EXECUTIVE NOTE TO
THE CRIMINAL PROCEEDINGS ETC. (REFORM) (SCOTLAND) ACT 2007 (INCIDENTAL, SUPPLEMENTAL AND CONSEQUENTIAL PROVISIONS) ORDER 2007 SSI/2007/

1. The above Order was made in exercise of the powers conferred by section 82(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 ("the 2007 Act"). The instrument is subject to affirmative resolution procedure under section 82(3)(a) of the 2007 Act.

2. The 2007 Act received Royal Assent on 22 February 2007. The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Commencement and Savings) Order 2007 (SSI 2007/250) brought into force a small number of the 2007 Act's sections on 23 April 2007. A second Commencement Order will be made that will bring, among others, sections 3, 20, 67 and 70 into force on 10 December 2007. This instrument makes some amendments to these sections and has effect from 10 December 2007.

Policy Objectives

3. This Order makes provision which is supplemental, incidental and consequential to the provisions and policy aims of the 2007 Act.

Amendment of section 3(1)(b) of the 2007 Act – breach of bail conditions

4. Part 1 of the 2007 Act makes a number of reforms to the system of bail and remand intended to improve the transparency, robustness and efficiency of the bail process, and bolster deterrents to reoffending.

5. Section 3(1)(b) of the Act inserts a new subsection (4B) into section 27 of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act"), relating to the breach of bail conditions. The policy intention underlying new section 27(4B) is that prosecutions in relation to breach of bail will be dealt with more efficiently and effectively when a person is accused of breaching one of their conditions of bail.

6. The new provisions mean that person will be required to notify the court in advance if intending to deny certain facts, namely: whether or not the accused - was on bail, was subject to a particular condition of bail, failed to appear at a diet, or was given due notice of a diet. The result is that undisputed matters are removed from the court, speeding up court proceedings and contributing to the improvement of the process by which bail breach is prosecuted.

7. The wording of the new section 27(4B) means that the provisions of that subsection will only apply to offences being prosecuted under section 27(1) of the 1995 Act. As a result the new presumption of proof will apply in relation to all alleged breaches of bail conditions, except where a person is prosecuted for failing to appear at court during solemn proceedings under section 27(7) provisions in the 1995 Act. This was not the policy intention.

8. Article 3 of the Order amends section 3(1)(b) of the 2007 Act, to ensure that the presumptions as to the facts discussed above will apply in all prosecutions of breach of bail stemming from a failure to appear or a breach of bail conditions. This is achieved by supplementing the provisions of new section 27B(4) of the 1995 Act so that they apply to

failure to appear during solemn proceedings under section 27(7) of the 1995 Act. The intention of the change in article 3 is to ensure, in line with the original policy objectives, prosecutions for breach of bail proceed more efficiently, effectively and consistently through the courts.

Amendment of section 20 of the 2007 Act – proof of uncontroversial matters

9. Part 2 of the 2007 Act provides for the reform of criminal proceedings - mainly in relation to summary cases, although some minor changes are also made to solemn procedure. It is intended that these reforms will improve a number of procedures within the court system, and reduce inconveniences to witnesses involved in the criminal justice system.

10. Section 20 of the 2007 Act amends section 258 of the 1995 Act, which sets down the procedure, in both summary and solemn proceedings, for dealing with evidence which is not thought to be in dispute. Such evidence can be agreed upon by parties prior to a court diet.

11. The policy intention of the provision in section 20 is to improve the efficiency of the procedure relating to the agreement of uncontroversial evidence, encourage parties to agree undisputed evidence in advance, reducing the number of witnesses that will be required to appear in court to give evidence which is not in dispute.

12. Under section 258(4A) (as amended by section 20 of the 2007 Act), where a notice of uncontroversial evidence has been served and subsequently challenged, any party to the proceedings may then ask the court to disregard that challenge. This request must be made no less than 48 hours prior to an intermediate or trial diet, as the case may be. In summary cases the latest point at which the notice of uncontroversial evidence may be served is 7 days before the relevant diet, and the latest point at which a challenge to the notice can be made is 7 days after the notice was served – as such, this will be no later than at the end of the day on which the intermediate or trial diet is held. In the specific circumstances where a challenge to a notice of uncontroversial evidence is lodged less than 48 hours prior to the intermediate or trial diet, parties will not have a practicable opportunity to ask the court to disregard the challenge within the specified time limit.

13. Article 4 of the Order makes provision which supplements the new timetable set down in section 258 of the 1995 Act. It provides that where it has proved impracticable for a party to make an application to the court to disregard a challenge to a notice of uncontroversial evidence within the specified time limit, the court may allow a late application. This change will help to ensure that the right of parties to ask the court to disregard a spurious challenge is preserved. This is in line with the policy objective underlying the original reforms: that spurious challenges will be discouraged and dismissed by courts, resulting in fewer witnesses being called to court to give undisputed evidence, speeding up the court process and minimising delays.

Amendment of sections 67 and 70 of the 2007 Act – appointment of justices of the peace

14. Part 4 of the 2007 Act provides for the reform of arrangements for lay justices (justices of the peace or 'JPs'). The policy objective of these reforms is to ensure the fair and transparent recruitment of JPs, and provide for their regular training and appraisal in order to enhance their capacity to act as skilled, proactive judges, reinforcing public confidence in the lay justice system.

15. On 10 December 2007, all JP appointments under section 9 of the District Courts (Scotland) Act 1975 ("the 1975 Act") will terminate, and most JPs will be taking up new appointments under section 67 of the 2007 Act. Section 6 of the Promissory Oaths Act 1868 ("the 1868 Act") requires JPs to take the oath of allegiance and the judicial oath upon appointment. Section 7 of the 1868 Act specifies that a person cannot hold office unless these oaths are taken. Under the 1868 Act as it stands, all JPs will be required to take their oaths in court upon taking up their new appointment under the 2007 Act on 10 December 2007, and upon reappointment at the end of their 5-year tenure thereafter.

16. Articles 5 and 6 of the Order amend sections 67 and 70 of the 2007 Act in order that neither existing JPs taking up a new appointment on 10 December 2007, nor JPs being reappointed at the end of their 5-year tenure, will be required to retake their oaths. The obligation to take oaths would be difficult to organise satisfactorily on 10 December 2007, and every 5 years thereafter, as many JPs would be required to retake their oaths simultaneously. Many JPs would have been required to travel in order to take their oaths, despite the fact that they had already taken the oath of allegiance and the judicial oath when first becoming a JP under the provisions of the 1975 Act. In addition, any justices who could not attend the relevant oath-taking ceremony in their area would have been unable to act as a justice until a later date. This could have had an impact on the scheduling of district court business. It could also have affected the number of justices available to sign warrants. Articles 5 and 6 do not affect any JPs who are to be appointed for the first time under the 2007 Act – they will be required to take the oath. The core policy objective of the 2007 Act is the improvement of the efficiency and effectiveness of the summary justice system. Articles 5 and 6 supplement the provisions in the 2007 Act relating to the appointment of JPs and are necessary to uphold these original policy objectives by ensuring the administration of business in the district courts is not unnecessarily impeded. They will ensure that there is a smooth transition from the current system to the new system.

Consultation

General - The Criminal Proceedings etc. (Reform) (Scotland) Act 2007

17. Many of the provisions of the 2007 Act are based on the recommendations of the 'McInnes Committee' and subsequent consultation during 2004. The Scottish Executive published *Smarter Justice, Safer Communities – Summary Justice Reform Next Steps*[1], in March 2005 following extensive consultation on the recommendations of the report[2] of the Committee chaired by Sheriff Principal John McInnes. Details of the history of the Act, including the McInnes report, and the *Smarter Justice* paper are all available through the Scottish Government's summary justice reform website.[3]

Article 3 – breach of bail conditions

[1] Scottish Executive, *Smarter Justice, Safer Communities: Summary Justice Reform - Next Steps*, available at: http://www.scotland.gov.uk/Publications/2005/03/20888/55016
[2] Scottish Executive, *Report of the Summary Justice Review Committee*, available at: http://www.scotland.gov.uk/Publications/2004/03/19042/34176
[3] The summary justice reform website can be found at: http://www.scotland.gov.uk/Topics/Justice/criminal/criminalprocedure/19008

18. The Bail and Remand Action Plan published by the then Scottish Executive in September 2005 included a commitment to "streamline the process by which breach of bail is reported and processed". The 2007 Act provided for changes in the law arising out of the Action Plan. Article 3 of the Order completes the change contained in new section 27(4B) of the 1995 Act (as inserted by section 3(1)(b) of the 2007 Act).

Article 4 – proof of uncontroversial matters

19. The provision in article 4 of the Order follows the original policy objectives formed as a result of the McInnes report and consultation. Respondents indicated that only the witnesses whose evidence was in dispute should be required to attend trials. Article 4 will help to ensure the desired policy intention is achieved.

Articles 5 and 6 - Reform of Lay Justice

20. The policy intention to ensure that JPs should not be required to retake oaths was made clear to the Lay Justice Planning and Delivery Group in June 2006. The group includes representatives of the sheriffs principal, the Sheriffs' Association, the Scottish Justices Association, legal assessors, the Judicial Studies Committee, the Judicial Appointments Board for Scotland, the Lord Lieutenants' Association, the Scottish Court Service, Victim Support Scotland and CoSLA.

Financial Effects

21. The Order preserves the original policy intention of the relevant provisions of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. It therefore has no financial effects beyond those which were set out in the Financial Memorandum to the Act.

22. Although financial costs in relation to the reforms to lay justice were set out in the financial memorandum to the 2007 Act, articles 5 and 6 of the Order do not directly relate to these reforms. These provisions of the Order will not result in any additional costs. They will instead remove a requirement which could have led to additional expenditure, since justices may have had to travel in order to take their oaths, and the need for justices to take oaths may have had a disruptive impact on court business.