



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

2007 asp 6

PART 2

PROCEEDINGS

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—

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“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.”.

Commencement Information

- II** S. 19 wholly in force at 10.12.2007, see s. 84 and S.S.I. 2007/479. {art. 3}, Sch. (subject to transitional provisions in art. 7)

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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.”.

[^{F1}(3) In section 258 of that Act, after subsection (4C) there is added—

“(4D) In summary proceedings, the court may allow an application under subsection (4A) above to be made late if the court is satisfied that a timeous application would not have been practicable.”]

Textual Amendments

F1 S. 20(3) added (10.12.2007) by [The Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(Incidental, Supplemental and Consequential Provisions\) Order 2007 \(S.S.I. 2007/540\)](#), [art. 4](#)

Commencement Information

I2 S. 20 wholly in force at 10.12.2007, see [s. 84](#) and [S.S.I. 2007/479](#). {art. 3}, Sch. (subject to transitional provisions in art. 7)

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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

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

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I3 [S. 21](#) wholly in force at 10.12.2007, see [s. 84](#) and [S.S.I. 2007/479](#). art. 3, Sch. (subject to transitional provisions in art. 8)

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