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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 479**

**The Criminal Proceedings etc. (Reform)  
(Scotland) Act 2007 (Commencement No. 2 and  
Transitional Provisions and Savings) Order 2007**

**Citation**

1. This Order may be cited as the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Commencement No. 2 and Transitional Provisions and Savings) Order 2007.

**Interpretation**

2. In this Order—

“the 2007 Act” means the Criminal Proceedings etc. (Reform) (Scotland) Act 2007; and

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(1).

**Appointed day**

3.—(1) The provisions of the Act specified in column 1 of the Schedule to this Order, the subject matter being specified in column 2, shall come into force on 10th December 2007.

(2) The coming into force of the provisions listed in the Schedule to this Order are subject to—

(a) the transitional provisions and savings in articles 4 to 14; and

(b) any exceptions specified in the Schedule.

(3) Where a particular purpose is specified in relation to any provision in column 1 of the Schedule to this Order, that provision shall come into force on 10th December 2007 for that purpose only.

**Transitional provisions relating to bail**

4.—(1) The provisions of sections 2, 3(1)(a) and (d) to (f) of the 2007 Act shall apply only in proceedings relating to a person where a decision on whether or not to grant that person bail is taken on or after 10th December 2007.

(2) The provisions of section 3(1)(b) of the 2007 Act and paragraph 14 of the schedule to the 2007 Act shall only apply in proceedings relating to an offence under section 27(1) of the 1995 Act where, at 10th December 2007—

(a) in the case of proceedings on indictment, the period of notice for the accused to raise a preliminary objection in terms of section 71(2) or 72(6)(b)(i) of the 1995 Act has not expired;

(b) in summary proceedings, the accused has not had a plea recorded.

(3) The provisions of section 4(2) of the 2007 Act shall only apply in an appeal under section 32 of the 1995 Act where the decision which is the subject of the appeal was taken on or after 10th December 2007.

#### **Transitional provision relating to liberation on undertaking**

5. The provisions of section 7(2)(c) of the 2007 Act shall apply only in proceedings against an accused person where that person has given an undertaking under section 22 of the 1995 Act on or after 10th December 2007.

#### **Transitional provision relating to failure of accused to appear**

6. The provisions of section 15 of the 2007 Act shall apply only to a failure to appear at a diet which, on or after 10th December 2007, the court assigned to take place at a later date.

#### **Transitional provision relating to notice of defences and proof of uncontroversial matters**

7.—(1) The provisions of sections 19 and 20 of the 2007 Act and paragraph 28 of the schedule to the 2007 Act shall apply only to proceedings which, on or after 10th December 2007, the court adjourned for trial to take place at a later date.

(2) The reference in article 7(1) to adjourned for trial means adjourned for trial under section 146(3) of the 1995 Act.

#### **Transitional provision relating to engagement, dismissal and withdrawal of solicitor representing accused**

8. Where any notification requirement arises by virtue of the coming into force of section 21 of the 2007 Act, that requirement is complied with if—

- (a) notification has been given prior to the coming into force of that section in a manner that satisfies the requirements of section 148C of the 1995 Act (as inserted by section 21 of the 2007 Act); or
- (b) notification is given forthwith.

#### **Transitional provision relating to obstructive witnesses in solemn cases**

9. The provisions of section 27(2) of the 2007 Act and paragraph 14 of the schedule to the 2007 Act shall apply only where the period of notice for the accused to raise a preliminary objection in terms of section 71(2) or 72(6)(b)(i) of the 1995 Act has not expired.

#### **Savings relating to recovery of documents**

10. The provisions of section 37 of the 2007 Act shall not apply to any petition for an order for commission and diligence or a petition for an order for the production of documents lodged prior to 10th December 2007.

#### **Savings relating to the power of court to excuse procedural irregularities**

11. The provisions of section 40 of the 2007 Act shall not apply in respect of a procedural irregularity arising before 10th December 2007.

#### **Transitional provision relating to sentencing powers**

12.—(1) The provisions of sections 43, 45(1) and (2), 47(1) and (2) and 48 of the 2007 Act shall apply only to proceedings where either of the requirements in paragraph (2) are met.

(2) The requirements are that—

- (a) a first calling took place on or after 10th December 2007; or

- (b) a first calling has not taken place, but a warrant under section 135 or section 139(1)(b) of the 1995 Act was granted on or after 10th December 2007.
- (3) For the purposes of paragraph (2) a first calling means a first calling under section 144 of the 1995 Act but does not include any continuation or adjournment thereof.
- (4) Paragraph (3) applies despite the provisions of section 144(9) of the 1995 Act.

**Savings relating to restriction of liberty orders**

13. The provisions of section 58 of the 2007 Act shall not apply to proceedings under section 245F of the 1995 Act where the failure to comply with a restriction of liberty order has taken place before 10th December 2007.

**Transitional provision relating to minor and consequential amendments to section 119(11) (provisions where the High Court authorises new prosecutions) of the 1995 Act**

14. The provisions of paragraph 16(6) of the schedule to the 2007 Act shall apply only to proceedings against an accused person where, on or after 10th December 2007, the High Court grants authority to bring a prosecution under section 118(1)(c) of the 1995 Act.

St Andrew's House,  
Edinburgh  
25th October 2007

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