



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

2007 asp 6

PART 2

PROCEEDINGS

Solemn cases

32 Failure of accused to appear

After section 102 of the 1995 Act there is inserted—

“Failure of accused to appear

102A Failure of accused to appear

- (1) In proceedings on indictment, an accused person who without reasonable excuse fails to appear at a diet of which the accused has been given due notice (apart from a diet which the accused is not required to attend) is—
 - (a) guilty of an offence; and
 - (b) liable on conviction on indictment to a fine or to imprisonment for a period not exceeding 5 years or to both.
- (2) In proceedings on indictment, where an accused person fails to appear at a diet of which the accused has been given due notice (apart from a diet which the accused is not required to attend), the court may grant a warrant to apprehend the accused.
- (3) It is not, otherwise than under subsection (2) above, competent in any proceedings on indictment for a court to grant a warrant for the apprehension of an accused person for failure to appear at a diet.
- (4) However, it remains competent for a court to grant a warrant on petition (as referred to in section 34 of this Act) in respect of an offence under—
 - (a) subsection (1) above;

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- (b) section 27(1)(a) of this Act,
whether or not a warrant has been granted under subsection (2) above in respect of the same failure to appear to which that offence relates.
- (5) Where a warrant to apprehend an accused person is granted under subsection (2) above, the indictment falls as respects that accused.
- (6) Subsection (5) above is subject to any order to different effect made by the court when granting the warrant.
- (7) An order under subsection (6) above—
- (a) for the purpose of proceeding with the trial in the absence of the accused under section 92(2A) (where the warrant is granted at a trial diet), 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.
- (8) A warrant granted under subsection (2) above shall be in such form as may be prescribed by Act of Adjournal or as nearly as may be in such form.
- (9) A warrant granted under subsection (2) above (in the form mentioned in subsection (8) above) shall imply warrant to officers of law—
- (a) to search for and apprehend the accused;
 - (b) to bring the accused before the court;
 - (c) in the meantime, to detain the accused in a police station, police cell or other convenient place; and
 - (d) so far as is necessary for the execution of the warrant, to break open shut and lockfast places.
- (10) An accused apprehended under a warrant granted under subsection (2) above shall wherever practicable be brought before the court not later than in the course of the first day on which the court is sitting after the accused is taken into custody.
- (11) Where the accused is brought before the court in pursuance of a warrant granted under subsection (2) above, the court shall make an order—
- (a) detaining the accused until liberated in due course of law; or
 - (b) releasing the accused on bail.
- (12) For the purposes of subsection (11) above, the court is to have regard to the terms of the indictment in relation to which the warrant was granted even if that indictment has fallen.
- (13) In a case where a warrant is granted under subsection (2) above, any period of time during which the accused was detained in custody—
- (a) as regards that case; and
 - (b) prior to the making of an order under subsection (11) above,
- does not count towards any time limit applying in that case by virtue of section 65(4) of this Act.
- (14) For the purposes of subsection (13) above—
- (a) detention as regards a case includes, in addition to detention as regards the indictment in relation to which the warrant was granted (whether

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- or not that indictment has fallen), detention as regards any preceding petition;
- (b) it is immaterial whether or not further proceedings are on a fresh indictment.
- (15) At any time before the trial of an accused person on indictment, it is competent—
- (a) to amend the indictment so as to include an additional charge of an offence under subsection (1) above;
- (b) to include, in the list of witnesses or productions associated with the indictment, witnesses or productions relating to that offence.
- (16) In this section, “the court” means—
- (a) where the accused failed to appear at the High Court—
- (i) for the purposes of subsections (10) to (12) above, that Court (whether or not constituted by a single judge);
- (ii) otherwise, a single judge of that Court;
- (b) where the accused failed to appear at a sheriff court, any sheriff court with jurisdiction in relation to the proceedings.”.

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