



# Criminal Procedure (Amendment) (Scotland) Act 2004

2004 asp 5

## PART 2

### SOLEMN PROCEEDINGS GENERALLY

#### 6 Time limits

- (1) Section 65 (prevention of delay in trials) of the 1995 Act is amended as follows.
- (2) In subsection (1), for the words from “the trial” to “that period” substitute—
  - “(a) where an indictment has been served on the accused in respect of the High Court, a preliminary hearing is commenced within the period of 11 months; and
  - (b) in any case, the trial is commenced within the period of 12 months,of the first appearance of the accused on petition in respect of the offence.
  - (1A) If the preliminary hearing (where subsection (1)(a) above applies) or the trial is not so commenced.”.
- (3) In subsection (2), after “(1)” insert “or (1A)”.
- (4) In subsection (3), for the words from “the sheriff” to the end substitute—
  - “(a) where an indictment has been served on the accused in respect of the High Court, a single judge of that court may, on cause shown, extend either or both of the periods of 11 and 12 months specified in subsection (1) above; or
  - (b) in any other case, the sheriff may, on cause shown, extend the period of 12 months specified in that subsection.”.
- (5) In subsection (4)—
  - (a) in paragraph (a), for the words “liberated forthwith” substitute “entitled to be admitted to bail”;
  - (b) after paragraph (a) insert—

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*Status: This is the original version (as it was originally enacted).*

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- “(aa) where an indictment has been served on the accused in respect of the High Court—
  - (i) 110 days, unless a preliminary hearing in respect of the case is commenced within that period, which failing he shall be entitled to be admitted to bail; or
  - (ii) 140 days, unless the trial of the case is commenced within that period, which failing he shall be entitled to be admitted to bail;”,
- (c) in paragraph (b)—
  - (i) at the beginning, insert “where an indictment has been served on the accused in respect of the sheriff court;”,
  - (ii) for the words from “liberated” to the end substitute “entitled to be admitted to bail”.
- (6) After subsection (4) insert—
 

“(4A) Where an indictment has been served on the accused in respect of the High Court, subsections (1)(a) and (4)(aa)(i) above shall not apply if the preliminary hearing has been dispensed with under section 72B(1) of this Act.”.
- (7) For subsection (5) substitute—
 

“(5) On an application made for the purpose—

  - (a) in a case where, at the time the application is made, an indictment has not been served on the accused, a single judge of the High Court; or
  - (b) in any other case, the court specified in the notice served under section 66(6) of this Act,

may, on cause shown, extend any period mentioned in subsection (4) above.

(5A) Before determining an application under subsection (3) or (5) above, the judge or, as the case may be, the court shall give the parties an opportunity to be heard.

(5B) However, where all the parties join in the application, the judge or, as the case may be, the court may determine the application without hearing the parties and, accordingly, may dispense with any hearing previously appointed for the purpose of considering the application.”.
- (8) Subsections (6) and (7) are repealed.
- (9) After subsection (8) insert—
 

“(8A) Where an accused is, by virtue of subsection (4) above, entitled to be admitted to bail, the accused shall, unless he has been admitted to bail by the Lord Advocate, be brought forthwith before—

  - (a) in a case where an indictment has not yet been served on the accused, a single judge of the High Court; or
  - (b) in any other case, the court specified in the notice served under section 66(6) of this Act.

(8B) Where an accused is brought before a judge or court under subsection (8A) above, the judge or, as the case may be, the court shall give the prosecutor an opportunity to make an application under subsection (5) above.

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

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- (8C) If the prosecutor does not make such an application or, if such an application is made but is refused, the judge or, as the case may be, the court shall, after giving the prosecutor an opportunity to be heard, admit the accused to bail.
- (8D) Where such an application is made but is refused and the prosecutor appeals against the refusal, the accused—
- (a) may continue to be detained under the committal warrant for no more than 72 hours from the granting of bail under subsection (8C) above or for such longer period as the High Court may allow; and
  - (b) on expiry of that period, shall, whether the appeal has been disposed of or not, be released on bail subject to the conditions imposed.”.
- (10) In subsection (9), after “section,” insert—
- “(a) where the accused is cited in accordance with subsection (4)(b) of section 66 of this Act, the indictment shall be deemed to have been served on the accused;
  - (b) a preliminary hearing shall be taken to commence when it is called; and
  - (c)”.
- (11) In subsection (10), for “period of” substitute “periods of 11 and”.