

CRIMINAL PROCEEDINGS ETC. (REFORM) (SCOTLAND) ACT 2007

EXPLANATORY NOTES

INTRODUCTION

Part 2 - Proceedings

Preparation for summary trial

Section 18: Intermediate diets

124. This section amends section 148 of the 1995 Act which relates to intermediate diets, the purpose of which is to allow the court to ascertain if the parties to a case are adequately prepared to proceed to trial on the date assigned.
125. Paragraph (a) inserts a new paragraph (ba) into subsection (1) of section 148. This provides that the court at the intermediate diet should ascertain from parties the number of witnesses that are required to attend the trial. This is intended to ensure that the parties to a case have given proper consideration to which witnesses they wish to call at the trial before the intermediate diet. This should, in turn, reduce the number of witnesses who are called to the trial and are subsequently not required to give evidence.
126. Paragraph (b) amends subsection (2)(a) of section 148. The present position is that discharge of the trial diet is mandatory where, at the intermediate diet, the court considers that it is unlikely that the trial will proceed on the appointed day. The amendment to subsection 2(a) changes that position by making the discharge in these circumstances discretionary.
127. Paragraph (d) replaces subsection (4) of section 148. Currently the court 'may' at the intermediate diet ask the prosecutor and the accused questions to ascertain the state of preparation of their cases. The new subsection (4) provides that the court 'shall' ask such questions.

Section 19: Notice of defences

128. This section makes new provision in relation to the notification by the accused of a special defence or a notice calculated to exculpate the accused by incriminating a co-accused. The section substitutes the existing sections 149 (Alibi) and 149A (Notice of defence plea of consent) of the 1995 Act with a new section 149B.

New Section 149B

129. Subsections (1) & (2) provide that where the accused intends to insist on a special defence, a defence which incriminates a co-accused, a defence of automatism or coercion or a defence of consent in certain sexual offences, the accused must intimate that intention to the prosecutor in advance. Failure to so intimate will make it incompetent to found on that defence in court unless the court, on cause shown, allows the accused so to do. Currently, under the provisions of section 149, a defence of alibi

*These notes relate to the Criminal Proceedings etc. (Reform) (Scotland)
Act 2007 (asp 6) which received Royal Assent on 22 February 2007*

may be founded upon at any time up until the first witness is sworn. A plea of consent in relation to certain sexual offences requires to be notified no less than 10 days prior to the trial diet.

130. Subsection (3) explains the meaning of consent for the purposes of subsection (2)(d).
131. Subsection (5) provides that intimation of any such defence must be given before an intermediate diet where such a diet is to be held or, where no such diet is to be held, no later than 10 days before the trial diet.
132. Subsection (6) sets out the particulars that must be provided when intimating such a defence. Details of any witnesses to be called to speak to it must be given. Additionally, if a defence of alibi is to be relied upon details as to time and place must also be given.
133. Subsections (7) & (8) provide that where a notice of defence is intimated to the prosecutor, the prosecutor is entitled to an adjournment of the case whether or not the notice was given timeously and whether or not the adjournment could have been requested at an earlier diet.

Section 20: Proof of uncontroversial matters

134. This section modifies the existing provisions which set down the procedure for dealing with evidence which is not thought to be in contention. This provision is designed to, as far as possible, bring the summary provisions in this regard into line with the equivalent provisions applicable to solemn cases. The relevant solemn provisions were introduced as part of the Criminal Procedure (Amendment) (Scotland) Act 2004.
135. Subsection (1) inserts a new subsection (5) into section 257 of the 1995 Act which provides that the parties to a case in summary proceedings are to seek to ensure that any steps which can be taken to (i) identify evidence capable of agreement and (ii) seek agreement of that evidence with the other party are taken before any intermediate diet which is to be held in the case. This provision is designed, so far as possible, to bring the summary provisions into line with the equivalent provisions applicable to solemn cases.
136. Subsection (2) amends section 258 of the 1995 Act to provide that the relevant diet by which a notice of uncontroversial evidence must be served on the parties to the proceedings is to be the intermediate diet where one has been fixed. Where one has not been fixed the trial diet becomes the relevant diet.
137. The changes to sections 258(2) and 258(2A) and insertion of section 258(2ZA) mean that any notice of uncontroversial evidence must be served on parties to the proceedings not less than 7 days prior to the intermediate diet. Any subsequent objection to that notice must be served by the conclusion of the day on which that intermediate diet was held. Where an intermediate diet has not been set down the notice of uncontroversial evidence must be intimated within 14 days of a trial diet.
138. The reference to ‘solemn proceedings’ in subsection (4A) is repealed, thus all cases will be covered by the procedure in that subsection. This means that where a notice of uncontroversial evidence has been challenged, the court has the power to direct that that challenge is to be disregarded. The effect would be to allow the notice to be admitted as evidence notwithstanding the challenge.
139. Time limits are fixed in that subsection for an application to a court to have a challenge disregarded.

Section 21: Service of documents through solicitor etc.

140. This section introduces a new requirement on solicitors engaged by an accused for the purposes of the accused’s defence at trial to intimate that fact to the procurator fiscal and the court. The purpose of the requirement is to enable documents, other than

the complaint, to be served on an accused through that person's solicitor. A similar requirement already exists for solemn cases – see sections 72F and 72G of the 1995 Act.

New Section 148C

141. Subsection (1) as inserted provides that where a solicitor is engaged to act for an accused for the purpose of his defence at a trial the solicitor is required to intimate this fact in writing to the procurator fiscal and the court. The duty applies at a later stage than in solemn proceedings. In terms of section 72F, the duty in solemn proceedings applies wherever a solicitor is engaged for the purpose of the defence of the accused at any part of the proceedings. The provision made for summary proceedings reflects the fact that, at a first calling, the accused may not yet have contacted the solicitor of his choice for the trial, particularly where the accused is represented by the duty solicitor under the Legal Aid Scheme.
142. Subsection (2) provides that the solicitor is deemed to have complied with subsection (1) in circumstances where s/he has (1) appeared at the first calling of the case and tendered a plea on behalf of the accused or intimated in writing a plea on behalf of the accused and (2) at the same time has notified the court and the prosecutor that s/he is also engaged by the accused for the purposes of the accused's defence at trial. The notification under subsection (2) can be given orally or in writing, whereas notification under subsection (1) must be in writing.
143. The effect of subsection (3) is that any solicitor who has intimated that s/he is acting for the accused must intimate if s/he is no longer acting for the accused for any reason.

New Section 148D

144. This section provides that where a solicitor who, by the operation of the provisions in sections 148C and 148D, is known to be acting for the accused it is possible to serve any material in relation to the proceedings on the solicitor rather than the accused, with the exception of the initial complaint which commences the proceedings.