) that it would not be practicable for those courts to deal with all the cases involved,

the prosecutor may apply to the sheriff principal for the order referred to in subsection (2) below.

(2) For the purposes of subsection (1) above, the order is for authority for summary proceedings against some or all of the accused persons to be—

(a) taken at a sheriff court in another sheriffdom; and

(b) maintained—

(i) there; or

(ii) at any of the sheriff courts referred to in subsection (1) above as may at the first calling of the case be appointed for further proceedings.

(3) On an application under subsection (1) above, the sheriff principal may make the order sought with the consent of the sheriff principal of the other sheriffdom.

(4) An order under subsection (3) above may be made by reference to a particular period or particular circumstances.

137D Transfer of JP court proceedings to the sheriff court

(1) Where an accused person is due to be sentenced at a sheriff court for an offence, the prosecutor may apply to the sheriff for an order for—

(a) the transfer to the sheriff court of any case against the accused in respect of which sentencing is pending at any JP court in the sheriffdom; and

(b) the case to call at a diet of the sheriff court.

(2) On an application under subsection (1) above, the sheriff is to make the order sought if the sheriff considers that it would be expedient for the different cases to be disposed of at the same court at the same time.

(3) If, in a case transferred under subsection (1) above, the finding of guilt was before a justice of the peace, the sentencing powers of the sheriff in the case are restricted to those of the justice.".

23 Time bar for transferred and related cases

After section 136 of the 1995 Act there is inserted—

"**136A Time limits for transferred and related cases**

(1) This section applies where the prosecutor recommences proceedings by complaint containing both—

(a) a charge to which proceedings—

(i) transferred to a court by authority of an order made in pursuance of section 137A(1) of this Act; or

(ii) transferred to, or taken at, a court by authority of an order made in pursuance of section 137B(1), (1A) or (1C) of this Act,

relate; and

(b) a charge to which previous proceedings at that court relate.

(2) Where this section applies, proceedings for an offence charged in that complaint are, for the purposes of—

(a) section 136 of this Act (so far as applying to the offence);

(b) any provision of any other enactment for a time limit within which proceedings are to be commenced (so far as applying to the offence); and

(c) any rule of law relating to delay in bringing proceedings (so far as applying to the offence),

to be regarded as having been commenced when any previous proceedings for the offence were first commenced.".

Other provisions

24 Reports about supervised persons

In section 203 (reports) of the 1995 Act, after subsection (1) there is inserted—

"(1A) However, if there is available to the court a report from a local authority—

(a) of the kind described in subsection (1)(b) above; and

(b) which was prepared in relation to the person not more than 3 months before the person was convicted of the offence,

the court need not obtain another report of that kind before disposing of the case unless it considers, following representations made by or on behalf of the person as to the person's circumstances, that it is appropriate to obtain another report.

(1B) Nothing in subsection (1) or (1A) above requires the court to obtain a report if the court is satisfied, having regard to its likely method of dealing with the case before it for disposal, that the report would not be of any material assistance.".

25 Summary appeal time limit

(1) In section 180 (leave to appeal against conviction etc.) of the 1995 Act—

(a) in subsection (3)—

(i) after the word "below" there is inserted "(and if that period is extended under subsection (4A) below before the period being extended expires, until the expiry of the period as so extended)",

(ii) for the words "that subsection" there is substituted "subsection (4) below",

(b) after subsection (4) there is inserted—

"(4A) The High Court may, on cause shown, extend the period of 14 days mentioned in subsection (4) above, or that period as extended under this subsection, whether or not the period to be extended has expired (and if that period of 14 days has expired, whether

or not it expired before section 25(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) came into force).".

(2) In section 186 (appeals against sentence only) of that Act, in subsection (5), for the words from the beginning to "may" there is substituted "The sheriff principal of the sheriffdom in which the judgment was pronounced may, on cause shown,".

(3) In section 187 (leave to appeal against sentence) of that Act—

(a) in subsection (2)—

(i) after the word "below" there is inserted "(and if that period is extended under subsection (3A) below before the period being extended expires, until the expiry of the period as so extended)",

(ii) for the words "that subsection" there is substituted "subsection (3) below",

(b) after subsection (3) there is inserted—

"(3A) The High Court may, on cause shown, extend the period of 14 days mentioned in subsection (3) above, or that period as extended under this subsection, whether or not the period to be extended has expired (and if that period of 14 days has expired, whether or not it expired before section 25(3) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) came into force).".

(4) In section 194 (computation of time) of that Act, in subsection (2), for the words from the beginning to "may" there is substituted "The sheriff principal of the sheriffdom in which the judgment was pronounced may, on cause shown,".

Solemn cases

26 Pre-trial time limits

In section 65(3)(b) (prevention of delay in trials) of the 1995 Act, for the words "the period of" there is substituted "either or both of the periods of 11 and".

27 Obstructive witnesses

(1) In section 90B of the 1995 Act, after subsection (2) there is inserted—

"(2A) Whenever the court makes an order under subsection (1) above, it shall state the reasons for the terms of the order.".

(2) In section 90C (breach of bail under section 90B(1)(b)) of that Act, after subsection (2) there is inserted—

"(2A) In any proceedings in relation to an offence under subsection (1) above, the fact that (as the case may be) a person—

(a) was on bail;

(b) was subject to any particular condition of bail;

(c) failed to appear at a diet;

(d) was cited to a diet,

shall, unless challenged by giving notice of a preliminary objection in accordance with section 71(2) or 72(6)(b)(i) of this Act, be held as admitted.".

(3) In section 90D (review of orders under section 90B(1)(a) or (b)) of that Act—

(a) in subsection (1), the words ", on cause shown" are repealed,

(b) in subsection (2)(a), the words "and on cause shown" are repealed,

(c) in subsection (3), for the words "(2)(b) above unless the" there is inserted

"(1) or (2) above unless—

(a) in the case of an application by the witness, the circumstances of the witness have changed materially; or

(b) in that or any other any case, the witness or".

28 Proceedings against bodies corporate

In section 70 (proceedings against bodies corporate) of the 1995 Act, for subsection (8) there is substituted—

"(8) In subsection (4) above, "representative" means—

(a) in the case of a body corporate (other than a limited liability partnership), the managing director, secretary or other person in charge, or locally in charge, of its affairs;

(b) in the case of a limited liability partnership, a member of the partnership;

(c) in either case, an employee of the body duly appointed by it for the purpose of the proceedings.

(9) For the purposes of subsection (8)(c) above, a statement—

(a) in the case of a body corporate (other than a limited liability partnership), purporting to be signed by an officer of the body;

(b) in the case of a limited liability partnership, purporting to be signed by a member of the partnership,

to the effect that the person named in the statement has been appointed as the representative for the purposes of any proceedings to which this section applies is sufficient evidence of such appointment.".

29 Jury citation

In section 85 (juries: citation and attendance of jurors) of the 1995 Act, after subsection (4) there is inserted—

"(4A) Citation of a juror may also be effected by an electronic citation which is sent—

(a) by or on behalf of the sheriff clerk; and

(b) by means of electronic communication,

to the home or business email address of the juror.

(4B) Citation under subsection (4A) above is a legal citation if the sheriff clerk possesses a legible version of an electronic communication which—

(a) is signed by electronic signature by the person who signed the citation;

(b) includes the citation; and

(c) bears to have been sent to the home or business email address of the juror being cited.

(4C) In subsection (4A) above, an "electronic citation" is a citation in electronic form which—

(a) is capable of being kept in legible form; and

(b) is signed by electronic signature by or on behalf of the sheriff clerk.".

30 Duty to seek agreement of evidence

In section 257 (duty to seek agreement of evidence) of the 1995 Act, in subsection (4)—

(a) for the words "in the case of proceedings in the High Court" there is substituted "in relation to proceedings on indictment",

(b) for the words "by that subsection are identified and taken before the preliminary hearing" there is substituted "are identified and taken—

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

(b) in the case of the sheriff court, before the first diet".

31 Petition proceedings outwith sheriffdom

After section 34 of the 1995 Act there is inserted—

"Petition proceedings outwith sheriffdom

34A Petition proceedings outwith sheriffdom

(1) Where the prosecutor believes—

(a) that, because of exceptional circumstances (and without an order under subsection (3) below), it is likely that there would be an unusually high number of accused persons appearing from custody for the first calling of cases on petition in the sheriff courts in the sheriffdom; and

(b) that it would not be practicable for those courts to deal with all the cases involved,

the prosecutor may apply to the sheriff principal for the order referred to in subsection (2) below.

(2) For the purposes of subsection (1) above, the order is for authority for petition proceedings against some or all of the accused persons to be—

(a) taken at a sheriff court in another sheriffdom; and

(b) maintained—

(i) there; or

(ii) at any of the sheriff courts referred to in subsection (1) above as may at the first calling of the case be appointed for further proceedings.

(3) On an application under subsection (1) above, the sheriff principal may make the order sought with the consent of the sheriff principal of the other sheriffdom.

(4) An order under subsection (3) above may be made by reference to a particular period or particular circumstances.

(5) This section does not confer jurisdiction for any subsequent proceedings on indictment.".

32 Failure of accused to appear

After section 102 of the 1995 Act there is inserted—

"Failure of accused to appear

102A Failure of accused to appear

(1) In proceedings on indictment, an accused person who without reasonable excuse fails to appear at a diet of which the accused has been given due notice (apart from a diet which the accused is not required to attend) is—

(a) guilty of an offence; and

(b) liable on conviction on indictment to a fine or to imprisonment for a period not exceeding 5 years or to both.

(2) In proceedings on indictment, where an accused person fails to appear at a diet of which the accused has been given due notice (apart from a diet which the accused is not required to attend), the court may grant a warrant to apprehend the accused.

(3) It is not, otherwise than under subsection (2) above, competent in any proceedings on indictment for a court to grant a warrant for the apprehension of an accused person for failure to appear at a diet.

(4) However, it remains competent for a court to grant a warrant on petition (as referred to in section 34 of this Act) in respect of an offence under—

(a) subsection (1) above;

(b) section 27(1)(a) of this Act,

whether or not a warrant has been granted under subsection (2) above in respect of the same failure to appear to which that offence relates.

(5) Where a warrant to apprehend an accused person is granted under subsection (2) above, the indictment falls as respects that accused.

(6) Subsection (5) above is subject to any order to different effect made by the court when granting the warrant.

(7) An order under subsection (6) above—

(a) for the purpose of proceeding with the trial in the absence of the accused under section 92(2A) (where the warrant is granted at a trial diet), may be made on the motion of the prosecutor;

(b) for any other purpose, may be made on the motion of the prosecutor or of the court's own accord.

(8) A warrant granted under subsection (2) above shall be in such form as may be prescribed by Act of Adjournal or as nearly as may be in such form.

(9) A warrant granted under subsection (2) above (in the form mentioned in subsection (8) above) shall imply warrant to officers of law—

(a) to search for and apprehend the accused;

(b) to bring the accused before the court;

(c) in the meantime, to detain the accused 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.

(10) An accused apprehended under a warrant granted under subsection (2) above shall wherever practicable be brought before the court not later than in the course of the first day on which the court is sitting after the accused is taken into custody.

(11) Where the accused is brought before the court in pursuance of a warrant granted under subsection (2) above, the court shall make an order—

(a) detaining the accused until liberated in due course of law; or

(b) releasing the accused on bail.

(12) For the purposes of subsection (11) above, the court is to have regard to the terms of the indictment in relation to which the warrant was granted even if that indictment has fallen.

(13) In a case where a warrant is granted under subsection (2) above, any period of time during which the accused was detained in custody—

(a) as regards that case; and

(b) prior to the making of an order under subsection (11) above,

does not count towards any time limit applying in that case by virtue of section 65(4) of this Act.

(14) For the purposes of subsection (13) above—

(a) detention as regards a case includes, in addition to detention as regards the indictment in relation to which the warrant was granted (whether or not that indictment has fallen), detention as regards any preceding petition;

(b) it is immaterial whether or not further proceedings are on a fresh indictment.

(15) At any time before the trial of an accused person on indictment, it is competent—

(a) to amend the indictment so as to include an additional charge of an offence under subsection (1) above;

(b) to include, in the list of witnesses or productions associated with the indictment, witnesses or productions relating to that offence.

(16) In this section, "the court" means—

(a) where the accused failed to appear at the High Court—

(i) for the purposes of subsections (10) to (12) above, that Court (whether or not constituted by a single judge);

(ii) otherwise, a single judge of that Court;

(b) where the accused failed to appear at a sheriff court, any sheriff court with jurisdiction in relation to the proceedings.".

Miscellaneous

33 Apprehension warrants

After section 297 of the 1995 Act there is inserted—

"**297A Re-execution of apprehension warrants**

(1) This section applies where a person has been apprehended under a warrant (the "original warrant") granted under this Act in relation to any proceedings.

(2) If the person absconds, the person may be re-apprehended under the original warrant (and as if that warrant had not been executed to any extent).

(3) If, for any reason, it is not practicable to bring the person before the court as required under a provision of this Act applying in the case, the person is to be brought before the court as soon as practicable after the relevant reason ceases to prevail.

(4) Despite subsection (3) above, if—

(a) the original warrant was granted in solemn proceedings; and

(b) the impracticability arises because the person needs medical treatment or care,

the person may be released.

(5) A person released under subsection (4) above may be re-apprehended under the original warrant (and as if that warrant had not been executed to any extent).

(6) Subsection (3) above does not affect the operation of section 22(1B) of this Act (which relates to liberation on an undertaking of persons apprehended under warrant granted in summary proceedings).

(7) Nothing in this section prevents a court from granting a fresh warrant for the apprehension of the person.

(8) Subject to this section are—

(a) any rule of law as to bringing a person before a court in pursuance of a warrant granted on petition (as referred to in section 34 of this Act);

(b) section 102A(10) of this Act;

(c) section 135(3) (including as applying in relation to sections 22(1B) and 156) of this Act;

(d) section 90A(9) of this Act.".

34 Participation in identification procedures

After section 267A of the 1995 Act there is inserted—

"Identification procedures

267B Order requiring accused to participate in identification procedure

(1) The court may, on an application by the prosecutor in any proceedings, make an order requiring the accused person to participate in an identification parade or other identification procedure.

(2) The application may be made at any time after the proceedings have been commenced.

(3) The court—

(a) shall (if the accused is present) allow the accused to make representations in relation to the application;

(b) may, if it considers it appropriate to do so (where the accused is not present), fix a hearing for the purpose of allowing the accused to make such representations.

(4) Where an order is made under subsection (1) above, the clerk of court shall (if the accused is not present) have notice of the order effected as respects the accused without delay.

(5) Notice under subsection (4) above shall (in relation to any proceedings) be effected in the same manner as citation under section 141 of this Act.

(6) It is sufficient evidence that notice has been effected under subsection (5) above if there is produced a written execution—

(a) in the form prescribed by Act of Adjournal or as nearly as may be in such form; and

(b) signed by the person who effected notice.

(7) In relation to notice effected by means of registered post or the recorded delivery service, the relevant post office receipt requires to be produced along with the execution mentioned in subsection (6) above.

(8) A person who, having been given due notice of an order made under subsection (1) above, without reasonable excuse fails to comply with the order is—

(a) guilty of an offence; and

(b) liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 12 months or to both.

(9) For the purpose of subsection (5) above, section 141 of this Act is to be read with such modifications as are necessary for its application in the circumstances.

(10) In this section, "the court" means—

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

(b) in any other case, any court with jurisdiction in relation to the proceedings.".

35 Evidence on commission

(1) In section 66 (service and lodging of indictment, etc.) of the 1995 Act—

(a) in subsection (6A)—

(i) in paragraph (a)(i), after the word "defence" there is inserted "(including at any commissioner proceedings)",

(ii) in paragraph (a)(iii), after the word "trial" there is inserted "(or at any related commissioner proceedings)",

(b) after subsection (14) there is added—

"(15) In subsection (6A) above, "commissioner proceedings" means proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act.".

(2) In section 140 (citation) of that Act—

(a) in subsection (2A)—

(i) in paragraph (a), after the word "defence" there is inserted "(including at any commissioner proceedings)",

(ii) in paragraph (c), after the word "trial" there is inserted "(or at any related commissioner proceedings)",

(b) after subsection (2B) there is added—

"(2C) In subsection (2A) above, "commissioner proceedings" means proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act.".

(3) In section 271I (taking of evidence by a commissioner) of that Act—

(a) after subsection (1) there is inserted—

"(1A) Proceedings before a commissioner appointed under subsection (1) above shall, if the court so directed when authorising such proceedings, take place by means of a live television link between the place where the commissioner is taking, and the place from which the witness is giving, evidence.",

(b) in subsection (3)(a), for the words "present in the room where such proceedings are taking place" there is substituted "present—

(i) in the room where such proceedings are taking place; or

(ii) if such proceedings are taking place by means of a live television link, in the same room as the witness",

(c) after subsection (4) there is added—

"(5) Sections—

(a) 274;

(b) 275;

(c) 275B except subsection (2)(b);

(d) 275C;

(e) 288C;

(f) 288E; and

(g) 288F,

of this Act apply in relation to proceedings before a commissioner appointed under subsection (1) above as they apply in relation to a trial.

(6) In the application of those sections in relation to such proceedings—

(a) the commissioner acting in the proceedings is to perform the functions of the court as provided for in those sections;

(b) references—

(i) in those sections, except section 275(3)(c) and (7)(c), to a trial or a trial diet;

(ii) in those sections, except sections 275(3)(e) and 288F(2), (3) and (4), to the court,

shall be read accordingly;

(c) the reference in section 275B(1) to 14 days shall be read as a reference to 7 days.

(7) In a case where it falls to the court to appoint a commissioner under subsection (1) above, the commissioner shall be a person described in subsection (8) below.

(8) The persons are—

(a) where the proceedings before the commissioner are for the purposes of a trial in the High Court, a judge of the High Court; or

(b) in any other case, a sheriff.".

(4) In section 272 (evidence by letter of request or on commission) of that Act, after subsection (9) there is added—

"(10) Sections—

(a) 274;

(b) 275;

(c) 275B except subsection (2)(b);

(d) 275C; and

(e) 288C,

of this Act apply in relation to proceedings in which a commissioner examines a witness under subsection (1)(b) above as they apply in relation to a trial.

(11) In the application of those sections in relation to such proceedings—

(a) the commissioner acting in the proceedings is to perform the functions of the court as provided for in those sections;

(b) references—

(i) in those sections, except section 275(3)(c) and (7)(c), to a trial or a trial diet;

(ii) in those sections, except section 275(3)(e), to the court,

shall be read accordingly;

(c) the reference in section 275B(1) to 14 days shall be read as a reference to 7 days.

(12) In a case where it falls to the court to appoint a commissioner for the purposes of subsection (1)(b) above, the commissioner shall be a person described in subsection (13) below.

(13) The persons are—

(a) where the proceedings before the commissioner are for the purposes of a trial in the High Court, a judge of the High Court; or

(b) in any other case, a sheriff.".

(5) In section 275A(1) (disclosure of accused's previous convictions where court allows questioning or evidence under section 275) of that Act, after the word "court" there is inserted "(or, in proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act, a commissioner)".

(6) In section 288D (appointment of solicitor by court in such cases) of that Act—

(a) in subsection (2), after paragraph (a)(ii) there is inserted—

"(iii) the conduct of his case at any commissioner proceedings; or",

(b) in subsection (6), after the word "trial" there is inserted "(or at any related commissioner proceedings)",

(c) after that subsection there is inserted—

"(6A) Where, in relation to commissioner proceedings, the commissioner is satisfied that a solicitor so appointed is no longer able to act upon the instructions, or in the best interests, of the accused, the commissioner is (for the purpose of the application of subsection (6) above) to refer the case to the court.",

(d) in subsection (7), for the word "(6)" in the first place where it occurs there is substituted "(6A)",

(e) after subsection (8) there is added—

"(9) In this section, "commissioner proceedings" means proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act.".

36 Victim notification scheme

In section 16 (victim's right to receive information concerning release etc. of offender) of the Criminal Justice (Scotland) Act 2003 (asp 7)—

(a) in subsection (5)(b)(ii), after the word "sub-paragraph" in the second place where it occurs there is inserted "and as if in paragraph (a)(ii) of the said section 14(6) (as it applies by virtue of that sub-paragraph) the words ", immediately before the offence (or apparent offence) was perpetrated, cared" were "cares"",

(b) after subsection (6) there is added—

"(7) Where, but for section 14(8) (as it applies in relation to subsection (5)(a)), information would—

(a) under subsection (1) (as read with subsection (5)(a)); and

(b) by virtue of section 14(10)(c) to (e) and (g) to (i) (as it applies in relation to subsection (5)(a)),

fall to be given to a child who has not attained the age of fourteen years, that information is to be given instead to a person who cares for the child.

(8) In subsection (7), the reference to a person who cares for the child is to be construed in accordance with section 2(28) of the Regulation of Care (Scotland) Act 2001 (asp 8).".

37 Recovery of documents

After section 301 of the 1995 Act there is inserted—

"Recovery of documents

301A Recovery of documents

(1) It is competent for the sheriff court to make, in connection with any criminal proceedings mentioned in subsection (2) below, the orders mentioned in subsection (3) below.

(2) The proceedings are—

(a) solemn proceedings in that sheriff court;

(b) summary proceedings—

(i) in that sheriff court;

(ii) in any JP court in that sheriff court's district.

(3) The orders are—

(a) an order granting commission and diligence for the recovery of documents;

(b) an order for the production of documents.

(4) An application for the purpose may not be made—

(a) in connection with solemn proceedings, until the indictment has been served on the accused or the accused has been cited under section 66(4)(b) of this Act;

(b) in connection with summary proceedings, until the accused has answered the complaint.

(5) A decision of the sheriff on an application for an order under subsection (1) above may be appealed to the High Court.

(6) In an appeal under subsection (5) above, the High Court may uphold, vary or quash the decision of the sheriff.

(7) The prosecutor is entitled to be heard in any—

(a) application for an order under subsection (1) above;

(b) appeal under subsection (5) above,

even if the prosecutor is not a party to the application or (as the case may be) appeal.

(8) The competence of the High Court to make, in connection with criminal proceedings, the orders mentioned in subsection (3) above is restricted to making them in connection with proceedings in that court.".

38 Intimation of certain applications to the High Court

After section 298 of the 1995 Act there is inserted—

"Intimation of certain applications to the High Court

298A Intimation of bills and of petitions to the nobile officium

(1) This subsection applies where the prosecutor requires to intimate to the respondent—

(a) a bill of advocation;

(b) a petition to the nobile officium; or

(c) an order of the High Court relating to such a bill or (as the case may be) petition.

(2) Where subsection (1) above applies, the requirement may be met by serving on the respondent or the respondent's solicitor a copy of the bill, petition or (as the case may be) order.

(3) Service under subsection (2) above may (in relation to any proceedings) be effected—

(a) on the respondent, in the same manner as citation under section 141 of this Act;

(b) on the respondent's solicitor, by post.

(4) This subsection applies where a person requires to intimate to the prosecutor—

(a) a bill of suspension or advocation;

(b) a petition to the nobile officium; or

(c) an order of the High Court relating to such a bill or (as the case may be) petition.

(5) Where subsection (4) above applies, the requirement may be met by serving on the prosecutor a copy of the bill, petition or (as the case may be) order.

(6) Service under subsection (5) above may (in relation to any proceedings) be effected by post.

(7) It is sufficient evidence that service has been effected under subsection (3) or (6) above if there is produced a written execution—

(a) in the form prescribed by Act of Adjournal or as nearly as may be in such form; and

(b) signed by the person who effected service.

(8) In relation to service effected by means of registered post or the recorded delivery service, the relevant post office receipt requires to be produced along with the execution mentioned in subsection (7) above.

(9) A party who has service effected under subsection (3) or (6) above must, as soon as practicable thereafter, lodge with the Clerk of Justiciary a copy of the execution mentioned in subsection (7) above.

(10) For the purpose of subsection (3)(a) above, section 141 of this Act is to be read with such modifications as are necessary for its application in the circumstances.

(11) This section is without prejudice to any rule of law or practice by virtue of which things of the kinds mentioned in subsections (1) and (4) above (including copies) may be intimated or served.".

39 Refixing diets

(1) After section 75A (adjournment and alteration of diets) of the 1995 Act there is inserted—

"**75B Refixing diets**

(1) This section applies where in any proceedings on indictment any diet has been fixed for a non-sitting day.

(2) The court may at any time before the non-sitting day—

(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.

(3) That is, by acting—

(a) of the court's own accord; and

(b) without the need for a hearing for the purpose.

(4) In the case of a trial diet—

(a) the prosecutor;

(b) the accused,

shall be entitled to an adjournment of the new diet fixed if the court is satisfied that it is not practicable for that party to proceed with the case on that date.

(5) The power of the court under subsection (1) above is not exercisable for the sole purpose of ensuring compliance with a time limit applying in the proceedings.

(6) In subsections (1) and (2) above, a "non-sitting day" is a day on which the court is under this Act not required to sit.

(7) In subsections (2) to (5) above, "the court" means—

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

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

(2) After section 137 (alteration of diets) of that Act there is inserted—

"**137ZA Refixing diets**

(1) This section applies where in a summary prosecution any diet has been fixed for a non-sitting day.

(2) The court may at any time before the non-sitting day—

(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.

(3) That is, by acting—

(a) of the court's own accord; and

(b) without the need for a hearing for the purpose.

(4) In the case of a trial diet—

(a) the prosecutor;

(b) the accused,

shall be entitled to an adjournment of the new diet fixed if the court is satisfied that it is not practicable for that party to proceed with the case on that date.

(5) The power of the court under subsection (1) above is not exercisable for the sole purpose of ensuring compliance with a time limit applying in the proceedings.

(6) In subsections (1) and (2) above, a "non-sitting day" is a day on which the court is under this Act not required to sit.".

40 Power of court to excuse procedural irregularities

After section 300 of the 1995 Act there is inserted—

"Excusal of irregularities

300A Power of court to excuse procedural irregularities

(1) Any court may excuse a procedural irregularity—

(a) of a kind described in subsection (5) below; and

(b) which has occurred in relation to proceedings before that court,

if the conditions mentioned in subsection (4) below are met.

(2) In appeal proceedings, the High Court may excuse a procedural irregularity—

(a) of that kind; and

(b) which has occurred in relation to earlier proceedings in the case that is the subject of the appeal,

if those conditions are met.

(3) A court may proceed under subsection (1) or (2) above on the application of the prosecutor or an accused person (having given the other an opportunity to be heard).

(4) The conditions are that—

(a) it appears to the court that the irregularity arose because of—
(i) mistake or oversight; or
(ii) other excusable reason; and
(b) the court is satisfied in the circumstances of the case that it would be in the interests of justice to excuse the irregularity.

(5) A procedural irregularity is an irregularity arising at any stage of proceedings—
(a) from—
(i) failure to call or discharge a diet properly;
(ii) improper adjournment or continuation of a case;
(iii) a diet being fixed for a non-sitting day;
(b) from failure of—
(i) the court; or
(ii) the prosecutor or the accused,
to do something within a particular period or otherwise comply with a time limit;
(c) from failure of the prosecutor to serve properly a notice or other thing;
(d) from failure of the accused to—
(i) intimate properly a preliminary objection;
(ii) intimate properly a plea or defence;
(iii) serve properly a notice or other thing;
(e) from failure of—
(i) the court; or
(ii) the prosecutor or the accused,
to fulfil any other procedural requirement.

(6) Subsection (1) above does not authorise a court to excuse an irregularity arising by reason of the detention in custody of an accused person for a period exceeding that fixed by this Act.

(7) Subsection (1) above does not apply in relation to any requirement as to proof including, in particular, any matter relating to—
(a) admissibility of evidence;
(b) sufficiency of evidence; or
(c) any other evidential factor.

(8) Where a court excuses an irregularity under subsection (1) above, it may make such order as is necessary or expedient for the purpose of—
(a) restoring the proceedings as if the irregularity had never occurred;
(b) facilitating the continuation of the proceedings as if it had never occurred, for example—
(i) altering a diet;
(ii) extending any time limit;
(iii) appointing a diet for further procedure or granting an adjournment or continuation of a diet;
(c) protecting the rights of the parties.

(9) For the purposes of this section—

(a) a reference to an accused person, except the reference in subsection (6) above, includes reference to a person who has been convicted of an offence;

(b) something is done properly if it is done in accordance with a requirement of an enactment or any rule of law.

(10) In subsection (5)(a)(iii) above, a "non-sitting day" is a day on which the court is under this Act not required to sit.

(11) This section is without prejudice to any provision of this Act under which a court may—

(a) alter a diet; or

(b) extend—

(i) a period within which something requires to be done; or

(ii) any other time limit.

(12) This section is without prejudice to any rule of law by virtue of which it may be determined by a court that breach, in relation to criminal proceedings—

(a) of a requirement of an enactment; or

(b) of a rule of law,

does not render the proceedings, or anything done (or purported to have been done) for the purposes of or in connection with proceedings, invalid.".

Electronic proceedings

41 Electronic proceedings

(1) After section 303A of the 1995 Act there is inserted—

"Electronic proceedings

303B Electronic summary proceedings

(1) For the purposes of section 138(1) of this Act—

(a) institution of proceedings may be effected by electronic complaint;

(b) the requirement for signing is satisfied in relation to an electronic complaint by an electronic signature;

(c) the requirement for signing may be satisfied in relation to any other complaint by an electronic signature.

(2) The references in the other provisions of this Act to a complaint include an electronic complaint unless the context otherwise requires.

(3) Where proceedings are instituted by electronic complaint, in the event of any conflict between—

(a) the principal electronic complaint kept by the clerk of court for the purposes of the proceedings; and

(b) any other document (whether in electronic or other form) purporting to be the complaint,

the principal electronic complaint prevails.

(4) The requirement in section 85(4) of this Act for signing may be satisfied by electronic signature.

(5) The requirement in section 136B(2) of this Act for signing may be satisfied by electronic signature.

(6) The requirement in section 141(3)(a) of this Act for signing may be satisfied by electronic signature.

(7) The requirement in section 159(3) of this Act for authentication by initials is satisfied in relation to an electronic complaint by authentication by electronic signature.

(8) The requirements in section 172(2) of this Act for signing by the clerk of court may be satisfied by electronic signature.

(9) The requirements in section 258(2) and (9) of this Act for signing may be satisfied in relation to summary proceedings by electronic signature.

(10) The requirement in section 299(5) of this Act for authentication by signature is satisfied in relation to—

(a) proceedings which are recorded in electronic form;

(b) any extract of sentence, or order made, which is recorded in electronic form,

by authentication by electronic signature.".

(2) After section 308 of the 1995 Act there is inserted—

"**308A Expressions relating to electronic proceedings**

(1) In this Act, an "electronic complaint" is a complaint in electronic form which is capable of being—

(a) transmitted by means of electronic communication;

(b) kept in legible form.

(2) In this Act, unless the context otherwise requires—

"electronic communication" is to be construed in accordance with section 15(1) of the Electronic Communications Act 2000 (c. 7);

"electronic signature" is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000, but includes a version of an electronic signature which is reproduced on a paper document.

(3) The Scottish Ministers may by order modify the meaning of "electronic signature" provided for in subsection (2) above for the purpose of such provisions of this Act as are specified in the order.

(4) An order under subsection (3) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.".

42 Further provision for summary cases

(1) The Scottish Ministers may, in relation to summary criminal proceedings, by order make provision for the purposes of or in connection with—

(a) using electronic complaints and other documents in electronic form,

(b) keeping, in electronic form, records of proceedings,

(c) allowing requirements as to formality (and validity) of documents to be satisfied by electronic means,

(d) using electronic communication.

(2) Provision in an order under subsection (1) may, in particular, relate to—

(a) the availability of documents and records in electronic or other form to specified persons or classes of person,

(b) the authentication of—

(i) documents and records,

(ii) information contained in documents and records,

(c) the use of electronic signatures in documents and records.

(3) An order under subsection (1) may make provision by amending the 1995 Act or otherwise.

(4) In subsection (1), the expressions "electronic complaint" and "electronic communication" are to be construed by reference to section 308A (expressions relating to electronic proceedings) of the 1995 Act.

PART 3

PENALTIES

Sentencing powers

43 Common law offences

In section 5 (the sheriff: summary jurisdiction and powers) of the 1995 Act—

(a) in paragraph (d) of subsection (2), for the word "three" there is substituted "12", and

(b) subsection (3) is repealed.

44 Particular statutory offences

(1) In section 41 (assaults on constables, etc.) of the Police (Scotland) Act 1967 (c. 77), in subsection (1), for the word "nine" there is substituted "12".

(2) In section 26A (enforcement of wildlife legislation) of the Wildlife and Countryside Act 1981 (c. 69), for the words from "as amended" to "97/62/EC" there is substituted "(that is, the Directive as amended from time to time by any other Community instrument or otherwise)".

(3) In section 37 (offences) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)—

(a) in subsection (4), for the words from "(a "relevant offence")" to the end there is substituted "shall be liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding the prescribed sum within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 (c. 46) or to both.",

(b) subsection (5) is repealed.

(4) In section 6 (penalties) of the Emergency Workers (Scotland) Act 2005 (asp 2)—

(a) for the word "9" there is substituted "12",

(b) for the words "level 5 on the standard scale" there is substituted "the prescribed sum within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 (c. 46)".

(5) In section 39 (assaulting or impeding employees discharging certain functions) of the Fire (Scotland) Act 2005 (asp 5), in subsection (4)—

(a) for the word "9" there is substituted "12",

(b) after the word "scale" there is added "or to both".

(6) This section does not affect the penalty for an offence committed before the coming into force of this section.

45 Other statutory offences

(1) The maximum term of imprisonment to which a person is liable on summary conviction of a relevant offence is, by virtue of this subsection, 12 months.

(2) Accordingly, the specification of a maximum period of imprisonment in every relevant penalty provision is, in relation to any relevant offence to which it applies, to be read subject to subsection (1).

(3) Without prejudice to subsections (1) and (2), the Scottish Ministers may by order amend the specification of a maximum term of imprisonment in a relevant penalty provision so as to specify, in relation to the relevant offence to which it applies, that the maximum term of imprisonment to which a person is liable on summary conviction is 12 months.

(4) The specification of a maximum period of imprisonment in a relevant power is, in relation to any offence to which it applies, to be read as a period of 12 months.

(5) Without prejudice to subsection (4), the Scottish Ministers may by order amend a relevant power so as to increase to 12 months the maximum term of imprisonment specified in the power.

(6) In this section, a "relevant offence" is an offence under a relevant enactment or instrument which is—

(a) triable either on indictment or summary complaint, and

(b) punishable on summary conviction with a maximum term of imprisonment of less than 12 months.

(7) In this section—

a "relevant enactment" is an Act passed before this Act,

a "relevant instrument" is any subordinate legislation made before the passing of this Act,

a "relevant penalty provision" is a provision of a relevant enactment or instrument which specifies the penalties to which a person is liable on summary conviction of a relevant offence,

a "relevant power" is a provision of a relevant enactment which confers a power (however expressed) for subordinate legislation to make a person, as regards an offence that is triable either on indictment or summary complaint, liable on summary conviction to a maximum term of imprisonment of less than 12 months.

(8) For the purposes of subsection (7), reference to the passing of an Act is to be construed, in the case of an Act of the Scottish Parliament (including this Act), as reference to the passing by the Parliament of the Bill for the Act.

46 JP court: power to increase penalties

(1) The Scottish Ministers may by order amend any specification of a maximum—

(a) term of imprisonment,

(b) level of fine,

(c) amount of caution,

in section 7(6) or (7) of the 1995 Act.

(2) The Scottish Ministers may by order amend any specification, in relation to the JP court, of a maximum—

(a) term of imprisonment,

(b) level of fine,

in any other enactment.

(3) An order under subsection (1) or (2) may not make provision for—

(a) a term of imprisonment exceeding 6 months,

(b) a fine exceeding level 5 on the standard scale,

(c) an amount of caution exceeding level 5 on the standard scale.

47 Fine level

(1) The maximum fine to which a person is liable on summary conviction of a relevant offence is, by virtue of this subsection, the statutory maximum.

(2) Accordingly, the specification (by reference to level 5 on the standard scale) of a maximum fine in every relevant penalty provision is, in relation to any relevant offence to which it applies, to be read subject to subsection (1).

(3) Without prejudice to subsections (1) and (2), the Scottish Ministers may by order amend the specification of a maximum fine in a relevant penalty provision so as to specify, in relation to the relevant offence to which it applies, that the maximum fine to which a person is liable on summary conviction is the statutory maximum.

(4) The specification (by reference to level 5 on the standard scale) of a maximum fine in a relevant power is, in relation to any offence to which it applies, to be read as the statutory maximum.

(5) Without prejudice to subsection (4), the Scottish Ministers may by order amend the specification of a maximum fine in a relevant power so as to increase to the statutory maximum the maximum fine specified in the power.

(6) In this section, a "relevant offence" is an offence under a relevant enactment or instrument which is—

(a) triable either on indictment or summary complaint, and

(b) punishable on summary conviction with a maximum fine specified as level 5 on the standard scale.

(7) In this section—

a "relevant enactment" is an Act passed before this Act,

a "relevant instrument" is any subordinate legislation made before the passing of this Act,

a "relevant penalty provision" is a provision of a relevant enactment or instrument which specifies the penalties to which a person is liable on summary conviction of a relevant offence,

a "relevant power" is a provision of a relevant enactment which confers a power (however expressed) for subordinate legislation to make a person, as regards an offence that is triable either on indictment or summary complaint, liable on summary conviction to a maximum fine specified as level 5 on the standard scale.

(8) For the purposes of subsection (7), reference to the passing of an Act is to be construed, in the case of an Act of the Scottish Parliament (including this Act), as reference to the passing by the Parliament of the Bill for the Act.

48 Prescribed sum

In section 225 (penalties: standard scale, prescribed sum and uprating) of the 1995 Act, in subsection (8), for the words "£5,000" there is substituted "£10,000".

49 Compensation orders

(1) In section 249 (compensation order against convicted person) of the 1995 Act—

(a) in subsection (1), for the words from "any" in the second place where it occurs to the end there is substituted "any—

(a) personal injury, loss or damage caused directly or indirectly; or

(b) alarm or distress caused directly,

to the victim.",

(b) after that subsection there is inserted—

"(1A) For the purposes of subsection (1) above, "victim" means—

(a) a person against whom; or

(b) a person against whose property,

the acts which constituted the offence were directed.".

(2) In section 251(1)(a) (review of compensation order) of that Act, for the words "or damage" there is substituted ", damage, alarm or distress".

(3) In section 253(1) (effect of compensation order on subsequent award of damages in civil proceedings) of that Act, for the words "or damage" there is substituted ", damage, alarm or distress".

(4) In section 229 (probation orders: additional requirements) of that Act—

(a) in subsection (6), for the words from "any" in the second place where it occurs to "offence" there is substituted "the matters referred to in subsection (6A) below",

(b) after that subsection there is inserted—

"(6A) Those matters are any personal injury, loss, damage, alarm or distress of the victim as described in section 249(1) and (1A) of this Act.".

Penalties as alternative to prosecution

50 Fixed penalty and compensation offers

(1) In section 302 (fixed penalty: conditional offer by procurator fiscal) of the 1995 Act—

(a) in subsection (2)—

(i) for sub-paragraph (ii) of paragraph (b) there is substituted—

"(ii) if the penalty is to be payable by instalments, the amount of the instalments and the intervals at which they should be paid;",

(ii) sub-paragraph (iii) of that paragraph and the word "and" immediately preceding it are repealed,

(iii) in paragraph (c), for the words "of the fixed penalty or of the first instalment thereof" there is substituted "in respect of the fixed penalty",

(iv) after paragraph (c) there is inserted—

"(ca) shall indicate—

(i) that the alleged offender may refuse the conditional offer by giving notice to the clerk of court in the manner specified in the conditional offer before the expiry of 28 days, or such longer period as may be specified in the conditional offer, beginning on the day on which the conditional offer is made;

(ii) that unless the alleged offender gives such notice, the alleged offender will be deemed to have accepted the conditional offer (even where no payment is made in respect of the offer);

(iii) that where the alleged offender is deemed as described in sub-paragraph (ii) above to have accepted the conditional offer any liability to conviction of the offence shall be discharged except where the offer is recalled under section 302C of this Act;",

(v) the word "and" immediately following paragraph (d) is repealed,

(vi) for paragraph (e) there is substituted—

"(e) shall state—

(i) that the acceptance of the offer in the manner described in paragraph (c) above, or deemed acceptance of the offer as described in paragraph (ca)(ii) above, shall not be a conviction nor be recorded as such;

(ii) that the fact that the offer has been accepted, or deemed to have been accepted, may be disclosed to the court in any proceedings for an offence committed by the alleged offender within the period of two years

beginning on the day of acceptance of the offer;

(iii) that if the offer is not accepted, that fact may be disclosed to the court in any proceedings for the offence to which the conditional offer relates;

(f) shall state that refusal of a conditional offer under paragraph (ca)(i) above will be treated as a request by the alleged offender to be tried for the offence; and

(g) shall explain the right to request a recall of the fixed penalty under section 302C of this Act.",

(b) for subsection (4) there is substituted—

"(4) The clerk of court shall—

(a) without delay, notify the procurator fiscal who issued the conditional offer when a notice as described in subsection (2)(ca)(i) above has been received in respect of the offer; or

(b) following the expiry of the period of 28 days referred to in subsection (2)(c) above or such longer period as may be specified in the offer, notify the procurator fiscal if no such notice has been received.",

(c) after subsection (4) there is inserted—

"(4A) A conditional offer is accepted by the alleged offender making any payment in respect of the appropriate fixed penalty.

(4B) Where an alleged offender to whom a conditional offer of a fixed penalty is made does not give notice as described in subsection (2)(ca)(i) above, the alleged offender is deemed to have accepted the conditional offer.

(4C) Where—

(a) an alleged offender accepts a conditional offer as described in subsection (4A) above; or

(b) an alleged offender is deemed to have accepted a conditional offer under subsection (4B) above and the fixed penalty is not recalled,

no proceedings shall be brought against the alleged offender for the offence.",

(d) subsections (5) and (6) are repealed,

(e) in subsection (7), the words from ", the amount" to the end are repealed,

(f) after subsection (7) there is inserted—

"(7A) The amount of the maximum penalty on the scale prescribed under subsection (7) above may not exceed £300 or such higher sum as the Scottish Ministers may by order specify.",

(g) in subsection (8)—

(i) after the word "(7)" there is inserted "or (7A)",

(ii) in paragraph (b), for the words from "be" in the second place where it occurs to the end there is substituted "not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament",

(h) after subsection (8) there is inserted—

"(8A) The alleged offender shall be presumed to have received a conditional offer under subsection (1) above if the offer is sent to—

(a) the address given by the alleged offender in a request for recall under section 302C(1) of this Act of an earlier offer in the same matter; or

(b) any address given by the alleged offender to the clerk of court specified in the offer, or to the procurator fiscal, in connection with the offer.

(8B) For the purposes of section 141(4) of this Act, the accused shall be presumed to have received any citation effected at—

(a) the address to which a conditional offer under subsection (1) above was sent provided it is proved that the accused received the offer; or

(b) any address given by the accused to the clerk of court specified in the offer, or to the procurator fiscal, in connection with the offer.",

(i) in subsection (9), for the words "competently be tried before a district court" there is substituted "be tried summarily".

(2) After section 302 of that Act there is inserted—

"**302A Compensation offer by procurator fiscal**

(1) Where a procurator fiscal receives a report that a relevant offence has been committed he may send to the alleged offender a notice under this section (referred to in this section as a compensation offer); and where he issues a compensation offer the procurator fiscal shall notify the clerk of court specified in it of the issue of the offer and of its terms.

(2) A compensation offer—

(a) shall give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence;

(b) shall state—

(i) the amount of compensation payable;

(ii) if the compensation is to be payable by instalments, the amount of the instalments and the intervals at which they should be paid;

(c) shall indicate that if, within 28 days of the date on which the offer was issued, or such longer period as may be specified in the offer, the alleged offender accepts the offer by making payment in respect of the offer to the clerk of court specified in the offer at the address therein mentioned, any liability to conviction of the offence shall be discharged;

(d) shall indicate—

(i) that the alleged offender may refuse the offer by giving notice to the clerk of court in the manner specified in the offer before the expiry of 28 days, or such longer period as may

be specified in the offer, beginning on the day on which the offer is made;

(ii) that unless the alleged offender gives such notice, the alleged offender will be deemed to have accepted the offer (even where no payment is made in respect of the offer);

(iii) that where the alleged offender is deemed as described in sub-paragraph (ii) above to have accepted the offer any liability to conviction of the offence shall be discharged except where the offer is recalled under section 302C of this Act;

(e) shall state that proceedings against the alleged offender shall not be commenced in respect of that offence until the end of a period of 28 days from the date on which the offer was made, or such longer period as may be specified in the offer;

(f) shall state—

(i) that the acceptance of the offer in the manner described in paragraph (c) above, or deemed acceptance of the offer as described in paragraph (d)(ii) above, shall not be a conviction nor be recorded as such;

(ii) that the fact that the offer has been accepted, or deemed to have been accepted, may be disclosed to the court in any proceedings for an offence committed by the alleged offender within the period of two years beginning on the day of acceptance of the offer;

(iii) that if the offer is not accepted, that fact may be disclosed to the court in any proceedings for the offence to which the offer relates;

(g) shall state that refusal of an offer under paragraph (d)(i) above will be treated as a request by the alleged offender to be tried for the offence; and

(h) shall explain the right to request a recall of the offer under section 302C of this Act.

(3) A compensation offer may be made in respect of more than one relevant offence and shall, in such a case, state the amount payable in respect of the offer for all the offences in relation to which it is issued.

(4) The clerk of court shall—

(a) without delay, notify the procurator fiscal who issued the compensation offer when a notice as described in subsection (2)(d)(i) above has been received in respect of the offer; or

(b) following the expiry of the period of 28 days referred to in subsection (2)(c) above or such longer period as may be specified in the offer, notify the procurator fiscal if no such notice has been received.

(5) A compensation offer is accepted by the alleged offender making any payment in respect of the offer.

(6) Where an alleged offender to whom a compensation offer is made does not give notice as described in subsection (2)(d)(i) above, the alleged offender is deemed to have accepted the offer.

(7) Where—

(a) an alleged offender accepts a compensation offer as described in subsection (5) above; or

(b) an alleged offender is deemed to have accepted a compensation offer under subsection (6) above and the offer is not recalled,

no proceedings shall be brought against the alleged offender for the offence.

(8) The Scottish Ministers shall by order prescribe the maximum amount of a compensation offer; but that amount shall not exceed level 5 on the standard scale.

(9) An order under subsection (8) above shall be made by statutory instrument; and any such instrument shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(10) The alleged offender shall be presumed to have received a compensation offer under subsection (1) above if the offer is sent to—

(a) the address given by the alleged offender in a request for recall under section 302C(1) of this Act of an earlier offer in the same matter; or

(b) any address given by the alleged offender to the clerk of court specified in the offer, or to the procurator fiscal, in connection with the offer.

(11) For the purposes of section 141(4) of this Act, the accused shall be presumed to have received any citation effected at—

(a) the address to which a compensation offer under subsection (1) above was sent provided it is proved that the accused received the offer; or

(b) any address given by the accused to the clerk of court specified in the offer, or to the procurator fiscal, in connection with the offer.

(12) The clerk of court shall account for the amount paid under a compensation offer to the person entitled thereto.

(13) In this section, a "relevant offence" means any offence—

(a) in respect of which an alleged offender could be tried summarily; and

(b) on conviction of which it would be competent for the court to make a compensation order under section 249 of this Act.

302B Combined fixed penalty and compensation offer

(1) The procurator fiscal may send to an alleged offender a notice under sections 302(1) and 302A(1) of this Act in respect of the same relevant offence (referred to in this section as a "combined offer").

(2) A combined offer shall be contained in the one notice.

(3) In addition to the information required to be provided under sections 302(2) and 302A(2) of this Act, the combined offer shall state—

(a) that the combined offer consists of both a fixed penalty offer and a compensation offer;

(b) the whole amount of the combined offer; and

(c) that liability to conviction of the offence shall not be discharged unless the whole of the combined offer is accepted.

(4) Any acceptance or deemed acceptance of part of a combined offer shall be treated as applying to the whole of the offer.

302C Recall of fixed penalty or compensation offer

(1) Where an alleged offender is deemed to have accepted—

(a) a fixed penalty offer by virtue of section 302(2)(ca)(ii) of this Act; or

(b) a compensation offer by virtue of section 302A(2)(d)(ii) of this Act,

the alleged offender may request that it be recalled.

(2) A request for recall under subsection (1) above is valid only if—

(a) the alleged offender claims that he—

(i) did not receive the offer concerned; and

(ii) would (if he had received it) have refused the offer; or

(b) the alleged offender claims that—

(i) although he received the offer concerned, it was not practicable by reason of exceptional circumstances for him to give notice of refusal of the offer; and

(ii) he would (but for those circumstances) have refused the offer.

(3) A request for recall of a fixed penalty offer or a compensation offer requires to be made—

(a) to the clerk of court referred to in the offer; and

(b) no later than 7 days after the expiry of the period specified in the offer for payment of the fixed penalty or compensation offer or, where a notice is sent in pursuance of section 303(1A)(a) of this Act, no later than 7 days after it is sent.

(4) The clerk of court may, on cause shown by reference to subsection (2) above, consider a request for recall of such an offer despite its being made outwith the time limit applying by virtue of subsection (3)(b) above.

(5) The clerk of court may, following receipt of such a request—

(a) uphold the fixed penalty offer or compensation offer; or

(b) recall it.

(6) The alleged offender may, within 7 days of a decision under subsection (5)(a) above, apply to the court specified in the offer for a review of the decision (including as it involves a question which arose by reference to subsections (2) to (4) above).

(7) In a review under subsection (6) above, the court may—

(a) confirm or quash the decision of the clerk;

(b) in either case, give such direction to the clerk as the court considers appropriate.

(8) The decision of the court in a review under subsection (6) above shall be final.

(9) The clerk of court shall, without delay, notify the procurator fiscal of—

(a) a request for recall under subsection (1) above;

(b) an application for review under subsection (6) above;

(c) any decision under subsection (5) or (7) above.

(10) For the purposes of this section, a certificate given by the procurator fiscal as to the date on which a fixed penalty offer or compensation order was sent shall be sufficient evidence of that fact.".

(3) In section 303 (fixed penalty: enforcement) of that Act—

(a) for subsection (1) there is substituted—

"(1) Subject to subsections (1A) and (2) below, where an alleged offender accepts a fixed penalty offer under section 302 of this Act or a compensation offer under section 302A of this Act, any amount of it which is outstanding at any time shall be treated as if the penalty or offer were a fine imposed by the court (the clerk of which is specified in the notice).",

(b) after subsection (1) there is inserted—

"(1A) No action shall be taken to enforce a fixed penalty or compensation offer which an alleged offender is deemed to have accepted by virtue of section 302(2)(ca)(ii) or section 302A(2)(d)(ii) of this Act unless—

(a) the alleged offender is sent a notice—

(i) of the intention to take enforcement action; and

(ii) which explains the right to request a recall of the penalty or offer under section 302C of this Act;

(b) any request for recall made under that section has been finally disposed of.",

(c) in subsection (2), for the word "penalty" there is substituted "fixed penalty or compensation offer",

(d) in subsection (3), after the word "penalty" there is inserted "or compensation offer".

51 Work orders

After section 303 of the 1995 Act there is inserted—

"**303ZA Work orders**

(1) Where a procurator fiscal receives a report that a relevant offence has been committed he may send the alleged offender a notice under this section (referred to in this section as a work offer) which offers the alleged offender the opportunity of performing unpaid work.

(2) The total number of hours of unpaid work shall be not less than 10 nor more than 50.

(3) A work offer—

(a) shall give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence;

(b) shall state—

(i) the number of hours of unpaid work which the alleged offender is required to perform;

(ii) the date by which that work requires to be completed;

(c) shall indicate that if the alleged offender—

(i) accepts the work offer; and

(ii) completes the work to the satisfaction of the supervising officer,

any liability to conviction of the offence shall be discharged;

(d) shall state that proceedings against the alleged offender shall not be commenced in respect of that offence until the end of a period of 28 days from the date on which the offer was issued, or such longer period as may be specified in the offer;

(e) shall state—

(i) that acceptance of a work offer in the manner described in subsection (5) below shall not be a conviction nor be recorded as such;

(ii) that the fact that the offer has been accepted may be disclosed to the court in any proceedings for an offence committed by the alleged offender within the period of two years beginning on the day of acceptance of the offer;

(iii) that if a work order made under subsection (6) below is not completed, that fact may be disclosed to the court in any proceedings for the offence to which the order relates.

(4) A work offer may be made in respect of more than one relevant offence and shall, in such a case, state the total amount of work requiring to be performed in respect of the offences in relation to which it is made.

(5) An alleged offender accepts a work offer by giving notice to the procurator fiscal specified in the order before the expiry of 28 days, or such longer period as may be specified in the offer, beginning on the day on which the offer is made.

(6) If (and only if) the alleged offender accepts a work offer, the procurator fiscal may make an order (referred to in this section as a work order) against the alleged offender.

(7) Notice of a work order—

(a) shall be sent to the alleged offender as soon as reasonably practicable after acceptance of the work offer; and

(b) shall contain—

(i) the information mentioned in subsection (3)(b) above; and

(ii) the name and contact details of the person who is to act as supervisor ("the supervising officer") in relation to the alleged offender.

(8) The procurator fiscal shall notify the local authority which will be responsible for supervision of an alleged offender of the terms of any work order sent to the alleged offender.

(9) Where a work order is made, the supervising officer shall—

(a) determine the nature of the work which the alleged offender requires to perform;

(b) determine the times and places at which the alleged offender is to perform that work;

(c) give directions to the alleged offender in relation to that work;

(d) provide the procurator fiscal with such information as the procurator fiscal may require in relation to the alleged offender's conduct in connection with the requirements of the order.

(10) In giving directions under subsection (9)(c) above, a supervising officer shall, so far as practicable, avoid—

(a) any conflict with the alleged offender's religious beliefs;

(b) any interference with the times at which the alleged offender normally—

(i) works (or carries out voluntary work); or

(ii) attends an educational establishment.

(11) The supervising officer shall, on or as soon as practicable after the date referred to in subsection (3)(b)(ii) above, notify the procurator fiscal whether or not the work has been performed to the supervising officer's satisfaction.

(12) Where an alleged offender completes the work specified in the work order to the satisfaction of the supervising officer, no proceedings shall be brought against the alleged offender for the offence.

(13) The Scottish Ministers may, by regulations, make provision for the purposes of subsection (9) above (including, in particular, the kinds of activity of which the work requiring to be performed may (or may not) consist).

(14) Regulations under subsection (13) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(15) For the purposes of section 141(4) of this Act, the accused shall be presumed to have received any citation effected at—

(a) the address to which a work offer was sent provided it is proved that the accused received the offer; or

(b) any address given, in connection with the offer, by the accused to the procurator fiscal specified in the offer.

(16) In this section, a "relevant offence" means any offence in respect of which an alleged offender could be tried summarily.".

52 Setting aside of offers and orders

After section 303ZA (inserted by section 51 of this Act) of the 1995 Act there is inserted—

"**303ZB Setting aside of offers and orders**

(1) Where this subsection applies, the procurator fiscal may set aside—

(a) a fixed penalty offer made under section 302(1) of this Act;

(b) a compensation offer made under section 302A(1) of this Act;

(c) a work offer made under section 303ZA(1) of this Act;

(d) a work order made under section 303ZA(6) of this Act.

(2) Subsection (1) above applies where, on the basis of information which comes to the procurator fiscal's attention after the offer or (as the case may be) order has been made, the procurator fiscal considers that the offer or (as the case may be) order should not have been made in respect of the alleged offender.

(3) The procurator fiscal may act under subsection (1)(a) to (c) above even where the offer has been accepted (including, in the case of an offer mentioned in subsection (1)(a) or (b) above, deemed to have been accepted).

(4) Where the procurator fiscal acts under subsection (1) above, the procurator fiscal shall give the alleged offender notice—

(a) of the setting aside of the offer or (as the case may be) order; and

(b) indicating that any liability of the alleged offender to conviction of the alleged offence is discharged.".

53 Disclosure of previous offers

(1) In section 69 (notice of previous convictions) of the 1995 Act, after subsection (5) there is added—

"(6) This section applies in relation to the alternative disposals mentioned in subsection (7) below as it applies in relation to previous convictions.

(7) Those alternative disposals are—

(a) a—

(i) fixed penalty under section 302(1) of this Act;

(ii) compensation offer under section 302A(1) of this Act,

that has been accepted (or deemed to have been accepted) by the accused in the two years preceding the date of an offence charged;

(b) a work order under section 303ZA(6) of this Act that has been completed in the two years preceding the date of an offence charged.".

(2) In section 101 (previous convictions: solemn proceedings) of that Act, after subsection (8) there is added—

"(9) This section, except subsection (2) above, applies in relation to the alternative disposals mentioned in subsection (10) below as it applies in relation to previous convictions.

(10) Those alternative disposals are—

(a) a—

(i) fixed penalty under section 302(1) of this Act;

(ii) compensation offer under section 302A(1) of this Act,

that has been accepted (or deemed to have been accepted) by the accused in the two years preceding the date of an offence charged;

(b) a work order under section 303ZA(6) of this Act that has been completed in the two years preceding the date of an offence charged.

(11) Nothing in this section or in section 69 of this Act shall prevent the prosecutor, following conviction of an accused of an offence—

(a) to which a fixed penalty offer made under section 302(1) of this Act related;

(b) to which a compensation offer made under section 302A(1) of this Act related; or

(c) to which a work offer made under section 303ZA(1) of this Act related,

providing the judge with information about the making of the offer (including the terms of the offer).".

(3) In section 166 (previous convictions: summary proceedings) of that Act, after subsection (8) there is added—

"(9) This section, except subsection (8) above, applies in relation to the alternative disposals mentioned in subsection (10) below as it applies in relation to previous convictions.

(10) Those alternative disposals are—

(a) a—

(i) fixed penalty under section 302(1) of this Act;

(ii) compensation offer under section 302A(1) of this Act,

that has been accepted (or deemed to have been accepted) by the accused in the two years preceding the date of an offence charged;

(b) a work order under section 303ZA(6) of this Act that has been completed in the two years preceding the date of an offence charged.

(11) Nothing in this section shall prevent the prosecutor, following conviction of an accused of an offence—

(a) to which a fixed penalty offer made under section 302(1) of this Act related;

(b) to which a compensation offer made under section 302A(1) of this Act related; or

(c) to which a work offer made under section 303ZA(1) of this Act related,

providing the judge with information about the making of the offer (including the terms of the offer).".

54 Time bar where offer made

After section 136A of the 1995 Act (inserted by section 23 of this Act) there is inserted—

"**136B Time limits where fixed penalty offer etc. made**

(1) For the purposes of section 136 of this Act, and any provision of any other enactment for a time limit within which proceedings are to be commenced, in calculating the period since a contravention occurred—

(a) where a fixed penalty offer is made under section 302(1) of this Act, the period between the date of the offer and—

(i) the receipt by the procurator fiscal of a notice under section 302(4) of this Act;

(ii) a recall of the fixed penalty by virtue of section 302C of this Act,

shall be disregarded;

(b) where a compensation offer is made under section 302A(1) of this Act, the period between the date of the offer and—

(i) the receipt by the procurator fiscal of a notice under section 302A(4) of this Act;

(ii) a recall of the offer by virtue of section 302C of this Act,

shall be disregarded;

(c) where a work offer is made under section 303ZA(1) of this Act, the period between the date of the offer and—

(i) if the alleged offender does not accept the offer in the manner described in section 303ZA(5) of this Act, the last date for notice of acceptance of the offer;

(ii) if the alleged offender accepts the offer as so described, but fails to complete the subsequent work order, the date specified for completion of the order,

shall be disregarded.

(2) A certificate purporting to be signed by or on behalf of the prosecutor which states a period to be disregarded by virtue of subsection (1) above is sufficient authority for the period to be disregarded.".

Enforcement of fines etc.

55 Fines enforcement officers and their functions

After section 226 of the 1995 Act there is inserted—

"Enforcement of fines etc.: fines enforcement officers

226A Fines enforcement officers

(1) The Scottish Ministers may authorise persons (including classes of person) to act as fines enforcement officers for any or all of the purposes of this section and sections 226B to 226H of this Act.

(2) A FEO has the general functions of—

(a) providing information and advice to offenders as regards payment of relevant penalties;

(b) securing compliance of offenders with enforcement orders (including as varied under section 226C(1) of this Act).

(3) Where an offender is subject to two or more relevant penalties, a FEO—

(a) in exercising the function conferred by subsection (2)(b) above;

(b) in considering whether or not to vary an enforcement order under section 226C(1) of this Act,

shall have regard to that fact and to the total amount which the offender is liable to pay in respect of them.

(4) Where an enforcement order as respects an offender has been made in a sheriff court district other than that in which the offender resides, a FEO for the district

in which the offender resides may (whether or not those districts are in the same sheriffdom) take responsibility for exercising functions in relation to the order.

(5) A FEO taking responsibility for exercising functions by virtue of subsection (4) above is to notify that fact to—

(a) the offender; and

(b) any FEO for the district in which the enforcement order was made.

(6) Notification under subsection (5)(b) above has the effect of transferring functions in relation to the enforcement order—

(a) from any FEO for the district in which the order was made; and

(b) to a FEO for the district in which the offender resides.

(7) The Scottish Ministers may by regulations make further provision as to FEOs and their functions.

(8) Regulations under subsection (7) above are not made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, the Scottish Parliament.

226B Enforcement orders

(1) When a court grants time to pay (or further time to pay) a relevant penalty (or an instalment of it) under section 214 or 215 of this Act, the court shall make an enforcement order under this subsection in relation to payment of the penalty.

(2) Despite subsection (1) above, a court need not make an enforcement order where it considers that it would not be appropriate to do so in the circumstances of the case.

(3) Where, by virtue of subsection (2) above, a court does not make an enforcement order under subsection (1) above, it may subsequently make an enforcement order under that subsection in relation to payment of the penalty.

(4) Where—

(a) a person has accepted (or is deemed to have accepted)—

(i) a fixed penalty offer under section 302(1) of this Act; or

(ii) a compensation offer under section 302A(1) of this Act; and

(b) payment (or payment of an instalment) has not been made as required by the offer,

the relevant court may make an enforcement order under this subsection in relation to the payment due.

(5) Where—

(a) a person is liable to pay—

(i) a fixed penalty notice given under section 54 (giving notices for fixed penalty offences), or section 62 (fixing notices to vehicles) of the Road Traffic Offenders Act 1988 (c. 53), which has been registered under section 71 of that Act; or

(ii) by virtue of section 131(5) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), a fixed penalty notice given under section 129 (fixed penalty notices) of that Act; and

(b) payment (or payment of an instalment) has not been made as required by the penalty,

the relevant court may make an enforcement order under this subsection in relation to the payment due.

(6) Where there is transferred to a court in Scotland a fine—

(a) imposed by a court in England and Wales; and

(b) in relation to which a collection order (within the meaning of Part 4 of Schedule 5 to the Courts Act 2003 (c. 39)) has been made,

the relevant court may make an enforcement order under this subsection in relation to payment of the fine.

(7) An enforcement order under subsection (4), (5) or (6) above may be made—

(a) on the oral or written application of the clerk of court; and

(b) without the offender being present.

(8) An enforcement order shall—

(a) state the amount of the relevant penalty;

(b) require payment of the relevant penalty in accordance with—

(i) such arrangements as to the amount of the instalments by which the relevant penalty should be paid and as to the intervals at which such instalments should be paid;

(ii) such other arrangements,

as the order may specify;

(c) provide contact details for the FEO dealing with the enforcement order;

(d) explain the effect of the enforcement order.

(9) Where a court makes (or is to make) an enforcement order in relation to a fine—

(a) a court may not impose imprisonment—

(i) under section 214(4) of this Act; or

(ii) under section 219(1) of this Act,

in respect of the fine;

(b) a court may not—

(i) allow further time for payment under subsection (9)(a) of section 214 of this Act; or

(ii) make an order under subsection (9)(b) of that section,

in respect of the fine;

(c) the offender may not make an application under section 215(1) of this Act in respect of the fine.

(10) Paragraphs (a) to (c) of subsection (9) above apply for so long as the enforcement order continues to have effect.

(11) An enforcement order ceases to have effect if—

(a) the relevant penalty is paid (including by application of any proceeds of enforcement action); or

(b) it is revoked under section 226G(9)(a) of this Act.

226C Variation for further time to pay

(1) A FEO dealing with an enforcement order may—

(a) on the application of the offender; and

(b) having regard to the circumstances of the offender,

vary the arrangements specified in the order for payment of the relevant penalty.

(2) That is, by—

(a) allowing the offender further time to pay the penalty (or any instalment of it);

(b) allowing the offender to pay the penalty by instalments of such lesser amounts, or at such longer intervals, as those specified in the enforcement order.

(3) An application by an offender for the purpose of subsection (1) above may be made orally or in writing.

(4) A FEO shall notify the offender concerned of any—

(a) variation under subsection (1) above;

(b) refusal of an application for variation under that subsection.

226D Seizure of vehicles

(1) A FEO may, for the purpose mentioned in subsection (2) below, direct that a motor vehicle belonging to the offender be—

(a) immobilised;

(b) impounded.

(2) The purpose is of obtaining the amount of a relevant penalty which has not been paid in accordance with an enforcement order.

(3) For the purposes of this section—

(a) a vehicle belongs to an offender if it is registered under the Vehicle Excise and Registration Act 1994 (c. 22) in the offender's name;

(b) a reference—

(i) to a vehicle being immobilised is to its being fitted with an immobilisation device in accordance with regulations made under subsection (12) below;

(ii) to a vehicle being impounded is to its being taken to a place of custody in accordance with regulations made under that subsection;

(c) a direction under subsection (1) above is referred to as a "seizure order".

(4) A FEO shall notify the offender concerned that a seizure order has been carried out.

(5) Where—

(a) a seizure order has been carried out; and

(b) at the end of such period as may be specified in regulations made under subsection (12) below, any part of the relevant penalty remains unpaid,

a FEO may apply to the relevant court for an order under subsection (6) below.

(6) The court may make an order under this subsection—

(a) for the sale or other disposal of the vehicle in accordance with regulations made under subsection (12) below;

(b) for any proceeds of the disposal to be applied in accordance with regulations made under that subsection in payment of or towards the unpaid amount of the relevant penalty;

(c) for any remainder of those proceeds to be applied in accordance with regulations made under that subsection in payment of or towards any reasonable expenses incurred by the FEO in relation to the seizure order;

(d) subject to paragraphs (b) and (c) above, for any balance to be given to the offender.

(7) Where, before a vehicle which is the subject of a seizure order is disposed of—

(a) a third party claims to own the vehicle; and

(b) either—

(i) a FEO is satisfied that the claim is valid (and that there are no reasonable grounds for believing that the claim is disputed by the offender or any other person from whose possession the vehicle was taken); or

(ii) the sheriff, on an application by the third party, makes an order that the sheriff is so satisfied,

the seizure order ceases to have effect.

(8) An application for the purposes of subsection (7)(b)(ii) above does not preclude any other proceedings for recovery of the vehicle.

(9) A person commits an offence if, without lawful authority or reasonable excuse, the person removes or attempts to remove—

(a) an immobilisation device fitted;

(b) a notice fixed,

to a motor vehicle in pursuance of a seizure order.

(10) A person guilty of an offence under subsection (9) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(11) A seizure order must not be made in respect of a vehicle—

(a) which displays a valid disabled person's badge; or

(b) in relation to which there are reasonable grounds for believing that it is used primarily for the carriage of a disabled person.

(12) The Scottish Ministers may make regulations for the purposes of and in connection with this section.

(13) Regulations under subsection (12) above may, in particular, include provision—

(a) as to circumstances in which a seizure order may (or may not) be made;

(b) as regards the value of a vehicle seizable compared to the amount of a relevant penalty which is unpaid;

(c) by reference to subsection (3)(a) and (7) above or otherwise, for protecting the interests of owners of vehicles apart from offenders;

(d) relating to subsections (3)(b), (5)(b) and (6) above;

(e) as to the fixing of notices to vehicles to which an immobilisation device has been fitted;

(f) as to the keeping and release of vehicles immobilised or impounded (including as to conditions of release);

(g) as to the payment of reasonable fees, charges or other costs in relation to—

(i) the immobilisation or impounding of vehicles;

(ii) the keeping, release or disposal of vehicles immobilised or impounded.

(14) Regulations under subsection (12) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.

(15) In this section—

"disabled person's badge" means a badge issued, or having effect as if issued, under regulations made under section 21 of the Chronically Sick and Disabled Persons Act 1970 (c. 44);

"immobilisation device" has the same meaning as in section 104(9) of the Road Traffic Regulation Act 1984 (c. 27);

"motor vehicle" means a mechanically propelled vehicle intended or adapted for use on roads (except that section 189 of the Road Traffic Act 1988 (c. 52) applies for the purposes of this section as it applies for the purposes of that Act).

226E Deduction from benefits

(1) A FEO may, for the purpose mentioned in subsection (2) below, request the relevant court to make an application under regulations made under section 24(1)(a) of the Criminal Justice Act 1991 (c. 53) for deductions as described in that section.

(2) The purpose is of obtaining the amount of a relevant penalty which has not been paid in accordance with an enforcement order.

226F Powers of diligence

(1) When a court makes an enforcement order, it shall grant a warrant for civil diligence in the form prescribed by Act of Adjournal.

(2) A warrant granted under subsection (1) above authorises a FEO to execute the types of diligence mentioned in subsection (3) below for the purpose mentioned in subsection (4) below.

(3) The types of diligence are—

(a) arrestment of earnings; and

(b) arrestment of funds standing in accounts held at any bank or other financial institution.

(4) The purpose is of obtaining the amount of a relevant penalty which has not been paid in accordance with an enforcement order.

(5) The types of diligence mentioned in subsection (3) above may (whatever the amount of the relevant penalty concerned) be executed by an FEO in the same manner as if authorised by a warrant granted by the sheriff in a summary cause.

(6) However, the power of FEOs to execute the types of diligence mentioned in subsection (3) above is subject to such provision as the Scottish Ministers may by regulations make.

(7) Provision in regulations under subsection (6) above may, in particular—

(a) specify circumstances in which the types of diligence mentioned in subsection (3) above are (or are not) to be executed by a FEO;

(b) modify the application of any enactment (including subsection (5) above) or rule of law applying in relation to those types of diligence in so far as they may be executed by a FEO.

(8) Regulations under subsection (6) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.

226G Reference of case to court

(1) A FEO may refer an enforcement order to the relevant court where—

(a) the FEO believes that payment of a relevant penalty, or any remaining part of a relevant penalty, to which an enforcement order relates is unlikely to be obtained;

(b) for any other reason (including failure of the offender to co-operate with the FEO) the FEO considers it expedient to do so.

(2) A FEO may make a reference under subsection (1) above at any time from the day after the enforcement order is made.

(3) When making a reference under subsection (1) above, the FEO shall provide the court with a report on the circumstances of the case.

(4) A report under subsection (3) above shall include, in particular—

(a) a copy of any report from a supervising officer received by the FEO under section 217(9) of this Act; and

(b) information about—

(i) the steps taken by the enforcement officer to obtain payment of or towards the relevant penalty; and

(ii) any effort (or lack of effort) made by the offender to make payment of or towards the penalty.

(5) Where a reference is made under subsection (1) above, the relevant court shall enquire of the offender as to the reason why the relevant penalty (or an instalment of it) has not been paid.

(6) Subsection (5) above does not apply where the offender is in prison.

(7) Subsections (3) to (7) of section 216 of this Act apply in relation to subsection (5) above as they apply in relation to subsection (1) of that section.

(8) After the court has considered—

(a) the report provided by the FEO under subsection (3) above; and

(b) any information obtained by enquiry under subsection (5) above,

the court may dispose of the case as mentioned in subsection (9) below.

(9) That is, the court may—

(a) revoke the enforcement order and deal with the offender as if the enforcement order had never been made;

(b) vary the enforcement order;

(c) confirm the enforcement order as previously made;

(d) direct the FEO to take specified steps to secure payment of or towards the relevant penalty in accordance with the enforcement order (including as varied under paragraph (b) above);

(e) make such other order as it thinks fit.

226H Review of actions of FEO

(1) The offender may apply to the relevant court for review—

(a) in relation to an enforcement order—

(i) of any variation under section 226C(1) of this Act;

(ii) of any refusal of an application for variation under that section;

(b) of the making of a seizure order under section 226D(1) of this Act.

(2) An application under subsection (1) above requires to be made within 7 days of notification under section 226C(4) of this Act or (as the case may be) section 226D(4) of this Act.

(3) On an application under subsection (1) above, the relevant court may—

(a) confirm, vary or quash the decision of the FEO;

(b) make such other order as it thinks fit.

226I Enforcement of fines etc.: interpretation

(1) In this section and sections 226A to 226H of this Act—

"enforcement order" is to be construed in accordance with section 226B(1) and (4) to (6) of this Act;

"FEO" means a fines enforcement officer;

"offender" means the person who is liable to pay a relevant penalty;

"relevant court"—

(a) in the case of a fine or compensation order, means—

(i) the court which imposed the penalty; or

(ii) where the penalty is transferred to another court, that other court;

(b) in the case of another relevant penalty (apart from a penalty specified by order for the purposes of this section), means—

(i) the court whose clerk is specified in the notice to the offender; or

(ii) where the penalty is transferred to another court, that other court;

(c) in the case of a penalty specified by order for the purposes of this section, means—

(i) the court whose clerk is specified in the notice to the offender;

(ii) where the penalty is transferred to another court, that other court; or

(iii) such other court as the order may specify for those purposes;

"relevant penalty" means—

(a) a fine;

(b) a compensation order imposed under section 249 of this Act;

(c) a fixed penalty offer made under section 302(1) of this Act;

(d) a compensation offer made under section 302A(1) of this Act;

(e) a fixed penalty notice given under section 54 (giving notices for fixed penalty offences) or section 62 (fixing notices to vehicles) of the Road Traffic Offenders Act 1988 (c. 53);

(f) a fixed penalty notice given under section 129 (fixed penalty notices) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8);

(g) such other penalty as the Scottish Ministers may by order specify for the purposes of this section.

(2) An order specifying a penalty or a court for the purpose of this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.".

56 Recognition of EU financial penalties

(1) The Scottish Ministers may by order make provision for the purposes of and in connection with implementing any obligations of the United Kingdom created by or arising under the Framework Decision (so far as they have effect in or as regards Scotland).

(2) The provision may, in particular, confer functions—

(a) on the Scottish Ministers,

(b) on other persons.

(3) The provision—

(a) must relate to fines and other financial penalties imposed by a court on conviction of an offence,

(b) may relate to financial penalties which are—

(i) accrued otherwise than on conviction of an offence, and

(ii) on default, enforced in the same manner as fines imposed by a court.

(4) The provision may not relate to—

(a) orders for the confiscation of instrumentalities or proceeds of crime,

(b) orders of a civil nature which—

(i) arise out of a claim for damages and restitution, and

(ii) are enforceable in accordance with Council Regulation (EC) No 44/2001 of 22 December 2000 (as amended) on jurisdiction and the recognition of judgements in civil and commercial matters.

(5) Expressions used in subsections (3) and (4) and in the Framework Decision are to be construed in accordance with that Decision.

(6) In this section, "the Framework Decision" is Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

Breach of post-conviction orders

57 Probation and community service orders

(1) In section 232 (probation orders: failure to comply with requirement) of the 1995 Act—

(a) in subsection (1), for the words "information from" there is substituted "the basis of a report made to it by",

(b) after subsection (1) there is inserted—

"(1A) A copy of a report made under subsection (1) above shall be served on the probationer in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the copy, together with, where appropriate, a receipt issued by the postal operator shall be sufficient evidence of service of the copy.".

(2) In section 239 (community service orders: requirements) of that Act—

(a) in subsection (4), for the words "information from" there is substituted "the basis of a report made to it by",

(b) after subsection (4) there is inserted—

"(4ZA) A copy of a report made under subsection (4) above shall be served on the offender in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the copy, together with, where appropriate, a receipt issued by the postal operator shall be sufficient evidence of service of the copy.".

58 Restriction of liberty orders

In section 245F (breach of restriction of liberty order) of the 1995 Act, after subsection (2) there is inserted—

"(2A) For the purposes of subsection (2) above, evidence of one witness shall be sufficient evidence.".

PART 4

JP COURTS AND JPS

Establishing JP courts etc.

59 Establishing JP courts

(1) It is the duty of the Scottish Ministers to secure the adequate and efficient provision of courts of summary criminal jurisdiction.

(2) The Scottish Ministers may by order establish courts of summary criminal jurisdiction to be known as justice of the peace courts.

(3) JP courts are to be established by reference to a particular sheriff court district.

(4) There is to be at least one JP court located in every sheriff court district except where, in relation to a district, the Scottish Ministers determine that a JP court is not necessary.

(5) In determining for the purposes of subsection (4) whether a JP court is necessary, the Scottish Ministers must have regard to—

(a) the amount of summary criminal court business in the district, and

(b) the capacity of—

(i) other JP courts in the same sheriffdom,

(ii) the sheriff courts in that sheriffdom.

(6) The Scottish Ministers may by order provide for—

(a) the relocation of a JP court,

(b) the disestablishment of a JP court.

(7) Before making an order under subsection (2) or (6), the Scottish Ministers must consult the sheriff principal for the sheriffdom in which the JP court is, or is to be, located.

(8) This section—

(a) is without prejudice to section 1 (organisation and administration of sheriff courts) of the 1971 Act, and

(b) does not affect the operation of the sheriff court.

(9) In this Part—

a "district court" is a court of that name established under the 1975 Act,

a "JP court" is a justice of the peace court,

a "JP" is a justice of the peace.

60 Making provision for JP courts

(1) The Scottish Ministers—

(a) must make such provision, including provision—

(i) as to organisation and administration, and

(ii) for suitable and sufficient premises and facilities,

as is necessary for the purposes of JP courts,

(b) may make such other provision as is expedient in connection with those purposes.

(2) Provision under subsection (1)(a)(ii)—

(a) may, for the purposes of a JP court, require the local authority for the place in which the court is (or is to be) located to—

(i) let (or sub-let) premises controlled by the local authority to the Scottish Ministers, or

(ii) make such premises available for use,

(b) may be effected through arrangements made in agreement with a local authority or other persons.

(3) A requirement under subsection (2)(a)(i) is subject to agreement—

(a) between the Scottish Ministers and the local authority as to the rent payable under, and as to the other terms of, the lease, and

(b) with any third party who has an interest in the premises.

(4) A requirement under subsection (2)(a)(ii) is subject to—

(a) reimbursing the authority for any reasonable expenses incurred by it in respect of heating, lighting and cleaning in relation to the use of the premises for the purposes of the JP court, and

(b) allowing the premises to continue to be used for any business normally conducted there, or for any business for which it may be used under a local enactment (whether a local Act or otherwise), without adversely affecting that business.

(5) The Scottish Ministers may allow premises used for the purposes of a JP court to be used by other persons, subject to such conditions as the Scottish Ministers may impose for the purpose of ensuring that the business of the JP court is not adversely affected.

(6) Any dispute arising from the operation of subsections (2) to (5), which the parties are unable to resolve, is to be determined by an arbiter appointed—

(a) by agreement of the parties, or

(b) in the absence of such agreement, by the Lord President of the Court of Session on the application of a party.

(7) A JP court is, having regard to the desirability of minimising the expense and inconvenience caused to persons involved (whether as parties or witnesses) in proceedings before the court, to sit at a suitable place.

61 Administration of JP courts

(1) A sheriff principal has responsibility for the efficient administration of any JP court located in that sheriff principal's sheriffdom.

(2) A sheriff principal may, for the purpose of ensuring the efficient administration of any JP court in that sheriff principal's sheriffdom, give directions of an administrative character to any persons (except the Scottish Ministers) involved in the administration of the JP court.

(3) The Scottish Ministers may, for the purpose of ensuring the efficient administration of the JP courts, give directions of an administrative character to any persons involved in the administration of any or all of the JP courts.

(4) Before giving directions under subsection (3) to a sheriff principal, the Scottish Ministers must consult that sheriff principal.

(5) A person to whom directions are given under this section must comply with the directions.

62 Area and territorial jurisdiction of JP courts

(1) A JP court has territorial jurisdiction in respect of offences committed within—

(a) the sheriff court district in which it is located, and

(b) any other district in the same sheriffdom.

(2) Without prejudice to subsection (1)(b), it is competent for proceedings for an offence committed in one district in a sheriffdom to be taken in a JP court in any other district in the sheriffdom.

(3) Sections 9 and 10 of the 1995 Act include further provision in relation to the territorial jurisdiction of JP courts.

(4) A JP or stipendiary magistrate may exercise the judicial functions of office at any place within the sheriffdom for which the JP or (as the case may be) magistrate is appointed.

(5) It is also competent (in the exercise of judicial functions) for a JP or stipendiary magistrate to sign, at any other place in Scotland, any—

(a) warrant, judgment or interlocutor, or

(b) other document,

relating to criminal proceedings within that sheriffdom.

(6) A JP or stipendiary magistrate may exercise signing functions at any place in Scotland.

(7) The competence of a JP or stipendiary magistrate under subsections (4) and (5) extends to competence to—

(a) exercise the functions mentioned in those subsections for the purposes of any remaining district court for an area wholly or partly within the sheriffdom for which the JP or (as the case may be) stipendiary magistrate is appointed, and

(b) do so at any place within the area of that district court.

(8) Any reference in this Act, the 1995 Act or any other enactment to the area of a JP court means the sheriff court district in which it is located.

63 Constitution and powers etc. of JP courts

(1) A JP court has competence, subject to sections 6 and 7 of the 1995 Act (which include provision as to the constitution and powers of JP courts), as respects summary proceedings for offences.

(2) The Scottish Ministers may by order amend section 6(2) of the 1995 Act so that it provides that a JP court (when not constituted by a stipendiary magistrate) is to be constituted by one JP only.

(3) Each JP court is to have a clerk of the court.

(4) The clerk of a JP court is to be a solicitor or advocate.

(5) The clerk of a JP court—

(a) except on occasions when a stipendiary magistrate presides, is to act as legal adviser to the court, and

(b) has such other functions as the Scottish Ministers may confer.

(6) Each JP court is to have such staff as is necessary for the efficient administration of the court.

64 Abolition of district courts

(1) For the purpose mentioned in subsection (2), the Scottish Ministers may by order—

(a) provide for any district court to be disestablished,

(b) impose, in relation to the disestablishment, specific requirements on the local authority responsible for the court.

(2) The purpose is that, by the end of a period determined by the Scottish Ministers, the district courts (taken as a whole) cease to exist.

(3) Before making an order under subsection (1), the Scottish Ministers must consult—

(a) the sheriff principal for the sheriffdom in which the district court is located, and

(b) the local authority responsible for the court.

(4) The Scottish Ministers may by order repeal any or all of the provisions of the 1975 Act to such extent as they consider to be appropriate for the purposes of or in connection with the provisions of this Part.

(5) The Scottish Ministers may by order provide for the application for the purpose of the operation of any remaining district courts of any provisions of the 1995 Act, or any other enactment, which refer to JP courts.

(6) The provisions of—

(a) the 1975 Act for the time being in force,

(b) the 1995 Act, or any other enactment, so far as applying in relation to any remaining district courts,

have effect with or subject to such modifications as the Scottish Ministers may by order make for the purpose of the operation of any remaining district courts.

(7) Any function of any remaining district court (including as referable to jurisdiction or powers) exercisable by virtue of—

(a) a provision of the 1975 Act (including as modified under subsection (6)(a) or as affected by repeal by or under this Act),

(b) a provision of the 1995 Act (including as applied under subsection (5), as modified under subsection (6)(b) or as affected by repeal by or under this Act),

(c) a provision of any other enactment (including as modified under subsection (6)(b) or as affected by repeal by or under this Act),

is subject to such provision as the Scottish Ministers may by order make for the purpose of the operation of any remaining district courts.

(8) Any function of a local authority under a provision of the 1975 Act for the time being in force (including as modified under subsection (6)(a)) is subject to any requirements imposed under subsection (1)(b).

65 Transfer of staff and property

(1) An order under section 64(1) may include provision by reference to a scheme made (or to be made) under subsection (2).

(2) The Scottish Ministers must make a scheme for the transfer to the employment of the Scottish Administration of clerks, assessors and other staff of the district court to which the order applies.

(3) A scheme under subsection (2) may apply to—

(a) all, or any description of, staff,

(b) an individual member of staff.

(4) The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) apply to any transfer of staff by virtue of a scheme made under subsection (2) whether or not they would apply apart from this subsection.

(5) An order under section 64(1) may include provision for the transfer to, and vesting in, the Scottish Ministers of—

(a) property (including rights)—

(i) of the local authority responsible for the district court to which the order applies, and

(ii) which is used (or exercised) for the time being for or in connection with the operation or administration of that district court,

(b) liabilities of that local authority deriving from the operation or administration of that district court.

(6) Provision—

(a) in a scheme under subsection (2),

(b) under subsection (5),

may specify the extent to which the transfer is (or is to be) made.

(7) Subsection (5) has effect despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the transfer of the property or liabilities to which it relates.

(8) A certificate issued by the Scottish Ministers that any property or liability has (or has not) been transferred under subsection (5) is conclusive evidence of that matter.

66 Transitional arrangements for proceedings

(1) Where a district court is disestablished by virtue of section 64(1)—

(a) any proceedings which were instituted in the district court, but which have not been completed when it is disestablished, continue in the appointed JP court as if instituted there,

(b) the cases involved are to be heard and disposed of as if the appointed JP court always had jurisdiction for the proceedings, and

(c) any relevant—

(i) verdict, sentence, order or other determination, and

(ii) complaint, notice, citation, warrant or other document,

has effect accordingly.

(2) For the purposes of subsection (1), the clerk of the district court must transfer to the clerk of the appointed JP court such records, productions and other documents relating to the proceedings as are in the district court clerk's possession.

(3) Further, the clerk of the district court must transfer to the clerk of the appointed JP court such records, productions and other documents relating to recent proceedings as are in the district court clerk's possession.

(4) For the purposes of subsection (3), proceedings are recent if they were completed not more than 5 years before the date on which the relevant district court is disestablished.

(5) The sheriff principal for the sheriffdom in which a district court is located may determine which is the appointed JP court for the purposes of the application of this section in relation to that district court.

(6) Before making a determination under subsection (5) which would have the effect of transferring proceedings to another sheriffdom, the sheriff principal must consult the sheriff principal for that other sheriffdom.

Appointment of JPs etc.

67 Appointment of JPs

(1) Justices of the peace are to be appointed by name on behalf of and in the name of Her Majesty by instrument under the hand of the Scottish Ministers.

(2) A JP is to be appointed for a sheriffdom.

(3) An appointment of a JP is to be for a term of 5 years.

(4) However, a JP—

(a) may resign from office by giving notice to the Scottish Ministers,

(b) ceases to hold office on reaching the age of 70 years.

(5) In making appointments of JPs, except—

(a) appointments under subsection (7)(b),

(b) reappointments under section 70(2),

the Scottish Ministers must comply with such provision as to procedure and consultation as they may by order make.

(6) Provision in an order under subsection (5) may, in particular, relate to—

(a) the participation in the appointments process of persons who are not—

(i) legally qualified,

(ii) involved in the administration of the law or of government,

(b) the manner in which vacancies in office are publicised.

(7) A person who, on the coming into force of this section, holds the office of justice of the peace under the 1975 Act—

(a) ceases to hold that office under that Act on such day as the Scottish Ministers may by order specify for the purpose of this subsection, and

(b) is, on the day so specified, to be appointed as a JP under subsection (1) unless the person declines the appointment.

(8) Subsection (7)(b) applies only in relation to the full justices (within the meaning given by section 9 of the 1975 Act) whose names were included in a duty rota of justices (that is, such a rota as approved under section 16(1)(b) of that Act) for any time during the 12 months ending on the day specified as mentioned in that subsection.

68 Conditions of office

(1) A person is not to be appointed as a JP for a sheriffdom, except where eligible for reappointment under section 70(1)(a), unless the person ordinarily resides in the sheriffdom or within 15 miles of it.

(2) Appointments of JPs are to be made subject to conditions which—

(a) by reference to the JP court business (and business to which signing functions relate) in the sheriffdom, relate to availability to exercise judicial (and signing) functions commensurate to that business,

(b) by reference to an order made under section 69, relate to training and appraisal.

(3) For the purpose of subsection (2)(a)—

(a) the JP court (or signing) business,

(b) any need for availability to exercise judicial (or signing) functions in connection with that business,

means the likely amount as assessed by the sheriff principal.

(4) The Scottish Ministers are, in accordance with a scheme devised by them, to pay allowances to JPs.

(5) A scheme under subsection (4) may, in particular—

(a) by reference to functions, specify rates or amounts of allowances,

(b) specify circumstances in which—

(i) allowances are not payable,

(ii) a rate or amount of allowances payable is reduced,

(c) provide for procedure for claiming and paying allowances.

69 Training and appraisal of JPs

(1) The Scottish Ministers may by order make provision as to—

(a) training arrangements for JPs and future JPs, and

(b) appraisal of JPs.

(2) An order under subsection (1) may, in particular, confer functions on the Lord President of the Court of Session.

(3) An order under subsection (1) may, in particular, establish committees to—

(a) adopt or develop suitable—

(i) training schemes or courses of instruction,

(ii) appraisal systems,

(b) secure—

(i) the provision of such schemes or courses,

(ii) the application of such systems,

(c) provide advice about training and appraisal.

(4) An order under subsection (1) may not be made without the Lord President's prior approval of the provision contained in the order.

70 Reappointment of JPs

(1) A person—

(a) whose 5-year term of appointment as a JP has expired, or

(b) who has resigned from office as a JP,

is eligible for reappointment.

(2) And a person who is eligible under subsection (1)(a) is to be reappointed except where—

(a) the person declines the reappointment,

(b) the person is aged 69 years or over,

(c) the person is disqualified under section 73,

(d) the sheriff principal for the sheriffdom for which the person was appointed as a JP makes a recommendation to the Scottish Ministers against the reappointment.

(3) A recommendation for the purpose of subsection (2)(d) may be made—

(a) on the ground that the JP has inadequately performed the functions of a JP,

(b) on the ground that the JP has, without good reason, failed to meet a condition imposed under section 68(2),

(c) on the ground that the JP does not ordinarily reside in the sheriffdom of appointment or within 15 miles of it,

(d) on such other ground as the sheriff principal considers relevant.

71 Removal of JPs

(1) A JP may be removed from office by, and only by, an order made under subsection (2).

(2) A tribunal appointed by the Lord President of the Court of Session may order the removal of a JP from office.

(3) The tribunal is to consist of three members, namely—

(a) a sheriff principal,

(b) a person who is, and has been for at least 10 years, a solicitor or advocate,

(c) another person.

(4) The sheriff principal member of the tribunal must not be—

(a) the sheriff principal for the sheriffdom for which the JP is appointed,

(b) a temporary sheriff principal.

(5) The sheriff principal member of the tribunal is to chair the tribunal.

(6) The tribunal may make an order under subsection (2) only if, after investigation carried out at the instance of the sheriff principal for the sheriffdom for which the JP is appointed, it finds that—

(a) the JP is—

(i) unfit for that office, or

(ii) unfit for performing judicial functions,

by reason of inability, neglect of duty or misbehaviour,

(b) the JP has inadequately performed the functions of a JP,

(c) the JP has, without good reason, failed to meet a condition imposed under section 68(2).

(7) The Scottish Ministers may by order make provision—

(a) as respects the tribunal,

(b) authorising a specified body or class of persons to recommend (by reference to information provided with the recommendation) to a sheriff principal that an investigation for the purposes of subsection (6) be carried out.

(8) Provision in an order under subsection (7)(a) may, in particular—

(a) prescribe the tribunal's procedures,

(b) enable the tribunal, at any time during an investigation, to suspend a JP from office or from acting as a JP.

(9) A person who is removed from office as a JP is ineligible for reappointment as a JP.

72 Disqualification of solicitors who are JPs

(1) A solicitor who is a JP is disqualified from acting (whether directly or indirectly) as a solicitor in, or in connection with, any proceedings before a JP court in the sheriffdom for which the appointment as JP is made.

(2) A disqualification of a solicitor under subsection (1)—

(a) extends to any member of staff of the solicitor,

(b) where the solicitor is a partner of a partnership or is a member of a limited liability partnership, extends to any—

(i) member of staff of the partnership,

(ii) any other partner or (as the case may be) member of the partnership.

73 Disqualification where sequestration or bankruptcy

(1) A person is disqualified from being appointed as, or acting as, a JP if—

(a) the person's estate has been sequestrated in Scotland, or

(b) the person has been adjudged bankrupt outwith Scotland.

(2) Where a person is disqualified under subsection (1)(a), the disqualification ceases if—

(a) the award of sequestration is recalled or reduced, or

(b) the person is discharged by virtue of the Bankruptcy (Scotland) Act 1985 (c. 66).

(3) Where a person is disqualified under subsection (1)(b), the disqualification ceases if—

(a) the adjudication of bankruptcy against the person is annulled, or

(b) the person is discharged.

74 Appointment of stipendiary magistrates

(1) Stipendiary magistrates are to be appointed by name on behalf of and in the name of Her Majesty by instrument under the hand of the Scottish Ministers.

(2) A stipendiary magistrate is to be appointed for a sheriffdom.

(3) But a stipendiary magistrate may be appointed only if the Scottish Ministers, on the advice of a sheriff principal, consider that the appointment is necessary or expedient for the purposes of the efficient administration of any or all of the JP courts in that sheriff principal's sheriffdom.

(4) A stipendiary magistrate may be appointed as a full-time or part-time magistrate.

(5) A person is not to be appointed as a stipendiary magistrate unless the person is, and has been for at least 5 years, a solicitor or advocate.

(6) A stipendiary magistrate may, by reason of holding that office—

(a) exercise judicial and signing functions in the same manner as a JP, and

(b) use the title of office of JP in relation to the exercise of those functions.

(7) An appointment of—

(a) a full-time stipendiary magistrate is to be without limit of time,

(b) a part-time stipendiary magistrate is to be for a term of 5 years.

(8) However, a stipendiary magistrate—

(a) may resign from office by giving notice to the Scottish Ministers,

(b) ceases to hold office on reaching the age of 70 years.

(9) In making appointments of stipendiary magistrates, except—

(a) appointments under subsection (12)(b),

(b) reappointments by virtue of section 75(3)(b) as it relates to section 70(2),

the Scottish Ministers must comply with such provision as to procedure and consultation as they may by order make.

(10) Provision in an order under subsection (9) may, in particular, relate to—

(a) the participation in the appointments process of persons who are not—

(i) legally qualified,

(ii) involved in the administration of the law or of government,

(b) the manner in which vacancies in office are publicised.

(11) In making an appointment of a part-time stipendiary magistrate, the Scottish Ministers must have regard to the desirability of the magistrate having the opportunity of sitting on not fewer than 20 days, and not more than 100 days, in each successive period of 12 months beginning with the day of appointment.

(12) A person who, on the coming into force of this section, holds the office of stipendiary magistrate under the 1975 Act—

(a) ceases to hold that office under that Act on such day as the Scottish Ministers may by order specify for the purpose of this subsection, and

(b) is, on the day so specified, to be appointed as a stipendiary magistrate under subsection (1) unless the person declines the appointment.

75 Stipendiary magistrates: further provision

(1) Stipendiary magistrates are entitled to such remuneration, allowances and pension provision as the Scottish Ministers may determine.

(2) The Scottish Ministers are to pay the expenditure arising in consequence of subsection (1).

(3) In relation to stipendiary magistrates—

(a) section 68(2)(a) applies,

(b) section 70, except subsection (3)(a) and (c), applies,

(c) section 71, except subsection (6)(b), applies,

(d) sections 72 and 73 apply,

as if a stipendiary magistrate were a JP (and references in those sections to JPs are to be read accordingly).

76 Signing functions

(1) A person who is a JP or a stipendiary magistrate may not exercise the judicial functions of office (but may exercise signing functions) if the person is—

(a) a member of a local authority,

(b) a member of the Scottish Parliament,

(c) a member of the House of Commons or the House of Lords.

(2) A member of a local authority, despite not being a JP, may exercise signing functions in the same manner as a JP.

(3) Where a member of a local authority exercises a signing function, the document, declaration or certificate concerned has effect—

(a) as if that function were exercised by a JP,

(b) even where that document, declaration or certificate requires (or bears to require) to be signed, authenticated or given by a JP,

if the words "member of a local authority" appear on it adjacent to the member's signature.

(4) Where in exercising a signing function a stipendiary magistrate uses the title of office of JP, the document, declaration or certificate concerned has effect as if the magistrate were a JP.

(5) A JP, stipendiary magistrate or member of a local authority may not charge a fee for exercising signing functions.

(6) In this Part, "signing functions" are—

(a) signing any document for the purpose of authenticating another person's signature,

(b) taking and authenticating by signature any written declaration,

(c) giving a signed certificate of—

(i) facts within the giver's knowledge, or

(ii) the giver's opinion as to any matter.

77 Records and validity of appointment etc.

(1) The Scottish Ministers are to maintain (in such form as they consider appropriate)—

(a) a list of all persons holding office as a JP or stipendiary magistrate,

(b) a record of—

(i) the instruments of appointment of those persons,

(ii) any order removing a JP or stipendiary magistrate from office.

(2) The Scottish Ministers are to send to the clerk of each sheriff court a copy of the list and record mentioned in subsection (1) so far as relating to JPs and stipendiary magistrates appointed for the sheriffdom containing that sheriff court.

(3) Where a sheriff clerk is sent a copy of something under subsection (2), the clerk is to make it available (in such form as the clerk considers appropriate) for public inspection.

(4) No appointment of a JP, nor any act of a JP, is invalidated solely because—

(a) provision made under section 67(5) is not complied with,

(b) the residential requirement referred to in section 68(1) is not met, or

(c) a condition imposed under section 68(2) is not met.

(5) No appointment of a stipendiary magistrate, nor any act of a stipendiary magistrate, is invalidated solely because—

(a) provision made under section 74(9) is not complied with, or

(b) a condition imposed by virtue of section 75(3)(a) is not met.

PART 5

INSPECTION OF THE CROWN OFFICE AND PROCURATOR FISCAL SERVICE

78 Appointment of Inspector

(1) There is to be an officer known as Her Majesty's Chief Inspector of Prosecution in Scotland (in this section and section 79 referred to as the "Inspector").

(2) The Inspector is to be an individual person appointed by the Lord Advocate.

(3) A person—

(a) is to be appointed as Inspector for such period as the Lord Advocate may determine,

(b) may be reappointed as Inspector.

(4) A person appointed as Inspector—

(a) may, by giving notice to the Lord Advocate, resign from office,

(b) otherwise, holds and vacates office in accordance with the terms and conditions of appointment.

(5) Any person authorised by the Inspector for the purpose may exercise, on behalf of the Inspector, any function of the Inspector.

79 The Inspector's functions

(1) The Inspector is to secure the inspection of the operation of the Crown Office and Procurator Fiscal Service (in this section referred to as the "Service").

(2) The Inspector is to submit to the Lord Advocate a report on any particular matter connected with the operation of the Service which the Lord Advocate refers to the Inspector.

(3) In the exercise of the function conferred by subsection (1) or (2), the Inspector may require any person directly involved in the operation of the Service to provide the Inspector with information.

(4) For the purposes of subsection (3), information—

(a) may be of a general or specific character,

(b) includes information in electronic or documentary form.

(5) The Scottish Ministers may require the Inspector to provide them with details of the expenditure incurred (or to be incurred) for the purposes of the Inspector's functions.

(6) The Inspector must submit to the Lord Advocate an annual report on the exercise of the Inspector's functions.

(7) Before submitting a report under subsection (6), the Inspector must—

(a) submit a draft report to the Lord Advocate, and

(b) allow the Lord Advocate to comment on its contents.

(8) The Lord Advocate must lay before the Parliament every report submitted under subsection (6).

(9) In exercising the functions conferred on the Inspector by this section (except as relating to any administrative requirement as to reports and expenditure), the Inspector is to act independently of any other person.

(10) In this section, references to the operation of the Service mean the operation of—

(a) the Service as a whole, and

(b) the Service from place to place, by reference to—

(i) Crown Office,

(ii) any Procurator Fiscal.

PART 6

GENERAL

80 Modification of enactments

The schedule makes provision for modification of enactments.

81 Orders

(1) Any power of the Scottish Ministers to make orders under the preceding Parts of this Act is exercisable by statutory instrument.

(2) And it includes power to—

(a) make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient for the purposes of or in connection with the order,

(b) make different provision for different purposes or areas.

(3) But—

(a) a statutory instrument containing an order under section 46(1) or (2), 56 or 63(2) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament,

(b) a statutory instrument containing any other order under the preceding Parts of this Act is subject to annulment in pursuance of a resolution of the Parliament.

82 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 of or in connection with this Act.

(2) An order under subsection (1) may modify any enactment (including this Act), instrument or document.

(3) But—

(a) a statutory instrument containing an order under subsection (1) which adds to, replaces or omits any part of the text of an Act is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament,

(b) a statutory instrument containing any other order under that subsection is subject to annulment in pursuance of a resolution of the Parliament.

83 Interpretation

(1) In this Act—

"the 1971 Act" is the Sheriff Courts (Scotland) Act 1971 (c. 58),

"the 1975 Act" is the District Courts (Scotland) Act 1975 (c. 20),

"the 1995 Act" is the Criminal Procedure (Scotland) Act 1995 (c. 46).

(2) Any expression used in this Act and in the 1995 Act is, unless the context requires otherwise, to be construed in accordance with section 307 (interpretation) of the 1995 Act.

84 Commencement and short title

(1) The provisions of this Act, except sections 81 to 83 and this section, come 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 provisions,

(b) include such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient in connection with the provisions,

(c) make different provision for different purposes or areas.

(3) This Act may be cited as the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.