



Criminal Justice (Scotland) Act 2003

2003 asp 7

PART 8

EVIDENTIAL, JURISDICTIONAL AND PROCEDURAL MATTERS

Procedural matters

60 Unified citation provisions

(1) In the 1995 Act, in—

- (a) section 232 (probation orders: failure to comply with requirement), for subsection (7) there is substituted;
- (b) section 233 (probation orders: commission of further offence), after subsection (1) there is inserted;
- (c) section 234E (amendment of drug treatment and testing order), after subsection (2) there is inserted;
- (d) section 234G (breach of drug treatment testing order), after subsection (1) there is inserted;
- (e) section 239 (community service orders: requirements), after subsection (4) there is inserted;
- (f) section 240 (community service orders: amendment and revocation etc.), at the end there is added;
- (g) section 245E (variation of restriction of liberty order), after subsection (3) there is inserted; and
- (h) section 245F (breach of restriction of liberty order), after subsection (1) there is inserted,

in each case as a subsection appropriately numbered, the following—

“() The unified citation provisions apply in relation to a citation under this section as they apply in relation to a citation under section 216(3)(a) of this Act.”.

(2) In section 307(1) of that Act (interpretation), at the appropriate place there is inserted—

““the unified citation provisions” means section 216(5) and (6)(a) and (b) of this Act;”.

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- (3) In Schedule 6 to that Act (discharge of and amendment to probation orders), in paragraph 5, at the end there is added—

“(3) The unified citation provisions apply in relation to a citation under sub-paragraph (1) above as they apply in relation to a citation under section 216(3)(a) of this Act.”.

- (4) In Schedule 7 to that Act (supervised attendance orders: further provisions), after paragraph 5, there is inserted—

“5A The unified citation provisions apply in relation to a citation under paragraph 4(1) or 5(3) of this Schedule as they apply in relation to a citation under section 216(3)(a) of this Act.”.

- (5) In section 15 of the 1993 Act (variation of supervised release order etc.), after subsection (5) there is inserted—

“(5A) The unified citation provisions (as defined by section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46)) apply in relation to a citation under subsection (5) above as they apply in relation to a citation under section 216(3)(a) of that Act.”.

- (6) In section 18 of that Act (breach of supervised release order), after subsection (1) there is inserted—

“(1A) The unified citation provisions (as defined by section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46)) apply in relation to a citation under subsection (1)(b) above as they apply in relation to a citation under section 216(3)(a) of that Act.”.

61 Citation other than by service of indictment or complaint

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

- (a) for subsection (4) there is substituted—

“(4) The accused may be cited either—

- (a) by being served with a copy of the indictment and of the list of the names and addresses of the witnesses to be adduced by the prosecution; or
- (b) by a constable affixing to the door of the accused’s dwelling-house or place of business a notice in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form—
 - (i) specifying the date on which it was so affixed;
 - (ii) informing the accused that he may collect a copy of the indictment and of such list as is mentioned in paragraph (a) above from a police station specified in the notice; and
 - (iii) calling upon him to appear and answer to the indictment at such diet as shall be so specified.

- (4A) Where a date is specified by virtue of sub-paragraph (i) of subsection (4)(b) above, that date shall be deemed the date on which

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the indictment is served; and the copy of the indictment referred to in sub-paragraph (ii) of that subsection shall, for the purposes of subsections (12) and (13) below be deemed the service copy.

(4B) Paragraphs (a) and (b) of subsection (6) below shall apply for the purpose of specifying a diet by virtue of subsection (4)(b)(iii) above as they apply for the purpose of specifying a diet in any notice under subsection (6).”;

- (b) in subsection (6)—
 - (i) for the words “Except where the indictment is served” there is substituted “ If the accused is cited by being served with a copy of the indictment, then except where such service is ”; and
 - (ii) in paragraph (b), the words “and notice” are repealed;
- (c) in subsection (7), at the beginning there is inserted “ Subject to subsection (4)(b) above, ”;
- (d) in subsection (8), after the word “indictment” there is inserted “ , to citation under subsection (4)(b) above ”;
- (e) in subsection (11), after the word—
 - (i) “indictment” there is inserted “ , or who executed a citation under subsection (4)(b) above, ”; and
 - (ii) “service” there is inserted “ or execution ”;
- (f) in subsection (13), the words “required to be” are repealed; and
- (g) in subsection (14)—
 - (i) for the word “of”, in the second place where it occurs, there is substituted “ or ”; and
 - (ii) for the words “requiring to be” there is substituted “ so ”.

(2) In section 140(2) of that Act (form of citation in summary proceedings), at the beginning there is inserted “ Without prejudice to section 141(2A) of this Act, ”.

(3) In section 141 of that Act (manner of citation in such proceedings)—

- (a) after subsection (2) there is inserted—

“(2A) Notwithstanding subsection (1) above and section 140(2) of this Act, citation of the accused may also be effected by an officer of law affixing to the door of the accused’s dwelling-house or place of business a notice in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form—

 - (a) specifying the date on which it was so affixed;
 - (b) informing the accused that he may collect a copy of the complaint from a police station specified in the notice; and
 - (c) calling upon him to appear and answer the complaint at such diet as shall be so specified.

(2B) Where the citation of the accused is effected by notice under subsection (2A) above, the induciae shall be reckoned from the date specified by virtue of paragraph (a) of that subsection.”;

- (b) in subsection (3), after the word “below” there is inserted “ and without prejudice to the effect of any other manner of citation ”;
- (c) in subsection (5), after the word “subsection”, in the first place where it occurs, there is inserted “ (2A) or ”; and

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- (d) in subsection (7)—
- (i) the existing words from “a citation” to the end shall be paragraph (a); and
 - (ii) after that paragraph there shall be added the word “ ; or ” and the following paragraph—
 - “(b) citation has been effected by notice under subsection (2A) above, if there is produced in court a written execution, in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form, signed by the officer of law who affixed the notice.”.

62 Leave to appeal: extension of time limit for application under section 107(4) of 1995 Act

In section 107 of the 1995 Act (leave to appeal)—

- (a) in subsection (3)—
 - (i) after the words “subsection (4) below” there is inserted “ (and if that period is extended under subsection (4A) below before the period being extended expires, until the expiry of the period as so extended) ”; and
 - (ii) for the words “that subsection” there is substituted “ subsection (4) ”; and
- (b) after subsection (4) there is inserted—
 - “(4A) The High Court may, on cause shown, extend the period of 14 days mentioned in subsection (4) above, or that period as extended under this subsection, whether or not the period to be extended has expired (and if that period of 14 days has expired, whether or not it expired before section 62 of the Criminal Justice (Scotland) Act 2003 (asp 7) came into force).”.

63 Adjournment at first diet in summary proceedings

- (1) The 1995 Act is amended as follows.
- (2) In section 144 (procedure at first diet), in subsection (9) after “145” there is inserted “ or 145A ”.
- (3) In section 145 (adjournment for inquiry at first calling), in subsection (1) for the words from the beginning to “Act,” there is substituted “ Where the accused is present ”.
- (4) After section 145 there is inserted—

“145A Adjournment at first calling to allow accused to appear etc.

- (1) Without prejudice to section 150(1) to (7) of this Act, where the accused is not present at the first calling of the case in a summary prosecution, the court may (whether or not the prosecutor is able to provide evidence that the accused has been duly cited) adjourn the case under this section for such period as it considers appropriate; and subject to subsections (2) and (3) below, the court may from time to time so adjourn the case.
- (2) An adjournment under this section shall be—

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- (a) for the purposes of allowing—
 - (i) the accused to appear in answer to the complaint; or
 - (ii) time for inquiry into the case; or
- (b) for any other cause the court considers reasonable.

(3) No one period of adjournment under this section shall exceed 28 days.”.

64 Review hearing of drug treatment and testing order

In section 234F of the 1995 Act (periodic review of drug treatment and testing order), after subsection (1) there is inserted—

“(1A) A review hearing may be held whether or not the prosecutor elects to appear.”.

65 Transcript of record

In section 94 of the 1995 Act (transcripts of record and documentary productions)—

- (a) in subsection (2)—
 - (i) at the end of paragraph (a) there is added “ or, subject to subsection (2B) below, the prosecutor ”; and
 - (ii) in paragraph (b), after the word “person” there is inserted “ , not being a person convicted at the trial, ”; and
- (b) after that subsection there is inserted—

“(2A) If—

- (a) on the written application of a person convicted at the trial and granted leave to appeal; and
- (b) on cause shown,

a judge of the High Court so orders, the Clerk of Justiciary shall direct, on payment of such charges as are mentioned in paragraph (b) of subsection (2) above, that such a transcript be made and sent to that person.

(2B) Where, as respects any person convicted at the trial, the Crown Agent has received intimation under section 107(10) of this Act, the prosecutor shall not be entitled to make a request under subsection (2) (a) above; but if, on the written application of the prosecutor and on cause shown, a judge of the High Court so orders, the Clerk of Justiciary shall direct that such a transcript be made and sent to the prosecutor.

(2C) Any application under subsection (2A) above shall—

- (a) be made within 14 days after the date on which leave to appeal was granted or within such longer period after that date as a judge of the High Court may, on written application and on cause shown, allow; and
- (b) be intimated forthwith by the applicant to the prosecutor.

(2D) The prosecutor may, within 7 days after receiving intimation under subsection (2C)(b) above, make written representations to the court as respects the application under subsection (2A) above (the application being determined without a hearing).

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- (2E) Any application under subsection (2B) above shall—
- (a) be made within 14 days after the receipt of intimation mentioned in that subsection or within such longer period after that receipt as a judge of the High Court may, on written application and on cause shown, allow; and
 - (b) be intimated forthwith by the prosecutor to the person granted leave to appeal.

(2F) The person granted leave to appeal may, within 7 days after receiving intimation under subsection (2E)(b) above, make written representations to the court as respects the application under subsection (2B) above (the application being determined without a hearing).”.

66 Bail and related matters

- (1) The 1995 Act is amended as follows.
- (2) In section 103 (appeal sittings)—
 - (a) after subsection (6) there is inserted—

“(6A) Where a judge acting under subsection (5)(c) above grants an application by an appellant to exercise that power in his favour, the prosecutor shall be entitled to have the application determined by the High Court.”; and
 - (b) in subsection (7) for the words “and (6)” there is substituted “, (6) and (6A)”.
- (3) In section 105 (appeal against refusal of application), after subsection (4), there is inserted—

“(4A) An application by a convicted person for a determination by the High Court of a decision of a judge acting under section 103(5)(c) of this Act to refuse to admit him to bail shall be intimated by him immediately and in writing to the Crown Agent.”.
- (4) After section 105 there is inserted—

“105A Appeal against granting of application

- (1) Where the prosecutor desires a determination by the High Court as mentioned in subsection (6A) of section 103 of this Act, he shall apply to the judge immediately after the power in subsection (5)(c) of that section is exercised in favour of the appellant.
- (2) Where a judge acting under section 103(5)(c) of this Act has exercised that power in favour of the appellant but the prosecutor has made an application under subsection (1) above—
 - (a) the appellant shall not be liberated until the determination by the High Court; and
 - (b) that application by the prosecutor shall be heard not more than seven days after the making of the application,

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and the Clerk of the Justiciary shall forward to the appellant the prescribed form for completion and return forthwith if he desires to be present at the hearing.

- (3) At a hearing and determination as mentioned in subsection (2) above, if the appellant—
 - (a) is not legally represented, he may be present;
 - (b) is legally represented, he shall not be entitled to be present without leave of the court.
 - (4) If the appellant completes and returns the form mentioned in subsection (2) above indicating a desire to be present at the hearing, the form shall be deemed to be an application by the appellant for leave to be so present, and the Clerk of Justiciary, on receiving the form, shall take the necessary steps for placing the application before the court.
 - (5) If the application to be present is refused by the court, the Clerk of Justiciary shall notify the appellant; and if the application is granted, he shall notify the appellant and the Governor of the prison where the applicant is in custody and the Scottish Ministers.
 - (6) For the purposes of constituting a Court of Appeal, the judge who exercised the power in section 103(5)(c) of this Act in favour of the appellant may sit as a member of the court, and take part in determining the application of the prosecutor.”.
- (5) In section 112 (admission of appellant to bail)—
- (a) in subsection (1) for “subsection (2)” there is inserted “ subsections (2), (2A) and (9) ”;
 - (b) for subsection (2) there is substituted—

“(2) The High Court shall not admit a convicted person to bail under subsection (1) above unless—

 - (a) the application for bail—
 - (i) states reasons why it should be granted; and
 - (ii) where he is the appellant and has not lodged a note of appeal in accordance with section 110(1)(a) of this Act, sets out the proposed grounds of appeal; and
 - (b) the prosecutor has had an opportunity to be heard on the application.

(2A) Where—

 - (a) the convicted person is the appellant and has not lodged a note of appeal in accordance with section 110(1)(a) of this Act; or
 - (b) the Lord Advocate is the appellant,

the High Court shall not admit the convicted person to bail under subsection (1) above unless it considers there to be exceptional circumstances justifying admitting him to bail.”;
 - (c) in subsection (6) for “subsection (7)” there is inserted “ subsections (7) and (9) ”;
 - (d) in subsection (7)—
 - (i) the words from “the application” to the end become paragraph (a); and

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- (ii) after that paragraph there is inserted “and
 - (b) where the appeal relates to conviction on indictment, the prosecutor has had an opportunity to be heard on the application.”; and
- (e) after subsection (8) there is added—
 - “(9) An application for the purposes of subsection (1) or (6) above by a person convicted on indictment shall be—
 - (a) intimated by him immediately and in writing to the Crown Agent; and
 - (b) heard not less than seven days after the date of that intimation.”.

67 Adjourning of case before sentence

In section 201 (power of court to adjourn case before sentence) of the 1995 Act, in subsection (3), for the words from “exceeding” to the end there is substituted “exceeding four weeks or, on cause shown, eight weeks.”.

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