

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

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

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

#### **Miscellaneous**

#### ***Section 40: Power of court to excuse procedural irregularities***

#### **New section 300A**

225. This section inserts section 300A into the 1995 Act and creates a new power for the court to relieve any party to a criminal case from failure to comply with certain procedural requirements. This power applies to summary and solemn cases. The power can be exercised whether the requirements are set out in statute (such as the 1995 Act) or whether they form part of the common law. An example of where this provision may be used would be where an accused appears on a number of complaints at different times and, in order that the complaints may be dealt with at the same time, the complaints are continued to the same date. On that date the complaints are dealt with, with the exception of one which was inadvertently missed from the court list. This was not discovered until the next day. As the complaint did not call on the date it was continued, the proceedings were deemed to have fallen at midnight on the date of the continuation. This provision would allow the prosecutor to apply to the court to seek an excusal of that irregularity and have the case called.
226. Subsection (1) sets out the circumstances in which the court can excuse a procedural irregularity. The irregularity must fall within the kinds described in subsection (5), and must also relate to the current criminal proceedings before the court. The court can exercise its power only where the conditions set out in subsection (4) apply.
227. Subsection (2) provides that the High Court, in appeal proceedings, can also excuse a procedural irregularity which occurred in the original proceedings which are the subject of the appeal. Subsection (3) provides that the application may be at the instance of the prosecutor or the accused and that the other party is to be given the opportunity to be heard.
228. Subsection (4) lists certain conditions of which the court must be satisfied before excusing a procedural irregularity under subsection (1). A procedural irregularity must have arisen from a mistake or an oversight, or another excusable reason, and the court must be satisfied in the circumstances of the case that its excusal would be in the interests of justice.
229. Subsection (5) describes the procedural failures that are covered by the court's power to excuse. Paragraphs (a) to (d) of subsection (5) list specific types of irregularity. The list is not intended to be exhaustive – paragraph (e) states that any other procedural

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

requirement not complied with by the court, the prosecutor or the accused may be excused by the court, subject to the exclusions set out in subsections (6) and (7).

230. Subsection (6) expressly excludes irregularities arising from a period of detention of an accused person in custody which exceeds the relevant time limits contained in the 1995 Act. Therefore, for example, a failure on the part of the Crown to commence proceedings within the 40 day time limit in section 147 where the accused is being held in custody could not be excused under new section 300A. However, the general power in section 300A is without prejudice to any statutory provision that allows the court to extend a time limit (subsection (11)). Accordingly, in the above example, section 147(2) would continue to apply and an application could therefore be made under that provision for an extension of the time limit.
231. Subsection (7) expressly excludes irregularities relating to the admissibility or sufficiency of evidence, or any other evidential factor. For example the fact that evidence had been ruled as inadmissible because it was irrelevant could not be excused. Nor could a lack of corroboration (in terms of sufficiency of evidence) be excused.
232. Subsection (8) sets out the powers available to the court where it decides to excuse a procedural irregularity under subsection (1). Following an excusal, the court can make an order, as is necessary or expedient, for the purpose of restoring or facilitating the continuation of the proceedings as if the irregularity had never occurred, or protecting the rights of the parties to the case.
233. Subsections (11) & (12) make it clear that section 300A is to operate without prejudice to other parts of the 1995 Act which empower the court to cure defects in proceedings by, for example, allowing the court to alter a diet, extend a particular time period or limit, or any rule of law which allows departure from directory requirements to be excused.