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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes amendments to the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (“the 2007 Act”) which are ancillary to the provisions of the 2007 Act.

Article 3 of the Order amends provisions of the 2007 Act dealing with breach of bail. Section 3(1)(b) of the 2007 Act is amended so that provisions relating to the proof of certain facts in proceedings relating to breach of bail (under section 27 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”)) will be the same for solemn as for summary cases.

New section 27(4B) of the 1995 Act provides that where the defence does not challenge the prosecution’s assertion that the accused—

- was on bail;
- was subject to particular bail conditions;
- failed to appear at a diet; or
- was given due notice of a diet,

that assertion shall be held as admitted.

Under the provisions of the 2007 Act as enacted this would only apply to breaches of bail in summary proceedings where the breach consisted of a failure to attend a diet and/or a failure to comply with a condition of bail. In solemn proceedings this would apply only to proceedings where the breach of bail consisted of a failure to comply with a condition of bail and would not extend to a breach of bail consisting of a failure to appear at a diet for which due notice had been given. This is because separate provision is made in section 27(7) of the 1995 Act to deal with breach of bail in solemn cases consisting of a failure to attend at a diet. The amendment made by this Order supplements these provisions of the 2007 Act by extending their application to solemn cases where the breach of bail consists of a failure to appear.

Article 4 of the Order supplements the provision in section 20 of the 2007 Act which amends section 258 of the 1995 Act. Section 258 makes provision in order to facilitate the agreement of uncontroversial evidence between parties. The amendments made by section 20 of the 2007 Act set down new timescales for the lodging of a statement of agreed evidence and lodging a challenge to that statement in summary cases. The provisions of section 258(4A) also allow applications to the court to have a challenge to a statement of agreed evidence disregarded in circumstances where the court finds such a challenge unjustified. The addition of subsection (4D) to section 258 will give summary courts the power to allow an application under section 258(4A) to be lodged late in circumstances where it has not been practicable to have the application lodged on time.

Articles 5 and 6 make incidental and supplemental provision to sections 67 (appointment of JPs) and 70 (reappointment of JPs) of the 2007 Act. Both articles concern the requirement of JPs to take oaths when they are appointed under section 67 of the 2007 Act or are reappointed under section 70 of that Act. The effect of article 5 is that justices of the peace appointed under the 1975 Act will not be required to take a fresh oath (as required by section 6 of the Promissory Oaths Act 1868 (and in accordance with Promissory Oaths Act 1871)) when they are appointed as JPs under the 2007 Act. The effect of article 6 is that JPs will not be required to take a fresh oath upon reappointment under section 70 of the 2007 Act following the expiry of a 5 year term of appointment.