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

2007 asp 6

PART 2

PROCEEDINGS

Miscellaneous

33 Apprehension warrants

After section 297 of the 1995 Act there is inserted—

"**297A Re-execution of apprehension warrants**

(1) This section applies where a person has been apprehended under a warrant (the "original warrant") granted under this Act in relation to any proceedings.

(2) If the person absconds, the person may be re-apprehended under the original warrant (and as if that warrant had not been executed to any extent).

(3) If, for any reason, it is not practicable to bring the person before the court as required under a provision of this Act applying in the case, the person is to be brought before the court as soon as practicable after the relevant reason ceases to prevail.

(4) Despite subsection (3) above, if—

(a) the original warrant was granted in solemn proceedings; and

(b) the impracticability arises because the person needs medical treatment or care,

the person may be released.

(5) A person released under subsection (4) above may be re-apprehended under the original warrant (and as if that warrant had not been executed to any extent).

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(6) Subsection (3) above does not affect the operation of section 22(1B) of this Act (which relates to liberation on an undertaking of persons apprehended under warrant granted in summary proceedings).

(7) Nothing in this section prevents a court from granting a fresh warrant for the apprehension of the person.

(8) Subject to this section are—
- (a) any rule of law as to bringing a person before a court in pursuance of a warrant granted on petition (as referred to in section 34 of this Act);
- (b) section 102A(10) of this Act;
- (c) section 135(3) (including as applying in relation to sections 22(1B) and 156) of this Act;
- (d) section 90A(9) of this Act.”.

34 Participation in identification procedures

After section 267A of the 1995 Act there is inserted—

“Identification procedures

267B Order requiring accused to participate in identification procedure

(1) The court may, on an application by the prosecutor in any proceedings, make an order requiring the accused person to participate in an identification parade or other identification procedure.

(2) The application may be made at any time after the proceedings have been commenced.

(3) The court—
- (a) shall (if the accused is present) allow the accused to make representations in relation to the application;
- (b) may, if it considers it appropriate to do so (where the accused is not present), fix a hearing for the purpose of allowing the accused to make such representations.

(4) Where an order is made under subsection (1) above, the clerk of court shall (if the accused is not present) have notice of the order effected as respects the accused without delay.

(5) Notice under subsection (4) above shall (in relation to any proceedings) be effected in the same manner as citation under section 141 of this Act.

(6) It is sufficient evidence that notice has been effected under subsection (5) above if there is produced a written execution—
- (a) in the form prescribed by Act of Adjournal or as nearly as may be in such form; and
- (b) signed by the person who effected notice.

(7) In relation to notice effected by means of registered post or the recorded delivery service, the relevant post office receipt requires to be produced along with the execution mentioned in subsection (6) above.

(8) A person who, having been given due notice of an order made under subsection (1) above, without reasonable excuse fails to comply with the order is—

(a) guilty of an offence; and

(b) liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 12 months or to both.

(9) For the purpose of subsection (5) above, section 141 of this Act is to be read with such modifications as are necessary for its application in the circumstances.

(10) In this section, "the court" means—

(a) in the case of proceedings in the High Court, a single judge of that Court;

(b) in any other case, any court with jurisdiction in relation to the proceedings.".

35 Evidence on commission

(1) In section 66 (service and lodging of indictment, etc.) of the 1995 Act—

(a) in subsection (6A)—

(i) in paragraph (a)(i), after the word "defence" there is inserted " (including at any commissioner proceedings) ",

(ii) in paragraph (a)(iii), after the word "trial" there is inserted " (or at any related commissioner proceedings) ",

(b) after subsection (14) there is added—

"(15) In subsection (6A) above, "commissioner proceedings" means proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act.".

(2) In section 140 (citation) of that Act—

(a) in subsection (2A)—

(i) in paragraph (a), after the word "defence" there is inserted " (including at any commissioner proceedings) ",

(ii) in paragraph (c), after the word "trial" there is inserted " (or at any related commissioner proceedings) ",

(b) after subsection (2B) there is added—

"(2C) In subsection (2A) above, "commissioner proceedings" means proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act.".

(3) In section 271I (taking of evidence by a commissioner) of that Act—

(a) after subsection (1) there is inserted—

"(1A) Proceedings before a commissioner appointed under subsection (1) above shall, if the court so directed when authorising such proceedings, take place by means of a live television link between the place where the commissioner is taking, and the place from which the witness is giving, evidence.",

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(b) in subsection (3)(a), for the words "present in the room where such proceedings are taking place" there is substituted "present—

(i) in the room where such proceedings are taking place; or

(ii) if such proceedings are taking place by means of a live television link, in the same room as the witness",

(c) after subsection (4) there is added—

"(5) Sections—

(a) 274;

(b) 275;

(c) 275B except subsection (2)(b);

(d) 275C;

(e) 288C;

(f) 288E; and

(g) 288F,

of this Act apply in relation to proceedings before a commissioner appointed under subsection (1) above as they apply in relation to a trial.

(6) In the application of those sections in relation to such proceedings—

(a) the commissioner acting in the proceedings is to perform the functions of the court as provided for in those sections;

(b) references—

(i) in those sections, except section 275(3)(c) and (7)(c), to a trial or a trial diet;

(ii) in those sections, except sections 275(3)(e) and 288F(2), (3) and (4), to the court,

shall be read accordingly;

(c) the reference in section 275B(1) to 14 days shall be read as a reference to 7 days.

(7) In a case where it falls to the court to appoint a commissioner under subsection (1) above, the commissioner shall be a person described in subsection (8) below.

(8) The persons are—

(a) where the proceedings before the commissioner are for the purposes of a trial in the High Court, a judge of the High Court; or

(b) in any other case, a sheriff.".

(4) In section 272 (evidence by letter of request or on commission) of that Act, after subsection (9) there is added—

"(10) Sections—

(a) 274;

(b) 275;

(c) 275B except subsection (2)(b);

(d) 275C; and

(e) 288C,

of this Act apply in relation to proceedings in which a commissioner examines a witness under subsection (1)(b) above as they apply in relation to a trial.

(11) In the application of those sections in relation to such proceedings—

(a) the commissioner acting in the proceedings is to perform the functions of the court as provided for in those sections;

(b) references—

(i) in those sections, except section 275(3)(c) and (7)(c), to a trial or a trial diet;

(ii) in those sections, except section 275(3)(e), to the court,

shall be read accordingly;

(c) the reference in section 275B(1) to 14 days shall be read as a reference to 7 days.

(12) In a case where it falls to the court to appoint a commissioner for the purposes of subsection (1)(b) above, the commissioner shall be a person described in subsection (13) below.

(13) The persons are—

(a) where the proceedings before the commissioner are for the purposes of a trial in the High Court, a judge of the High Court; or

(b) in any other case, a sheriff.”.

(5) In section 275A(1) (disclosure of accused's previous convictions where court allows questioning or evidence under section 275) of that Act, after the word “court” there is inserted “ (or, in proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act, a commissioner) ”.

(6) In section 288D (appointment of solicitor by court in such cases) of that Act—

(a) in subsection (2), after paragraph (a)(ii) there is inserted—

“(iii) the conduct of his case at any commissioner proceedings; or”,

(b) in subsection (6), after the word “trial” there is inserted “ (or at any related commissioner proceedings) ”,

(c) after that subsection there is inserted—

“(6A) Where, in relation to commissioner proceedings, the commissioner is satisfied that a solicitor so appointed is no longer able to act upon the instructions, or in the best interests, of the accused, the commissioner is (for the purpose of the application of subsection (6) above) to refer the case to the court.”,

(d) in subsection (7), for the word “(6)” in the first place where it occurs there is substituted “ (6A) ”,

(e) after subsection (8) there is added—

“(9) In this section, “commissioner proceedings” means proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act.”.

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36 Victim notification scheme

In section 16 (victim's right to receive information concerning release etc. of offender) of the Criminal Justice (Scotland) Act 2003 (asp 7)—

(a) in subsection (5)(b)(ii), after the word "sub-paragraph" in the second place where it occurs there is inserted " and as if in paragraph (a)(ii) of the said section 14(6) (as it applies by virtue of that sub-paragraph) the words ", immediately before the offence (or apparent offence) was perpetrated, cared" were "cares" ",

(b) after subsection (6) there is added—

"(7) Where, but for section 14(8) (as it applies in relation to subsection (5)(a)), information would—

(a) under subsection (1) (as read with subsection (5)(a)); and

(b) by virtue of section 14(10)(c) to (e) and (g) to (i) (as it applies in relation to subsection (5)(a)),

fall to be given to a child who has not attained the age of fourteen years, that information is to be given instead to a person who cares for the child.

(8) In subsection (7), the reference to a person who cares for the child is to be construed in accordance with section 2(28) of the Regulation of Care (Scotland) Act 2001 (asp 8).".

37 Recovery of documents

After section 301 of the 1995 Act there is inserted—

"Recovery of documents

301A Recovery of documents

(1) It is competent for the sheriff court to make, in connection with any criminal proceedings mentioned in subsection (2) below, the orders mentioned in subsection (3) below.

(2) The proceedings are—

(a) solemn proceedings in that sheriff court;

(b) summary proceedings—

(i) in that sheriff court;

(ii) in any JP court in that sheriff court's district.

(3) The orders are—

(a) an order granting commission and diligence for the recovery of documents;

(b) an order for the production of documents.

(4) An application for the purpose may not be made—

(a) in connection with solemn proceedings, until the indictment has been served on the accused or the accused has been cited under section 66(4)(b) of this Act;

(b) in connection with summary proceedings, until the accused has answered the complaint.

(5) A decision of the sheriff on an application for an order under subsection (1) above may be appealed to the High Court.

(6) In an appeal under subsection (5) above, the High Court may uphold, vary or quash the decision of the sheriff.

(7) The prosecutor is entitled to be heard in any—

(a) application for an order under subsection (1) above;

(b) appeal under subsection (5) above,

even if the prosecutor is not a party to the application or (as the case may be) appeal.

(8) The competence of the High Court to make, in connection with criminal proceedings, the orders mentioned in subsection (3) above is restricted to making them in connection with proceedings in that court.”.

Commencement Information

I1 S. 37 wholly in force at 10.12.2007, see s. 84 and S.S.I. 2007/479. {art. 3}, Sch. (subject to savings in art. 10)

38 Intimation of certain applications to the High Court

After section 298 of the 1995 Act there is inserted—

“Intimation of certain applications to the High Court

298A Intimation of bills and of petitions to the nobile officium

(1) This subsection applies where the prosecutor requires to intimate to the respondent—

(a) a bill of advocation;

(b) a petition to the nobile officium; or

(c) an order of the High Court relating to such a bill or (as the case may be) petition.

(2) Where subsection (1) above applies, the requirement may be met by serving on the respondent or the respondent's solicitor a copy of the bill, petition or (as the case may be) order.

(3) Service under subsection (2) above may (in relation to any proceedings) be effected—

(a) on the respondent, in the same manner as citation under section 141 of this Act;

(b) on the respondent's solicitor, by post.

(4) This subsection applies where a person requires to intimate to the prosecutor—

(a) a bill of suspension or advocation;

(b) a petition to the nobile officium; or

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(c) an order of the High Court relating to such a bill or (as the case may be) petition.

(5) Where subsection (4) above applies, the requirement may be met by serving on the prosecutor a copy of the bill, petition or (as the case may be) order.

(6) Service under subsection (5) above may (in relation to any proceedings) be effected by post.

(7) It is sufficient evidence that service has been effected under subsection (3) or (6) above if there is produced a written execution—

(a) in the form prescribed by Act of Adjournal or as nearly as may be in such form; and

(b) signed by the person who effected service.

(8) In relation to service effected by means of registered post or the recorded delivery service, the relevant post office receipt requires to be produced along with the execution mentioned in subsection (7) above.

(9) A party who has service effected under subsection (3) or (6) above must, as soon as practicable thereafter, lodge with the Clerk of Justiciary a copy of the execution mentioned in subsection (7) above.

(10) For the purpose of subsection (3)(a) above, section 141 of this Act is to be read with such modifications as are necessary for its application in the circumstances.

(11) This section is without prejudice to any rule of law or practice by virtue of which things of the kinds mentioned in subsections (1) and (4) above (including copies) may be intimated or served.”.

39 Refixing diets

(1) After section 75A (adjournment and alteration of diets) of the 1995 Act there is inserted—

“**75B Refixing diets**

(1) This section applies where in any proceedings on indictment any diet has been fixed for a non-sitting day.

(2) The court may at any time before the non-sitting day—

(a) discharge the diet; and

(b) fix a new diet for a date earlier or later than that for which the discharged diet was fixed.

(3) That is, by acting—

(a) of the court's own accord; and

(b) without the need for a hearing for the purpose.

(4) In the case of a trial diet—

(a) the prosecutor;

(b) the accused,

shall be entitled to an adjournment of the new diet fixed if the court is satisfied that it is not practicable for that party to proceed with the case on that date.

(5) The power of the court under subsection (1) above is not exercisable for the sole purpose of ensuring compliance with a time limit applying in the proceedings.

(6) In subsections (1) and (2) above, a "non-sitting day" is a day on which the court is under this Act not required to sit.

(7) In subsections (2) to (5) above, "the court" means—

(a) in the case of proceedings in the High Court, a single judge of that Court;

(b) in the case of proceedings in the sheriff court, that court.".

(2) After section 137 (alteration of diets) of that Act there is inserted—

"**137ZA Refixing diets**

(1) This section applies where in a summary prosecution any diet has been fixed for a non-sitting day.

(2) The court may at any time before the non-sitting day—

(a) discharge the diet; and

(b) fix a new diet for a date earlier or later than that for which the discharged diet was fixed.

(3) That is, by acting—

(a) of the court's own accord; and

(b) without the need for a hearing for the purpose.

(4) In the case of a trial diet—

(a) the prosecutor;

(b) the accused,

shall be entitled to an adjournment of the new diet fixed if the court is satisfied that it is not practicable for that party to proceed with the case on that date.

(5) The power of the court under subsection (1) above is not exercisable for the sole purpose of ensuring compliance with a time limit applying in the proceedings.

(6) In subsections (1) and (2) above, a "non-sitting day" is a day on which the court is under this Act not required to sit.".

40 Power of court to excuse procedural irregularities

After section 300 of the 1995 Act there is inserted—

"Excusal of irregularities

300A Power of court to excuse procedural irregularities

(1) Any court may excuse a procedural irregularity—

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(a) of a kind described in subsection (5) below; and
(b) which has occurred in relation to proceedings before that court,

if the conditions mentioned in subsection (4) below are met.

(2) In appeal proceedings, the High Court may excuse a procedural irregularity—
(a) of that kind; and
(b) which has occurred in relation to earlier proceedings in the case that is the subject of the appeal,

if those conditions are met.

(3) A court may proceed under subsection (1) or (2) above on the application of the prosecutor or an accused person (having given the other an opportunity to be heard).

(4) The conditions are that—
(a) it appears to the court that the irregularity arose because of—
(i) mistake or oversight; or
(ii) other excusable reason; and
(b) the court is satisfied in the circumstances of the case that it would be in the interests of justice to excuse the irregularity.

(5) A procedural irregularity is an irregularity arising at any stage of proceedings—
(a) from—
(i) failure to call or discharge a diet properly;
(ii) improper adjournment or continuation of a case;
(iii) a diet being fixed for a non-sitting day;
(b) from failure of—
(i) the court; or
(ii) the prosecutor or the accused,

to do something within a particular period or otherwise comply with a time limit;
(c) from failure of the prosecutor to serve properly a notice or other thing;
(d) from failure of the accused to—
(i) intimate properly a preliminary objection;
(ii) intimate properly a plea or defence;
(iii) serve properly a notice or other thing;
(e) from failure of—
(i) the court; or
(ii) the prosecutor or the accused,

to fulfil any other procedural requirement.

(6) Subsection (1) above does not authorise a court to excuse an irregularity arising by reason of the detention in custody of an accused person for a period exceeding that fixed by this Act.

(7) Subsection (1) above does not apply in relation to any requirement as to proof including, in particular, any matter relating to—
(a) admissibility of evidence;
(b) sufficiency of evidence; or

(c) any other evidential factor.

(8) Where a court excuses an irregularity under subsection (1) above, it may make such order as is necessary or expedient for the purpose of—

(a) restoring the proceedings as if the irregularity had never occurred;

(b) facilitating the continuation of the proceedings as if it had never occurred, for example—

(i) altering a diet;

(ii) extending any time limit;

(iii) appointing a diet for further procedure or granting an adjournment or continuation of a diet;

(c) protecting the rights of the parties.

(9) For the purposes of this section—

(a) a reference to an accused person, except the reference in subsection (6) above, includes reference to a person who has been convicted of an offence;

(b) something is done properly if it is done in accordance with a requirement of an enactment or any rule of law.

(10) In subsection (5)(a)(iii) above, a "non-sitting day" is a day on which the court is under this Act not required to sit.

(11) This section is without prejudice to any provision of this Act under which a court may—

(a) alter a diet; or

(b) extend—

(i) a period within which something requires to be done; or

(ii) any other time limit.

(12) This section is without prejudice to any rule of law by virtue of which it may be determined by a court that breach, in relation to criminal proceedings—

(a) of a requirement of an enactment; or

(b) of a rule of law,

does not render the proceedings, or anything done (or purported to have been done) for the purposes of or in connection with proceedings, invalid.".

Commencement Information

I2 S. 40 wholly in force at 10.12.2007, see s. 84 and S.S.I. 2007/479. {art. 3}, Sch. (subject to savings in art. 11)

Changes to legislation:
There are currently no known outstanding effects for the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, Cross Heading: Miscellaneous.