These notes relate to the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5) which received Royal Assent on 4th June 2004

CRIMINAL PROCEDURE (AMENDMENT) (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 - Solemn Proceedings Generally

Section 6 - Time limits

49. Section 6 amends section 65 of the 1995 Act, which contains the time limits for proceedings on indictment in the High Court and the sheriff court.

50. Subsection (1) of section 65 currently provides that where any trial on indictment is not commenced within 12 months of the first appearance of the accused on petition the current proceedings fall and no further indictment on those charges can be issued. Subsection (2) of section 6 amends section 65(1) so as to require that, in High Court cases, a preliminary hearing must commence within 11 months of the first appearance of the accused on petition. The same consequences apply if the new 11 month time limit is not met i.e. the accused cannot be tried again on these charges.

51. Section 65(2) currently provides that the 12 month period does not operate so as to prevent trial in the case of an accused for whom a warrant has issued for failure to appear at a diet in the case. Subsection (3) amends section 65(2) so as to provide that in those circumstances the 11 month time limit for the preliminary hearing also does not operate to prevent trial of the accused.

52. Subsection (4) amends section 65(3) so as to provide that a single judge of the High Court may on cause shown extend the periods of 11 and 12 months in High Court cases and that the sheriff on cause shown may extend 12 month period in any other case (ie cases indicted in the sheriff court and those cases where an indictment has not been served).

53. Subsection (5) amends section 65(4) ("custody time limits") so as to-

- provide that an accused may not be detained by virtue of the warrant committing him or her for trial for a period of more than 80 days without an indictment having been served and that where it is not served he or she shall be entitled to be admitted to bail. At present if the indictment is not served within that period the accused is simply liberated; and

- provide that an accused indicted to the High Court may not be detained by virtue of the warrant committing him or her for trial for a period of more than 110 days without a preliminary hearing having commenced and that his or her trial must commence within a period of 140 days. The present time limit is that a trial must commence within the 110 day period. In addition, the subsection amends the present provision by giving the accused an entitlement to bail if these time limits are not complied with. At present if the 110 day period is not met the accused is liberated

forthwith and is free from any further prosecution on the charges on the indictment; and

- retain the 110 day period for cases in the sheriff court but provide that where that time limit cannot be met the accused shall be entitled to bail rather than (as at present) being liberated forthwith and free from any further prosecution on the charges on the indictment.

54. Subsection (6) inserts new provision that where a preliminary hearing is dispensed with under the provisions of new section 72B(8) the requirements to commence the hearing within the 11 month period (provided by the amendments made to section 65(1) by subsection (2)) and the 110 day period (provided by the amendment made to section 65(4) by subsection (5)(b)) do not apply.

55. Subsection (7) substitutes for the present subsection (5) of section 65 new subsections (5) to (5B) modifying the powers of the courts to grant extensions to the custody time limits. At present all applications for extension of the custody time limits are heard by a judge of the High Court. Where a time limit is not met the accused is liberated. Under the revised provisions applications for extensions will be dealt with by the court to which the case has been indicted, although applications for extension of the 80 day time limit (when the indictment has not yet been served) will still be heard by a judge of the High Court. Parties have a right to be heard, although it will be possible for the judge to determine the application without a hearing where defence and prosecution make a joint application for an extension. The present provision excluding an extension of the 80 day period where but for some fault on the part of the prosecutor the indictment could have been served is repealed. So also are the specific grounds applicable to the present 110 day period namely, illness of the accused, absence or illness of any necessary witness or any other sufficient cause not attributable to fault on the part of the prosecutor. The sole ground for extension of the custody time limits is cause shown.

56. Subsection (8) repeals section 65(6) and (7) which contain provision as to the grounds on which applications for extensions may be granted.

57. Subsection (9) introduces new subsections (8A) to (8D) into section 65. Subsection (8A) provides that where an accused is entitled to be admitted to bail as a result of the custody time limits not being complied with he shall, where the indictment has not been served, be brought forthwith before a judge of the High Court or, where the indictment has been served, a judge of the court to which the case has been indicted.

58. Subsection (8B) provides that where an accused has been brought before a judge under subsection (8A) the prosecutor shall be given an opportunity to make an application for extension of the time limit.

59. Subsection (8C) provides that if no application is made by the prosecutor or if the application is refused the court, before admitting the accused to bail, shall give the prosecutor an opportunity to be heard. In effect, the prosecutor will have the opportunity to comment on bail conditions before they are set.

60. Subsection (8D) provides that where an application to extend the time limit is refused and the prosecutor appeals against that refusal the accused may continue to be detained for a period of up to 72 hours from the granting of the bail, or for such longer period as the High Court may allow; and at the end of that period the accused must be released on bail whether the appeal has been disposed of or not.

61. Subsection (10) provides that where an accused is cited by the affixing of a notice in the prescribed form to the door of the accused's dwelling-house or place of business the indictment shall be deemed to be have been served on the accused. This takes account of the change to available methods of citation which was made by section 61 of the Criminal Justice (Scotland) Act 2003, which amended section 66 of the 1995 Act.

Section 7 - Citation

62. Section 7 of the Act amends section 66 of the 1995 Act which makes provision in relation to service and lodging of the indictment etc.

63. Subsection (1) of section 66 at present provides for the issue by the Clerk of Justiciary or, for solemn proceedings in the sheriff court, the sheriff clerk of a warrant to cite the accused witnesses and jurors when sittings of the relevant court have been appointed to be held for the purposes of trial of persons accused on indictment.

64. In terms of the Act, when a case is indicted in the High Court no trial diet will have been set. The accused will be cited to a preliminary hearing at which the trial diet shall be appointed by the court if appropriate. That diet will be appointed not to a sitting but to a specified date (which may under new section 83A inserted in the 1995 Act by section 5 of the Act be a date fixed as a date on which the diet must call).

65. Subsection (2) substitutes in relation to High Court and sheriff court solemn proceedings a new subsection (1) in section 66 which provides that the Act shall be sufficient authority for the citation of accused, witness and jurors. This removes the need for a warrant to be issued by the Clerk of Justiciary or sheriff clerk.

66. Subsections (3) and (4) amend the provisions relating to service where the accused is not in custody and provide that the accused may be cited by a constable affixing the notice referred to in subsection (4)(b) of section 66 at the accused's proper domicile of citation or in any other case at any premises which a constable reasonably believes to be the accused's dwelling house or place of business.

67. Subsection (5) inserts new subsections (6C) to (6E) into section 66. Subsections (6C) and (6D) provide that an accused will be taken as having been served with the indictment and notice of compearance referred to in section 66(6) if they are served on a solicitor who has intimated to the procurator fiscal that he is acting for the accused and has not informed that procurator fiscal that he has been dismissed or is no longer acting for the accused. Subsection (6E) imposes a duty on a solicitor who has, prior to service of the indictment, informed the prosecutor that he is engaged by the accused, to inform the procurator fiscal if he is dismissed by, or withdraws from acting for, the accused.

68. Subsection (6) provides for the consequential repeal of subsection (8) which relates to the warrant issued under the present subsection (1).

Section 8 - Engagement, dismissal and withdrawal of solicitor representing the accused

69. Section 8 inserts new section 72F in the 1995 Act. Subsection (1) of new section 72F requires any solicitor engaged by the accused in all proceedings on indictment to notify the court and the prosecutor accordingly in writing of that fact. Subsection (2) provides that if the solicitor has informed the procurator fiscal in writing prior to service of the indictment that he is acting and has not notified the procurator fiscal that he has been dismissed or has withdrawn from acting that is sufficient. Subsection (3) requires the solicitor if he or she is dismissed or withdraws to give immediate notification of that fact to the court and the prosecutor.

70. Subsection (4) provides that notification for the purposes of subsections (1) and (3) can be given to the prosecutor by being given, in the High Court cases, to the Crown Agent or, in sheriff court cases, to the procurator fiscal for the district where the trial is to be held.

71. Subsection (5) read with subsections (6) and (7) requires the court to fix a further pre-trial diet when a trial date has been fixed where:

- intimation is received after the preliminary hearing (or after the hearing has been dispensed with), or in sheriff court cases after the first diet, that a solicitor then acting for the accused is no longer so acting; and
- the case is one in which the accused is prohibited from conducting his own defence.

72. Subsection (8) requires the court, at the pre-trial diet, to ascertain from the accused whether he has appointed another solicitor to act on his behalf. Under subsection (9) a further diet under this section must be not less than 10 clear days before the trial diet.

73. Subsection (10) gives the court the power to postpone the trial diet for such period as appears appropriate and if it thinks fit direct that such period, or some part of it, shall not count towards any time limit applying in the case.

74. Subsection (11) gives the court power to dispense with a diet fixed under this section, but only if a solicitor engaged by the accused intimates that he has been engaged for the trial, and so requests.

Section 9 - Procedure where trial diet does not proceed

75. Section 9 substitutes a new section 81 into the 1995 Act which provides for the procedure where the trial diet does not proceed.

76. Subsection (1) provides that where the court has deserted the trial *simpliciter* the prosecutor can not raise another indictment in respect of these charges unless that decision is reversed on appeal.

77. Subsection (2) provides that where the court has deserted the diet *pro loco et tempore* (temporarily) the Court may appoint a further trial diet for a later date and the accused is required to attend that further diet.

78. Subsection (3) requires the court to have regard to the state of preparation of parties with respect to their cases and in particular the likelihood of the case being ready to proceed to trial on the date to be appointed for the trial. If there are any preliminary pleas, issues or other matters which require to be, or could be with advantage be, disposed of before the trial the judge may appoint a diet to be held before the trial diet for the purpose of disposing of them.

79. Subsections (4) and (5) provide that where a trial diet has been deserted *pro loco et tempore* and no further trial diet has been fixed under subsection (2), or where the indictment falls or has not been brought to trial and has not been continued, adjourned or postponed, the prosecutor may give notice, if the trial diet was in the High Court, to the accused within two months after the diet on another copy of the indictment to appear at a further preliminary hearing not less than seven clear days after service of the notice. Alternatively, if the charge is one that can be lawfully tried in the sheriff court, notice may be given to the accused to appear at a first diet in the sheriff court not less than 15 clear days after service and a trial diet not less than 29 clear days after service of the notice. If the trial diet was in the sheriff court, the notice may be given to appear and answer the indictment at a further trial diet in the sheriff court not less than seven clear days after service of the notice or to a preliminary hearing in the High Court not less than 21 days after service of the notice.

80. Subsection (6) provides that where notice is given to the accused to appear and answer the indictment in the sheriff court in a case where the trial diet referred to in subsection (4) was in the High Court, or to appear and answer the indictment at a preliminary hearing in the High Court in a case where that trial diet was in the sheriff court the giving of notice shall be taken, for the purposes of section 65(4), to be service of an indictment in, respectively, the sheriff court or the High Court and the previous service of the indictment is to be disregarded.

81. Subsection (7) provides that the notice is to be in a form prescribed by Act of Adjournal.

82. Subsection (8) makes provision as regards the start of the 2 month period.

Section 10 - Trial in absence of accused

83. Section 10 of the Act amends section 92 of the 1995 Act to give the court power to proceed with a solemn trial in the absence of the accused in certain cases. At present, section 92 provides that a trial cannot take place in the absence of the accused. This is subject to the exception in section 54 of the 1995 Act that applies where the accused is insane and there is an examination of facts or the exception in section 92(2) where the accused requires to be removed from court because of disruptive behaviour.

84. Subsection (1) amends section 92(1) to make it clear that the requirement for the trial to take place in the presence of the accused is subject to the further exception provided for in new subsection (2A) of section 92 inserted by section 10(3).

85. Subsection (2) amends the existing provision in section 92(2) which allows the court to proceed with a trial in absence because of disruptive behaviour by the accused and appoint a counsel or a solicitor to represent his interests. The amendment removes the reference to the court appointing counsel. This is to ensure consistency with the amendments that are being made in the remainder of section 11 in relation to legal representation of the accused where there is a trial in absence under the further exception that is provided for in new section 92(2A) (see below).

86. Subsection (3) creates a further exception to the requirement that the trial take place in the presence of the accused by inserting new subsections (2A) to (2F) into section 92. New subsection (2A) gives the court discretion to proceed with a trial in the absence of the accused on the motion of the prosecutor once evidence has been led, provided that evidence substantially implicates the accused and, taking into account the point in the proceedings where the failure to appear occurred, the court is satisfied that it is in the interests of justice to do so. Subsection (2B) makes provision for the court, where the prosecutor makes a motion under subsection (2A), if satisfied that there is a solicitor with authority to act for the purposes of representing the accused's interests at the hearing of the motion and for the purposes of the accused's defence at the trial, to allow that solicitor to act or if there is no such solicitor to appoint a solicitor to act for those purposes.

87. New subsections (2C) and (2D) relate to the duties of the solicitor appointed by the court and the engagement of Counsel. Subsection (2E) provides for the appointment of further solicitors by the court where the court is satisfied that a solicitor allowed to act under subsection (2B) no longer has authority to act or a solicitor appointed by the court under that subsection is no longer able to act in the best interests of the accused.

88. Subsection (2F) provides that the provisions in relation to legal representation for the accused when there is a trial in absence do not apply if the trial relates to a sexual offence or an offence in respect of which the court has made an order that there are vulnerable witnesses. This is because section 288D of the 1995 Act makes separate provision for the appointment of legal representation in those cases.

89. Subsection (5) amends section 66 of the 1995 Act to make provision to ensure that the accused if it is a body corporate is advised about the consequences of non-appearance when it is cited. The amendments provide that in a High Court case the notice must advise the body corporate that if it fails to appear as mentioned in section 70(4) of the 1995 at the preliminary hearing the hearing may proceed and a trial may be appointed in its absence and, in the case of the High Court or the sheriff court, if the body corporate fails to appear at the trial diet, that the trial may proceed in its absence. Subsection (6) amends section 70 of the 1995 Act by providing that the court requires to be satisfied that the body corporate was cited in accordance with section 66 of the Act and that it is in the interests of justice to do so before proceeding with the trial in the absence of the accused.

90. Subsections (7) and (8) amend the Legal Aid (Scotland) Act 1986 (c.47) to provide that accused persons are automatically entitled to legal aid for trials in absence and that the exception to the provision that an accused is entitled to choose a solicitor extends to these cases.

Section 11 - Obstructive witnesses

91. Section 11 inserts into the 1995 Act new sections 90A to 90E setting out how the court may deal with obstructive witnesses. These provisions set out the law in relation to the issuing of warrants for the apprehension of witnesses in proceedings on indictment; provide that where a witness is brought to court the court may (*inter alia)* release the witness on bail; give parties the right to appeal against the terms of orders made in relation to obstructive witnesses (including bail orders); set out the sanctions where bail orders are breached; and provide for review of court orders made in relation to obstructive witnesses.

New section 90A: apprehension of witnesses in proceedings on indictment

92. Section 90A deals with the apprehension of witnesses in proceedings on indictment, and replaces existing law on the matter (subsection (8)). Subsections (2) and (3) set out the circumstances in which a warrant may be issued for the apprehension of a witness. These are:

- where the witness has been duly cited and has deliberately and obstructively failed to appear, and
- where the court is satisfied by evidence on oath that the witness is being deliberately obstructive and is not likely to attend without compulsion.

93. Subsection (4) creates a presumption, in the absence of evidence to the contrary, that a witness who, having been duly cited, fails to appear has done so deliberately and obstructively.

94. Subsection (5) provides that an application for a warrant under subsection (1) may be made either orally or in writing and may be dealt with in chambers or in court with or without a hearing. Provision for the application to be made in writing means that it can be supported by a sworn affidavit by an officer of law attesting to the fact of citation without requiring that officer to attend the court. Under subsection (6) the warrant shall be as prescribed in an Act of Adjournal

95. Subsection (7) authorises officers of law in possession of the warrant to search for and apprehend the witness and take him to the appropriate court and grants authority to detain him meantime in a police cell or station or other convenient place. The warrant authorises the breaking open of shut and lockfast places for the purposes of executing the warrant.

96. Subsections (9) and (10) provide that a witness apprehended under a warrant should be brought before either a single judge of the High Court or the sheriff court no later than the first sitting day after he is apprehended.

New section 90B – orders in respect of witnesses apprehended under section 90A

97. Section 90B gives the court power to deal with witnesses apprehended under a warrant issued under the preceding section.

98. Subsection (1) states that where a witness has been apprehended and brought before the court parties and the witness will have an opportunity to address the court. The court may thereafter order the witness to be detained in custody until the conclusion of the diet at which he is due to give evidence; to be released on bail; or to be liberated. Under subsection (2) the court must be satisfied before ordering the witness to be detained in

custody or released on bail that such an order is necessary and appropriate to secure attendance of the witness.

99. Subsection (3) retains the power of the court to make a finding of contempt of court in respect of any witness who fails to attend having been cited and to dispose of the case accordingly.

100. Subsection (4) provides that, where a witness has been ordered to be detained in custody until the conclusion of the diet in which he is to give evidence, the trial court may recall that order when excusing the witness even if the trial is not concluded. The trial court may therefore liberate the witness as soon as they take the view that the witness's presence is no longer required. For example, the court might decide to release the witness immediately after their evidence has been given but before the conclusion of the trial.

101. Subsections (5) and (6) authorise the court, when releasing a witness on bail, to impose such conditions as it considers necessary to secure the attendance of the witness at court other than a deposit of a sum of money in court.

102. Subsection (7) provides that where the court has ordered the witness to be detained in custody it may on the application of the witness recall that order and order that the witness be released on bail subject to a condition restricting his movements together with a requirement that his compliance with that condition be remotely monitored.

103. Subsections (8) to (10) provide for the application of certain provisions of sections 24A to 25 of the 1995 Act to cases where remote monitoring requirements have been imposed on a witness under subsection (7). The provisions applied make provision—

- requiring the parties to be given the right to be heard (section 24A(7))
- requiring the effect of a remote monitoring requirement to be explained to the witness (section 24A(8) and (9))
- as the matters to be considered and information to be obtained before the court imposes a remote monitoring requirement (section 24A(10) to (12))
- as to monitoring in pursuance of remote monitoring requirements, including provision about devices to be worn for the purposes of such monitoring (section 24A(13) to (15) and section 24D)
- enabling regulations to be made by the Scottish Ministers about the imposition of remote monitoring requirements (section 24B)
- for the designation of persons who may monitor in pursuance of remote monitoring requirements (section 24C)
- about specification of the conditions of bail and the witness's proper domicile of citation (section 25)

New section 90C – breach of bail under section 90B(1)(b)

104. Section 90C introduces sanctions for those witnesses who, having been granted bail, fail to comply with any of the conditions attached to the order granting bail.

105. Subsections (1) and (2) make provision analogous to that provided in section 27 of the 1995 Act in relation to accused in solemn cases who breach bail. Subsection (1) provides that any witness on bail who fails to appear at any diet to which he has been cited or who fails to comply with any condition imposed in the order shall be guilty of an offence and subsection (2) sets out the penalties which may be imposed in the event of a conviction under the preceding section. These penalties - a fine and imprisonment not exceeding two years - are the same as those which apply under section 27(7) of

the 1995 Act where an accused in a solemn case fails to appear at a diet to which he has been cited.

106. Subsections (3) to (6) provide that evidence of an offence under subsection (1)(b) where the condition breached is a movement restriction condition or a requirement not to tamper with or intentionally damage the device may be given by production of documents automatically produced by a device specified in regulations made under section 24D(4) of the 1995 Act and a certificate signed by a person nominated by the Scottish Ministers that the statement relates to either the whereabouts of the witness or any tampering with or damage to the device. Subsection (7) provides for service of statement and certificate on the witness and subsection (8) allows the court to adjourn the trial if it considers that the witness has had insufficient notice of the statement or certificate.

107. Subsection (10) applies section 28 of the 1995 Act (which provides for the arrest and court appearance of an accused who has breached bail) to witnesses who have been granted bail. It allows a constable to arrest without warrant a witness who he has reasonable grounds for suspecting has broken or is likely to break the conditions imposed and to bring him to court. Once before the court, the court may recall or vary the bail order made or release the witness on the original order.

New section 90D – review of orders under section 90B(1)(a) or (b)

108. Section 90D gives the court power to review orders detaining the witness in custody or releasing him on bail.

109. Subsection (1) allows the court on the application of the witness to recall the order detaining the witness in custody and to make an order releasing him on bail or liberating him.

110. Subsection (2) authorises the court on the application of the witness to review the conditions imposed when granting bail; and make a new bail order with different conditions.

111. It also provides that, on the application of the person who applied for the warrant to apprehend the witness (that is, either the prosecutor or the accused) the court may recall the bail order or make a bail order with different conditions. Subsection (3) qualifies that right by providing that the court will only review a bail order in these circumstances where new material evidence is put before it. Under subsection (5) a court receiving such an application is required to intimate the application to the witness, fix a diet and, if it considers it necessary, grant a warrant to apprehend the witness.

112. Before making a new order the court must give the accused, the prosecutor and the witness the opportunity to be heard.

113. Subsection (4) sets the time limits for applications by a witness for a review of an order detaining him in custody or releasing him on bail, which are the same as those which apply in relation to a bail review sought by an accused or convicted person under section 30 of the 1995 Act. A first application may not be made earlier than the fifth day after the order was made and any further application no earlier than the fifteenth day after the order was made. These time limits do not apply to applications from parties citing the witness.

114. Subsection (6) retains the right of any party to appeal against the terms of any order made under Section 90B(1) for a witness to be remanded in custody, released on bail, or liberated.

New section 90E – appeals in respect of orders under section 90B(1)

115. Subsections (1) to (3) of section 90E give the witness, the prosecutor and the accused the right to appeal against the making any order under section 90B(1)(a), (b) or (c),

including any condition imposed on bail under subsection (1)(b) of that section and provide that the party appealing shall intimate the appeal to the other parties.

116. Subsection (4) gives power to the High Court or to a judge of the High Court to deal with an appeal under this section. The High Court would deal with an appeal against the decision of a single judge of that court and a single judge would deal with an appeal from the sheriff court

117. Subsection (5) applies section 51 of the 1995 Act to witnesses under the age of 21. Section 51 provides that persons under the age of 16 are detained in secure accommodation or committed to the care of the local authority rather than detained in prison.

Section 12 - Service etc. on accused through solicitor

118. Section 12 introduces a new section 72G into the 1995 Act in relation to service on the accused through his solicitor.

119. Subsection (1) provides that anything which requires to be served on, given, notified or otherwise intimated to an accused shall be taken to be served, given, notified or intimated if served on, given, notified or intimated to the solicitor acting for the accused at the solicitor's place of business, The relevant solicitor is, in terms of subsection (2) the solicitor who has intimated to the prosecutor under section 72F(1) that he is engaged by the accused for the purpose of his defence and has not informed the prosecutor that he has been dismissed or has withdrawn or alternatively a solicitor who has been appointed by the court under section 92 or 288D of the 1995 Act. The form and manner of service intimation etc. will be as prescribed by Act of Adjournal.

Section 13 - Preliminary pleas and preliminary issues

120. Section 13(1) substitutes a new section 79 into the 1995 Act. Most of this section replicates material already in the existing provisions in sections 72 and 79 of the 1995 Act including provision previously in section 72 for notice to be given to the court in relation to matters which can be dealt with before the trial. The new elements are that:

- it makes a clear division between preliminary pleas (which if conceded are likely to cause the case to fall) and preliminary issues. In new section 72 it is prescribed that at the preliminary hearing the former shall be taken before the accused is asked to plead, the latter after a plea has been taken and it is clear that the case is going to trial; and
- it adds express reference to objections to the admissibility of evidence to the list of preliminary issues.

121. Subsection (1) provides that, except by leave of the court, no preliminary plea or issue shall be raised or submitted in any proceedings on indictment unless the party has given notice of his intention to do so as prescribed in the sections governing the procedure at preliminary hearings in the High Court and at first diets in the sheriff court on the timescale.

122. Subsection (2) defines preliminary pleas and preliminary issues

123. Subsection (3) provides that no accused shall be entitled to object to plead to an indictment due to a discrepancy, error or deficiency such as is mentioned in new section 79(2)(a)(ii) unless the court is satisfied that these tended to mislead and prejudice the accused.

124. Subsection (4) provides that where the court allows a party to make, raise or submit a preliminary plea or issue (other than an objection to the admissibility of any evidence) without notice the court may, if it considers it appropriate to do so, appoint a diet to be held before the trial diet to consider it further. This provides another opportunity for

such matters to be resolved before the trial diet, in addition to the preliminary hearing. Alternatively, the court may appoint the plea or issue to be disposed of at the trial diet.

125. Section 13(2) introduces a new Section 87A into the 1995 Act.

126. That section provides that where any preliminary plea or issue, or in a case to be tried in the High Court, any application notice or other matter referred to in section 72(6)(b)(iii) or (iv) is to be disposed of at the trial diet it shall be disposed of before the jury is sworn, unless where it is an objection to the admissibility of any evidence the court at the trial diet considers it is not capable of being disposed of before then.

Section 14 - Objections to admissibility of evidence raised without due notice

127. Subsection (1) amends section 71 of the 1995 Act in relation to proceedings at the first diet in the sheriff court. It provides that the court shall ascertain if there is any objection to the admissibility of any evidence which any party wishes to raise despite not having given due notice. If this is so then the court shall decide whether to grant leave to allow the objection to be raised and if leave is granted dispose of the objection unless it considers it inappropriate to do so at that diet. Where the court decides not to dispose of the objection at the first diet, it may appoint a further diet to be held before the trial diet for the purpose of disposing of the objection or appoint the objection to be disposed of at the trial diet.

128. Subsection (2) introduces a new section 79A into the 1995 Act which concerns objections to the admissibility of evidence raised after the first diet, or the preliminary hearing.

129. New section 79A(2) provides that the court shall not, under section 79(1), grant leave for an objection to be raised unless the party seeking to raise it has given notice in writing to the other parties.

130. Subsection (3) provides that the court may dispense with the requirement for written notice to be given where the party seeks to raise the objection after the commencement of the trial However, subsection (4) goes on to provide that the court shall not grant leave for the objection to be raised after the commencement of the trial unless it considers it could not reasonably have been raised before that time.

131. Subsection (5) provides that where a party wishes to raise an objection before the commencement of the trial and the court under section 79(1) grants leave for it to be raised the court may if it considers it appropriate to do so appoint a diet before the trial diet for the purpose of disposing of the objection or dispose of the objection at the trial diet. Subsection (7) directs that the accused shall appear at any diet appointed under this subsection.

132. Subsection (6) provides that the court may postpone the trial diet for such period as appears appropriate and may if it thinks fit direct that such period or some part of it shall not count towards any time limit applying in the case.

133. Subsection (8) provides that for the purpose of this section the trial shall commence when the jury is sworn.

Section 15 - Alteration of diets

134. Section 15 of the Act introduces a new section 75A into the 1995 Act which provides for adjournment and alteration of diets.

135. Subsection (2) provides that any diet may be adjourned. Subsection (3) provides that in the case of a trial diet the diet may be adjourned only if the indictment is not brought to trial at the diet. It goes on to provide that if any diet is adjourned where, following enquiries as to whether the accused has engaged a solicitor for the purposes of the

conduct of his defence at the preliminary hearing or at the trial, it appears to the court that he has not done so, the adjournment shall be for a period of not more than 48 hours.

136. Subsection (4) provides that a trial diet in the High Court may be adjourned to a diet to be held at a sitting of the court in another place.

137. Subsections (5) to (7) provide that any party may apply to the court at any time before commencement of a diet to accelerate or postpone the diet. The application will be determined after hearing parties but where parties apply jointly the court may proceed to fix a new date without a hearing.

138. Subsection (8) requires the accused to attend any hearing in relation to the acceleration or postponement of the diet unless the judge permits the hearing to proceed in his absence.

139. Subsection (9) makes clear that, in setting a new trial diet, the judge must have regard to the state of preparation of the parties. It also gives the court power to appoint an additional pre-trial diet where it considers that there are any preliminary pleas, preliminary issues or other matters that could with advantage be disposed of, before the trial.

140. Subsection (10) provides that any diet fixed under subsection (5)(b) may be fixed notwithstanding that the holding of the diet on that date would result in any minimum or maximum period within which the diet is to be held or to commence not being complied with.

Section 16 - Uncontroversial evidence

141. Section 16 of the Act introduces three new subsections (4A) to (4C) into section 258 of the 1995 Act. Subsections (4A) and (4B) provide that where a notice challenging a notice of uncontroversial evidence has been served the court may on the application of any party made not less than 48 hours before the preliminary hearing in the High Court or the first diet in the sheriff court direct that the challenge be disregarded for the purpose of section 258(4) of the 1995 Act if the court considers that the challenge is unjustified. Subsection (4C) provides that in proceedings in the High Court, the court may on cause shown allow an application under subsection (4B) to be made after the time limit specified therein.