SCOTTISH STATUTORY INSTRUMENTS

2007 No. 479 (C.40)

CRIMINAL LAW

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

Made - - - - 25th October 2007

The Scottish Ministers make the following Order in exercise of the powers conferred by section 84(1) and (2) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007(**a**):

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(**b**).

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.

(**a**) 2007 asp 6.
(**b**) 1995 c.46.

(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.

KENNY MACASKILL
A member of the Scottish Executive

St Andrew's House,
Edinburgh
25th October 2007

SCHEDULE

Article 3(1)

PROVISIONS COMING INTO FORCE ON 10th DECEMBER 2007

Column 1 *(provision of the Act)*	*Column 2* *(subject matter)*
Section 1	Determination of questions of bail
Section 2	Bail and bail conditions
Section 3	Breach of bail conditions
Section 4	Bail review and appeal
Section 5	Attitude of prosecutor after conviction
Section 6	Time for dealing with applications
Section 7(2)(c)	Liberation on undertaking
Section 8	Manner of citation
Section 9	Procedure at first calling
Section 10	Intimation of diets etc.
Section 12(1)	Disclosure of convictions
Section 12(2), but only for the purpose of bringing into force section 166B of the 1995 Act	Disclosure of convictions
Section 13	Complaints triable together
Section 14	Proceedings in absence of accused
Section 15	Failure of accused to appear
Section 18	Intermediate diets
Section 19	Notice of defences
Section 20	Proof of uncontroversial evidence
Section 21	Service of documents through solicitor etc.
Section 24	Reports about supervised persons
Section 25	Summary appeal time limit
Section 26	Pre-trial time limits
Section 27	Obstructive witnesses
Section 30	Duty to seek agreement of evidence
Section 32	Failure of accused to appear
Section 33	Apprehension warrants
Section 34	Participation in identification parades
Section 37	Recovery of documents
Section 38	Intimation of certain applications to the High Court
Section 39	Refixing diets
Section 40	Power of court to excuse procedural irregularities
Section 41(1), but only for the purpose of bringing into force section 303B(6) of the 1995 Act	Electronic proceedings
Section 41(2), but only for the purpose of bringing into force sections 308A(2) to (4) of the 1995 Act	Electronic proceedings
Section 43	Common law offences

Column 1 *(provision of the Act)*	*Column 2* *(subject matter)*
Section 44 in so far as not already commenced	Particular Statutory Offences
Section 45	Other Statutory Offences
Section 47	Fine Level
Section 48	Prescribed sum
Section 57	Probation and Community Service Orders
Section 58	Restriction of Liberty Orders
Section 59 but only for the purpose of enabling orders to be made under section 59(2)	Establishing JP Courts
Section 60	Making provisions for JP Courts
Section 62(4) to (7) except insofar as those provisions apply to stipendiary magistrates	Area and territorial jurisdiction of JP courts
Section 64	Abolition of district courts
Section 65	Transfer of staff and property
Section 66	Transitional arrangements for proceedings
Section 67 insofar as not already commenced	Appointment of JPs
Section 68 except subsections (4) and (5)	Conditions of office
Section 70	Reappointment of JPs
Section 71	Removal of JPs
Section 72	Disqualification of solicitors who are JPs
Section 73	Disqualification where sequestration or bankruptcy
Section 76	Signing functions
Section 77(1) and (4)	Records and validity of appointment etc.
Section 80 for the purpose of bringing into force the following paragraphs of the schedule	Modification of enactments
Schedule, paragraph 1	Minor and consequential amendments relating to the Sheriff Courts and Legal Officer (Scotland) Act 1927(**a**)
Schedule, paragraph 5	Minor and consequential amendments relating to the Legal Aid (Scotland) Act 1986(**b**)
Schedule, paragraph 12	Minor and consequential amendments relating to sections 65 (prevention of delay in trials) and 71 (first diet) of the 1995 Act
Schedule, paragraph 13	Minor and consequential amendments relating to sections 72F (engagement, dismissal and withdrawal of solicitor representing accused) and 72G (service etc. on accused through a solicitor) of the 1995 Act
Schedule, paragraph 14	Minor and consequential amendments relating to section 79 (preliminary pleas and preliminary diets) of the 1995 Act

(**a**) 1927 c.35.
(**b**) 1986 c.47.

Column 1 *(provision of the Act)*	*Column 2* *(subject matter)*
Schedule, paragraph 15	Minor and consequential amendments relating to sections 90A(10) (apprehension of witnesses in proceedings on indictment), 90D(2)(b) (review of orders under section 90B(1)(a) or (b)) and 90E(3) (appeals in respect of orders under section 90B(1)) of the 1995 Act
Schedule, paragraph 16(2) to 16(6)	Minor and consequential amendments relating to sections 110 (note of appeal), 112 (admission of appellant to bail), 116 (abandonment of appeal), 118 (disposal of appeals) and 119 (provision where High Court authorises new prosecution) of the 1995 Act
Schedule, paragraph 17	Minor and consequential amendments to section 135 (warrants and apprehension and search) of the 1995 Act
Schedule, paragraph 18(1) and (4)	Minor and consequential amendments to section 177 (procedure where appellant in custody) and section 201 (power of court to adjourn case before sentence) of the 1995 Act
Schedule, paragraph 21	Minor and consequential amendments to section 245J (breach of certain orders: adjourning hearing and remanding in custody etc.) of the 1995 Act
Schedule, paragraph 23	Minor and consequential amendments to section 283 (evidence as to time and place of video surveillance recordings) of the 1995 Act
Schedule, paragraph 24	Minor and consequential amendments to section 292 (mode of trial of certain offences) of the 1995 Act
Schedule, paragraph 25(b)	Minor and consequential amendments to section 307 (interpretation) of the 1995 Act
Schedule, paragraph 27(a)	Minor and consequential amendments to the Bail, Judicial Appointments etc. (Scotland) Act 2000(**a**)
Schedule, paragraph 27(c) but only insofar as it repeals paragraph 2 of the Schedule to the Bail, Judicial Appointments etc. (Scotland) Act 2000	Minor and consequential amendments to the Bail, Judicial Appointments etc. (Scotland) Act 2000
Schedule, paragraph 28	Minor and consequential amendments to section 6 (accused to give notice of defence of consent) of the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002(**b**)
Schedule, paragraph 29	Minor and consequential amendments to the Public Appointments and Public Bodies Act 2003(**c**)
Schedule, paragraph 33(3) & (4)	Minor and consequential amendments: Enactments generally: references to district court and justices

(**a**) 2000 asp 9.
(**b**) 2002 asp 9.
(**c**) 2003 asp 4.

EXPLANATORY NOTE

(This note is not part of the Order)

The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 ("the 2007 Act") received Royal Assent on 22nd February 2007.

Article 3 of this Order brings into force various sections of the 2007 Act on 10th December 2007. The sections coming into force on that date together with the relevant subject matter are listed in the Schedule to the Order.

Articles 4 to 14 of the Order make savings and transitional provisions in relation to some of the provisions which are commenced by this Order.

The provisions of Part 1 (bail) of the 2007 Act are brought into force on 10th December 2007. Article 4 makes transitional provisions primarily to clarify how the commencement of this Part of the Act will apply to ongoing cases in which bail has been granted prior to the commencement date.

Article 4(1) confirms that certain provisions of the 2007 Act will only apply to bail orders which have been granted after the commencement date. The provisions listed could lend themselves to application to bail orders which are already in existence at the time of commencement. The inclusion of article 4(1) puts beyond doubt that this is not the case.

Similarly, the provisions listed in article 4(1) will not apply in circumstances where a bail order is continued on or after 10th December 2007. This is because, in the absence of any indication to the contrary, a bail order continues in force until a case is finally disposed of. A continuation of bail, therefore, does not constitute a new decision on whether or not to grant bail (see *Walker v. Lockhart* 1994 S.L.T. 209, *Fitzpatrick v. Normand* 1994 J.C. 128, *Mayo v. Neizer* 1994 S.L.T. 931, *McGinn v. H.M. Advocate* 1990 J.C. 269 and *Jamieson v. H.M. Advocate* 1990 J.C. 256).

Section 3(1)(b) of the 2007 Act creates new evidential provisions in relation to certain breach of bail offences. New provision is inserted into section 27 of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act"). It provides that, where the defence does not challenge the prosecution's assertion that the accused: was on bail, was subject to a particular bail condition, failed to appear at a diet or was given due notice of a diet, that assertion shall be held as admitted. The transitional provision at article 4(2) means that these presumptions will not apply if a case has already reached the stage where a person could no longer object to those presumptions.

Article 4(3) makes transitional provision which means that the changes to bail appeals to be inserted into section 32 the 1995 Act (by section 4(2) of the 2007 Act) will only have effect in cases where the decision to be appealed is taken on or after 10th December 2007.

Section 7(2)(c) of the 2007 Act increases the maximum penalty available in the sheriff court for a person breaching an undertaking given under section 22 (liberation by police) of the 1995 Act. The maximum penalty is increased from 3 months to 12 months. Article 5 makes transitional provision to ensure that this higher penalty level will only apply where a person has given such an undertaking on or after 10th December 2007.

Section 15 of the 2007 Act amends section 150 (failure of accused to appear) of the 1995 Act and provides for a new regime of penalties in cases where the accused fails to attend court. It also makes new provision as to how that failure to appear can be proved. Article 6 provides that these new provisions will only apply in cases where a person failed to appear at a diet in circumstances where the court had assigned that diet on or after 10th December 2007. For example: on 8th December 2007 a court assigns a trial diet for 22nd December 2007. The accused subsequently fails to appear at that trial diet. The provisions of section 15 (as it amends section 150 of the 1995 Act) will not apply to this case because the court assigned the diet to which the accused failed to attend before 10th December 2007.

Article 7 makes transitional provision in relation to sections 19 (notice of defences) and 20 (proof of uncontroversial evidence) of the 2007 Act. Paragraph 28 of the schedule to the 2007 Act relates to section 19, and is also caught by this transitional provision. The changes brought about by those sections (and that paragraph) will only apply to proceedings where, on or after 10th December 2007, the court has adjourned the case (under section 146(3) of the 1995 Act) for a trial to take place at a later date.

Section 21 (service of documents through solicitor etc.) of the 2007 Act introduces a new requirement on solicitors engaged by an accused to intimate that fact to the procurator fiscal and the court. Article 8 makes transitional provision so that any notification which would comply with the new requirements but was given prior to the commencement of section 21 will be taken as satisfying the new requirements. If no such notice has been given then the appropriate notification is to be given forthwith.

Article 9 makes similar transitional provision to that found in article 4(2) but in the context of the changes made to section 90C (breach of bail under section 90B(1)(b)) of the 1995 Act by section 27(2) of the 2007 Act. Again, this transitional provision ensures that presumptions as to certain factors pertaining to bail cannot be made if a case has reached a stage where a person would not be able to exercise their right to object to those presumptions.

Article 10 makes savings provisions in relation to the power of the High Court of Justiciary to grant production orders and orders for commission and diligence. The article confirms that the new provisions of section 37 (recovery of documents) do not apply to any petition which has been lodged prior to 10th December 2007. This provision will allow the High Court to deal with any extant petitions at the time of commencement of section 37 of the 2007 Act.

The savings provision in article 11 confirms that the provisions of section 40 (power of the court to excuse procedural irregularities) of the 2007 Act will not apply to irregularities which arise before 10th December 2007.

Sections 43 to 48 of the 2007 Act make provision in respect of sentencing powers. The transitional arrangements found in article 12 mean that the specified provisions will apply only to cases where a first calling took place after 10th December 2007, or where a "initiating warrant" (i.e. a warrant granted under section 135 or 139(1)(b) of the 1995 Act) has been granted after 10th December 2007.

Article 13 makes saving provision in relation to changes made to section 245F (breach of restriction of liberty orders) of the 1995 Act by section 58 of the 2007 Act. These changes mean that the evidence of one witness will be sufficient to establish a breach of a restriction of liberty order. By virtue of the savings provision in article 13, breaches of such orders which take place before 10th December 2007 will not be affected by this change.

Paragraph 16(6) of the schedule to the 2007 Act rectifies an omission in section 119(11) of the 1995 Act by substituting new cross references in that section to parts of section 65 (prevention of delay in trials) of the 1995 Act. The effect is that where the High Court grants authority to bring a new prosecution under section 118(1)(c) of the 1995 Act when disposing of an appeal, and the accused is remanded in custody pending trial, the custody time limits in section 65 in both sheriff court and High Court solemn proceedings will apply. By virtue of this transitional provision those time limits will not apply to cases where the High Court granted authority for re-trial before 10th December 2007.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the 2007 Act have been brought into force by commencement orders made before the date of this Order.

Provision	*Purpose*	*Date of Commencement*	*S.I. No.*
Sections 35, 36, 44(2), 56, 67(5) and (6), 69, 78, 79, Schedule paragraphs 6, 16(1), 18(2), 18(3) and 19		23rd April 2007	2007/250
Section 80 (partially)	To bring into force certain paragraphs of the schedule to the 2007 Act	23rd April 2007	2007/250

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