

# **Criminal Procedure (Amendment) (Scotland) Bill**

[AS INTRODUCED]

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# **Criminal Procedure (Amendment) (Scotland) Bill**

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision, in connection with proceedings in the High Court of Justiciary, for the holding of preliminary hearings prior to the trial diet and to require any solicitor engaged by the accused to notify the Court and the prosecutor of his engagement, withdrawal and dismissal; to make new provision as to the alteration and continuation of the trial diet in proceedings in the High Court; to make new provision as to the procedure where the trial diet in proceedings in the High Court does not proceed; to amend the time limit for commencement of the trial in proceedings in the High Court; in connection with solemn criminal proceedings generally, to amend the consequences of failure to comply with time limits, to remove the requirement for a warrant to be issued for citation of the accused, witnesses and jurors, to enable the trial to be conducted in the absence of the accused in certain circumstances, to provide for the apprehension, detention and release on bail of reluctant witnesses and to restate with modifications certain provisions in relation to the raising of preliminary pleas and issues; to enable persons to be released on bail subject to a requirement that their compliance with conditions of bail restricting their movements be remotely monitored; to make provision entitling the prosecutor to be heard on certain applications relating to bail; to make further provision as to the matters to be dealt with by the sheriff court at a first diet in solemn proceedings; to make new provision as to the procedure to be followed by the court in sentencing offenders who have pled guilty; to increase from three to five years the maximum extended sentence that may be imposed by a sheriff on persons convicted on indictment of certain violent and sexual offences; to make new provision as to the citation of witnesses for precognition by the prosecutor; and for connected purposes.

## **PART 1**

### **PROCEEDINGS IN THE HIGH COURT**

#### *Preliminary hearings*

#### **1 Preliminary hearings**

(1) In subsection (6) of section 66 (service and lodging of indictment etc.) of the Criminal Procedure (Scotland) Act 1995 (c.46) (referred to in this Act as “the 1995 Act”)—

(a) in paragraph (a)—

(i) after “court” insert—

“(i)”,

(ii) at the end insert “; and

(ii) at a trial diet not less than 29 clear days after service of the indictment,” and

5 (b) for paragraph (b) substitute—

“(b) where the indictment is in respect of the High Court, at a diet not less than 29 clear days after the service of the indictment (such a diet being referred to in this Act as a “preliminary hearing”).”.

10 (2) In subsection (6A) of that section, paragraph (b) and the word “and” immediately preceding it are repealed.

(3) For sections 72 to 73A of the 1995 Act substitute—

**“72 Preliminary hearing: procedure up to appointment of trial diet**

(1) A preliminary hearing shall be conducted in accordance with this section and section 72A.

15 (2) The court shall—

(a) where the accused is charged with an offence to which section 288C of this Act applies; or

(b) in any case in which an order has been made under section 288E(2) of this Act,

20 before taking any further step under this section, ascertain whether the accused has engaged a solicitor for the purposes of the conduct of his case at or for the purposes of the preliminary hearing.

25 (3) After complying with subsection (2) above, the court shall dispose of any preliminary pleas (within the meaning of section 79(2)(a) of this Act) of which a party has given notice not less than 7 clear days before the preliminary hearing to the court and to the other parties.

(4) After disposing of any preliminary pleas under subsection (3) above, the court shall require the accused to state how he pleads to the indictment.

(5) If the accused tenders a plea of guilty, section 77 of this Act shall apply.

30 (6) After the accused has stated how he pleads to the indictment, the court shall, unless a plea of guilty is tendered and accepted—

(a) in any case—

(i) where the accused is charged with an offence to which section 288C of this Act applies; or

35 (ii) in which an order has been made under section 288E(2) of this Act,

ascertain whether the accused has engaged a solicitor for the purposes of his defence at the trial;

40 (b) unless it considers it inappropriate to do so at the preliminary hearing, dispose of—

- (i) any preliminary issues (within the meaning of section 79(2)(b) of this Act) of which a party has given notice not less than 7 clear days before the preliminary hearing to the court and to the other parties;
- 5 (ii) subject to subsection (8) below, any application or notice under section 271A(2), 271C(2), 275(1) or 288E(2) of this Act made or lodged before the preliminary hearing; and
- (iii) any other matter which, in the opinion of the court, could be disposed of with advantage before the trial;
- 10 (c) ascertain which of the witnesses included in the list of witnesses are required by the accused to attend the trial;
- (d) ascertain whether subsection (7) below applies to any person who is to give evidence at or for the purposes of the trial or to the accused and, if so, consider whether it should make an order under section 271A(8) or
- 15 271D(2) of this Act in relation to the person or, as the case may be, the accused; and
- (e) ascertain, so far as is reasonably practicable—
- (i) the state of preparation of the prosecutor and the accused with respect to their cases; and
- 20 (ii) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of this Act.
- (7) This subsection applies—
- (a) to a person who is to give evidence at or for the purposes of the trial if that person is, or is likely to be, a vulnerable witness;
- 25 (b) to the accused if, were he to give evidence at or for the purposes of the trial, he would be, or would be likely to be, a vulnerable witness.
- (8) Where any application or notice such as is mentioned in subsection (6)(b)(ii) above is required by the provision under which it is made or lodged, or by any other provision of this Act, to be made or lodged by a certain time, the court—
- 30 (a) shall not be required under that subsection to dispose of it unless it has been made or lodged by that time; but
- (b) shall have power to dispose of it to the extent that the provision under which it was made, or any other provision of this Act, allows it to be disposed of notwithstanding that it was not made or lodged in time.
- 35 (9) Where the court decides not to dispose of any preliminary issue, application, notice or other matter referred to in subsection (6)(b) above at the preliminary hearing, it may appoint a further diet, to be held before the trial diet appointed under section 72A of this Act, for the purpose of disposing of the issue, application, notice or matter.

40 **72A Preliminary hearing: appointment of trial diet**

- (1) In any case in which subsection (6) of section 72 of this Act applies, the court shall, at the preliminary hearing—
- (a) after complying with that subsection;

(b) having regard to earlier proceedings at the preliminary hearing; and  
(c) subject to subsections (2) to (6) below,  
appoint a trial diet.

5 (2) In any case in which the 12 month period applies (whether or not the 140 day period also applies in the case)—

(a) if the court considers that the case would be likely to be ready to proceed to trial within that period, it shall, subject to subsections (4) to (6) below, appoint a trial diet for a date within that period; or

10 (b) if the court considers that the case would not be likely to be so ready, it shall give the prosecutor an opportunity to make an application to the court under section 65(3) of this Act for an extension of the 12 month period.

(3) Where paragraph (b) of subsection (2) above applies—

15 (a) if such an application as is mentioned in that paragraph is made and granted, the court shall, subject to subsections (4) to (6) below, appoint a trial diet for a date within the 12 month period as extended; or

(b) if no such application is made or if one is made but is refused by the court—

20 (i) the court may desert the diet *simpliciter* or *pro loco et tempore*; and

(ii) where the accused is committed until liberated in due course of law, he shall be liberated forthwith.

(4) Subsection (5) below applies in any case in which—

25 (a) the 140 day period as well as the 12 month period applies; and

(b) the court is required, by virtue of subsection (2)(a) or (3)(a) above, to appoint a trial diet within the 12 month period.

(5) In such a case—

30 (a) if the court considers that the case would be likely to be ready to proceed to trial within the 140 day period, it shall appoint a trial diet for a date within that period as well as within the 12 month period; or

(b) if the court considers that the case would not be likely to be so ready, it shall give the prosecutor an opportunity to make an application under section 65(5) of this Act for an extension of the 140 day period.

(6) Where paragraph (b) of subsection (5) above applies—

35 (a) if such an application as is mentioned in that paragraph is made and granted, the court shall appoint a trial diet for a date within the 140 day period as extended as well as within the 12 month period;

(b) if no such application is made or if one is made but is refused by the court—

40 (i) the court shall proceed under subsection (2)(a) or, as the case may be, (3)(a) above to appoint a trial diet for a date within the 12 month period; and

(ii) the accused shall then be entitled to be admitted to bail.

(7) Where an accused is, by virtue of subsection (6)(b)(ii) above, entitled to be admitted to bail, the court shall, before admitting him to bail, give the prosecutor an opportunity to be heard.

(8) On appointing a trial diet under this section in a case where the accused has been admitted to bail (otherwise than by virtue of subsection (6)(b)(ii) above), the court, after giving the parties an opportunity to be heard—

(a) shall review the conditions imposed on his bail; and

(b) having done so, may, if it considers it appropriate to do so, fix bail on different conditions.

(9) In this section—

“the 12 month period” means the period specified in subsection (1)(b) of section 65 of this Act and, in any case in which that period has been extended under subsection (3) of that section, includes that period as so extended; and

“the 140 day period” means the period specified in subsection (4)(aa)(ii) of that section and, in any case in which that period has been extended under subsection (5) of that section, includes that period as so extended.

**72B Adjournment and alteration of, and power to dispense with, preliminary hearing**

(1) The court may, if it considers it appropriate to do so, adjourn a preliminary hearing.

(2) However, where the court adjourns a preliminary hearing under subsection (1) above by reason only that, following inquiries for the purposes of section 72(2) or (6)(a) of this Act, it appears to the court that the accused has not engaged a solicitor for the purposes of the conduct of—

(a) his case at or for the purposes of the preliminary hearing; or

(b) his defence at the trial,

(as the case may be), that adjournment shall be for a period of not more than 48 hours.

(3) Where a preliminary hearing is adjourned, the accused shall appear at the adjourned hearing and answer the indictment.

(4) A party may, at any time before the commencement of the preliminary hearing, apply for acceleration or postponement of the hearing.

(5) Where an application is made under subsection (4) above, a single judge of the High Court may, after giving the parties an opportunity to be heard—

(a) discharge the preliminary hearing; and

(b) appoint a new preliminary hearing—

(i) in the case of an application for acceleration, for an earlier date;

(ii) in the case of an application for postponement, for a later date,

than that for which the discharged preliminary hearing was appointed.

- (6) Where all the parties join in an application under subsection (4) above, the judge may proceed under subsection (5) above without hearing the parties and, accordingly, may dispense with any hearing previously appointed for the purpose of considering the application.
- (7) Where there is a hearing for the purposes of considering an application under subsection (4) above, the accused shall attend it, unless the judge permits the hearing to proceed notwithstanding the absence of the accused.
- (8) The court may, on an application made to it jointly by the parties, dispense with a preliminary hearing and order the Clerk of Justiciary to appoint a trial diet if the court is satisfied on the basis of the application that—
- (a) the state of preparation of the prosecutor and the accused with respect of their cases is such that the case is likely to be ready to proceed to trial on the date to be appointed for the trial diet;
  - (b) there are no preliminary pleas, preliminary issues or other matters which require to be, or could with advantage be, disposed of before the trial; and
  - (c) there are no persons to whom section 72(7) of this Act applies.
- (9) An application under subsection (8) above shall identify which (if any) of the witnesses included in the list of witnesses are required by the accused to attend the trial.
- (10) Where a trial diet is to be appointed by the Clerk of Justiciary in pursuance of an order under subsection (8) above, it shall be appointed in accordance with such procedure as may be prescribed by Act of Adjournal.
- (11) Where a trial diet is appointed under subsection (8) above, the accused shall appear at the diet and answer the indictment.
- (12) For the purposes of subsection (4) above, a preliminary hearing shall be taken to commence when it is called.

### **72C Procedure where preliminary hearing does not proceed**

- (1) Where a preliminary hearing is deserted *pro loco et tempore*, the court may appoint a further preliminary hearing for a later date and the accused shall appear and answer the indictment at that hearing.
- (2) Subsection (3) below applies where, at a preliminary hearing—
- (a) the hearing has been deserted *pro loco et tempore* for any reason and no further preliminary hearing has been appointed under subsection (1) above; or
  - (b) the indictment is for any reason not proceeded with and the hearing has not been adjourned or postponed.
- (3) Where this subsection applies, the prosecutor may, at any time within the period of two months after the relevant date, give notice to the accused on another copy of the indictment to appear and answer the indictment—
- (a) at a further preliminary hearing in the High Court not less than seven clear days after the date of service of the notice; or
  - (b) at—

- (i) a first diet not less than 15 clear days after the service of the notice and not less than 10 clear days before the trial diet; and
- (ii) a trial diet not less than 29 clear days after the service of the notice,

5 in the sheriff court where the charge is one that can lawfully be tried in that court.

- (4) In subsection (3) above, “the relevant date” means—
  - (a) where paragraph (a) of subsection (2) above applies, the date on which the diet was deserted as mentioned in that paragraph; or
  - 10 (b) where paragraph (b) of that subsection applies, the date of the preliminary hearing referred to in that paragraph.
- (5) A notice referred to in subsection (3) above shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form.

**72D Preliminary hearing: further provision**

- 15 (1) A preliminary hearing may proceed notwithstanding the absence of the accused.
- (2) Where, at a preliminary hearing, a trial diet is appointed, the accused shall appear at the trial diet and answer the indictment.
- (3) At a preliminary hearing, the court—
  - 20 (a) shall take into account any written record lodged under section 72E of this Act; and
  - (b) may ask the prosecutor and the accused any question in connection with any matter which it is required to dispose of or ascertain under section 72 of this Act.
- 25 (4) The proceedings at a preliminary hearing shall be recorded by means of shorthand notes or by mechanical means.
- (5) Subsections (2) to (4) of section 93 of this Act shall apply for the purposes of the recording of proceedings at a preliminary hearing in accordance with subsection (4) above as they apply for the purposes of the recording of proceedings at the trial in accordance with subsection (1) of that section.
- 30 (6) The Clerk of Justiciary shall prepare, in such form and manner as may be prescribed by Act of Adjournal, a minute of proceedings at a preliminary hearing, which shall record, in particular, whether any preliminary pleas or issues were disposed of and, if so, how they were disposed of.
- 35 (7) In this section, references to a preliminary hearing include an adjourned preliminary hearing.
- (8) In this section and sections 72 to 72C, “the court” means the High Court.”

**2 Written record of state of preparation in certain cases**

After section 72D of the 1995 Act (as inserted by section 1(3) of this Act) insert—

**“72E Written record of state of preparation in certain cases**

(1) This section applies where, in any proceedings in the High Court, a solicitor has notified the Crown Agent under section 72F(1) of this Act that he has been engaged by the accused for the purposes of the conduct of his case at the preliminary hearing.

(2) The prosecutor and the accused’s legal representative shall, not less than two days before the preliminary hearing, jointly lodge with the Clerk of Justiciary a written record of their state of preparation with respect to their cases (referred to in this section as “a written record”).

(3) The High Court may, on cause shown, allow a written record to be lodged after the time referred to in subsection (2) above.

(4) A written record shall—

(a) be in such form, or as nearly as may be in such form; and

(b) contain such information,

as may be prescribed by Act of Adjournal.

(5) A written record may contain, in addition to the information required by virtue of subsection (4)(b) above, such other information as the prosecutor and the accused’s legal representative consider appropriate.

(6) In this section—

“the accused’s legal representative” means—

(a) the solicitor referred to in subsection (1) above; or

(b) where the solicitor has instructed counsel for the purposes of the conduct of the accused’s case at the preliminary hearing, either the solicitor or that counsel, or both of them; and

“counsel” includes a solicitor who has a right of audience in the High Court of Justiciary under section 25A (rights of audience in various courts including the High Court of Justiciary) of the Solicitors (Scotland) Act 1980 (c.46).”.

**3 Appeals**

(1) Section 74 (appeals in connection with preliminary diets) of the 1995 Act is amended in accordance with this section.

(2) In subsection (1), for the word “diet” where it secondly occurs, substitute “hearing”.

(3) In subsection (2)—

(a) in paragraph (a)—

(i) after the word “first” insert “diet”,

(ii) for the word “diet” where it first occurs, substitute “hearing”,

(b) after that paragraph insert—

“(aa) may not be taken against a decision at a preliminary hearing, in appointing a trial diet, to fix or not to fix, for the purposes of section 83A(3) of this Act, the day appointed as the day on which the diet shall commence;”.

5 (4) In subsection (3), for the words “the trial diet” substitute “any trial diet that has been appointed”.

(5) After that subsection insert—

10 “(3A) Where an appeal is taken under subsection (1) above against a decision at a preliminary hearing, the High Court may adjourn, or further adjourn, the preliminary hearing for such period as appears to it to be 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 respect of the case.”.

(6) In subsection (4)(b), after “fix” insert—

15 “(i) where the indictment is in respect of the High Court, a further preliminary hearing; or

(ii) where the indictment is in respect of the sheriff court.”.

#### **4 Prohibition on accused conducting case in person in certain cases**

(1) In section 288C(1) of the 1995 Act (prohibition of personal conduct of defence in cases of certain sexual offences), after “conducting” insert—

20 “(a) his case in person at or for the purposes of a preliminary hearing; and  
(b)”.

(2) In section 288D(2)(a) of that Act (appointment by the court of a solicitor in such cases), after “of” insert—

25 “(i) the conduct of his case at or for the purposes of a preliminary hearing; or  
(ii)”.

(3) In section 288E of that Act (power to prohibit personal conduct of defence in cases involving vulnerable witnesses), after subsection (4) insert—

30 “(4A) Where, in any proceedings in the High Court, an order is made under subsection (2) above before or at the preliminary hearing, the accused is also prohibited from conducting or, as the case may be, continuing to conduct, his case in person at or for the purposes of the preliminary hearing.”.

#### *Requirements relating to accused’s legal representation*

#### **5 Engagement, dismissal and withdrawal of solicitor representing accused**

35 After section 72E of the 1995 Act (as inserted by section 2 of this Act), insert—

#### **“72F Engagement, dismissal and withdrawal of solicitor representing accused in High Court cases**

(1) In any proceedings in the High Court, it is the duty of a solicitor who is engaged by the accused for the purposes of his defence at any part of the

proceedings to notify the court and the Crown Agent of that fact forthwith in writing.

(2) Where any such solicitor—

(a) is dismissed by the accused; or

(b) withdraws,

it is the duty of the solicitor to inform the court and the Crown Agent of those facts forthwith in writing.

(3) On being so informed in any case to which subsections (4) and (5) below apply, the court shall order that, before the trial diet, there shall be a further pre-trial diet under this section.

(4) This subsection applies to any case in which—

(a) the accused is charged with an offence to which section 288C of this Act applies; or

(b) an order has been made under section 288E(2) of this Act.

(5) This subsection applies to any case in which—

(a) the solicitor was engaged for the purposes of the defence of the accused—

(i) at the time of a preliminary hearing;

(ii) if a preliminary hearing was dispensed with under section 72B(8) of this Act, at the time it was so dispensed with;

(iii) at the time of a diet under this section; or

(iv) in the case of a diet which, under subsection (10) below, is dispensed with, at the time when it was so dispensed with; and

(b) the court is informed as mentioned in subsection (2) above after that time but before the trial diet.

(6) At a diet under this section, the court shall ascertain whether or not the accused has engaged another solicitor for the purposes of his defence at the trial.

(7) Where, following inquiries for the purposes of subsection (6) above, it appears to the court that the accused has not engaged another solicitor for the purposes of his defence at the trial, it may adjourn the diet under this section for a period of not more than 48 hours and the accused shall then attend.

(8) A diet under this section shall be not less than 10 clear days before the trial diet.

(9) A court may, at a diet under this section, postpone the trial diet for such period as appears to it to be 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 respect of the case.

(10) The court may dispense with a diet under this section previously ordered, but only if a solicitor engaged by the accused for the purposes of the defence of the accused at the trial has, in writing—

(a) confirmed his engagement for that purpose; and

(b) requested that the diet be dispensed with.”.

*Alteration etc. of trial diet*

**6 Alteration of trial diet**

Before section 80 (alteration and postponement of trial diet) insert—

**“79A Alteration of trial diet in the High Court**

- 5 (1) Where an indictment which is to be tried in the High Court is not brought to trial at the trial diet, the court may adjourn the trial diet.
- (2) The court may, in particular, adjourn the trial diet under subsection (1) above to a diet to be held at a sitting of the court in another place.
- 10 (3) In any case which is to be tried in the High Court, a party may, at any time before the commencement of the trial, apply for acceleration or postponement of the trial diet.
- (4) Where an application is made under subsection (3) above, a single judge of the High Court may, after giving the parties an opportunity to be heard—
- 15 (a) discharge the trial diet; and
- (b) appoint a new trial diet—
- (i) in the case of an application for acceleration, for an earlier date;
- (ii) in the case of an application for postponement, for a later date, than that for which the discharged trial diet was appointed.
- 20 (5) Where all the parties join in an application under subsection (3) above, the judge may proceed under subsection (4) above without hearing the parties and, accordingly, may dispense with any hearing previously appointed for the purpose of considering the application.
- 25 (6) Where there is a hearing for the purposes of considering an application under subsection (3) above, the accused shall attend it, unless the judge permits the hearing to proceed notwithstanding the absence of the accused.
- (7) In appointing a new trial diet under subsection (4) above, the judge—
- 30 (a) shall have regard to the state of preparation of the prosecutor and the accused with respect of their cases and, in particular, to the likelihood of the case being ready to proceed to trial on the date to be appointed for the trial diet; and
- (b) may, if it appears to the judge that there are any preliminary pleas, preliminary issues or other matters which require to be, or could with advantage be, disposed of or ascertained before the trial, appoint a diet to be held before the trial diet for the purpose of disposing of or, as the case may be, ascertaining them.
- 35 (8) For the purposes of subsection (3) above, the trial shall be taken to commence when the oath is administered to the jury.”.

**7 Procedure where trial diet does not proceed**

After section 81 (procedure where trial does not take place) of the 1995 Act insert—

**“81A Procedure where trial diet in the High Court does not proceed**

(1) Where a trial diet appointed in any proceedings in the High Court is deserted *pro loco et tempore*, the Court may appoint a further trial diet for a later date and the accused shall appear and answer the indictment at that diet.

(2) In appointing a further trial diet under subsection (1) above, the High Court—

(a) shall have regard to the state of preparation of the prosecutor and the accused with respect to their cases and, in particular, to the likelihood of the case being ready to proceed to trial on the date to be appointed for the trial diet; and

(b) may, if it appears to the Court that there are any preliminary pleas, preliminary issues or other matters which require to be, or could with advantage be, disposed of or ascertained before the trial, appoint a diet to be held before the trial diet for the purpose of disposing of or, as the case may be, ascertaining them.

(3) Where at a trial diet appointed in any proceedings in the High Court—

(a) the diet has been deserted *pro loco et tempore* for any reason and no further trial diet has been appointed under subsection (1) above; or

(b) the indictment is for any reason not brought to trial and the diet has not been continued, adjourned or postponed,

the prosecutor may, at any time within the period of two months after the relevant date, give notice to the accused on another copy of the indictment to appear and answer the indictment at a further preliminary hearing in the High Court not less than seven clear days after the date of service of the notice.

(4) In subsection (3) above, “the relevant date” means—

(a) where paragraph (a) of that subsection applies, the date on which the diet was deserted as mentioned in that paragraph; or

(b) where paragraph (b) of that subsection applies, the date of the trial diet.

(5) A notice referred to in subsection (3) above shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form.”.

**8 Continuation of trial diet**

After section 83 (transfer of sheriff court solemn proceedings) of the 1995 Act insert—

*“Continuation of trial diet in the High Court***83A Continuation of trial diet in the High Court**

(1) A trial diet appointed in any case which is to be tried in the High Court, other than a case to which subsection (3) below applies, may, without having been commenced, be continued from sitting day to sitting day—

(a) by minute, in such form as may be prescribed by Act of Adjournal, signed by the Clerk of Justiciary; and

- (b) up to such maximum number of sitting days after the day originally appointed for the trial diet as may be so prescribed.
- (2) If such a trial diet is not commenced by the end of the last sitting day to which it may be continued by virtue of subsection (1)(b) above, the indictment shall fall.
- (3) Where, in any case which is to be tried in the High Court—
- (a) the court has, in appointing a day for the holding of a trial diet in the case, fixed that day as the day on which the diet shall commence; and
- (b) the trial diet does not commence on that day,
- the indictment shall fall.
- (4) For the purposes of this section, a trial diet shall be taken to commence when it is called.
- (5) In this section, “sitting day” means any day on which the court is sitting, but does not include any Saturday or Sunday or any day which is a court holiday.”.

## PART 2

### SOLEMN PROCEEDINGS GENERALLY

#### 9 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—

“(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(8) 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.

(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.”.

(10) In subsection (9), after “section,” insert—

5                   “(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)”.

10           (11) In subsection (10), for “period of” substitute “periods of 11 and”.

## **10       Warrant for citation**

(1) Section 66 (service and lodging of indictment, etc.) of the 1995 Act is amended as follows.

(2) For subsection (1) substitute—

15           “(1) This Act shall be sufficient warrant for—

                      (a) the citation of the accused and witnesses to—

                          (i) any diet of the High Court to be held on any day, and at any place, the Court is sitting;

                          (ii) any diet of the sheriff court to be held on any day the court is sitting; or

                          (iii) any adjournment of a diet specified in sub-paragraph (i) or (ii) above; and

                      (b) the citation of jurors for any trial to be held—

                          (i) in the High Court; or

                          (ii) under solemn procedure in the sheriff court.”.

(3) Subsection (8) is repealed.

## **11       Trial in absence of accused**

(1) In subsection (1) of section 92 (trial in presence of accused) of the 1995 Act, for “subsection (2)” substitute “subsections (2) and (2A)”.

(2) In subsection (2) of that section, the words “counsel or” are repealed.

(3) After subsection (2) of that section insert—

                      “(2A) If—

                          (a) the accused fails to appear at the trial diet; and

                          (b) the court is satisfied that—

                              (i) the accused was cited in accordance with section 66 of this Act; and

                              (ii) it is in the interests of justice to do so,

then the court may, on the motion of the prosecutor, proceed with the trial and dispose of the case in the absence of the accused.

(2B) Where the court exercises the power under subsection (2A) above, it shall—

(a) if satisfied that there is a solicitor with authority to act for the purposes of the accused's defence at the trial, allow that solicitor to act for those purposes; or

(b) if there is no such solicitor, at its own hand appoint a solicitor to act for those purposes.

(2C) It is the duty of a solicitor appointed under subsection (2) or (2B)(b) above to act in the best interests of the accused.

(2D) In all other respects, a solicitor so appointed has, and may be made subject to, the same obligations and has, and may be given, the same authority as if engaged by the accused; and any employment of and instructions given to counsel by the solicitor shall proceed and be treated accordingly.

(2E) Where the court is satisfied that—

(a) a solicitor allowed to act under subsection (2B)(a) above no longer has authority to act; or

(b) a solicitor appointed under subsection (2) or (2B)(b) above is no longer able to act in the best interests of the accused,

the court may relieve that solicitor and appoint another solicitor for the purposes of the accused's defence at the trial.

(2F) Subsections (2B)(b) and (2E) above shall not apply in the case of proceedings—

(a) in respect of a sexual offence to which section 288C of this Act applies; or

(b) in which an order has been made under section 288E(2) of this Act.”.

(4) After subsection (3) of that section insert—

“(4) In this section—

(a) references to a solicitor appointed under subsection (2) or (2B)(b) above include references to a solicitor appointed under subsection (2E) above;

(b) “counsel” includes, in relation to the High Court of Justiciary, a solicitor who has a right of audience in that Court under section 25A of the Solicitors (Scotland) Act 1980 (c.46).”.

(5) After subsection (6A) of section 66 (service and lodging of indictment etc.) of the 1995 Act insert—

“(6AA) A notice affixed under subsection (4)(b) above or served under subsection (6) above shall also contain intimation to the accused—

(a) where the indictment is in respect of the High Court, that, if he does not appear at the preliminary hearing—

(i) the hearing may proceed; and

(ii) a trial diet may be appointed,

in his absence; and

- (b) in any case (whether the indictment is in respect of the High Court or the sheriff court), that if he does not appear at the trial diet, the trial may proceed in his absence.”.

## **12 Reluctant witnesses**

After section 90 (death or illness of jurors) of the 1995 Act insert—

### *“Reluctant witnesses*

#### **90A Apprehension of witnesses in proceedings on indictment**

- (1) In any proceedings on indictment, the court may, on the application of any of the parties, issue a warrant for the apprehension of a witness if subsection (2) or (3) below applies in relation to the witness.
- (2) This subsection applies if—
- (a) the witness, having been duly cited to any diet in the proceedings, fails to appear at the diet; and
- (b) no just excuse for failing to appear is given by or on behalf of the witness.
- (3) This subsection applies if the court is satisfied by evidence on oath that the witness is not likely to attend to give evidence at any diet in the proceedings without being compelled to do so.
- (4) An application under subsection (1) above—
- (a) may be made orally or in writing;
- (b) if made in writing—
- (i) shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form; and
- (ii) may be disposed of in court or in chambers after such inquiry or hearing (if any) as the court considers appropriate.
- (5) A warrant issued under this section shall be in such form as may be prescribed by Act of Adjournal or as nearly as may be in such form.
- (6) A warrant issued under this section in the form mentioned in subsection (5) above shall imply warrant to officers of law—
- (a) to search for and apprehend the witness in respect of whom it is issued;
- (b) to bring the witness before the court;
- (c) in the meantime, to detain the witness in a police station, police cell or other convenient place; and
- (d) so far as is necessary for the execution of the warrant, to break open shut and lockfast places.
- (7) It shall not be competent, in any proceedings on indictment, for a court to issue a warrant for the apprehension of a witness otherwise than in accordance with this section.
- (8) A person apprehended under a warrant issued under this section shall wherever practicable be brought before the court not later than in the course of the first day on which—

(a) in the case of a warrant issued by a single judge of the High Court, that Court,

(b) in any other case, the court,

is sitting after he is taken into custody.

5 (9) In this section and section 90B, “the court” means, except where the context requires otherwise—

(a) where the witness is to give evidence in proceedings in the High Court, a single judge of that Court; or

10 (b) where the witness is to give evidence in proceedings on indictment in the sheriff court, any sheriff court with jurisdiction in relation to the proceedings.

**90B Orders in respect of witnesses apprehended under section 90A**

15 (1) Where a witness is brought before the court in pursuance of a warrant issued under section 90A of this Act, the court shall, after giving the parties and the witness an opportunity to be heard, make an order—

(a) detaining the witness until the conclusion of the diet at which the witness is to give evidence;

(b) releasing the witness on bail; or

(c) liberating the witness.

20 (2) The court may make an order under subsection (1)(a) or (b) above only if it is satisfied that—

(a) the order is necessary with a view to securing that the witness appears at the diet at which the witness is to give evidence; and

(b) it is appropriate in all the circumstances to make the order.

25 (3) Subsection (1) above is without prejudice to any power of the court to—

(a) make a finding of contempt of court in respect of any failure of a witness to appear at a diet to which he has been duly cited; and

(b) dispose of the case accordingly.

30 (4) Where—

(a) an order under subsection (1)(a) above has been made in respect of a witness; and

(b) at, but before the conclusion of, the diet at which the witness is to give evidence, the court in which the diet is being held excuses the witness,

35 that court, on excusing the witness, may recall the order under subsection (1)(a) above and liberate the witness.

(5) On making an order under subsection (1)(b) above in respect of a witness, the court shall impose such conditions as it considers necessary with a view to securing that the witness appears at the diet at which he is to give evidence.

40 (6) However, the court may not impose as such a condition a requirement that the witness or a cautioner on his behalf deposit a sum of money in court.

(7) Where the court makes an order under subsection (1)(a) above in respect of a witness, the court shall, on the application of the witness—

(a) consider whether the imposition of a requirement such as is mentioned in paragraph (b)(ii) below would enable it to make an order under subsection (1)(b) above releasing the witness on bail subject to a condition under subsection (5) above restricting the applicant's movements; and

(b) if so—

(i) make an order under subsection (1)(b) above releasing the witness on bail subject to such a condition (as well as such other conditions required to be imposed under subsection (5) above); and

(ii) in the order, impose a requirement that compliance with the condition be remotely monitored.

(8) Subsections (2) to (13) and (15) of section 24A of this Act apply in relation to an order made, and the making of any order, under subsection (1)(b) above containing a requirement under subsection (7)(b)(ii) above as they apply to an order made, or the making of an order, under section 24A(1) of this Act, but with the following modifications—

(a) references to an order under section 24A(1) of this Act shall be read as if they were references to an order under subsection (1)(b) above containing a requirement under subsection (7)(b)(ii) above;

(b) references to the applicant shall be read as if they were references to the witness in respect of whom the order under subsection (1)(b) above is made;

(c) references to a requirement imposed under section 24A(1)(b)(ii) of this Act shall be read as if they were references to a requirement imposed under subsection (7)(b)(ii) above;

(d) in subsection (12), the reference to subsection (1)(b) of section 27 of this Act shall be read as if it were a reference to subsection (1)(b) of section 90C of this Act;

(e) subsection (13) shall be read as if—

(i) the reference to section 25 of this Act were a reference to that section as applied by virtue of subsection (9) below;

(ii) the reference to section 27 of this Act were a reference to section 90C(1) and (2) of this Act;

(iii) the reference to section 28 of this Act were a reference to that section as applied by virtue of section 90C(3) of this Act; and

(iv) the reference to sections 30 and 31 of this Act were a reference to section 90D of this Act.

(9) Section 25 of this Act (which makes provision for an order granting bail to specify the conditions imposed on bail and the accused's proper domicile of citation) shall apply in relation to an order under subsection (1)(b) above as it applies to an order granting bail, but with the following modifications—

- (a) references to the accused shall be read as if they were references to the witness in respect of whom the order under subsection (1)(b) above is made;
- (b) references to the order granting bail shall be read as if they were references to the order under subsection (1)(b) above;
- (c) subsection (3) shall be read as if for the words from “relating” to “offence” in the third place where it occurs there were substituted “at which the witness is to give evidence”.

(10) In this section, references to a condition restricting a witness’s movements include any condition requiring the witness to be, or not to be, in any place or description of place for, or during, any period or periods or at any time.

### **90C Breach of bail under section 90B(1)(b)**

(1) A witness who, having been released on bail by virtue of an order under subsection (1)(b) of section 90B of this Act, fails without reasonable excuse—

- (a) to appear at any diet to which he has been cited; or
- (b) to comply with any condition imposed under subsection (5) of that section,

shall be guilty of an offence and liable on conviction on indictment to the penalties specified in subsection (2) below.

(2) Those penalties are—

- (a) a fine; and
- (b) imprisonment for a period not exceeding two years.

(3) Section 28 of this Act shall apply in respect of a witness who has been released on bail by virtue of an order under section 90B(1)(b) of this Act as it applies to an accused released on bail, but with the following modifications—

- (a) references to an accused shall be read as if they were references to the witness;
- (b) in subsection (2), the reference to the court to which the accused’s application for bail was first made shall be read as if it were a reference to the court which made the order under section 90B(1)(b) of this Act in respect of the witness; and
- (c) in subsection (4)—
  - (i) references to the order granting bail and original order granting bail shall be read as if they were references to the order under section 90B(1)(b) and the original such order respectively;
  - (ii) paragraph (a) shall be read as if at the end there were inserted “and make an order under section 90B(1)(a) or (c) of this Act in respect of the witness”; and
  - (iii) paragraph (c) shall be read as if for the words from “complies” to the end there were substituted “appears at the diet at which the witness is to give evidence”.

**90D Review of orders under section 90B(1)(a) or (b)**

- 5 (1) Where a court has made an order under subsection (1)(a) of section 90B of this Act, the court may, on the application of the witness in respect of whom the order was made, on cause shown and after giving the parties and the witness an opportunity to be heard—
- (a) recall the order; and
  - (b) make an order under subsection (1)(b) or (c) of that section in respect of the witness.
- 10 (2) Where a court has made an order under subsection (1)(b) of section 90B of this Act, the court may, after giving the parties and the witness an opportunity to be heard—
- (a) on the application of the witness in respect of whom the order was made and on cause shown—
    - 15 (i) review the conditions imposed under subsection (5) of that section at the time the order was made; and
    - (ii) make a new order under subsection (1)(b) of that section and impose different conditions under subsection (5) of that section;
  - (b) on the application of the party who made the application under section 90A(1) of this Act in respect of the witness, review the order and the conditions imposed under subsection (5) of that section at the time the order was made, and
    - 20 (i) recall the order and make an order under subsection (1)(a) of that section in respect of the witness; or
    - (ii) make a new order under subsection (1)(b) of that section and impose different conditions under subsection (5) of that section.
- 25 (3) The court may not review an order by virtue of subsection (2)(b) above unless the party making the application puts before the court material information which was not available to it when it made the order which is the subject of the application.
- 30 (4) An application under this section by a witness—
- (a) where it relates to the first order made under section 90B(1)(a) or (b) of this Act in respect of the witness, shall not be made before the fifth day after that order is made;
  - (b) where it relates to any subsequent such order, shall not be made before the fifteenth day after the order is made.
- 35 (5) On receipt of an application under subsection (2)(b) above the court shall—
- (a) intimate the application to the witness in respect of whom the order which is the subject of the application was made;
  - (b) fix a diet for hearing the application and cite the witness to attend the diet; and
  - 40 (c) where it considers that the interests of justice so require, grant warrant to arrest the witness.

- (6) Nothing in this section shall affect any right of a person to appeal against an order under section 90B(1).

**90E Appeals in respect of orders under section 90B(1)**

- (1) Any of the parties specified in subsection (2) below may appeal to the High Court against—
- (a) any order made under subsection (1)(a) or (c) of section 90B of this Act; or
- (b) where an order is made under subsection (1)(b) of that section—
- (i) the order;
- (ii) any of the conditions imposed under subsection (5) of that section on the making of the order; or
- (iii) both the order and any such conditions.
- (2) The parties referred to in subsection (1) above are—
- (a) the witness in respect of whom the order which is the subject of the appeal was made;
- (b) the prosecutor; and
- (c) the accused.
- (3) A party making an appeal under subsection (1) above shall intimate it to the other parties specified in subsection (2) above and, for that purpose, intimation to the Lord Advocate shall be sufficient intimation to the prosecutor.
- (4) An appeal under this section shall be disposed of by the High Court or any Lord Commissioner of Justiciary in court or in chambers after such inquiry and hearing of the parties as shall seem just.
- (5) Where the witness in respect of whom the order which is the subject of an appeal under this section was made is under 21 years of age, section 51 of this Act shall apply to the High Court or, as the case may be, the Lord Commissioner of Justiciary when disposing of the appeal as it applies to a court when remanding or committing a person of the witness's age for trial or sentence.”.

**13 Preliminary pleas and preliminary issues**

For section 79 (preliminary pleas) of the 1995 Act, substitute—

**“79 Preliminary pleas and preliminary issues**

- (1) Except by leave of the court on cause shown, no preliminary plea or preliminary issue shall be made, raised or submitted in any proceedings on indictment by any party unless his intention to do so has been stated in a notice under section 71(2) or, as the case may be, 72(3) or (6)(b)(i) of this Act.
- (2) For the purposes of this section and those sections—
- (a) the following are preliminary pleas, namely—
- (i) a matter relating to the competency or relevancy of the indictment;

- (ii) an objection to the validity of the citation against a party, on the ground of any discrepancy between the record copy of the indictment and the copy served on him, or on account of any error or deficiency in such service copy or in the notice of citation; and
- 5 (iii) a plea in bar of trial; and
- (b) the following are preliminary issues, namely—
- (i) an application for separation or conjunction of charges or trials;
- (ii) a preliminary objection under section 255 or 255A of this Act;
- (iii) an application under section 278(2) of this Act;
- 10 (iv) an objection by a party to the admissibility of any evidence if it is an objection of which the party could reasonably be expected to give notice as required by subsection (1) above;
- (v) an assertion by a party that there are documents the truth of the contents of which ought to be admitted, or that there is any other matter which in his view ought to be agreed; and
- 15 (vi) any other point raised by a party, as regards any matter not mentioned in sub-paragraphs (i) to (v) above, which could in his opinion be resolved with advantage before the trial.
- (3) No discrepancy, error or deficiency such as is mentioned in subsection (2)(a)(ii) above shall entitle an accused to object to plead to the indictment unless the court is satisfied that the discrepancy, error or deficiency tended substantially to mislead and prejudice the accused.
- 20 (4) Where the court, under subsection (1) above, grants leave for a party to make, raise or submit a preliminary plea or preliminary issue without his intention to do so having been stated in a notice as required by that subsection, the court may, if it considers it appropriate to do so, appoint a diet to be held before the trial diet for the purpose of disposing of the plea or issue.”.
- 25

### PART 3

#### BAIL

#### 14 **Bail conditions: remote monitoring of restrictions on movements**

After section 24 (bail and bail conditions) of the 1995 Act insert—

##### **“24A Bail conditions: remote monitoring of restrictions on movements**

- (1) Where a court has refused to admit a person to bail, the court shall, on the application of that person (referred to in this section as “the applicant”)—
- 35 (a) consider whether the imposition of a requirement such as is mentioned in paragraph (b)(ii) below would enable it to admit the applicant to bail subject to a condition under section 24(4)(b) of this Act restricting the applicant’s movements; and
- (b) if so—

- 
- (i) make an order under this subsection admitting the applicant to bail subject to such a condition (as well as such other conditions required to be imposed under section 24(4) of this Act); and
- (ii) in the order, impose a requirement that compliance with the condition be remotely monitored.
- (2) Before considering whether to make an order under subsection (1) above, the court shall give the applicant and the prosecutor an opportunity to be heard.
- (3) Before making an order under subsection (1) above, the court shall explain to the applicant in ordinary language—
- (a) the effect of the order and, in particular—
- (i) of the requirement to be imposed under subsection (1)(b)(ii) above; and
- (ii) of any requirement to be imposed under section 245C(2) of this Act as applied by subsection (10) below; and
- (b) the consequences which may follow any failure by the applicant to comply with—
- (i) the condition in respect of which the requirement under subsection (1)(b)(ii) above is to be imposed; and
- (ii) any such requirement as is referred to in paragraph (a)(ii) above.
- (4) The court shall not make an order under subsection (1) above unless the applicant, after the court has explained to him the matters referred to in paragraphs (a) and (b) of subsection (3) above, has confirmed that he understands those matters.
- (5) Before considering whether to make an order under subsection (1) above where the condition to be imposed restricting the applicant's movements will require the applicant to remain in a specified place or places, the court shall obtain and consider information about that place or those places, including information as to the attitude of persons likely to be affected by the requirement that the applicant remain there.
- (6) The court may, for the purposes of subsection (5) above, adjourn the proceedings.
- (7) Where a court makes—
- (a) an order under subsection (1) above; or
- (b) an order varying or revoking such an order or revoking a requirement imposed under subsection (1)(b)(ii) above,
- the clerk of the court shall cause a copy of the order to be sent immediately to the monitor.
- (8) Where, in the course of monitoring in pursuance of a requirement imposed under subsection (1)(b)(ii) above a person's compliance with a condition imposed in an order under this section restricting the person's movements, the monitor becomes aware that the person has breached the condition, the monitor shall immediately notify a constable of the breach.

(9) Where a constable arrests a person under section 28(1) of this Act on the ground that the constable suspects the person of having breached a condition imposed in an order under this section restricting the person's movements the constable shall, as soon as possible, notify the monitor of the arrest.

(10) Sections 245A(8) to (10), 245B and 245C of this Act shall apply in relation to orders under subsection (1) above as they apply in relation to restriction of liberty orders, but with the following modifications—

(a) references to an offender or offenders shall be read as if they were references to an applicant or applicants under this section;

(b) references to restriction of liberty orders and to the making of such orders shall be read as if they were references to orders under subsection (1) above and to the making of such orders;

(c) references to monitoring compliance with restriction of liberty orders shall be read as if they were references to remote monitoring in pursuance of requirements imposed under subsection (1)(b)(ii) above.

(11) Section 245H of this Act shall apply in proceedings specified in subsection (12) below as that section applies in proceedings under section 245F of this Act, but as if references in it to the offender were references to the applicant under this section.

(12) The proceedings referred to in subsection (11) above are proceedings in respect of an offence under subsection (1)(b) of section 27 of this Act where the condition referred to in that subsection is a condition in respect of which a requirement has been imposed under subsection (1)(b)(ii) above.

(13) Any requirement imposed on the applicant by an order under this section shall be treated for the purposes of sections 25, 27, 28, 30 and 31 of this Act as a condition imposed on bail.

(14) In this section, references to a condition restricting the applicant's movements include any condition requiring the applicant to be, or not to be, in any place or description of place for, or during, any period or periods or at any time.

(15) In this section, "monitor" means, in relation to an order under this section, any person who is, or is to be, responsible for the remote monitoring of the compliance of the person in respect of whom the order is made with the condition imposed in the order restricting the person's movements."

## **15 Bail review: rights of prosecutor to be heard etc.**

(1) The 1995 Act is amended as follows.

(2) In section 25 (bail conditions: supplementary), after subsection (2) insert—

“(2A) Where an application is made under subsection (2) above—

(a) the application shall be intimated by the accused immediately and in writing to the Crown Agent; and

(b) the court shall, before determining the application, give the prosecutor an opportunity to be heard.”

(3) In section 30 (bail review), after subsection (2) insert—

“(2A) Subsection (2B) below applies where an application is made under subsection (2) above by a person convicted on indictment pending the determination of—

- (a) his appeal; or
- (b) any relevant appeal by the Lord Advocate under section 108 or 108A of this Act.

(2B) Where this subsection applies—

- (a) the application shall be—
  - (i) intimated by the person making it immediately and in writing to the Crown Agent; and
  - (ii) heard not less than 7 days after the date of that intimation; and
- (b) the court shall, before determining the application, give the prosecutor an opportunity to be heard.”.

(4) In section 31 (bail review on prosecutor’s application), after subsection (2) insert—

“(2A) Subsection (2B) below applies to an application under subsection (1) above where the person granted bail—

- (a) was convicted on indictment; and
- (b) was granted bail pending the determination of—
  - (i) his appeal; or
  - (ii) any relevant appeal by the Lord Advocate under section 108 or 108A of this Act.

(2B) Where this subsection applies, the application shall be heard not more than 7 days after the day on which it is made.”.

## PART 4

### MISCELLANEOUS AND GENERAL

#### *Miscellaneous*

#### **16 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 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)”.

**17 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”.

- 5 (3) After subsection (1) insert—

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

10 (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.”.

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

15 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”.

**19 Citation of witnesses for precognition**

After section 267 of the 1995 Act there is inserted—

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

20 (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.

25 (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

30 (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.”.

35 *General*

**20 Minor and consequential amendments**

The schedule makes minor and consequential modifications of the 1995 Act.

**21 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.
- 5 (2) An order under this section may modify any enactment (including this Act), instrument or document.
- (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.
- 10 (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.

**22 Commencement and short title**

- 15 (1) This Act (except section 21 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.
- 20 (3) This Act may be cited as the Criminal Procedure (Amendment) (Scotland) Act 2003.

SCHEDULE  
(introduced by section 20)

MINOR AND CONSEQUENTIAL MODIFICATIONS OF THE 1995 ACT

1 The 1995 Act is amended as follows.

5 2 In section 2 (fixing of High Court sittings)—

(a) in subsection (3)—

(i) for the words “attend a” substitute “, or otherwise required to attend, a diet to be held at any”,

(ii) for “his trial” substitute “the diet or, in the case of a trial diet, the trial”,

10 (iii) for “another sitting of the High Court” substitute “a diet to be held at a sitting of the Court in another place”,

(b) after subsection (3) insert—

15 “(3C) The judge may proceed under subsection (3) above on a joint application of the parties without hearing the parties and, accordingly, he may dispense with any hearing previously appointed for the purpose of considering the application.”,

(c) in subsection (4), for “cases have been indicted for” substitute “diets have been appointed to be held at”,

(d) in subsection (5), for “any case remains indicted for” substitute “in any case a diet remains appointed to be held at”,

20 (e) after that subsection insert—

“(6) For the purposes of subsection (3) above—

(a) a diet shall be taken to commence when it is called; and

(b) a trial shall be taken to commence when the oath is administered to the jury.”.

25 3 In section 17A(1) (right of person accused of sexual offence to be told about restriction on conduct of defence: arrest)—

(a) before paragraph (a) insert—

30 “(za) that, if he is indicted to the High Court in respect of the offence, his case at or for the purposes of the preliminary hearing may be conducted only by a lawyer;”,

(b) in paragraph (c), after the word “of” insert “the conduct of his case at or for the purposes of the preliminary hearing (if he is indicted to the High Court in respect of the offence) or”.

4 In section 24 (bail and bail conditions), in subsection (5)(a), at the end insert “or at which he is required by this Act to appear”.

5 In section 25 (bail conditions: supplementary), after subsection (3) insert—

“(4) In this section, references to the court (other than in subsection (2A)) shall, in relation to a person who has been admitted to bail by the Lord Advocate, be read as if they were references to the Lord Advocate.”.

40 6 In section 27 (breach of bail conditions: offences), in subsection (1)(a), after “notice” insert “or at which he is required by this Act to appear”.

7 In section 35(4A) (right of person accused of sexual offence to be told about restriction on conduct of defence: judicial examination)—

(a) before paragraph (a) insert—

“(za) that, if he is indicted to the High Court in respect of the offence, his case at or for the purposes of the preliminary hearing may be conducted only by a lawyer;”,

(b) in paragraph (c), after the word “of” insert “the conduct of his case at or for the purposes of the preliminary hearing (if he is indicted to the High Court in respect of the offence) or”.

8 In section 66 (service and lodging of indictment etc.)—

(a) in subsection (4)—

(i) in paragraph (a), at the end insert “and of the list of productions (if any) to be put in evidence by the prosecution”,

(ii) in paragraph (b), for the words “list as is” substitute “lists as are”,

(b) after subsection (4B), insert—

“(4C) Where—

(a) the accused is cited in accordance with subsection (4)(b) above; and

(b) the charge in the indictment is of committing a sexual offence to which section 288C of this Act applies,

the accused shall, on collecting the indictment, be given a notice containing intimation of the matters specified in subsection (6A)(a) below.”,

(c) in subsection (6A)(a)—

(i) before sub-paragraph (i) insert—

“(zi) where the case is to be tried in the High Court, that his case at or for the purposes of the preliminary hearing may be conducted only by a lawyer;”,

(ii) in sub-paragraph (iii), after the word “of” insert “the conduct of his case at or for the purposes of a preliminary hearing or”,

(d) in subsection (6B)—

(i) for “(6A)” substitute “(4C), (6A) or (6AA)”,

(ii) for “such notice” substitute “notice affixed under subsection (4)(b) above or served under subsection (6) above”,

(e) subsection (10) is repealed.

9 In section 67 (witnesses)—

(a) in subsection (3)—

(i) for “ten” substitute “seven”,

(ii) for “trial diet” in the first place where the expression occurs substitute “preliminary hearing”,

(iii) the words “at the trial diet” are repealed,

(b) in subsection (5), after “accused” insert “by the relevant time.

(5A) In subsection (5) above, “the relevant time” means—

(a) where the case is to be tried in the High Court—

(i) not less than seven clear days before the preliminary hearing; or

(ii) such later time, not less than seven clear days before the trial diet,  
as the court may in special circumstances allow;

(b) where the case is to be tried in the sheriff court.”.

10 Section 67A is repealed.

11 In section 68(3) (productions)—

(a) after “lodged” insert “, where the case is to be tried in the sheriff court,”,

(b) after “diet” in the first place where it occurs insert “or, where the case is to be  
tried in the High Court, at least 14 days before the preliminary hearing,”,

(c) after “accused,” insert “where the case is to be tried in the sheriff court,”,

(d) after “diet” in the second place where it occurs insert “or, where the case is to be  
tried in the High Court, at least seven days before the preliminary hearing,”.

12 In section 69 (intimation of objection to any conviction specified in the notice of  
previous convictions), in subsection (3), for the words from “cited” in paragraph (a) to  
the end of the subsection, substitute “indicted to the High Court, to the Crown Agent not  
less than seven clear days before the preliminary hearing;

(b) where the accused is indicted to the sheriff court, to the procurator fiscal  
at least five clear days before the first day of the sitting in which the trial  
diet is to be held.”.

13 In section 71(2) (first diet), for the words from “matter” to “Act” substitute “preliminary  
plea or preliminary issue (within the meanings given to those terms in section 79(2) of  
this Act)”.

14 In section 74 (appeals in connection with preliminary diets), in subsection (2)(a), before  
“postpone” insert “accelerate or”.

15 In section 75 (computation of certain periods), “72” is repealed.

16 In section 78 (special defences, incrimination and notice of witnesses etc.)—

(a) in subsection (1)(a), the words from—

“(i) where”

to the end are repealed,

(b) in subsection (3)—

(i) in paragraph (a)—

(A) for “the accused is cited to the High Court for the trial diet” substitute  
“the case is to be tried in the High Court”,

(B) for “10 clear days before the trial diet” substitute “seven clear days  
before the preliminary hearing”,

(ii) in paragraph (b), for “accused is cited to the sheriff court for the trial diet”  
substitute “case is to be tried in the sheriff court”,

(c) in subsection (4)(b)(ii), for the words from “ten” to the end substitute “seven clear  
days before the preliminary diet”,

(d) in subsection (5), for the words “the trial diet, for the use of the court” substitute—

“(a) where the case is to be tried in the High Court, the preliminary hearing;

(b) where the case is to be tried in the sheriff court, the trial diet,

for the use of the court.”.

17 In section 80 (alteration and postponement of trial diet)—

(a) for subsection (1) substitute—

“**(1)** Where, in a case which is to be tried under solemn procedure in the sheriff court, the indictment is not brought to trial at the trial diet, the court may adjourn the trial diet.”,

(b) in subsection (2), at the beginning insert “In a case to be tried under solemn procedure in the sheriff court,”,

(c) in subsection (4), at the end insert “and, accordingly, may dispense with any hearing previously appointed for the purpose of considering the application”,

(d) subsection (6) is repealed.

18 In section 81 (procedure where trial does not take place)—

(a) in subsection (1), after “diet” in the first place where it occurs insert “in any proceedings on indictment in the sheriff court”,

(b) in subsection (2), after “where” insert “, in any proceedings on indictment in the sheriff court,”,

(c) subsection (7) is repealed.

19 In section 82 (desertion or postponement where accused in custody)—

(a) in paragraph (b), after “is” insert “continued, accelerated,”,

(b) in paragraph (c), at the end insert “or, in the case of proceedings in the High Court, originally appointed by the Court,”.

20 In section 83 (transfer of sheriff court solemn proceedings)—

(a) in subsection (1), for the word “sitting” in both places where it occurs substitute “diet”,

(b) in subsection (1A), for the word “sitting” in both places where it occurs substitute “diet”,

(c) after subsection (2B) insert—

“(2C) The sheriff may proceed under subsection (2) above on a joint application of the parties without hearing the parties and, accordingly, he may dispense with any hearing previously appointed for the purposes of considering the application.”,

(d) subsection (3) is repealed.

21 In section 84 (juries: returns of jurors and preparations of lists)—

(a) in subsection (8)—

(i) for the words “sittings of the High Court” substitute “trials in the High Court sitting at a particular place on a particular day”,

(ii) the words “to be signed by the judge” are repealed,

(b) in subsection (9)—

(i) for the words “at a sitting of the High Court” substitute “in the High Court sitting at a particular place on a particular day”,

(ii) the words “shall be authenticated by the signature of a judge of the Court, and” are repealed,

(iii) for the words “the trial of all parties cited to that particular sitting” substitute “all trials to be held in the High Court sitting in that particular place on that particular day”,

(iv) for the words “the trials of all the accused cited to the sitting” substitute “all such trials”,

(c) in subsection (10), paragraph (c) is repealed.

22 In section 85 (juries: citation and attendance of jurors)—

(a) for subsection (2) substitute—

“**(2)** A list of jurors shall—

(a) be prepared and kept in such form and manner; and

(b) contain such minimum number of names,

as may be prescribed by Act of Adjournal.”,

(b) in subsection (4), for the words “a sitting of the High Court is to be held” substitute “the High Court is to sit”,

(c) in subsection (5)—

(i) for the words “a sitting of the High Court is to be held” substitute “the High Court is to sit on any particular day”,

(ii) for the words “the sitting” substitute “trials to be held in the High Court sitting in the sheriffdom on that day”.

23 In section 87 (non-availability of judge), in subsection (1)(a)—

(a) for the words “that sitting” substitute “the same day”,

(b) in sub-paragraph (ii), for “sitting” substitute “date”.

24 In section 88 (plea of not guilty, balloting and swearing of jury), after subsection (1) insert—

“(1A) Where—

(a) the accused fails to appear at the trial;

(b) the court proposes to proceed with the trial in the absence of the accused under subsection (2A) of section 92 of this Act; and

(c) no plea is entered on behalf of the accused,

the accused shall be treated for the purposes of subsection (1) above as having pled not guilty.”.

25 In section 119 (provision where High Court authorises new prosecution), in subsection (8), for paragraphs (a) and (b) substitute—

“(a) in a case where a warrant to apprehend the accused is granted—

- (i) on the date on which the warrant is executed, or
- (ii) if it is executed without unreasonable delay, on the date on which it is granted;

(b) in any other case, on the date on which the accused is cited.”.

5 26 In section 140 (citation in summary proceedings), in subsection (1), paragraph (a) is repealed.

27 In section 156 (apprehension of witnesses), in each of subsections (1), (2) and (3), after “a witness” insert “in a summary prosecution”.

10 28 In section 255 (special capacity), in paragraph (a), for the words from “under” in the first place where it occurs to “71(2)” substitute “in accordance with section 71(2) or 72(6)(b)(i)”.

29 In section 255A (proof of age), in paragraph (a), for the words from “under” in the first place where it occurs to “71(2)” substitute “in accordance with section 71(2) or 72(6)(b)(i)”.

15 30 In section 257 (duty to seek agreement of evidence), after subsection (3) insert—

“(4) Without prejudice to subsection (3) above, in the case of proceedings in the High Court, the parties to the proceedings shall, in complying with the duty under subsection (1) above, seek to ensure that the facts to be identified, and the steps to be taken in relation to those facts, by that subsection are identified and taken before the preliminary hearing.”.

31 In section 258 (uncontroversial evidence)—

(a) in subsection (2), for “trial” substitute “relevant”,

(b) after that subsection, insert—

“(2A) In subsection (2) above, “the relevant diet” means—

25 (a) in the case of proceedings in the High Court, the preliminary hearing;

(b) in any other case, the trial diet.”.

32 In section 259 (exceptions to the rule that hearsay evidence is inadmissible)—

(a) in subsection (5), for “before the trial diet” substitute “by the relevant time”,

(b) after that subsection insert—

30 “(5A) In subsection (5) above, “the relevant time” means—

(a) in the case of proceedings in the High Court—

(i) not less than 7 days before the preliminary hearing; or

(ii) such later time, before the trial diet, as the judge may on cause shown allow;

35 (b) in any other case, before the trial diet.”.

33 In section 271A (special measures for child witnesses)—

(a) in subsection (2), for “trial” substitute “relevant”,

(b) after subsection (2) insert—

“(2A) In subsection (2) above, “the relevant diet” means—

40 (a) in the case of proceedings in the High Court, the preliminary hearing;

(b) in any other case, the trial diet.”.

34 In section 271C (special measures for vulnerable witnesses other than child witnesses)—

(a) in subsection (2), for “trial” substitute “relevant”,

(b) after subsection (2) insert—

“*(2A)* In subsection (2) above, “the relevant diet” means—

(a) in the case of proceedings in the High Court, the preliminary hearing;

(b) in any other case, the trial diet.”.

35 In section 275B (provisions supplementary to sections 275 and 275A), in subsection (1), after “made” insert—

“(a) in the case of proceedings in the High Court, not less than 7 clear days before the preliminary hearing; or

(b) in any other case,”.

36 In section 277(2) (transcript of police interview sufficient evidence)—

(a) in paragraph (a), after “before” insert—

“(i) in the case of proceedings in the High Court, the preliminary hearing;

(ii) in any other case,”.

(b) in paragraph (b), for “six days before his trial, or” substitute—

“(i) in the case of proceedings in the High Court, seven days before the preliminary hearing;

(ii) in any other case, six days before his trial;

or (in either case)”.

37 In section 278 (record of proceedings at examination as evidence), in subsection (2)(a), for “72(1)(b)(iv)” substitute “79(1)”.

38 In section 280(6)(a) (routine evidence), after “before” insert—

“(i) in the case of proceedings in the High Court, the preliminary hearing;

(ii) in any other case,”.

39 In section 281 (routine evidence: autopsy and forensic science reports)—

(a) in subsection (1), for “six days before the trial, or” substitute—

“(i) in the case of proceedings in the High Court, seven days before the preliminary hearing;

(ii) in any other case, six days before the trial;

or (in either case)”.

(b) in subsection (2)—

(i) the words “(whom the prosecutor shall specify)” are repealed,

(ii) after “and” in the first place where it occurs insert “, where such intimation is given,”.

(iii) for the words “that pathologist or forensic scientist” substitute “one of those pathologists or forensic scientists”,

(iv) for “six days before the trial or” substitute—

5 “(i) in the case of proceedings in the High Court, seven days before the preliminary hearing;

(ii) in any other case, six days before the trial;

or (in either case)”.

40 In section 281A (routine evidence: reports of identification prior to trial)—

(a) in subsection (2)(a), for “trial” substitute “relevant diet”,

10 (b) after subsection (2) insert—

“(3) In subsection (2)(a) above, “the relevant diet” means—

(a) in the case of proceedings in the High Court, the preliminary hearing;

(b) in any other case, the trial diet.”.

41 In section 282 (evidence as to controlled drugs and medicinal products)—

15 (a) in subsection (3), for “trial” substitute “relevant”,

(b) after that subsection, insert—

“(3A) In subsection (3) above, “the relevant diet” means—

(a) in the case of proceedings in the High Court, the preliminary hearing;

(b) in any other case, the trial diet.”.

20 42 In section 283 (evidence as to time and place of video surveillance recordings)—

(a) in subsection (2), for “trial” substitute “relevant”,

(b) after that subsection, insert—

“(2A) In subsection (2) above, “the relevant diet” means—

(a) in the case of proceedings in the High Court, the preliminary hearing;

25 (b) in any other case, the trial diet.”.

43 In section 284 (evidence in relation to fingerprints)—

(a) in subsection (2), for “trial” substitute “relevant”,

(b) after subsection (2A), insert—

“(2B) In subsection (2) above, “the relevant diet” means—

30 (a) in the case of proceedings in the High Court, the preliminary hearing;

(b) in any other case, the trial diet.”.

44 In section 286 (previous convictions: proof in support of substantive charge)—

(a) in subsection (1)(b), for “trial” substitute “relevant”,

(b) after subsection (1), insert—

35 “(1A) In subsection (1)(b) above, “the relevant diet” means—

(a) in the case of proceedings in the High Court, the preliminary hearing;

(b) in any other case, the trial diet.”.

45 In section 307(1) (interpretation), insert at the appropriate place the following definitions—

““preliminary hearing” shall be construed in accordance with section 66(6)(b) of this Act;”

5 ““preliminary issue” shall be construed in accordance with section 79(2)(b) of this Act;”

““preliminary plea” shall be construed in accordance with section 79(2)(a) of this Act;”.

10 46 In Schedule 9, in column 1, in the entry relating to sections 24(3) to (8), 25 and 27 to 29 of the 1995 Act, for “25 and 27 to 29” substitute “25, 27 to 29 and 90C(1)”.

# **Criminal Procedure (Amendment) (Scotland) Bill**

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision, in connection with proceedings in the High Court of Justiciary, for the holding of preliminary hearings prior to the trial diet and to require any solicitor engaged by the accused to notify the Court and the prosecutor of his engagement, withdrawal and dismissal; to make new provision as to the alteration and continuation of the trial diet in proceedings in the High Court; to make new provision as to the procedure where the trial diet in proceedings in the High Court does not proceed; to amend the time limit for commencement of the trial in proceedings in the High Court; in connection with solemn criminal proceedings generally, to amend the consequences of failure to comply with time limits, to remove the requirement for a warrant to be issued for citation of the accused, witnesses and jurors, to enable the trial to be conducted in the absence of the accused in certain circumstances, to provide for the apprehension, detention and release on bail of reluctant witnesses and to restate with modifications certain provisions in relation to the raising of preliminary pleas and issues; to enable persons to be released on bail subject to a requirement that their compliance with conditions of bail restricting their movements be remotely monitored; to make provision entitling the prosecutor to be heard on certain applications relating to bail; to make further provision as to the matters to be dealt with by the sheriff court at a first diet in solemn proceedings; to make new provision as to the procedure to be followed by the court in sentencing offenders who have pled guilty; to increase from three to five years the maximum extended sentence that may be imposed by a sheriff on persons convicted on indictment of certain violent and sexual offences; to make new provision as to the citation of witnesses for precognition by the prosecutor; and for connected purposes.

Introduced by: Cathy Jamieson  
On: 7 October 2003  
Supported by: Hugh Henry  
Bill type: Executive Bill

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