



# Criminal Procedure (Amendment) (Scotland) Act 2004

2004 asp 5

## PART 4

### MISCELLANEOUS AND GENERAL

#### *Miscellaneous*

#### **19 First diet in sheriff court solemn proceedings: witnesses and bail**

(1) Section 71 (first diet) of the 1995 Act is amended as follows.

(2) After subsection (1B) insert—

“(1C) At a first diet, the court—

- (a) shall ascertain which of the witnesses included in the list of witnesses are required by the prosecutor or the accused to attend the trial; and
- (b) shall, where the accused has been admitted to bail, review the conditions imposed on his bail and may—
  - (i) after giving the parties an opportunity to be heard; and
  - (ii) if it considers it appropriate to do so,fix bail on different conditions.”.

(3) In subsection (2), for “and (1A)” substitute “, (1A) and (1C)”.

(4) In subsection (3), after “(1A)” insert “, (1C)”.

#### **20 Sentence following guilty plea**

(1) Section 196 (sentence following guilty plea) of the 1995 Act is amended as follows.

(2) In subsection (1), for “may” substitute “shall”.

(3) After subsection (1) insert—

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“(1A) In passing sentence on an offender referred to in subsection (1) above, the court shall—

- (a) state whether, having taken account of the matters mentioned in paragraphs (a) and (b) of that subsection, the sentence imposed in respect of the offence is different from that which the court would otherwise have imposed; and
- (b) if it is not, state reasons why it is not.”.

**21 Increase in extended sentence which may be passed by sheriff court in certain cases**

In section 210A(6) of the 1995 Act (which provides for the maximum extended sentence which may be imposed by the sheriff on sex and violent offenders), for “three years” substitute “five years”.

**22 Citation of witnesses for precognition**

After section 267 of the 1995 Act there is inserted—

**“267A Citation of witnesses for precognition**

- (1) This Act shall be sufficient warrant for the citation of witnesses for precognition by the prosecutor, whether or not any person has been charged with the offence in relation to which the precognition is taken.
- (2) Such citation shall be in the form prescribed by Act of Adjournal or as nearly as may be in such form.
- (3) A witness who, having been duly cited—
  - (a) fails without reasonable excuse, after receiving at least 48 hours notice, to attend for precognition by a prosecutor at the time and place mentioned in the citation served on him; or
  - (b) refuses when so cited to give information within his knowledge regarding any matter relative to the commission of the offence in relation to which the precognition is taken,
 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to a term of imprisonment not exceeding 21 days.”.

**23 Admissibility of prior statements of witnesses**

In section 260 (admissibility of prior statements of witnesses) of the 1995 Act, after subsection (4) insert—

- “(5) A prior statement made by a witness shall not, in any proceedings on indictment, be inadmissible by reason only that it is not included in any list of productions lodged by the parties.”.

## **24 Protection of Children (Scotland) Act 2003: references following conviction**

- (1) In section 10 (referral of person convicted of offence against a child for inclusion on list of persons considered unsuitable to work with children) of the Protection of Children (Scotland) Act 2003 (asp 5)—
  - (a) for “proposed reference”, where it appears in subsections (5) and (6), substitute “reference proposed under subsection (1) above”,
  - (b) for paragraphs (a) and (b) of subsection (6) substitute—
    - “(a) the period during which an appeal against the proposed reference may be brought has expired without an appeal being brought; or
    - (b) where an appeal is brought within that period, it is dismissed or abandoned.”.
- (2) In subsection (1) of section 110 (note of appeal) of the 1995 Act, after “Act”, where second occurring, insert “or, in the case of an appeal under section 106(1)(db) or (dc) of this Act, the date on which the proposal to make a reference is made”.
- (3) After subsection (2) of section 111 (extension of period during which an appeal may be brought in solemn proceedings) insert—

“(3) Subsection (2) above does not allow the High Court to extend any such period which relates to an appeal under section 106(1)(db), (dc) or (f)(ii) or (iii) of this Act.”.
- (4) After subsection (3) of section 181 (extension of period during which an appeal may be brought in summary proceedings) insert—

“(4) Subsection (1) above does not allow the High Court to make a direction in relation to an appeal under section 175(2)(cb) or (d)(ii) or (iii) of this Act.”.
- (5) In subsection (2)(a) of section 186 (appeals against sentence) of the 1995 Act—
  - (a) the word “or”, which immediately precedes sub-paragraph (ii) is repealed,
  - (b) after that sub-paragraph insert “; or
  - (iii) in the case of an appeal under section 175(2)(cb), the date on which it is proposed that a reference be made”.

### *General*

## **25 Further modifications of the 1995 Act**

The schedule makes further modifications of the 1995 Act, including modifications of a minor and consequential nature.

## **26 Ancillary provision**

- (1) The Scottish Ministers may by order made by statutory instrument make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act.
- (2) An order under this section may modify any enactment (including this Act), instrument or document.

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*Status: This is the original version (as it was originally enacted).*

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- (3) A statutory instrument containing an order under this section (except where subsection (4) applies) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) No order under this section containing provisions which add to, replace or omit any part of the text of an Act is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Parliament.

## **27 Commencement and short title**

- (1) This Act (except section 26 and this section) comes into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.
- (2) An order under subsection (1) may—
  - (a) appoint different days for different purposes,
  - (b) include such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient in connection with the coming into force of the provisions brought into force.
- (3) This Act may be cited as the Criminal Procedure (Amendment) (Scotland) Act 2004.