

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

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

#### **Part 2 - Proceedings**

##### **Solemn cases**

##### ***Section 26: Pre-trial time limits***

165. Section 65(1) of the 1995 Act provides that an accused shall not be tried on indictment for any offence unless, where an indictment has been served on the accused in High Court cases, a preliminary hearing is commenced within the period of 11 months. It also provides that, in any solemn case, the trial must be commenced within the period of 12 months of the first appearance of the accused on petition in respect of the offence. Section 65(3) details the circumstances in which the court may extend these time limits. Section 65(3)(a) provides that, in High Court cases where the indictment has been served on the accused, a single judge of that court can, on cause shown, extend both the 11 and 12 month periods. In terms of section 65(3)(b), in any other case, the sheriff may, on cause shown, extend *only* the period of 12 months. This section amends section 65(3)(b) and provides that the sheriff may extend either or both of the periods of 11 and 12 months in High Court cases where the indictment has not been served.

##### ***Section 27: Obstructive witnesses***

166. This section amends certain provisions relating to witnesses on bail in solemn proceedings as a result of the changes introduced by this Act (see note on section 16 for similar provisions applying to summary proceedings – the aim is to ensure consistency between summary and solemn proceedings).
167. Subsection (2) inserts a new subsection (2A) into section 90C of the 1995 Act and provides that, in proceedings for breach of bail, the fact that the witness was on bail, or was subject to a particular condition of bail, or that s/he failed to appear at a diet to which s/he had been cited, shall be held to be admitted unless challenged by a preliminary objection.

##### ***Section 28: Proceedings against bodies corporate***

168. This section amends the provisions relating to the prosecution of bodies corporate found in section 70 of the 1995 Act. A definition of “representative” is inserted into section 70(8). The way in which a person proves that they are able to act as representative of a company is also changed and inserted as subsection (9). These changes bring both the solemn and summary provisions on this matter into line (see note on section 17 for similar provisions applying to summary proceedings).

### ***Section 29: Jury Citation***

169. This section inserts new provisions into section 85 of the 1995 Act relating to the citation of jurors.
170. New subsection (4A) of section 85 provides that citation of a juror may be effected by electronic citation sent by or on behalf of the sheriff clerk by means of electronic communication to the home or business address of the juror.
171. New subsection (4B) of section 85 provides that citation of a juror under subsection (4A) is a legal citation if the sheriff clerk possesses a legible version of an electronic communication which is signed by electronic signature by the person who signed the citation, includes the citation and bears to have been sent to the home or business email address of the juror being cited.
172. New subsection (4C) provides a definition of 'electronic citation' for the purposes of subsection (4A).

### ***Section 30: Duty to seek agreement of evidence***

173. This section amends subsection (4) of section 257 of the 1995 Act and provides that the duty provided under subsection (1) (to seek and secure agreement of evidence capable of being agreed in advance of the trial) is extended to all proceedings on indictment. Currently that subsection relates only to proceedings in the High Court. It also provides a deadline by which the duty is to be complied with (before the preliminary hearing in High Court cases and before the first diet in sheriff court cases).

### ***Section 31: Petition proceedings outwith sheriffdom***

174. This section inserts a new section 34A into the 1995 Act. Section 22(3) of this Act provides for proceedings under summary procedure, in exceptional circumstances, to be initiated in sheriff courts outwith the sheriffdom where the alleged offence took place. This section makes equivalent provision in respect of an accused appearing on petition under solemn procedure. Jurisdiction for subsequent indictments is not affected by this section.

### ***Section 32: Failure of accused to appear.***

#### **New section 102A**

175. **Section 32** inserts a new section 102A into the 1995 Act which provides for an offence where an accused fails to appear, introduces a statutory procedure for the granting of warrants to apprehend in solemn proceedings and details the procedure to be followed if the accused is apprehended.
176. Subsection (1) makes it an offence for an accused to fail to appear at a diet on indictment of which the accused has been given due notice. If convicted of this offence on indictment, the accused will be liable to a fine, or imprisonment for a period not exceeding five years or to both.
177. Subsection (2) provides that the court may, where the accused fails to appear at any diet on indictment of which he has had due notice (apart from a diet which the accused is not required to attend), grant a warrant to apprehend the accused.
178. Subsection (3) provides that it is not competent in any proceedings on indictment for the court to grant a warrant for the apprehension of the accused where the accused fails to appear at a diet otherwise than in accordance with subsection (2). Currently (other than the provisions of section 71(4) of the 1995 Act) there is no statutory authority for the granting of a warrant to apprehend on indictment. The warrant is issued at common law. The provision in section 71(4) of the 1995 Act is repealed by paragraph 12(2) of the schedule to this Act.

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

179. Subsection (4) provides that it remains competent for a court to grant a warrant on a petition under section 34 of the 1995 Act in respect of an offence of failing to appear at a diet under subsection (1) of this section, or an offence under section 27(1)(a) of the 1995 Act, where the offence relates to the same failure to appear (whether or not a warrant was granted under section 102A(2)).
180. Subsections (5) & (6) make clear that the effect of the court granting a warrant to apprehend an accused under subsection (2) is that the indictment falls as respects that accused unless the court makes an order to a different effect.
181. Subsection (7) sets out the circumstances in which the court can make an order under subsection (6). The court may do so on the motion of the prosecutor for the purpose of proceeding with a trial in the absence of the accused. Where it is for any other purpose, the court may make such an order on the motion of the prosecutor, or of its own accord.
182. Subsection (8) makes provision for the form of a warrant granted under subsection (2) to be prescribed by Act of Adjournal.
183. Subsection (9) sets out the authority conferred by a warrant granted under section 102A.
184. Subsection (10) provides that where an accused is apprehended under a warrant granted under this section the accused must, wherever practicable, be brought before a relevant court not later than in the course of the first day on which that court is sitting after the accused is taken into custody.
185. Subsection (11) provides that where the accused is brought before a court in pursuance of a warrant granted under section 102A, the court is required to make an order either detaining the accused in custody until liberated in due course of law or releasing the accused on bail.
186. Subsection (12) provides that the court must have regard to the terms of the indictment in respect of which the warrant was granted, even where the indictment has fallen in terms of subsection (5), when making an order in accordance with subsection (11).
187. Subsection (13) provides that any period of time previously spent in custody as regards the case (prior to an order being made under subsection (11)) does not count towards any applicable custody time limit set out in section 65(4) of the 1995 Act.
188. Subsection (14) clarifies the meaning of the references in subsection (13) to the accused's detention in custody.
189. Subsection (15) provides that it is competent for an indictment to be amended to include an additional charge of an offence under subsection (1) (failing to appear at a diet of proceedings on indictment of which the accused has been given due notice).
190. Subsection (16) defines references to "the court" where they appear in section 102A.