



# Criminal Procedure (Amendment) (Scotland) Act 2004

2004 asp 5

## PART 2

### SOLEMN PROCEEDINGS GENERALLY

#### 10 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- (2) In subsection (2) of that section, the words “counsel or” are repealed.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) after evidence has been led which substantially implicates the accused in respect of the offence charged in the indictment or, where two or more offences are charged in the indictment, any of them, the accused fails to appear at the trial diet; and
- (b) the failure to appear occurred at a point in proceedings where the court is satisfied that it is in the interests of justice to do so,

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

(2B) Where a motion is made under subsection (2A) above, the court shall—

- (a) if satisfied that there is a solicitor with authority to act for the purposes of—
  - (i) representing the accused’s interests at the hearing on the motion; and
  - (ii) if the motion is granted, 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.

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*Status: This is the original version (as it was originally enacted).*

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- (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 referred to in subsection (2) or, as the case may be, (2B) above.
- (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, where the accused is a body corporate, also contain intimation to the accused—
- (a) where the indictment is in respect of the High Court, that, if it does not appear as mentioned in section 70(4) of this Act or by counsel or a solicitor at the preliminary hearing—
    - (i) the hearing may proceed; and
    - (ii) a trial diet may be appointed,
in its absence; and
  - (b) in any case (whether the indictment is in respect of the High Court or the sheriff court), that if it does not appear as mentioned in paragraph (a) above at the trial diet, the trial may proceed in its absence.”.
- (6) In section 70 (proceedings against bodies corporate) of the 1995 Act—
- (a) in subsection (5), for the words from “shall” to “hear” substitute “may—
    - (a) on the motion of the prosecutor; and

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*Status: This is the original version (as it was originally enacted).*

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- (b) if satisfied as to the matters specified in subsection (5A) below,
  - proceed with the trial”,
- (b) after that subsection insert—
  - “(5A) The matters referred to in subsection (5)(b) above are—
    - (a) that the body corporate was cited in accordance with section 66 of this Act as read with subsection (2) above; and
    - (b) that it is in the interests of justice to proceed as mentioned in subsection (5) above.”.
- (7) In section 22 (automatic availability of criminal legal aid) of the Legal Aid (Scotland) Act 1986 (c. 47), in subsection (1)(dd), after “person” insert “or section 92(2), (2B)(b) or (2E) of that Act (appointment of solicitor for accused where the trial is to proceed in his absence)”.
- (8) In section 31 of that Act, in subsection (1A) (exceptions to provision entitling a person receiving legal aid or advice and assistance to select a solicitor and counsel), in paragraph (f), for “section” substitute “sections 92(2), (2B)(b), (2D) and (2E) and”.