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

2007 asp 6

PART 2

PROCEEDINGS

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.".

Commencement Information

I1 S. 12 wholly in force at 10.3.2008; s. 12 not in force at Royal Assent, see s. 84; s. 12(1) in force and s. 12(2) in force for certain purposes at 10.12.2007 by S.S.I. 2007/479, **art. 3**, Sch.; s. 12(2) otherwise in force at 10.3.2008 by S.S.I. 2008/42, **art. 3**, Sch. (subject to savings in art. 5)

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.".

Commencement Information

I2 S. 15 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. 6)

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.".

Changes to legislation:
There are currently no known outstanding effects for the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, Cross Heading: Summary procedure.