



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

2007 asp 6

PART 2

PROCEEDINGS

Summary procedure

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

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- (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,

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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—

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- (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—

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- (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

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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.”.