JUSTICE 1 COMMITTEE

AGENDA

14th Meeting, 2003 (Session 2)

Wednesday 26 November 2003

The Committee will meet at 10.00am in the Chamber.

1. **Criminal Procedure (Amendment) (Scotland) Bill:** The Committee will take oral evidence on the general principles of the Bill at stage 1 from—

   Wilma Dickson, Head of Criminal Procedure Division, Justice Department, Moira Ramage, Justice Department Bill Team Leader and Senior Principal Procurator Fiscal, Tom Fyffe, Bill Team Member, and Sharon Grant, Community Justice Services, Justice Department, Scottish Executive.

   Morag McLaughlin, Head of Policy Group, and Bill Gilchrist, Deputy Crown Agent, Crown Office and Procurator Fiscal Service.

   Elaine Samuel, School of Social and Political Studies, University of Edinburgh.

2. **Criminal Procedure (Amendment) (Scotland) Bill:** The Committee will consider future witnesses for stage 1 of the Bill.

3. **HM Prison Greenock:** Committee members will give an oral report of the Committee's recent joint visit with the Justice 2 Committee to HM Prison Greenock.

   Alison Walker
   Clerk to the Committee
   Tel: 0131 348 5195
The following papers are attached for this meeting—

Agenda item 1

Note by the Clerk (private paper) J1/S2/03/14/1
Criminal Procedure (Scotland) 1995 as amended by the Bill as introduced (members only – copy available from the Clerk) J1/S2/03/14/2
Submission from the Crown Office and Procurator Fiscal Service J1/S2/03/14/3
Howard League for Penal Reform in Scotland, letter of 22 July 2003 to the Minister for Justice in relation to Lord Bonomy's review of the High Court J1/S2/03/14/5
Finance Committee, 1st Report, 2003 (Session 2): Report on the Financial Memorandum of the Criminal Procedure (Amendment) (Scotland) Bill J1/S2/03/14/6
Diagram showing current and proposed High Court time limits J1/S2/03/14/7
Criminal Procedure (Amendment) (Scotland) Bill: written submission from George Gebbie J1/S2/03/14/9

Agenda item 2

Note by the Clerk J1/S2/03/14/4

Papers for information circulated for the 12th meeting, 2003 (session 2)—

The Scottish Executive, pre-council briefing for the Justice and Home Affairs Council of EU Ministers on 6 November 2003 J1/S2/03/14/8

Forthcoming meetings—

Wednesday 3 December – Justice 1 Committee
Wednesday 10 December – Justice 1 Committee
Wednesday 17 December – Justice 1 Committee
1 Judges in the High Court.

(1) The Lord President of the Court of Session shall be the Lord Justice General and shall perform his duties as the presiding judge of the High Court.

(2) Every person who is appointed to the office of one of the Senators of the College of Justice in Scotland shall, by virtue of such appointment, be a Lord Commissioner of Justiciary in Scotland.

(3) If any difference arises as to the rotation of judges in the High Court, it shall be determined by the Lord Justice General, whom failing by the Lord Justice Clerk.

(4) Any Lord Commissioner of Justiciary may preside alone at the trial of an accused before the High Court.

(5) Without prejudice to subsection (4) above, in any trial of difficulty or importance it shall be competent for two or more judges in the High Court to preside for the whole or any part of the trial.

2 Fixing of High Court sittings.

(1) The High Court shall sit at such times and places as the Lord Justice General, whom failing the Lord Justice Clerk, may, after consultation with the Lord Advocate, determine.

(2) Without prejudice to subsection (1) above, the High Court shall hold such additional sittings as the Lord Advocate may require.

(3) Where an accused has been cited to or otherwise required to attend, a diet to be held at any sitting of the High Court, the prosecutor may, at any time before the commencement of the diet or, in the case of trial diet, the trial, apply to the Court to transfer the case to a diet to be held at a sitting of the Court in another place;\(^1\) and a single judge of the High Court may--

(a) after giving the accused or his counsel an opportunity to be

\(^1\) Substituted by paragraph 2(a) of the schedule to Criminal Procedure (Amendment) (Scotland) Bill “the CPA Bill”
heard; or

(b) on the joint application of all parties,

make an order for the transfer of the case.

(3C) The judge may proceed under subsection (3) above on a joint application of the parties without hearing the parties and, accordingly, he may dispense with any hearing previously appointed for the purpose of considering the application.

(4) Where no diets have been appointed to be held at a sitting of the High Court or if it is no longer expedient that a sitting should take place, it shall not be necessary for the sitting to take place.

(5) If in any case a diet remains appointed to be held at a sitting which does not take place in pursuance of subsection (4) above, subsection (3) above shall apply in relation to the transfer of any other such case to another sitting.

(6) For the purposes of subsection (3) above –

(a) a diet shall be taken to commence when it is called; and

(b) a trial shall be taken to commence when the oath is administered to the jury.

4 Jurisdiction and powers of solemn courts.

(1) The jurisdiction and powers of all courts of solemn jurisdiction, except so far as altered or modified by any enactment passed after the commencement of this Act, shall remain as at the commencement of this Act.

(2) Any crime or offence which is triable on indictment may be tried by the High Court sitting at any place in Scotland.

---

2 Inserted by paragraph 2(b) of the schedule to the CPA Bill
3 Substituted by paragraph 2(c) of the schedule to the CPA Bill
4 Substituted by paragraph 2(d) of the schedule to the CPA Bill
5 Inserted by paragraph 2(e) of the schedule to the CPA Bill
3

(3) The sheriff shall, without prejudice to any other or wider power conferred by statute, not be entitled, on the conviction on indictment of an accused, to pass a sentence of imprisonment for a term exceeding three years.

(4) Subject to subsection (5) below, where under any enactment passed or made before 1st January 1988 (the date of commencement of section 58 of the Criminal Justice (Scotland) Act 1987) an offence is punishable on conviction on indictment by imprisonment for a term exceeding two years but the enactment either expressly or impliedly restricts the power of the sheriff to impose a sentence of imprisonment for a term exceeding two years, it shall be competent for the sheriff to impose a sentence of imprisonment for a term exceeding two but not exceeding three years.

(5) Nothing in subsection (4) above shall authorise the imposition by the sheriff of a sentence in excess of the sentence specified by the enactment as the maximum sentence which may be imposed on conviction of the offence.

(6) Subject to any express exclusion contained in any enactment, it shall be lawful to indict in the sheriff court all crimes except murder, treason, rape and breach of duty by magistrates.

17A Right of person accused of sexual offence to be told about restriction on conduct of defence: arrest

(1) An accused arrested on a charge of committing a sexual offence to which section 288C of this Act applies by virtue of subsection (2) of that section shall be entitled to be told, immediately upon his arrest—

(za) that, if he is indicted to the High Court in respect of the offence, his case at or for the purposes of the preliminary hearing may be conducted only by a lawyer;

(a) that, if he is tried for the offence charged, his defence may be conducted only by a lawyer;

(b) that it is, therefore, in his interests to get the professional assistance of a solicitor; and

---

6 Inserted by paragraph 3(a) of the schedule to the CPA Bill
(c) that if he does not engage a solicitor for the purposes of the conduct of his case at or for the purposes of a preliminary hearing (if he is indicted to the High Court in respect of the offence) or his defence at the trial, the court will do so.

(2) A failure to comply with subsection (1) above does not affect the validity or lawfulness of the arrest of the accused or any other element of any consequent proceedings against him.

[FN1]

[FN1] added by Sexual Offences (Procedure and Evidence) (Scotland) Act (2002 ASP.9), Sch 1 Para 2

22A Consideration of bail on first appearance

(1) On the first occasion on which--

(a) a person accused on petition is brought before the sheriff prior to committal until liberated in due course of law; or

(b) a person charged on complaint with an offence is brought before a judge having jurisdiction to try the offence,

the sheriff or, as the case may be, the judge shall, after giving that person and the prosecutor an opportunity to be heard and within the period specified in subsection (2) below, either admit or refuse to admit that person to bail.

(2) That period is the period of 24 hours beginning with the time when the person accused or charged is brought before the sheriff or judge.

(3) If, by the end of that period, the sheriff or judge has not admitted or refused to admit the person accused or charged to bail, then that person shall be forthwith liberated.

(4) This section applies whether or not the person accused or

7 Inserted by paragraph 3(b) of the schedule to the CPA Bill
charged is in custody when that person is brought before the sheriff or judge.

] [FN1]

[FN1] added by Bail, Judicial Appointments etc. (Scotland) Act (2000 ASP.9), Pt 1 s 1

23 Bail applications.

(1) Any person accused on petition of a crime shall be entitled immediately, on any (other than the first) occasion on which he is brought before the sheriff prior to his committal until liberated in due course of law, to apply to the sheriff for bail, and the prosecutor shall be entitled to be heard against any such application.

(2) The sheriff shall be entitled in his discretion to refuse such application before the person accused is committed until liberated in due course of law.

(3) Where an accused is admitted to bail without being committed until liberated in due course of law, it shall not be necessary so to commit him, and it shall be lawful to serve him with an indictment or complaint without his having been previously so committed.

(4) Where bail is refused before committal until liberation in due course of law on an application under subsection (1) above, the application for bail may be renewed after such committal.

(5) Any sheriff having jurisdiction to try the offence or to commit the accused until liberated in due course of law may, at his discretion, on the application of any person who has been committed until liberation in due course of law for any crime or offence, and having given the prosecutor an opportunity to be heard, admit or refuse to admit the person to bail.

[(6) Any person charged on complaint with an offence shall, on any (other than the first) occasion on which he is brought before a judge having jurisdiction to try the offence, be entitled to apply to the judge for bail and the prosecutor shall be entitled to be heard against any such application.}
(7) An application under subsection (5) or (6) above shall be disposed of within 24 hours after its presentation to the judge, failing which the accused shall be forthwith liberated.

(8) This section applies whether or not the accused is in custody at the time he appears for disposal of his application.

[FN1] substituted by Bail, Judicial Appointments etc. (Scotland) Act (2000 ASP.9), Sch 1 Para 7 (1) (c)

23A Bail and liberation where person already in custody

(1) A person may be admitted to bail under section 22A or 23 of this Act although in custody--

(a) having been refused bail in respect of another crime or offence; or

(b) serving a sentence of imprisonment.

(2) A decision to admit a person to bail by virtue of subsection (1) above does not liberate the person from the custody mentioned in that subsection.

(3) The liberation under section 22A(3) or 23(7) of this Act of a person who may be admitted to bail by virtue of subsection (1) above does not liberate that person from the custody mentioned in that subsection.

(4) In subsection (1) above, "another crime or offence" means a crime or offence other than that giving rise to the consideration of bail under section 22A or 23 of this Act.

[FN1] added by Bail, Judicial Appointments etc. (Scotland) Act (2000 ASP.9), Pt 1 s 2
Bail and bail conditions.

(1) All crimes and offences are bailable.

(2) Nothing in this Act shall affect the right of the Lord Advocate or the High Court to admit to bail any person charged with any crime or offence.

(3) It shall not be lawful to grant bail or release for a pledge or deposit of money, and--

(a) release on bail may be granted only on conditions which subject to subsection (6) below, shall not include a pledge or deposit of money;

(b) liberation may be granted by the police under section 21, 22 or 43 of this Act.

(4) In granting bail the court or, as the case may be, the Lord Advocate shall impose on the accused--

(a) the standard conditions; and

(b) such further conditions as the court or, as the case may be, the Lord Advocate considers necessary to secure--

(i) that the standard conditions are observed; and

(ii) that the accused makes himself available for the purpose of participating in an identification parade or of enabling any print, impression or sample to be taken from him.

(5) The standard conditions referred to in subsection (4) above are conditions that the accused--

(a) appears at the appointed time at every diet relating to the offence with which he is charged of which he is given due notice or
at which he is required by this Act to appear;\(^8\)

(b) does not commit an offence while on bail;

(c) does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person;

(d) makes himself available for the purpose of enabling enquiries or a report to be made to assist the court in dealing with him for the offence with which he is charged; and

(e) where the (or an) offence in respect of which he is admitted to bail is one to which section 288C of this Act applies, does not seek to obtain, otherwise than by way of a solicitor, any precognition of or statement by the complainer in relation to the subject matter of the offence.

(6) The court or, as the case may be, the Lord Advocate may impose as one of the conditions of release on bail a requirement that the accused or a cautioner on his behalf deposits a sum of money in court, but only where the court or, as the case may be, the Lord Advocate is satisfied that the imposition of such condition is appropriate to the special circumstances of the case.

(7) In any enactment, including this Act and any enactment passed after this Act--

(a) any reference to bail shall be construed as a reference to release on conditions in accordance with this Act or to conditions imposed on bail, as the context requires;

(b) any reference to an amount of bail fixed shall be construed as a reference to conditions, including a sum required to be deposited under subsection (6) above;

(c) any reference to finding bail or finding sufficient bail shall be construed as a reference to acceptance of conditions imposed or the finding of a sum required to be deposited under subsection (6) above.

\(^8\) Inserted by paragraph 4 of the schedule to the CPA Bill
(7A) In subsection (5)(e) above, "complainer" has the same meaning as in section 274 of this Act.

[FN1]

(8) In this section and sections 25 and 27 to 29 of this Act, references to an accused and to appearance at a diet shall include references respectively to an appellant and to appearance at the court on the day fixed for the hearing of an appeal.

[FN1] added by Sexual Offences (Procedure and Evidence) (Scotland) Act (2002 ASP.9), s 5 (2)

24A9 Bail conditions: remote monitoring of restrictions on movements

(1) Where a court has refused to admit a person to bail, the court shall, on the application of that person (referred to in this section as “the applicant”)—

(a) consider whether the imposition of a requirement such as is mentioned in paragraph (b)(ii) below would enable it to admit the applicant to bail subject to a condition under section 24(4)(b) of this Act restricting the applicant’s movements; and

(b) if so—

(i) make an order under this subsection admitting the applicant to bail subject to such a condition (as well as such other conditions required to be imposed under section 24(4) of this Act); and

(ii) in the order, impose a requirement that compliance with the condition be remotely monitored.

(2) Before considering whether to make an order under subsection (1) above, the court shall give the applicant and the prosecutor an opportunity to be heard.

(3) Before making an order under subsection (1) above, the court shall explain to the applicant in ordinary language—

(a) the effect of the order and, in particular—

(i) of the requirement to be imposed under subsection (1)(b)(ii) above; and

9 Inserted by section 14 of the CPA Bill
(ii) of any requirement to be imposed under section 245C(2) of this Act as applied by subsection (10) below; and

(b) the consequences which may follow any failure by the applicant to comply with—

(i) the condition in respect of which the requirement under subsection (1)(b)(ii) above is to be imposed; and

(ii) any such requirement as is referred to in paragraph (a)(ii) above.

(4) The court shall not make an order under subsection (1) above unless the applicant, after the court has explained to him the matters referred to in paragraphs (a) and (b) of subsection (3) above, has confirmed that he understands those matters.

(5) Before considering whether to make an order under subsection (1) above where the condition to be imposed restricting the applicant’s movements will require the applicant to remain in a specified place or places, the court shall obtain and consider information about that place or those places, including information as to the attitude of persons likely to be affected by the requirement that the applicant remain there.

(6) The court may, for the purposes of subsection (5) above, adjourn the proceedings.

(7) Where a court makes—

(a) an order under subsection (1) above; or

(b) an order varying or revoking such an order or revoking a requirement imposed under subsection (1)(b)(ii) above,

the clerk of the court shall cause a copy of the order to be sent immediately to the monitor.

(8) Where, in the course of monitoring in pursuance of a requirement imposed under subsection (1)(b)(ii) above a person’s compliance with a condition imposed in an order under this section restricting the person’s movements, the monitor becomes aware that the person has breached the condition, the monitor shall immediately notify a constable of the breach.
(9) Where a constable arrests a person under section 28(1) of this Act on the ground that the constable suspects the person of having breached a condition imposed in an order under this section restricting the person’s movements the constable shall, as soon as possible, notify the monitor of the arrest.

(10) Sections 245A(8) to (10), 245B and 245C of this Act shall apply in relation to orders under subsection (1) above as they apply in relation to restriction of liberty orders, but with the following modifications—

(a) references to an offender or offenders shall be read as if they were references to an applicant or applicants under this section;

(b) references to restriction of liberty orders and to the making of such orders shall be read as if they were references to orders under subsection (1) above and to the making of such orders;

(c) references to monitoring compliance with restriction of liberty orders shall be read as if they were references to remote monitoring in pursuance of requirements imposed under subsection (1)(b)(ii) above.

(11) Section 245H of this Act shall apply in proceedings specified in subsection (12) below as that section applies in proceedings under section 245F of this Act, but as if references in it to the offender were references to the applicant under this section.

(12) The proceedings referred to in subsection (11) above are proceedings in respect of an offence under subsection (1)(b) of section 27 of this Act where the condition referred to in that subsection is a condition in respect of which a requirement has been imposed under subsection (1)(b)(ii) above.

(13) Any requirement imposed on the applicant by an order under this section shall be treated for the purposes of sections 25, 27, 28, 30 and 31 of this Act as a condition imposed on bail.

(14) In this section, references to a condition restricting the applicant’s movements include any condition requiring the applicant to be, or not to be, in any place or description of place for, or during, any period or periods or at any time.

(15) In this section, “monitor” means, in relation to an order under this section, any person who is, or is to be, responsible for the remote monitoring of the compliance of the person in respect of
whom the order is made with the condition imposed in the order restricting the person’s movements.

25  **Bail conditions: supplementary.**

(1) The court shall specify in the order granting bail, a copy of which shall be given to the accused--

(a) the conditions imposed; and

(b) an address, within the United Kingdom (being the accused’s normal place of residence or such other place as the court may, on cause shown, direct) which, subject to subsection (2) below, shall be his proper domicile of citation.

(2) The court may on application in writing by the accused while he is on bail alter the address specified in the order granting bail, and this new address shall, as from such date as the court may direct, become his proper domicile of citation; and the court shall notify the accused of its decision on any application under this subsection.

(2A) Where an application is made under subsection (2) above –

(a) the application shall be intimated by the accused immediately and in writing to the Crown Agent; and

(b) the court shall, before determining the application, give the prosecutor an opportunity to be heard.

(3) In this section "proper domicile of citation" means the address at which the accused may be cited to appear at any diet relating to the offence with which he is charged or an offence charged in the same proceedings as that offence or to which any other intimation or document may be sent; and any citation at or the sending of an intimation or document to the proper domicile of citation shall be presumed to have been duly carried out.

(4) In this section, references to the court (other than in subsection (2A)) shall, in relation to a person who has been

---

10 Inserted by section 15(2) of the CPA Bill
11 Inserted by paragraph 5 of the schedule to the CPA Bill
admitted to bail by the Lord Advocate, be read as if they were references to the Lord Advocate.

26.

 [...] [FN1]

[FN1] repealed by Bail, Judicial Appointments etc. (Scotland) Act (2000 ASP.9), Pt 1 s 3 (2)

27. **Breach of bail conditions: offences.**

(1) Subject to subsection (7) below, an accused who having been granted bail fails without reasonable excuse--

(a) to appear at the time and place appointed for any diet of which he has been given due notice or at which he is required by this Act to appear\(^\text{12}\); or

(b) to comply with any other condition imposed on bail,

shall, subject to subsection (3) below, be guilty of an offence and liable on conviction to the penalties specified in subsection (2) below.

(2) The penalties mentioned in subsection (1) above are--

(a) a fine not exceeding level 3 on the standard scale; and

(b) imprisonment for a period--

(i) where conviction is in the district court, not exceeding 60 days; or

(ii) in any other case, not exceeding 3 months.

(3) Where, and to the extent that, the failure referred to in subsection (1)(b) above consists in the accused having committed an offence while on bail (in this section referred to as "the subsequent offence"), he shall

\(^{12}\) Inserted by paragraph 6 of the Schedule to the CPA Bill
not be guilty of an offence under that subsection but, subject to subsection (4) below, the court which sentences him for the subsequent offence shall, in determining the appropriate sentence or disposal for that offence, have regard to--

(a) the fact that the offence was committed by him while on bail and the number of bail orders to which he was subject when the offence was committed;

(b) any previous conviction of the accused of an offence under subsection (1)(b) above; and

(c) the extent to which the sentence or disposal in respect of any previous conviction of the accused differed, by virtue of this subsection, from that which the court would have imposed but for this subsection.

(4) The court shall not, under subsection (3) above, have regard to the fact that the subsequent offence was committed while the accused was on bail unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.

(4A) The fact that the subsequent offence was committed while the accused was on bail shall, unless challenged--

(a) in the case of proceedings on indictment, by giving notice of a preliminary objection under paragraph (b) of section 72(1) of this Act or under that paragraph as applied by section 71(2) of this Act; or

(b) in summary proceedings, by preliminary objection before his plea is recorded,

be held as admitted.

[FN1]
(a) where it is a fine, by the amount for the time being equivalent to level 3 on the standard scale; and

(b) where it is a period of imprisonment--

(i) as respects a conviction in the High Court or the sheriff court, by 6 months; and

(ii) as respects a conviction in the district court, by 60 days,

notwithstanding that the maximum penalty as so increased exceeds the penalty which it would otherwise be competent for the court to impose.

(6) Where the sentence or disposal in respect of the subsequent offence is, by virtue of subsection (3) above, different from that which the court would have imposed but for that subsection, the court shall state the extent of and the reasons for that difference.

(7) An accused who having been granted bail in relation to solemn proceedings fails without reasonable excuse to appear at the time and place appointed for any diet of which he has been given due notice (where such diet is in respect of solemn proceedings) shall be guilty of an offence and liable on conviction on indictment to the following penalties--

(a) a fine; and

(b) imprisonment for a period not exceeding 2 years.

(8) At any time before the trial of an accused under solemn procedure for the original offence, it shall be competent--

(a) to amend the indictment to include an additional charge of an offence under this section;

(b) to include in the list of witnesses or productions relating to the original offence, witnesses or productions relating to the offence under this section.

(9) The penalties provided for in subsection (2) above may be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penalties imposed may
exceed the maximum penalty which it is competent to impose in respect of the original offence.

(10) A court which finds an accused guilty of an offence under this section may remit the accused for sentence in respect of that offence to any court which is considering the original offence.

(11) In this section "the original offence" means the offence with which the accused was charged when he was granted bail or an offence charged in the same proceedings as that offence.

[FN1] added by Criminal Procedure and Investigations Act (1996 c.25), Pt VII s 73 (2)

28  Breach of bail conditions: arrest of offender, etc.

(1) A constable may arrest without warrant an accused who has been released on bail where the constable has reasonable grounds for suspecting that the accused has broken, is breaking, or is likely to break any condition imposed on his bail.

(2) An accused who is arrested under this section shall wherever practicable be brought before the court to which his application for bail was first made not later than in the course of the first day after his arrest, such day not being, subject to subsection (3) below, a Saturday, a Sunday or a court holiday prescribed for that court under section 8 of this Act.

(3) Nothing in subsection (2) above shall prevent an accused being brought before a court on a Saturday, a Sunday or such a court holiday where the court is, in pursuance of the said section 8, sitting on such day for the disposal of criminal business.

(4) Where an accused is brought before a court under subsection (2) or (3) above, the court, after hearing the parties, may--

(a) recall the order granting bail;

(b) release the accused under the original order granting bail; or
(c) vary the order granting bail so as to contain such conditions as the court thinks it necessary to impose to secure that the accused complies with the requirements of paragraphs (a) to (d) of section 24(5) of this Act.

(5) The same rights of appeal shall be available against any decision of the court under subsection (4) above as were available against the original order of the court relating to bail.

(6) For the purposes of this section and section 27 of this Act, an extract from the minute of proceedings, containing the order granting bail and bearing to be signed by the clerk of court, shall be sufficient evidence of the making of that order and of its terms and of the acceptance by the accused of the conditions imposed under section 24 of this Act.

29 Bail: monetary conditions.

(1) Without prejudice to section 27 of this Act, where the accused or a cautioner on his behalf has deposited a sum of money in court under section 24(6) of this Act, then--

(a) if the accused fails to appear at the time and place appointed for any diet of which he has been given due notice, the court may, on the motion of the prosecutor, immediately order forfeiture of the sum deposited;

(b) if the accused fails to comply with any other condition imposed on bail, the court may, on conviction of an offence under section 27(1)(b) of this Act and on the motion of the prosecutor, order forfeiture of the sum deposited.

(2) If the court is satisfied that it is reasonable in all the circumstances to do so, it may recall an order made under subsection (1)(a) above and direct that the money forfeited shall be refunded, and any decision of the court under this subsection shall be final and not subject to review.

(3) A cautioner, who has deposited a sum of money in court under section 24(6) of this Act, shall be entitled, subject to subsection (4) below, to recover the sum deposited at any diet of the court at which the accused appears personally.
(4) Where the accused has been charged with an offence under section 27(1)(b) of this Act, nothing in subsection (3) above shall entitle a cautioner to recover the sum deposited unless and until--

(a) the charge is not proceeded with; or

(b) the accused is acquitted of the charge; or

(c) on the accused’s conviction of the offence, the court has determined not to order forfeiture of the sum deposited.

(5) The references in subsections (1)(b) and (4)(c) above to conviction of an offence shall include references to the making of an order in respect of the offence under section 246(3) of this Act.

30 Bail review.

(1) This section applies where a court has refused to admit a person to bail or, where a court has so admitted a person, the person has failed to accept the conditions imposed or that a sum required to be deposited under section 24(6) of this Act has not been so deposited.

(2) A court shall, on the application of any person mentioned in subsection (1) above, have power to review its decision to admit to bail or its decision as to the conditions imposed and may, on cause shown, admit the person to bail or, as the case may be, fix bail on different conditions.

(2A) Subsection (2B) below applies where an application is made under subsection (2) above by a person convicted on indictment pending the determination of—

(a) his appeal; or

(b) any relevant appeal by the Lord Advocate under section 108 or 108A of this Act.

(2B) Where this subsection applies—

13 Inserted by section 15(3) of the CPA Bill
(a) the application shall be—

(i) intimated by the person making it immediately and in writing to the Crown Agent; and

(ii) heard not less than 7 days after the date of that intimation; and

(b) the court shall, before determining the application, give the prosecutor an opportunity to be heard.

(3) An application under this section, where it relates to the original decision of the court, shall not be made before the fifth day after that decision and, where it relates to a subsequent decision, before the fifteenth day thereafter.

(4) Nothing in this section shall affect any right of a person to appeal against the decision of a court in relation to admitting to bail or to the conditions imposed.

31 Bail review on prosecutor's application.

(1) On an application by the prosecutor at any time after a court has granted bail to a person the court may, where the prosecutor puts before the court material information which was not available to it when it granted bail to that person, review its decision.

(2) On receipt of an application under subsection (1) above the court shall—

(a) intimate the application to the person granted bail;

(b) fix a diet for hearing the application and cite that person to attend the diet; and

(c) where it considers that the interests of justice so require, grant warrant to arrest that person.

(2A) Subsection (2B) below applies to an application under

14 Inserted by section 15 (4) of the CPA Bill
subsection (1) above where the person granted bail –

(a) was convicted on indictment; and

(b) was granted bail pending the determination of –

(i) his appeal; or

(ii) any relevant appeal by the Lord Advocate under section 108 or 108A of this Act.

(2B) Where this subsection applies, the application shall be heard not more than 7 days after the day on which it is made.

(3) On hearing an application under subsection (1) above the court may--

(a) withdraw the grant of bail and remand the person in question in custody; or

(b) grant bail, or continue the grant of bail, either on the same or on different conditions.

(4) Nothing in the foregoing provisions of this section shall affect any right of appeal against the decision of a court in relation to bail.

32 Bail appeal.

(1) Where, in any case, bail is refused or where the accused is dissatisfied with the amount of bail fixed, he may appeal to the High Court which may, in its discretion order intimation to the Lord Advocate or, as the case may be, the prosecutor.

(2) Where, in any case, bail is granted, or, in summary proceedings an accused is ordained to appear, the public prosecutor, if dissatisfied--

(a) with the decision allowing bail;

(b) with the amount of bail fixed; or

(c) in summary proceedings, that the accused has been
ordained to appear,

may appeal to the High Court, and the accused shall not be liberated, subject to subsection (7) below, until the appeal by the prosecutor is disposed of.

(3) Written notice of appeal shall be immediately given to the opposite party by a party appealing under this section.

(4) An appeal under this section shall be disposed of by the High Court or any Lord Commissioner of Justiciary in court or in chambers after such inquiry and hearing of parties as shall seem just.

(5) Where an accused in an appeal under this section is under 21 years of age, section 51 of this Act shall apply to the High Court or, as the case may be, the Lord Commissioner of Justiciary when disposing of the appeal as it applies to a court when remanding or committing a person of the accused's age for trial or sentence.

(6) In the event of the appeal of the public prosecutor under this section being refused, the court may award expenses against him.

(7) When an appeal is taken by the public prosecutor either against the grant of bail or against the amount fixed, the accused to whom bail has been granted shall, if the bail fixed has been found by him, be liberated after 72 hours from the granting of [bail] [FN1], whether the appeal has been disposed of or not, unless the High Court grants an order for his further detention in custody.

(8) In computing the period mentioned in subsection (7) above, Sundays and public holidays, whether general or court holidays, shall be excluded.

(9) When an appeal is taken under this section by the prosecutor in summary proceedings against the fact that the accused has been ordained to appear, subsections (7) and (8) above shall apply as they apply in the case of an appeal against the granting of bail or the amount fixed.

(10) Notice to the governor of the prison of the issue of an order such as is mentioned in subsection (7) above within the time mentioned in that subsection bearing to be sent by the Clerk of Justiciary or the Crown Agent shall be sufficient warrant for the detention of the accused
pending arrival of the order in due course of post.

[FN1] words substituted by Bail, Judicial Appointments etc. (Scotland) Act (2000 ASP.9), Sch 1 Para 7 (2) (c)

33 Bail: no fees exigible.

No clerks fees, court fees or other fees or expenses shall be exigible from or awarded against an accused in respect of a decision on bail under section 22A above, an application for bail or of the appeal of such [a decision or] [FN1] application to the High Court.

[FN1] words added by Bail, Judicial Appointments etc. (Scotland) Act (2000 ASP.9), Sch 1 Para 7 (3) (b)

34 Petition for warrant.

(1) A petition for warrant to arrest and commit a person suspected of or charged with crime may be in the forms--

(a) set out in Schedule 2 to this Act; or

(b) prescribed by Act of Adjournal,

or as nearly as may be in such form; and Schedule 3 to this Act shall apply to any such petition as it applies to the indictment.

(2) If on the application of the procurator fiscal, a sheriff is satisfied that there is reasonable ground for suspecting that an offence has been or is being committed by a body corporate, the sheriff shall have the like power to grant warrant for the citation of witnesses and the production of documents and articles as he would have if a petition charging an individual with the commission of the offence were presented to him.

35 Judicial examination.
(1) The accused's solicitor shall be entitled to be present at the examination.

(2) The sheriff may delay the examination for a period not exceeding 48 hours from and after the time of the accused’s arrest, in order to allow time for the attendance of the solicitor.

(3) Where the accused is brought before the sheriff for examination on any charge and he or his solicitor intimates that he does not desire to emit a declaration in regard to such a charge, it shall be unnecessary to take a declaration, and, subject to section 36 of this Act, the accused may be committed for further examination or until liberated in due course of law without a declaration being taken.

(4) Nothing in subsection (3) above shall prejudice the right of the accused subsequently to emit a declaration on intimating to the prosecutor his desire to do so; and that declaration shall be taken in further examination.

[ (4A) An accused charged with a sexual offence to which section 288C of this Act applies shall, as soon as he is brought before the sheriff for examination on the charge, be told—

(za) that, if he is indicted to the High Court in respect of the offence, his case at or for the purposes of the preliminary hearing may be conducted only by a lawyer;

(a) that, if he is tried for the offence, his defence may be conducted only by a lawyer;

(b) that it is, therefore, in his interests, if he has not already done so, to get the professional assistance of a solicitor; and

(c) that, if he does not engage a solicitor for the purposes of the conduct of his case at or for the purposes of the preliminary hearing (if he is indicted to the High Court in respect of the offence) or his defence at the trial, the court will do so.

(4B) A failure to comply with subsection (4A) above does not affect the

15 Inserted by paragraph 7(a) of the schedule to the CPA Bill
16 Inserted by paragraph 7(b) of the schedule to the CPA Bill
validity or lawfulness of the examination or of any other element of the proceedings against the accused.

[FN1]

(5) Where, subsequent to examination or further examination on any charge, the prosecutor desires to question the accused as regards an extrajudicial confession, whether or not a full admission, allegedly made by him to or in the hearing of a constable, which is relevant to the charge and as regards which he has not previously been examined, the accused may be brought before the sheriff for further examination.

(6) Where the accused is brought before the sheriff for further examination the sheriff may delay that examination for a period not exceeding 24 hours in order to allow time for the attendance of the accused’s solicitor.

(7) Any proceedings before the sheriff in examination or further examination shall be conducted in chambers and outwith the presence of any co-accused.

(8) This section applies to procedure on petition; without prejudice to the accused being tried summarily by the sheriff for any offence in respect of which he has been committed until liberated in due course of law.

[FN1] added by Sexual Offences (Procedure and Evidence) (Scotland) Act (2002 ASP.9), Sch 1 Para 3

36 Judicial examination: questioning by prosecutor.

(1) Subject to the following provisions of this section an accused on being brought before the sheriff for examination on any charge (whether the first or a further examination) may be questioned by the prosecutor in so far as such questioning is directed towards eliciting any admission, denial, explanation, justification or comment which the accused may have as regards anything to which subsections (2) to (4) below apply.

(2) This subsection applies to matters averred in the charge, and the particular aims of a line of questions under this subsection shall be to
determine--

(a) whether any account which the accused can give ostensibly discloses a defence; and

(b) the nature and particulars of that defence.

(3) This subsection applies to the alleged making by the accused, to or in the hearing of a constable, of an extrajudicial confession (whether or not a full admission) relevant to the charge, and questions under this subsection may only be put if the accused has, before the examination, received from the prosecutor or from a constable a written record of the confession allegedly made.

(4) This subsection applies to what is said in any declaration emitted in regard to the charge by the accused at examination.

(5) The prosecutor shall, in framing questions in exercise of his power under subsection (1) above, have regard to the following principles--

(a) the question should not be designed to challenge the truth of anything said by the accused;

(b) there should be no reiteration of a question which the accused has refused to answer at the examination; and

(c) there should be no leading questions,

and the sheriff shall ensure that all questions are fairly put to, and understood by, the accused.

(6) The accused shall be told by the sheriff--

(a) where he is represented by a solicitor at the judicial examination, that he may consult that solicitor before answering any question; and

(b) that if he answers any question put to him at the examination under this section in such a way as to disclose an ostensible defence, the prosecutor shall be under the duty imposed by subsection (10) below.

(7) With the permission of the sheriff, the solicitor for the accused may
ask the accused any question the purpose of which is to clarify any ambiguity in an answer given by the accused to the prosecutor at the examination or to give the accused an opportunity to answer any question which he has previously refused to answer.

(8) An accused may decline to answer a question under subsection (1) above; and, where he is subsequently tried on the charge mentioned in that subsection or on any other charge arising out of the circumstances which gave rise to the charge so mentioned, his having so declined may be commented upon by the prosecutor, the judge presiding at the trial, or any co-accused, only where and in so far as the accused (or any witness called on his behalf) in evidence avers something which could have been stated appropriately in answer to that question.

(9) The procedure in relation to examination under this section shall be prescribed by Act of Adjournal.

(10) Without prejudice to any rule of law, on the conclusion of an examination under this section the prosecutor shall secure the investigation, to such extent as is reasonably practicable, of any ostensible defence disclosed in the course of the examination.

(11) The duty imposed by subsection (10) above shall not apply as respects any ostensible defence which is not reasonably capable of being investigated.

37 Judicial examination: record of proceedings.

(1) The prosecutor shall provide for a verbatim record to be made by means of shorthand notes or by mechanical means of all questions to and answers and declarations by the accused in examination, or further examination, under sections 35 and 36 of this Act.

(2) A shorthand writer shall--

   (a) sign the shorthand notes taken by him of the questions, answers and declarations mentioned in subsection (1) above and certify the notes as being complete and correct; and

   (b) retain the notes.
(3) A person recording the questions, answers and declarations mentioned in subsection (1) above by mechanical means shall--

(a) certify that the record is true and complete;

(b) specify in the certificate the proceedings to which the record relates; and

(c) retain the record.

(4) The prosecutor shall require the person who made the record mentioned in subsection (1) above, or such other competent person as he may specify, to make a transcript of the record in legible form; and that person shall--

(a) comply with the requirement;

(b) certify the transcript as being a complete and correct transcript of the record purporting to have been made and certified, and in the case of shorthand notes signed, by the person who made the record; and

(c) send the transcript to the prosecutor.

(5) A transcript certified under subsection (4)(b) above shall, subject to section 38(1) of this Act, be deemed for all purposes to be a complete and correct record of the questions, answers and declarations mentioned in subsection (1) above.

(6) Subject to subsections (7) to (9) below, within 14 days of the date of examination or further examination, the prosecutor shall--

(a) serve a copy of the transcript on the accused examined; and

(b) serve a further such copy on the solicitor (if any) for that accused.

(7) Where at the time of further examination a trial diet is already fixed and the interval between the further examination and that diet is not sufficient to allow of the time limits specified in subsection (6) above and subsection (1) of section 38 of this Act the sheriff shall (either or both)
(a) direct that those subsections shall apply in the case with such modifications as to time limits as he shall specify;

(b) subject to subsection (8) below, postpone the trial diet.

(8) Postponement under paragraph (b) of subsection (7) above alone shall only be competent where the sheriff considers that to proceed under paragraph (a) of that subsection alone, or paragraphs (a) and (b) together, would not be practicable.

(9) Any time limit mentioned in subsection (6) above and subsection (1) of section 38 of this Act (including any such time limit as modified by a direction under subsection (7) above) may be extended, in respect of the case, by the High Court; and an application to the High Court for any such extension shall be disposed of by the High Court or any Lord Commissioner of Justiciary in court or in chambers [FN1].

(10) A copy of--

(a) a transcript required by paragraph (a) of subsection (6) above to be served on an accused or by paragraph (b) of that subsection to be served on his solicitor; or

(b) a notice required by paragraph (a) of section 38(1) of this Act to be served on an accused or on the prosecutor,

shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served such transcript or notice, together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of such a copy.

[FN1] words added by SI 1998/2635 (Act of Adjournal (Extension of Time Limit for Service of Transcript of Examination)), r 2

38 Judicial examination: rectification of record of proceedings.

(1) Subject to subsections (7) to (9) of section 37 of this Act, where notwithstanding the certification mentioned in subsection (5) of that
section the accused or the prosecutor is of the opinion that a transcript served under paragraph (a) of subsection (6) of that section contains an error or is incomplete he may--

(a) within 10 days of service under the said paragraph (a) serve notice of such opinion on the prosecutor or as the case may be the accused; and

(b) within 14 days of service under paragraph (a) of this subsection, apply to the sheriff for the error or incompleteness to be rectified,

and the sheriff shall within 7 days of the application hear the prosecutor and the accused in chambers and may authorise rectification.

(2) Where--

(a) the person on whom notice is served under paragraph (a) of subsection (1) above agrees with the opinion to which that notice relates the sheriff may dispense with such hearing;

(b) the accused neither attends, nor secures that he is represented at, such hearing it shall, subject to paragraph (a) above, nevertheless proceed.

(3) In so far as it is reasonably practicable so to arrange, the sheriff who deals with any application made under subsection (1) above shall be the sheriff before whom the examination or further examination to which the application relates was conducted.

(4) Any decision of the sheriff, as regards rectification under subsection (1) above, shall be final.

39 Judicial examination: charges arising in different districts.

(1) An accused against whom there are charges in more than one sheriff court district may be brought before the sheriff of any one such district at the instance of the procurator fiscal of such district for examination on all or any of the charges.

(2) Where an accused is brought for examination as mentioned in
subsection (1) above, he may be dealt with in every respect as if all of the charges had arisen in the district where he is examined.

(3) This section is without prejudice to the power of the Lord Advocate under section 10 of this Act to determine the court before which the accused shall be tried on such charges.

40 Committal until liberated in due course of law.

(1) Every petition shall be signed and no accused shall be committed until liberated in due course of law for any crime or offence without a warrant in writing expressing the particular charge in respect of which he is committed.

(2) Any such warrant for imprisonment which either proceeds on an unsigned petition or does not express the particular charge shall be null and void.

(3) The accused shall immediately be given a true copy of the warrant for imprisonment signed by the constable or person executing the warrant before imprisonment or by the prison officer receiving the warrant.

64 Prosecution on indictment.

(1) All prosecutions for the public interest before the High Court or before the sheriff sitting with a jury shall proceed on indictment in name of Her Majesty’s Advocate.

(2) The indictment may be in the forms--

(a) set out in Schedule 2 to this Act; or

(b) prescribed by Act of Adjournal,

or as nearly as may be in such form.

(3) Indictments in proceedings before the High Court shall be signed
by the Lord Advocate or one of his deputes.

(4) Indictments in proceedings before the sheriff sitting with a jury shall be signed by the procurator fiscal, and the words "By Authority of Her Majesty’s Advocate" shall be prefixed to the signature of the procurator fiscal.

(5) The principal record and service copies of indictments and all notices of citation, lists of witnesses, productions and jurors, and all other official documents required in a prosecution on indictment may be either written or printed or partly written and partly printed.

(6) Schedule 3 to this Act shall have effect as regards indictments under this Act.

65  Prevention of delay in trials.

(1) Subject to subsections (2) and (3) below, an accused shall not be tried on indictment for any offence unless

(a) where an indictment has been served on the accused in respect of the High Court, a preliminary hearing is commenced within the period of 11 months; and

(b) in any case, the trial is commenced within the period of 12 months,

of the first appearance of the accused on petition in respect of the offence.

(1A) If the preliminary hearing (where subsection (1)(a) above applies) or the trial is not so commenced, the accused

(a) shall be discharged forthwith from any indictment as respects the offence; and

(b) shall not at any time be proceeded against on indictment as respects the offence.

17 Substituted by section 9(2) of the CPA Bill
(2) Nothing in subsection (1) or (1A)\textsuperscript{18} above shall bar the trial of an accused for whose arrest a warrant has been granted for failure to appear at a diet in the case.

(3) On an application made for the purpose,

(a) where an indictment has been served on the accused in respect of the High Court, a single judge of that court may, on cause shown, extend either or both of the periods of 11 and 12 months specified in subsection (1) above; or

(b) in any other case, the sheriff may, on cause shown, extend the period of 12 months specified in that subsection.\textsuperscript{19}

[ (3A) An application under subsection (3) shall not be made at any time when an appeal made with leave under section 74(1) of this Act has not been disposed of by the High Court. ] [FN1]

(4) Subject to subsections (5) to (9) below, an accused who is committed for any offence until liberated in due course of law shall not be detained by virtue of that committal for a total period of more than--

(a) 80 days, unless within that period the indictment is served on him, which failing he shall be entitled to be admitted to bail;\textsuperscript{20} or

(aa)\textsuperscript{21} where an indictment has been served on the accused in respect of the High Court –

(i) 110 days, unless a preliminary hearing in respect of the case is commenced within that period, which failing he shall be entitled to be admitted to bail; or

(ii) 140 days, unless the trial of the case is commenced within that period, which failing he shall be admitted to bail;

\textsuperscript{18} Inserted by section 9(3) of the CPA Bill
\textsuperscript{19} Substituted by section 9(4) of the CPA Bill
\textsuperscript{20} Substituted by section 9(5) of the CPA Bill
\textsuperscript{21} Inserted by section 9(5) of the CPA Bill
(b) where an indictment has been served on the accused in respect of the sheriff court\(^{22}\) 110 days, unless the trial of the case is commenced within that period, which failing he shall be entitled to be admitted to bail;

(4A)\(^{23}\) Where an indictment has been served on the accused in respect of the High Court, subsections (1)(a) and (4)(aa)(i) above shall not apply if the preliminary hearing has been dispensed with under section 72B(8) of this Act

(5)\(^{24}\) On an application made for the purpose –

(a) in a case where, at the time the application is made, an indictment has not been served on the accused, a single judge of the High Court; or

(b) in any other case, the court specified in the notice served under section 66(6) of this Act, may, on cause shown, extend any period mentioned in subsection (4) above.

(5A) Before determining an application under subsection (3) or (5) above, the judge or, as the case may be, the court shall give the parties an opportunity to be heard.

(5B) However, where all the parties join in the application, the judge or, as the case may be, the court may determine the application without hearing the parties and, accordingly, may dispense with any hearing previously appointed for the purpose of considering the application.

(6)\(^{25}\)

(7)\(^{26}\)

(8) The grant or refusal of any application to extend the periods mentioned in this section may be appealed against by note of appeal

\(^{22}\) Ibid
\(^{23}\) Inserted by section 9(6) of the CPA Bill
\(^{24}\) Substituted by section 9(7) of the CPA Bill
\(^{25}\) Repealed by section 9(8) of the CPA Bill
\(^{26}\) Ibid
presented to the High Court; and that Court may affirm, reverse or amend the determination made on such application.

(8A) Where an accused is, by virtue of subsection (4) above, entitled to be admitted to bail, the accused shall, unless he has been admitted to bail by the Lord Advocate, be brought forthwith before—

(a) in a case where an indictment has not yet been served on the accused, a single judge of the High Court; or

(b) in any other case, the court specified in the notice served under section 66(6) of this Act.

(8B) Where an accused is brought before a judge or court under subsection (8A) above, the judge or, as the case may be, the court shall give the prosecutor an opportunity to make an application under subsection (5) above.

(8C) If the prosecutor does not make such an application or, if such an application is made but is refused, the judge or, as the case may be, the court shall, after giving the prosecutor an opportunity to be heard, admit the accused to bail.

(9) For the purposes of this section,

(a) where the accused is cited in accordance with subsection (4)(b) of section 66 of this Act, the indictment shall be deemed to have been served on the accused;

(b) a preliminary hearing shall be taken to commence when it is called; and

(c) a trial shall be taken to commence when the oath is administered to the jury.

(10) In calculating the periods of 11 and 12 months specified in subsections (1) and (3) above there shall be left out of account any period during which the accused is detained, other than while serving a sentence of imprisonment or detention, in any other part of the United Kingdom.

---

27 Inserted by section 9(9) of the CPA Bill
28 Inserted by section 9(10) of the CPA Bill
29 Inserted by section 9(11) of the CPA Bill
Kingdom or in any of the Channel Islands or the Isle of Man in any prison or other institution or place mentioned in subsection (1) or (1A) of section 29 of the Criminal Justice Act 1961 (transfer of prisoners for certain judicial purposes).

[FN1] added by Crime and Punishment (Scotland) Act (1997 c.48), Sch 1 Para 21 (9)

66 Service and lodging of indictment, etc.

(1) 30 This Act shall be sufficient warrant for—
    (a) the citation of the accused and witnesses to—
        (i) any diet of the High Court to be held on any day,
            and at any place, the Court is sitting;
        (ii) any diet of the sheriff court to be held on any day
            the court is sitting; or
        (iii) any adjournment of a diet specified in sub-
            paragraph (i) or (ii) above; and
    (b) the citation of jurors for any trial to be held—
        (i) in the High Court; or
        (ii) under solemn procedure in the sheriff court.

(2) The execution of the citation against an accused, witness or juror shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form.

(3) A witness may be cited by sending the citation to the witness by ordinary or registered post or by the recorded delivery service and a written execution in the form prescribed by Act of Adjournal or as nearly as may be in such form, purporting to be signed by the person who served such citation together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such citation.

(4) The accused may be cited either--

30 Substituted by section 10(2) of the CPA Bill
(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 and of the list of productions (if any) to be put in evidence by the prosecution;\textsuperscript{31} 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 lists as are\textsuperscript{32} 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 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).

(4C)\textsuperscript{33} Where

(a) the accused is cited in accordance with subsection (4)(b) above; and

(b) the charge in the indictment is of committing a sexual offence to which section 288C of this Act applies,

the accused shall, on collecting the indictment, be given a notice containing intimation of the matters specified in subsection (6A)(a)

\textsuperscript{31} Inserted by paragraph 8(a) of the schedule to the CPA Bill

\textsuperscript{32} Substituted by paragraph 8(a) of the schedule to the CPA Bill

\textsuperscript{33} Inserted by paragraph 8(b) of the schedule to the CPA Bill
(5) Except in a case to which section 76 of this Act applies, the prosecutor shall on or before the date of service of the indictment lodge the record copy of the indictment with the clerk of court before which the trial is to take place, together with a copy of the list of witnesses and a copy of the list of productions.

(6) If the accused is cited by being served with a copy of the indictment, then except where such service is under section 76(1) of this Act a notice shall be served on the accused with the indictment calling upon him to appear and answer to the indictment--

(a) where the case is to be tried in the sheriff court,

   (i) at a first diet not less than 15 clear days after the service of the indictment and not less than 10 clear days before the trial diet; and

   (ii) at a trial diet not less than 29 clear days after the service of the indictment, and

(b)\(^{34}\) where the indictment is in respect of the High Court, at a diet not less than 29 clear days after the service of the indictment (such a diet being referred to in this Act as a “preliminary hearing”).

(6A) Where the charge in the indictment is of committing a sexual offence to which section 288C of this Act applies, the notice served under subsection (6) above shall--

(a) contain intimation to the accused—

   (zi)\(^{35}\) where the case is to be tried in the High Court, that his case at or for the purposes of the preliminary hearing may be conducted only by a lawyer;

   (i) that, if he is tried for the offence, his defence may be conducted only by a lawyer;

   (ii) that it is, therefore, in his interests, if he has not already

---

\(^{34}\) Inserted by section 1(1) of the CPA Bill

\(^{35}\) Inserted by paragraph 8(c) of the schedule to the CPA Bill
done so, to get the professional assistance of a solicitor; and

(iii) that if he does not engage a solicitor for the purposes of the conduct of his case at or for the purposes of a preliminary hearing or his defence at the trial, the court will do so;

(b) A notice affixed under subsection (4)(b) above or served under subsection (6) above shall also contain intimation to the accused –

(a) where an indictment is in respect of the High Court, that, if he does not appear at the preliminary hearing -

(i) the hearing may proceed; and

(ii) a trial diet may be appointed,

in his absence; and

(b) in any case (whether the indictment is in respect of the High Court or the sheriff court), that if he does not appear at the trial diet, the trial may proceed in his absence.

(6B) A failure to comply with subsection (4C),(6A) or (6AA) above does not affect the validity or lawfulness of any notice affixed under subsection (4) (b) above or served under subsection (6) above or any other element of the proceedings against the accused.

(7) Subject to subsection (4)(b) above, Service of the indictment, lists of witnesses and productions, and any notice or intimation to the accused, and the citation of witnesses, whether for precognition or trial, may be effected by any officer of law.

(8)
(9) The citation of witnesses may be effected by any officer of law duly authorised; and in any proceedings, the evidence on oath of the officer shall, subject to subsection (10) below, be sufficient evidence of the execution of the citation.

(10) No objection to the competency of the officer who served the indictment, or who executed a citation under subsection (4)(b) above, to give evidence in respect of such service or execution shall be upheld on the ground that his name is not included in the list of witnesses served on the accused.

(12) Any deletion or correction made before service on the record or service copy of an indictment shall be sufficiently authenticated by the initials of the person who has signed, or could by law have signed, the indictment.

(13) Any deletion or correction made on a service copy of an indictment, or on any notice of citation, postponement, adjournment or other notice served on an accused shall be sufficiently authenticated by the initials of any procurator fiscal or of the person serving the same.

(14) Any deletion or correction made on any execution of citation or notice of other document so served shall be sufficiently authenticated by the initials or the person serving the same.

[FN1] words Inserted by Criminal Justice (Scotland) Act (2003 ASP.7), Pt 8 s 61 (1) (d)

67 Witnesses.

(1) The list of witnesses shall consist of the names of the witnesses together with an address at which they can be contacted for the purposes of precognition.

42 Repealed by paragraph 8(e) of the schedule to the CPA Bill
(2) It shall not be necessary to include in the list of witnesses the names of any witnesses to the declaration of the accused or the names of any witnesses to prove that an extract conviction applies to the accused, but witnesses may be examined in regard to these matters without previous notice.

(3) Any objection in respect of misnomer or misdescription of--

(a) any person named in the indictment; or

(b) any witness in the list of witnesses,

shall be intimated in writing to the court before which the trial is to take place, to the prosecutor and to any other accused, where the case is to be tried in the sheriff court, at or before the first diet and, where the case is to be tried in the High Court, not less than seven clear days before the preliminary hearing; and, except on cause shown, no such objection shall be admitted unless so intimated.

(4) Where such intimation has been given or cause is shown and the court is satisfied that the accused making the objection has not been supplied with sufficient information to enable him to identify the person named in the indictment or to find such witness in sufficient time to precognosce him before the trial, the court may grant such remedy by postponement, adjournment or otherwise as appears to it to be appropriate.

(5) Without prejudice to--

(a) any enactment or rule of law permitting the prosecutor to examine any witness not included in the list of witnesses; or

(b) subsection (6) below,

in any trial it shall be competent with the leave of the court for the prosecutor to examine any witness or to put in evidence any production not included in the lists lodged by him, provided that written notice, containing in the case of a witness his name and address as mentioned in subsection (1) above, has been given to the accused by the relevant...
(5A) In subsection (5) above, “the relevant time” means –

(a) where the case is to be tried in the High Court –

(i) not less than seven clear days before the preliminary hearing; or

(ii) such later time, not less than seven clear days before the trial diet, as the court may in special circumstances allow;

(b) where the case is to be tried in the sheriff court, not less than two clear days before the day on which the jury is sworn to try the case.

(6) It shall be competent for the prosecutor to examine any witness or put in evidence any production included in any list or notice lodged by the accused, and it shall be competent for an accused to examine any witness or put in evidence any production included in any list or notice lodged by the prosecutor or by a co-accused.

[67A]

68 Productions.

(1) The list of productions shall include the record, made under section 37 of this Act (incorporating any rectification authorised under section 38(1) of this Act), of proceedings at the examination of the accused.

(2) The accused shall be entitled to see the productions according to the existing law and practice in the office of the sheriff clerk of the district in which the court of the trial diet is situated or, where the trial diet is to be in the High Court in Edinburgh, in the Justiciary Office.

---

45 Inserted by paragraph 9(b) of the schedule to the CPA Bill
46 Ibid
47 Repealed by paragraph 10 of the schedule to the CPA Bill
(3) Where a person who has examined a production is adduced to give evidence with regard to it and the production has been lodged, where the case is to be tried in the sheriff court, at least eight days before the trial diet or, where the case is to be tried in the High Court, at least 14 days before the preliminary hearing, it shall not be necessary to prove--

(a) that the production was received by him in the condition in which it was taken possession of by the procurator fiscal or the police and returned by him after his examination of it to the procurator fiscal or the police; or

(b) that the production examined by him is that taken possession of by the procurator fiscal or the police,

unless the accused where the case is to be tried in the sheriff court, at least four days before the trial diet or, where the case is to be tried in the High Court, at least seven days before the preliminary hearing, gives in accordance with subsection (4) below written notice that he does not admit that the production was received or returned as aforesaid or, as the case may be, that it is that taken possession of as aforesaid.

(4) The notice mentioned in subsection (3) above shall be given--

(a) where the accused is cited to the High Court for the trial diet, to the Crown Agent; and

(b) where he is cited to the sheriff court for the trial diet, to the procurator fiscal.

69 Notice of previous convictions.

(1) No mention shall be made in the indictment of previous convictions, nor shall extracts of previous convictions be included in the list of productions annexed to the indictment.

---

48 Inserted by paragraph 11(a) of the schedule to the CPA Bill
49 Inserted by paragraph 11(b) of the schedule to the CPA Bill
50 Inserted by paragraph 11(c) of the schedule to the CPA Bill
51 Inserted by paragraph 11(d) of the schedule to the CPA Bill
(2) If the prosecutor intends to place before the court any previous conviction, he shall cause to be served on the accused along with the indictment a notice in the form set out in an Act of Adjournal or as nearly as may be in such form, and any conviction specified in the notice shall be held to apply to the accused unless he gives, in accordance with subsection (3) below, written intimation objecting to such conviction on the ground that it does not apply to him or is otherwise inadmissible.

(3) Intimation objecting to a conviction under subsection (2) above shall be given--

(a) where the accused is indicted to the High Court, to the Crown Agent not less than seven clear days before the preliminary hearing;

(b) where the accused is indicted to the sheriff court, to the procurator fiscal at least five clear days before the first day of the sitting in which the trial diet is to be held. 52

(4) Where notice is given by the accused under section 76 of this Act of his intention to plead guilty and the prosecutor intends to place before the court any previous conviction, he shall cause to be served on the accused along with the indictment a notice in the form set out in an Act of Adjournal or as nearly as may be in such form.

(5) Where the accused pleads guilty at any diet, no objection to any conviction of which notice has been served on him under this section shall be entertained unless he has, at least two clear days before the diet, given intimation to the procurator fiscal of the district to the court of which the accused is cited for the diet.

70 Proceedings against bodies corporate.

(1) This section applies to proceedings on indictment against a body corporate.

(2) The indictment may be served by delivery of a copy of the indictment together with notice to appear at the registered office or, if there is no registered office or the registered office is not in the United

52 Substituted by paragraph 12 of the schedule to the CPA Bill
Kingdom, at the principal place of business in the United Kingdom of the body corporate.

(3) Where a letter containing a copy of the indictment has been sent by registered post or by the recorded delivery service to the registered office or principal place of business of the body corporate, an acknowledgement or certificate of the delivery of the letter issued by the postal operator shall be sufficient evidence of the delivery of the letter at the registered office or place of business on the day specified in such acknowledgement or certificate.

(4) A body corporate may, for the purpose of--

(a) stating objections to the competency or relevancy of the indictment or proceedings; or

(b) tendering a plea of guilty or not guilty; or

(c) making a statement in mitigation of sentence,

appear by a representative of the body corporate.

(5) Where at the trial diet the body corporate does not appear as mentioned in subsection (4) above, or by counsel or a solicitor, the court shall, on the motion of the prosecutor, if it is satisfied that subsection (2) above has been complied with, proceed to hear and dispose of the case in the absence of the body corporate.

(6) Where a body corporate is sentenced to a fine, the fine may be recovered in like manner in all respects as if a copy of the sentence certified by the clerk of the court were an extract decree of the Court of Session for the payment of the amount of the fine by the body corporate to the Queen’s and Lord Treasurer’s Remembrancer.

(7) Nothing in section 77 of this Act shall require a plea tendered by or on behalf of a body corporate to be signed.

(8) [In this section,

"representative", in relation to a body corporate, means an officer or employee of the body corporate duly appointed by it for the purpose of the proceedings; and a statement in writing purporting to be signed by the managing director of, or by any person having or being one of the
persons having the management of the affairs of the body corporate, to the effect that the person named in the statement has been appointed the representative of the body corporate for the purpose of any proceedings to which this section applies shall be sufficient evidence of such appointment; and

"officer" and any person having or being one of the persons having the management of the affairs of the body corporate, in relation to a limited liability partnership, means a member of the limited liability partnership.

] [FN1]

[FN1] words Inserted by SSI 2001/128 (Limited Liability Partnerships (Scotland) Regulations), Sch 4 Para 1

71 First diet.

(A1) At a first diet, the court shall, where the accused is charged with a sexual offence to which section 288C of this Act applies, ascertain whether he has engaged a solicitor for the purposes of his defence at the trial.

(1) At a first diet the court shall, so far as is reasonably practicable, ascertain whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular--

(a) the state of preparation of the prosecutor and of the accused with respect to their cases; and

(b) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of this Act.

[(1A) Inserted by the Vulnerable Witnesses Bill]
(b) if so, consider whether it should make an order under section 271A(8) or 271D(2) of this Act in relation to the person or, as the case may be, the accused.

(1B) This subsection applies –

(a) to a person who is to give evidence at or for the purposes of the trial if that person is, or is likely to be, a vulnerable witness,

(b) to the accused if, were he to give evidence at or for the purposes of the trial, he would be, or would be likely to be, a vulnerable witness.]

(1C) At a first diet, the court –

(a) shall ascertain which of the witnesses included in the list of witnesses are required by the accused to attend the trial; and

(b) shall, where the accused has been admitted to bail, review the conditions imposed on his bail and may -
(i) after giving the parties the opportunity to be heard; and

(ii) if it considers it appropriate to do so,

fix bail on different conditions.

(2) In addition to the matters mentioned in subsection (1), (1A) and (1C) above the court shall, at a first diet, consider any preliminary plea or preliminary issue (within the meanings given to those terms in section 79(2) of this Act) of which a party has, not less than two clear days before the first diet, given notice to the court and to the other parties.

(2A) At a first diet the court may consider an application for the purposes of subsection (1) of section 275 of this Act.

(3) At a first diet the court may ask the prosecutor and the accused

54 Inserted by section 16(2) of the CPA Bill
55 Substituted by section 16(3) of the CPA Bill
56 Substituted by paragraph 13 of the schedule to the CPA Bill
any question in connection with any matter which it is required to ascertain or consider under subsection (1) or (2) above or which is relevant to an application for the purposes of subsection (1) 1A and 1C\(^{57}\) of the said section 275.

(4) The accused shall attend a first diet of which he has been given notice and the court may, if he fails to do so, grant a warrant to apprehend him.

(5) A first diet may proceed notwithstanding the absence of the accused.

(5A) Where, however--

(a) the accused is charged with a sexual offence to which section 288C of this Act applies; and

(b) the court has not ascertained (whether at that diet or earlier) that he has engaged a solicitor for the purposes of his defence at the trial,

a first diet may not proceed in his absence; and, in such a case, the court shall adjourn the diet and ordain the accused then to attend.

(6) The accused shall, at the first diet, be required to state how he pleads to the indictment, and section 77 of this Act shall apply where he tenders a plea of guilty.

(7) Where at a first diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court--

(a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and

(b) may fix a further first diet.

(8) Subject to subsection (7) above, the court may, if it considers it appropriate to do so, adjourn a first diet.

\[^{57}\text{Inserted by section 16(4) of the CPA Bill}\]
(8A) Where the court adjourns a first diet under subsection (8) above by reason only that, following inquiries for the purposes of subsection (A1) above, it appears to the court that the accused has not engaged a solicitor for the purposes of his defence at his trial, that adjournment shall be for a period of not more than 48 hours and the accused shall be ordained to then attend.

[FN1]

(9) In this section "the court" means the sheriff court.

[FN1] added by Sexual Offences (Procedure and Evidence) (Scotland) Act (2002 ASP.9), Sch 1 Para 5 (c)

71A Further pre-trial diet: dismissal or withdrawal of solicitor representing accused in case of sexual offence

(1) It is the duty of a solicitor who--

(a) was engaged for the purposes of the defence of an accused charged with a sexual offence to which section 288C of this Act applies--

(i) at the time of a first diet,

(ii) at the time of a diet under this section, or

(iii) in the case of a diet which, under subsection (7) below, is dispensed with, at the time when it was so dispensed with; and

(b) after that time but before the trial diet--

(i) is dismissed by the accused; or

(ii) withdraws,

forthwith to inform the court in writing of those facts.

(2) On being so informed, the court shall order that, before the trial diet, there shall be a further pre-trial diet under this section and
ordain the accused then to attend.

(3) At a diet under this section, the court shall ascertain whether or not the accused has engaged another solicitor for the purposes of his defence at the trial.

(4) Where, following inquiries for the purposes of subsection (3) above, it appears to the court that the accused has not engaged another solicitor for the purposes of his defence at his trial, it may adjourn the diet under this section for a period of not more than 48 hours and ordain the accused then to attend.

(5) A diet under this section shall be not less than 10 clear days before the trial diet.

(6) A court may, at a diet under this section, postpone the trial diet.

(7) The court may dispense with a diet under this section previously ordered, but only if a solicitor engaged by the accused for the purposes of the defence of the accused at the trial has, in writing--

(a) confirmed his engagement for that purpose; and

(b) requested that the diet be dispensed with.

(8) Where--

(a) a solicitor has requested, under subsection (7) above, that a diet under this section be dispensed with; and

(b) before that diet has been held or dispensed with, the solicitor--

(i) is dismissed by the accused; or

(ii) withdraws,

the solicitor shall forthwith inform the court in writing of those facts.
72 Preliminary hearing: procedure up to appointment of a trial diet.

(1) A preliminary hearing shall be conducted in accordance with this section and section 72A.

(2) The court shall—

(a) where the accused is charged with an offence to which section 288C of this Act applies; or

(b) in any case in which an order has been made under section 288E(2) of this Act,

before taking any further step under this section, ascertain whether the accused has engaged a solicitor for the purposes of the conduct of his case at or for the purposes of the preliminary hearing.

(3) After complying with subsection (2) above, the court shall dispose of any preliminary pleas (within the meaning of section 79(2)(a) of this Act) of which a party has given notice not less than 7 clear days before the preliminary hearing to the court and the other parties.

(4) After disposing of any preliminary pleas under subsection (3) above, the court shall require the accused to state how he pleads to the indictment.

(5) If the accused tenders a plea of guilty, section 77 of this Act shall apply.

(6) After the accused has stated how he pleads to the indictment, the court shall, unless a plea of guilty is tendered and accepted—

(a) in any case—

(i) where the accused is charged with an offence to which section 288C of this Act applies; or

(ii) in which an order has been made under section 288E(2) of this Act,

ascertain whether the accused has engaged a solicitor for the purposes of his defence at the trial;

58 Substituted by section 1(3) of the CPA Bill
(b) unless it considers it inappropriate to do so at the preliminary hearing, dispose of—

(i) any preliminary issues (within the meaning of section 79(2)(b) of this Act) of which a party has given notice not less than 7 clear days before the preliminary hearing to the court and to the other parties;

(ii) subject to subsection (8) below, any application or notice under section 271A(2), 271C(2), 275(1) or 288E(2) of this Act made or lodged before the preliminary hearing; and

(iii) any other matter which, in the opinion of the court, could with be disposed of with advantage before the trial;

(c) ascertain which of the witnesses included in the list of witnesses are required by the accused to attend the trial;

(d) ascertain whether subsection (7) below applies to any person who is to give evidence at or for the purposes of the trial or to the accused and, if so, consider whether it should make an order under section 271A(8) or 271D(2) of this Act in relation to the person or, as the case may be, the accused; and

(e) ascertain, so far as is reasonably practicable—

(i) the state of preparation of the prosecutor and the accused with respect to their cases; and

(ii) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of this Act.

(7) This subsection applies—

(a) to a person who is to give evidence at or for the purposes of the trial if that person is, or is likely to be, a vulnerable witness;

(b) to the accused if, were he to give evidence at or for the purposes of the trial, he would be, or would be likely to be, a vulnerable witness.

(8) Where any application or notice such as is mentioned in subsection (6)(b)(ii) above is required by the provision under which it is made or lodged, or by any other provision of this Act, to be made or lodged by a certain time, the court—
(a) shall not be required under that subsection to dispose of it unless it has been made or lodged by that time; but
(b) the court shall have power to dispose of it to the extent that the provision under which it was made, or any other provision of this Act, allows it to be disposed of notwithstanding that it was not made or lodged in time.

(9) Where the court decides not to dispose of any preliminary issue, application, notice or other matter referred to in subsection 6(b) above at the preliminary hearing, it may appoint a further diet, to be held before the trial diet appointed under section 72A of this Act, for the purpose of disposing of the issue, application, notice or matter.

72A Preliminary hearing: appointment of trial diet

(1) In any case in which subsection (6) of section 72 of this Act applies, the court shall, at the preliminary hearing—

(a) after complying with that subsection;
(b) having regard to earlier proceedings at the preliminary hearing; and
(c) subject to subsections (2) to (6) below, appoint a trial diet.

(2) In any case in which the 12 month period applies (whether or not the 140 day period also applies in the case)—

(a) if the court considers that the case would be likely to be ready to proceed to trial within that period, it shall, subject to subsections (4) to (6) below, appoint a trial diet for a date within that period; or

(b) if the court considers that the case would not be likely to be so ready, it shall give the prosecutor an opportunity to make an application to the court under section 65(3) of this Act for an extension of the 12 month period.

(3) Where paragraph (b) of subsection (2) above applies—

(a) if such an application as is mentioned in that paragraph is made and granted, the court shall, subject to subsections (4) to (6) below, appoint a trial diet for a date within the 12 month period as extended; or

59 Substituted by section 1(3) of the CPA Bill.
(b) if no such application is made or if one is made but is refused by the court—
   
   (i) the court may desert the diet *simpliciter or pro loco et tempore*; and
   
   (ii) where the accused is committed until liberated in due course of law, he shall be liberated forthwith.

(4) Subsection (5) below applies in any case in which—

(a) the 140 day period as well as the 12 month period applies; and

(b) the court is required, by virtue of subsection (2)(a) or (3)(a) above, to appoint a trial diet within the 12 month period.

(5) In such a case—

(a) if the court considers that the case would be likely to be ready to proceed to trial within the 140 day period, it shall appoint a trial diet for a date within that period as well as within the 12 month period; or

(b) if the court considers that the case would not be likely to be so ready, it shall give the prosecutor an opportunity to make an application under section 65(5) of this Act for an extension of the 140 day period.

(6) Where paragraph (b) of subsection (5) above applies—

(a) if such an application as is mentioned in that paragraph is made and granted, the court shall appoint a trial diet for a date within the 140 day period as extended as well as within the 12 month period;

(b) if no such application is made or if one is made but is refused by the court—

   (i) the court shall proceed under subsection (2)(a) or, as the case may be, (3)(a) above to appoint a trial diet for a date within the 12 month period; and

   (ii) the accused shall then be entitled to be admitted to bail.

(7) Where an accused is, by virtue of subsection (6)(b)(ii) above, entitled to be admitted to bail, the court shall, before admitting him to bail, give the prosecutor an opportunity to be heard.
(8) On appointing a trial diet under this section in a case where the accused has been admitted to bail (otherwise than by virtue of subsection (6)(b)(ii) above), the court, after giving the parties an opportunity to be heard—

(a) shall review the conditions imposed on his bail; and
(b) having done so, may, if it considers it appropriate to do so, fix bail on different conditions.

(9) In this section—

“the 12 month period” means the period specified in subsection (1)(b) of section 65 of this Act and, in any case in which that period has been extended under subsection (3) of that section, includes that period as so extended; and

“the 140 day period” means the period specified in subsection (4)(aa)(ii) of that section and, in any case in which that period has been extended under subsection (5) of that section, includes that period as so extended.

72B Adjournment and alteration of, and power to dispense with, preliminary hearing

(1) The court may, if it considers it appropriate to do so, adjourn a preliminary hearing.

(2) However, where the court adjourns a preliminary hearing under subsection (1) above by reason only that, following inquiries for the purposes of section 72(2) or (6)(a) of this Act, it appears to the court that the accused has not engaged a solicitor for the purposes of the conduct of—

(a) his case at or for the purposes of the preliminary hearing; or
(b) his defence at the trial,

(as the case may be), that adjournment shall be for a period of not more than 48 hours.

(3) Where a preliminary hearing is adjourned, the accused shall appear at the adjourned hearing and answer the indictment.

(4) A party may, at any time before the commencement of the preliminary hearing, apply for acceleration or postponement of the hearing.

---

Substituted by section 1(3) of the CPA Bill
(5) Where an application is made under subsection (4) above, a single judge of the High Court may, after giving the parties an opportunity to be heard—

(a) discharge the preliminary hearing; and

(b) appoint a new preliminary hearing—

(i) in the case of an application for acceleration, for an earlier date;

(ii) in the case of an application for postponement, for a later date,

than that for which the discharged preliminary hearing was appointed.

(6) Where all the parties join in an application under subsection (4) above, the judge may proceed under subsection (5) above without hearing the parties and, accordingly, may dispense with any hearing previously appointed for the purpose of considering the application.

(7) Where there is a hearing for the purposes of considering an application under subsection (4) above, the accused shall attend it, unless the judge permits the hearing to proceed notwithstanding the absence of the accused.

(8) The court may, on an application made to it jointly by the parties, dispense with a preliminary hearing and order the Clerk of Justiciary to appoint a trial diet if the court is satisfied on the basis of the application that—

(a) the state of preparation of the prosecutor and the accused with respect of their cases is such that the case is likely to be ready to proceed to trial on the date to be appointed for the trial diet;

(b) there are no preliminary pleas, preliminary issues or other matters which require to be, or could with advantage be, disposed of before the trial; and

(c) there are no persons to whom section 72(7) of this Act applies.

(9) An application under subsection (8) above shall identify which (if any) of the witnesses included in the list of witnesses are required by the accused to attend the trial.
(10) Where a trial diet is to be appointed by the Clerk of Justiciary in pursuance of an order under subsection (8) above, it shall be appointed in accordance with such procedure as may be prescribed by Act of Adjournal.

(11) Where a trial diet is appointed under subsection (8) above, the accused shall appear at the diet and answer the indictment.

(12) For the purposes of subsection (4) above, a preliminary hearing shall be taken to commence when it is called.

72C Procedure where preliminary hearing does not proceed

(1) Where a preliminary hearing is deserted pro loco et tempore, the court may appoint a further preliminary hearing for a later date and the accused shall appear and answer the indictment at that hearing.

(2) Subsection (3) below applies where, at a preliminary hearing—

(a) the hearing has been deserted pro loco et tempore for any reason and no further preliminary hearing has been appointed under subsection (1) above; or

(b) the indictment is for any reason not proceeded with and the hearing has not been adjourned or postponed.

(3) Where this subsection applies, the prosecutor may, at any time within the period of two months after the relevant date, give notice to the accused on another copy of the indictment to appear and answer the indictment—

(a) at a further preliminary hearing in the High Court not less than seven clear days after the date of service of the notice; or

(b) at—

(i) a first diet not less than 15 clear days after the service of the notice and not less than 10 clear days before the trial diet; and

(ii) a trial diet not less than 29 clear days after the service of the notice,

in the sheriff court where the charge is one that can lawfully be tried in that court.

61 Substituted by section 1(3) of the CPA Bill
(4) In subsection (3) above, “the relevant date” means—
  (a) where paragraph (a) of subsection (2) above applies, the
date on which the diet was deserted as mentioned in that
paragraph; or
  (b) where paragraph (b) of that subsection applies, the date
of the preliminary hearing referred to in that paragraph.
(5) A notice referred to in subsection (3) above shall be in such
form as may be prescribed by Act of Adjournal, or as nearly as may
be in such form.

72D Preliminary hearing: further provision
(1) A preliminary hearing may proceed notwithstanding the
absence of the accused.
(2) Where, at a preliminary hearing, a trial diet is appointed, the
accused shall appear at the trial diet and answer the indictment.
(3) At a preliminary hearing, the court—
  (a) shall take into account any written record lodged under
section 72E of this Act; and
  (b) may ask the prosecutor and the accused any question in
connection with any matter which it is required to dispose of
or ascertain under section 72 of this Act.
(4) The proceedings at a preliminary hearing shall be recorded by
means of shorthand notes or by mechanical means.
(5) Subsections (2) to (4) of section 93 of this Act shall apply for
the purposes of the recording of proceedings at a preliminary
hearing in accordance with subsection (4) above as they apply for
the purposes of the recording of proceedings at the trial in
accordance with subsection (1) of that section.
(6) The Clerk of Justiciary shall prepare, in such form and
manner as may be prescribed by Act of Adjournal, a minute of
proceedings at a preliminary hearing, which shall record, in
particular, whether any preliminary pleas or issues were disposed
of and, if so, how they were disposed of.
(7) In this section, references to a preliminary hearing include an
adjourned preliminary hearing.

62 Ibid
(8) In this section and sections 72 to 72C, “the court” means the High Court.”.

72E\textsuperscript{63} Written record of state of preparation in certain cases

(1) This section applies where, in any proceedings in the High Court, a solicitor has notified the Crown Agent under section 72F(1) of this Act that he has been engaged by the accused for the purposes of the conduct of his case at the preliminary hearing.

(2) The prosecutor and the accused’s legal representative shall, not less than two days before the preliminary hearing, jointly lodge with the Clerk of Justiciary a written record of their state of preparation with respect to their cases (referred to in this section as “a written record”).

(3) The High Court may, on cause shown, allow a written record to be lodged after the time referred to in subsection (2) above.

(4) A written record shall—

(a) be in such form, or as nearly as may be in such form; and

(b) contain such information,

as may be prescribed by Act of Adjournal.

(5) A written record may contain, in addition to the information required by virtue of subsection (4)(b) above, such other information as the prosecutor and the accused’s legal representative consider appropriate.

(6) In this section—

“the accused’s legal representative” means—

(a) the solicitor referred to in subsection (1) above; or

(b) where the solicitor has instructed counsel for the purposes of the conduct of the accused’s case at the preliminary hearing, either the solicitor or that counsel, or both of them; and

“counsel” includes a solicitor who has a right of audience in the High Court of Justiciary under section 25A (rights of audience in various courts including the High Court of Justiciary) of the Solicitors (Scotland) Act 1980 (c.46).

\textsuperscript{63} Inserted by section 2 of the CPA Bill
72F Engagement, dismissal and withdrawal of solicitor representing accused in High Court cases

(1) In any proceedings in the High Court, it is the duty of a solicitor who is engaged by the accused for the purposes of his defence at any part of the proceedings to notify the court and the Crown Agent of that fact forthwith in writing.

(2) Where any such solicitor—
   (a) is dismissed by the accused; or
   (b) withdraws,

   it is the duty of the solicitor to inform the court and the Crown Agent of those facts forthwith in writing.

(3) On being so informed in any case to which subsections (4) and (5) below apply, the court shall order that, before the trial diet, there shall be a further pre-trial diet under this section.

(4) This subsection applies to any case in which—
   (a) the accused is charged with an offence to which section 288C of this Act applies; or
   (b) an order has been made under section 288E(2) of this Act.

(5) This subsection applies to any case in which—
   (a) the solicitor was engaged for the purposes of the defence of the accused—
       (i) at the time of a preliminary hearing;
       (ii) if a preliminary hearing was dispensed with under section 72B(8) of this Act, at the time it was so dispensed with;
       (iii) at the time of a diet under this section; or
       (iv) in the case of a diet which, under subsection (10) below, is dispensed with, at the time when it was so dispensed with; and
   (b) the court is informed as mentioned in subsection (2) above after that time but before the trial diet.

64 Inserted by section 5 of the CPA Bill
(6) At a diet under this section, the court shall ascertain whether or not the accused has engaged another solicitor for the purposes of his defence at the trial.

(7) Where, following inquiries for the purposes of subsection (6) above, it appears to the court that the accused has not engaged another solicitor for the purposes of his defence at the trial, it may adjourn the diet under this section for a period of not more than 48 hours and the accused shall then attend.

(8) A diet under this section shall be not less than 10 clear days before the trial diet.

(9) A court may, at a diet under this section, postpone the trial diet for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.

(10) The court may dispense with a diet under this section previously ordered, but only if a solicitor engaged by the accused for the purposes of the defence of the accused at the trial has, in writing—

(a) confirmed his engagement for that purpose; and

(b) requested that the diet be dispensed with.”.

74 Appeals in connection with preliminary diets.

(1) Without prejudice to--

(a) any right of appeal under section 106 or 108 of this Act; and

(b) section 131 of this Act,

and subject to subsection (2) below, a party may with the leave of the court of first instance (granted either on the motion of the party or ex proprio motu) in accordance with such procedure as may be prescribed by Act of Adjournal, appeal to the High Court against a decision at a first diet or a preliminary hearing.65

(2) An appeal under subsection (1) above--

65 Substituted by section 3(2) of the CPA Bill
(a) may not be taken against a decision to adjourn the first diet\textsuperscript{66} or, as the case may be, preliminary hearing\textsuperscript{67} or to accelerate or\textsuperscript{68} postpone the trial diet;

(aa) may not be taken against a decision at a preliminary hearing, in appointing a trial diet, to fix or not to fix, for the purposes of section 83A(3) of this Act, the day appointed as the day on which the diet shall commence;\textsuperscript{69}

(b) must be taken not later than 2 days after the decision.

(3) Where an appeal is taken under subsection (1) above, the High Court may postpone any trial diet that has been appointed\textsuperscript{70} for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.

(3A)\textsuperscript{71} Where an appeal is taken under subsection (1) above against a decision at a preliminary hearing, the High Court may adjourn, or further adjourn, the preliminary hearing for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.

(4) In disposing of an appeal under subsection (1) above the High Court--

(a) may affirm the decision of the court of first instance or may remit the case to it with such directions in the matter as it thinks fit;

(b) where the court of first instance has dismissed the indictment or any part of it, may reverse that decision and direct that the court of first instance fix

(i) where the indictment is in respect of the High

\textsuperscript{66} Inserted by section 3(3) of the CPA Bill
\textsuperscript{67} Substituted by section 3(3) of the CPA Bill
\textsuperscript{68} Substituted by paragraph 14 of the schedule to the CPA Bill
\textsuperscript{69} Inserted by section 3(3) of the CPA Bill
\textsuperscript{70} Substituted by section 3(4) of the CPA Bill
\textsuperscript{71} Inserted by section 3(5) of the CPA Bill
Court, a further preliminary hearing; or

(ii) where the indictment is in respect of the sheriff court, a trial diet, if it has not already fixed one as regards so much of the indictment as it has not dismissed; and [FN1]

(c) may on cause shown extend the period mentioned in section 65(1) of this Act.

75 Computation of certain periods.

Where the last day of any period mentioned in section 66(6), 67(3), [ ]73 or 74 of this Act falls on a Saturday, Sunday or court holiday.

76 Procedure where accused desires to plead guilty.

(1) Where an accused intimates in writing to the Crown Agent that he intends to plead guilty and desires to have his case disposed of at once, the accused may be served with an indictment (unless one has already been served) and a notice to appear at a diet of the appropriate court not less than four clear days after the date of the notice; and it shall not be necessary to lodge or give notice of any list of witnesses or productions.

(2) In subsection (1) above, "appropriate court" means--

(a) in a case where at the time of the intimation mentioned in that subsection an indictment had not been served, either the High Court or the sheriff court; and

(b) in any other case, the court specified in the notice served under section 66(6) of this Act on the accused.

(3) If at any such diet the accused pleads not guilty to the charge or pleads guilty only to a part of the charge, and the prosecutor declines to accept such restricted plea, the diet shall be deserted pro loco et tempore and thereafter the cause may proceed in accordance with the

---

72 Inserted by section 3(6) of the CPA Bill
73 Repealed by paragraph 15 of the schedule to the CPA Bill
other provisions of this Part of this Act; except that in a case mentioned in paragraph (b) of subsection (2) above the court may postpone the trial diet and the period of such postponement shall not count towards any time limit applying in respect of the case.

77 Plea of guilty.

(1) Where at any diet the accused tenders a plea of guilty to the indictment or any part thereof he shall do so in open court and, subject to section 70(7) of this Act, shall, if he is able to do so, sign a written copy of the plea; and the judge shall countersign such copy.

(2) Where the plea is to part only of the charge and the prosecutor does not accept the plea, such non-acceptance shall be recorded.

(3) Where an accused charged on indictment with any offence tenders a plea of guilty to any other offence of which he could competently be found guilty on the trial of the indictment, and that plea is accepted by the prosecutor, it shall be competent to convict the accused of the offence to which he has so pled guilty and to sentence him accordingly.

78 Special defences, incrimination and notice of witnesses, etc.

(1) It shall not be competent for an accused to state a special defence or to lead evidence calculated to exculpate the accused by incriminating a co-accused unless--

(a) a plea of special defence or, as the case may be, notice of intention to lead such evidence has been lodged and intimated in writing in accordance with subsection (3) below—

[74]

(2) Subsection (1) above shall apply to a defence of automatism, coercion or, in a prosecution for an offence to which section 288C of this Act applies, consent as if it were a special defence.

74 Repealed by paragraph 16(a) of the schedule to the CPA Bill
(2A) In subsection (2) above, the reference to a defence of consent is a reference to the defence which is stated by reference to the complainer’s consent to the act which is the subject matter of the charge or the accused’s belief as to that consent.

(2B) In subsection (2A) above, "complainer" has the same meaning as in section 274 of this Act.

] [FN1]

(3) A plea or notice is lodged and intimated in accordance with this subsection--

(a) where the case is to be tried in the High Court,\(^75\) by lodging the plea or notice with the Clerk of Justiciary and by intimating the plea or notice to the Crown Agent and to any co-accused not less than seven clear days before the preliminary hearing;\(^76\)

(b) where the case is to be tried in the sheriff court,\(^77\) by lodging the plea or notice with the sheriff clerk and by intimating it to the procurator fiscal and to any co-accused at or before the first diet.

(4) It shall not be competent for the accused to examine any witnesses or to put in evidence any productions not included in the lists lodged by the prosecutor unless--

(a) written notice of the names and addresses of such witnesses and of such productions has been given--

(i) where the case is to be tried in the sheriff court, to the procurator fiscal of the district of the trial diet at or before the first diet; and

(ii) where the case is to be tried in the High Court, to the Crown Agent at least seven clear days before the preliminary diet;\(^78\) or

\(^75\) Substituted by paragraph 16(b) of the schedule to the CPA Bill
\(^76\) Substituted by paragraph 16(b) of the schedule to the CPA Bill
\(^77\) Ibid
\(^78\) Substituted by paragraph 16(c) of the schedule to the CPA Bill
(b) the court, on cause shown, otherwise directs.

(5) A copy of every written notice required by subsection (4) above shall be lodged by the accused with the sheriff clerk of the district in which the trial diet is to be held, or in any case the trial diet of which is to be held in the High Court in Edinburgh with the Clerk of Justiciary, at or before

(a) where the case is to be tried in the High Court, the preliminary hearing,

(b) where the case is to be tried in the sheriff court, the trial diet,

for the use of the court.

[FN1] added by Sexual Offences (Procedure and Evidence) (Scotland) Act (2002 ASP.9), s 6 (1) (b)

7980 Preliminary pleas and preliminary issues

(1) Except by leave of the court on cause shown, no preliminary plea or preliminary issue shall be made, raised or submitted in any proceedings on indictment by any party unless his intention to do so has been stated in a notice under section 71(2) or, as the case may be, 72(3) or (6)(b)(i) of this Act.

(2) For the purposes of this section above and those sections—

(a) the following are preliminary pleas, namely—

(i) a matter relating to the competency or relevancy of the indictment;

(ii) an objection to the validity of the citation against a party, on the ground of any discrepancy between the record copy of the indictment and the copy served on him, or on account of any error or deficiency in such service copy or in the notice of citation; and

79 Substituted by paragraph 16(d) of the schedule to the CPA Bill
80 Substituted by section 13 of the CPA Bill
(iii) a plea in bar of trial; and

(b) the following are preliminary issues, namely—

(i) an application for separation or conjunction of charges or trials;

(ii) a preliminary objection under section 255 or 255A of this Act;

(iii) an application under section 278(2) of this Act;

(iv) an objection by a party to the admissibility of any evidence if it is an objection of which the party could reasonably be expected to give notice as required by subsection (1) above;

(v) an assertion by a party that there are documents the truth of the contents of which ought to be admitted, or that there is any other matter which in his view ought to be agreed; and

(vi) any other point raised by a party, as regards any matter not mentioned in sub-paragraphs (i) to (iv) above, which could in his opinion be resolved with advantage before the trial.

(3) No discrepancy, error or deficiency such as is mentioned in subsection (2)(a)(ii) above shall entitle an accused to object to plead to the indictment unless the court is satisfied that the discrepancy, error or deficiency tended substantially to mislead and prejudice the accused.

(4) Where the court, under subsection (1) above, grants leave for a party to make, raise or submit a preliminary plea or preliminary issue without his intention to do so having been stated in a notice as required by that subsection, the court may, if it considers it appropriate to do so, appoint a diet to be held before the trial diet for the purpose of disposing of the plea or issue.

79A

Alteration of trial diet in the High Court

(1) Where an indictment which is to be tried in the High Court is not brought to trial at the trial diet, the court may adjourn the trial diet.

81 Inserted by section 6 of the CPA Bill.
(2) The court may, in particular, adjourn the trial diet under subsection (1) above to a diet to be held at a sitting of the court in another place.

(3) In any case which is to be tried in the High Court, a party may, at any time before the commencement of the trial, apply for acceleration or postponement of the trial diet.

(4) Where an application is made under subsection (3) above, a single judge of the High Court may, after giving the parties an opportunity to be heard—

(a) discharge the trial diet; and

(b) appoint a new trial diet—

(i) in the case of an application for acceleration, for an earlier date;

(ii) in the case of an application for postponement, for a later date,

than that for which the discharged trial diet was appointed.

(5) Where all the parties join in an application under subsection (3) above, the judge may proceed under subsection (4) above without hearing the parties and, accordingly, may dispense with any hearing previously appointed for the purpose of considering the application.

(6) Where there is a hearing for the purposes of considering an application under subsection (3) above, the accused shall attend it, unless the judge permits the hearing to proceed notwithstanding the absence of the accused.

(7) In appointing a new trial diet under subsection (4) above, the judge—

(a) shall have regard to the state of preparation of the prosecutor and the accused with respect of their cases and, in particular, to the likelihood of the case being ready to proceed to trial on the date to be appointed for the trial diet; and

(b) may, if it appears to the judge that there are any preliminary pleas, preliminary issues or other matters which require to be, or could with advantage be, disposed of or ascertained before the trial, appoint a diet to be held before the trial diet for the purpose of disposing of or, as the case may be, ascertaining them.
(8) For the purposes of subsection (3) above, the trial shall be taken to commence when the oath is administered to the jury.

80 Alteration and postponement of trial diet.

(1) Where, in a case which is to be tried under solemn procedure in the sheriff court, the indictment is not brought to trial at the trial diet, the court may adjourn the trial diet.

(2) In a case to be tried under solemn procedure in the sheriff court, at any time before the trial diet, a party may apply to the court before which the trial is to take place for postponement of the trial diet.

(3) Subject to subsection (4) below, after hearing all the parties the court may discharge the trial diet and either fix a new trial diet or give leave to the prosecutor to serve a notice fixing a new trial diet.

(4) Where all the parties join in an application to postpone the trial diet, the court may proceed under subsection (3) above without hearing the parties and, accordingly, may dispense with any hearing previously appointed for the purpose of considering the application.

(5) Where there is a hearing under this section the accused shall attend it, unless the court permits the hearing to proceed notwithstanding the absence of the accused.

81 Procedure where trial does not take place.

(1) Where at the trial diet in any proceedings on indictment in the

---

82 Substituted by paragraph 17(a) of the schedule to the CPA Bill
83 Inserted by paragraph 17(b) of the schedule to the CPA Bill
84 Inserted by paragraph 17(c) of the schedule to the CPA Bill
85 Repealed by paragraph 17(d) of the schedule to the CPA Bill
(a) the diet has been deserted pro loco et tempore for any cause; or

(b) an indictment is for any cause not brought to trial and no order has been given by the court postponing such trial or appointing it to be held at a subsequent date at some other sitting of the court,

it shall be lawful at any time within nine clear days after the last day of the sitting in which the trial diet was to be held to give notice to the accused on another copy of the indictment to appear to answer the indictment at a further diet either in the High Court or in the sheriff court when the charge is one that can be lawfully tried in that court, notwithstanding that the original citation to a trial diet was to a different court.

(2) Without prejudice to subsection (1) above, where, in any proceedings on indictment in the sheriff court a trial diet has been deserted pro loco et tempore and the court has appointed a further trial diet to be held on a subsequent date at the same sitting the accused shall require to appear and answer the indictment at that further diet.

(3) The prosecutor shall not raise a fresh libel in a case where the court has deserted the trial simpliciter and its decision in that regard has not been reversed on appeal.

(4) The notice referred to in subsection (1) above shall be in the form prescribed by Act of Adjournal or as nearly as may be in such form.

(5) The further diet specified in the notice referred to in subsection (1) above shall be not earlier than nine clear days from the giving of the notice.

(6) On or before the day on which notice referred to in subsection (1) above is given, a list of jurors shall be prepared and kept by the sheriff clerk of the district to which the notice applies in the manner provided in section 85(2) of this Act.

---

86 Inserted by paragraph 18(a) of the schedule to the CPA Bill
87 Inserted by paragraph 18(b) of the schedule to the CPA Bill
81A Procedure where trial diet in the High Court does not proceed

(1) Where a trial diet appointed in any proceedings in the High Court is deserted _pro loco et tempore_, the Court may appoint a further trial diet for a later date and the accused shall appear and answer the indictment at that diet.

(2) In appointing a further trial diet under subsection (1) above, the High Court—

(a) shall have regard to the state of preparation of the prosecutor and the accused with respect to their cases and, in particular, to the likelihood of the case being ready to proceed to trial on the date to be appointed for the trial diet; and

(b) may, if it appears to the Court that there are any preliminary pleas, preliminary issues or other matters which require to be, or could with advantage be, disposed of or ascertained before the trial, appoint a diet to be held before the trial diet for the purpose of disposing of or, as the case may be, ascertaining them.

(3) Where at a trial diet appointed in any proceedings in the High Court—

(a) the diet has been deserted _pro loco et tempore_ for any reason and no further trial diet has been appointed under subsection (1) above; or

(b) the indictment is for any reason not brought to trial and the diet has not been continued, adjourned or postponed,

the prosecutor may, at any time within the period of two months after the relevant date, give notice to the accused on another copy of the indictment to appear and answer the indictment at a further preliminary hearing in the High Court not less than seven clear days after the date of service of the notice.

---

88 Repealed by paragraph 18(c) of the schedule to the CPA Bill
89 Inserted by section 7 of the CPA Bill
(4) In subsection (3) above, “the relevant date” means—
(a) where paragraph (a) of that subsection applies, the date on which the diet was deserted as mentioned in that paragraph; or
(b) where paragraph (b) of that subsection applies, the date of the trial diet.

(5) A notice referred to in subsection (3) above shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form.

82 Desertion or postponement where accused in custody.

Where--

(a) a diet is deserted pro loco et tempore;

(b) a diet is continued, accelerated, postponed or adjourned; or

(c) an order is issued for the trial to take place at a different place from that first given notice of or, in the case of proceedings in the High Court, originally appointed by the Court,

the warrant of committal on which the accused is at the time in custody till liberated in due course of law shall continue in force.

83 Transfer of sheriff court solemn proceedings.

(1) Where an accused person has been cited to attend a diet of the sheriff court the prosecutor may apply to the sheriff for an order for the transfer of the proceedings to a sheriff court in another district in that sheriffdom (that court being taken to be, by virtue of any such order, appointed as mentioned in section 66(1) of this Act) and for adjournment to a diet of that court.

---

90 Inserted by paragraph 19(a) of the schedule to the CPA Bill
91 Inserted by paragraph 19(b) of the schedule to the CPA Bill
92 Inserted by paragraph 20(a) of the schedule to the CPA Bill
93 Ibid
Where--

(a) an accused person has been cited to attend a diet\textsuperscript{94} of the sheriff court; or

(b) paragraph (a) above does not apply but it is competent so to cite an accused person,

and the prosecutor is informed by the sheriff clerk that, because of exceptional circumstances which could not reasonably have been foreseen, it is not practicable for that court (in subsection (2A)(b)(i) below referred to as the "relevant court") or any other sheriff court in that sheriffdom to proceed with the case, the prosecutor—

(i) may, where paragraph (b) above applies, so cite the accused; and

(ii) shall, where paragraph (a) above applies or the accused is so cited by virtue of paragraph (i) above, as soon as practicable apply to the sheriff principal for an order for the transfer of the proceedings to a sheriff court in another sheriffdom (that court being taken to be, by virtue of any such order, appointed as mentioned in section 66(1) of this Act) and for adjournment to a diet\textsuperscript{95} of that court.

On an application under subsection (1) above the sheriff may--

(a) after giving the accused or his counsel or solicitor an opportunity to be heard; or

(b) on the joint application of the parties,

make such order as is mentioned in that subsection.

On an application under subsection (1A) above the sheriff principal may make the order sought--

(a) provided that the sheriff principal of the other sheriffdom consents; but

\textsuperscript{94} Inserted by paragraph 20(b) of the schedule to the CPA Bill

\textsuperscript{95} Ibid
(b) in a case where the trial (or part of the trial) would be transferred, shall do so only--

(i) if the sheriff of the relevant court, after giving the accused or his counsel an opportunity to be heard, consents to the transfer; or

(ii) on the joint application of the parties.

(2B) On the application of the prosecutor, a sheriff principal who has made an order under subsection (2A) above may, if the sheriff principal of the other sheriffdom mentioned in that subsection consents--

(a) revoke; or

(ii) vary so as to restrict the effect of,

that order.

(2C) The sheriff may proceed under subsection (2) above on a joint application of the parties without hearing the parties and, accordingly, he may dispense with any hearing previously appointed for the purposes of considering the application.

(3)

83A Continuation of trial diet in the High Court

(1) A trial diet appointed in any case which is to be tried in the High Court, other than a case to which subsection (3) below applies, may, without having been commenced, be continued from sitting day to sitting day—

(a) by minute, in such form as may be prescribed by Act of Adjournal, signed by the Clerk of Justiciary; and

(b) up to such maximum number of sitting days after the day originally appointed for the trial diet as may be so prescribed.

---

96 Inserted by paragraph 20(c) of the schedule to the CPA Bill
97 Repealed by paragraph 20(d) of the schedule to the CPA Bill
98 Inserted by section 8 of the CPA Bill
(2) If such a trial diet is not commenced by the end of the last sitting day to which it may be continued by virtue of subsection (1)(b) above, the indictment shall fall.

(3) Where, in any case which is to be tried in the High Court—
   (a) the court has, in appointing a day for the holding of a trial diet in the case, fixed that day as the day on which the diet shall commence; and
   (b) the trial diet does not commence on that day,
       the indictment shall fall.

(4) For the purposes of this section, a trial diet shall be taken to commence when it is called.

(5) In this section, “sitting day” means any day on which the court is sitting, but does not include any Saturday or Sunday or any day which is a court holiday.

84 Juries: returns of jurors and preparation of lists.

(1) For the purposes of a trial, the sheriff principal shall return such number of jurors as he thinks fit or, in relation to a trial in the High Court, such other number as the Lord Justice Clerk or any Lord Commissioner of Justiciary may direct.

(2) The Lord Justice General, whom failing the Lord Justice Clerk, may give directions as to the areas from which and the proportions in which jurors are to be summoned for trials to be held in the High Court, and for any such trial the sheriff principal of the sheriffdom in which the trial is to take place shall requisition the required number of jurors from the areas and in the proportions so specified.

(3) Where a sitting of the High Court is to be held at a town in which the High Court does not usually sit, the jury summoned to try any case in such a sitting shall be summoned from the list of potential jurors of the sheriff court district in which the town is situated.

(4) For the purpose of a trial in the sheriff court, the clerk of court shall be furnished with a list of names from lists of potential jurors of the sheriff court district in which the court is held containing the number of persons required.

(5) The sheriff principal, in any return of jurors made by him to a court,
shall take the names in regular order, beginning at the top of the list of potential jurors in each of the sheriff court districts, as required; and as often as a juror is returned to him, he shall mark or cause to be marked, in the list of potential jurors of the respective sheriff court districts the date when any such juror was returned to serve; and in any such return he shall commence with the name immediately after the last in the preceding return, without regard to the court to which the return was last made, and taking the subsequent names in the order in which they are entered, as directed by this subsection, and so to the end of the lists respectively.

(6) Where a person whose name has been entered in the lists of potential jurors dies, or ceases to be qualified to serve as a juror, the sheriff principal, in making returns of jurors in accordance with the Jurors (Scotland) Act 1825, shall pass over the name of that person, but the date at which his name has been so passed over, and the reason therefore, shall be entered at the time in the lists of potential jurors.

(7) Only the lists returned in accordance with this section by the sheriffs principal to the clerks of court shall be used for the trials for which they were required.

(8) The persons to serve as jurors at trials in the High Court sitting at a particular place on a particular day shall be listed and their names and addresses shall be Inserted in one roll, and the list made up under this section shall be known as the "list of assize".

(9) When more than one case is set down for trial in the High Court sitting at a particular place on a particular day, it shall not be necessary to prepare more than one list of assize, and such list shall be the list of assize for all trials to be held in the High Court sitting in that particular place on that particular day; and the persons included in such list shall be summoned to serve generally for all such trials, and only one general execution of citation shall be returned against them; and a copy of the list of assize, certified by one of the clerks of court, shall have the like effect, for all purposes for which the list may be required, as the principal list of assize authenticated as aforesaid.

---

99 Substituted by paragraph 21(a) of the schedule to the CPA Bill
100 Repealed by paragraph 21(a) of the schedule to the CPA Bill
101 Substituted by paragraph 21(b) of the schedule to the CPA Bill
102 Repealed by paragraph 21(b) of the schedule to the CPA Bill
103 Substituted by paragraph 21(b) of the schedule to the CPA Bill
104 Ibid
(10) No irregularity in--

(a) making up the lists in accordance with the provisions of this Act;

(b) transmitting the lists;

(c)\(^{105}\)

(d) summoning jurors; or

(e) in returning any execution of citation,

shall constitute an objection to jurors whose names are included in the jury list, subject to the ruling of the court in relation to the effect of an objection as to any criminal act by which jurors may be returned to serve in any case contrary to this Act or the Jurors (Scotland) Act 1825.

85 Juries: citation and attendance of jurors.

(1) It shall not be necessary to serve any list of jurors upon the accused.

(2)\(^{106}\) A list of jurors shall –

(a) be prepared and kept in such form and manner; and

(b) contain such minimum number of names,

as may be prescribed by Act of Adjournal.

(2A) The clerk of the court before which the trial is take place shall, on an application made to him by or on behalf of an accused, supply the accused, free of charge, on the day on which the trial diet is called, and before the oath has been administered to the jurors for the trial of the

\(^{105}\) Repealed by paragraph 21(c) of the schedule to the CPA Bill

\(^{106}\) Substituted by paragraph 22(a) of the schedule to the CPA Bill
accused, with a copy of a list of jurors prepared under subsection (2) above.

(2B) Where an accused has been supplied under subsection (2A) above with a list of jurors--

(a) neither he nor any person acting on his behalf shall make a copy of that list, or any part thereof; and

(b) he or his representative shall return the list to the clerk of the court after the oath has been administered to the jurors for his trial.

(2C) A person who fails to comply with subsection (2B) above shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(3) It shall not be necessary to summon all the jurors contained in any list of jurors under this Act, but it shall be competent to summon such jurors only, commencing from the top of the list, as may be necessary to ensure a sufficient number for the trial of the cases which remain for trial at the date of the citation of the jurors, and such number shall be fixed by the clerk of the court in which the trial diet is to be called, or in any case in the High Court by the Clerk of Justiciary, and the jurors who are not so summoned shall be placed upon the next list issued, until they have attended to serve.

(4) The sheriff clerk of the sheriffdom in which the High Court is to sit107 or the sheriff clerk of the sheriff court district in which any juror is to be cited where the citation is for a trial before a sheriff, shall fill up and sign a proper citation addressed to each such juror, and shall cause the same to be transmitted to him by letter, sent to him at his place of residence as stated in the lists of potential jurors by registered post or recorded delivery or to be served on him by an officer of law; and a certificate under the hand of such sheriff clerk of the citation of any jurors or juror in the manner provided in this subsection shall be a legal citation.

(5) The sheriff clerk of the sheriffdom in which the High Court is to sit on any particular day108 shall issue citations to the whole jurors

---

107 Substituted by paragraph 22(b) of the schedule to the CPA Bill
108 Ibid
required for trials to be held in the High Court sitting in the sheriffdom on that day,\(^\text{109}\) whether the jurors reside in that or in any other sheriffdom.

(6) Persons cited to attend as jurors may, unless they have been excused in respect thereof under section 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980, be fined up to level 3 on the standard scale if they fail to attend in compliance with the citation.

(7) A fine imposed under subsection (6) above may, on application, be remitted--

(a) by a Lord Commissioner of Justiciary where imposed in the High Court;

(b) by the sheriff court where imposed in the sheriff court,

and no court fees or expenses shall be exigible in respect of any such application.

(8) A person shall not be exempted by sex or marriage from the liability to serve as a juror.

\[\text{FN1} \] subsections (2), (2A), (2B) and (2C) (2) are substituted for subsection (2) by Crime and Punishment (Scotland) Act (1997 c.48), Pt VI s 58 (3)

86 Jurors: excusal and objections.

(1) Where, before a juror is sworn to serve, the parties jointly apply for him to be excused the court shall, notwithstanding that no reason is given in the application, excuse that juror from service.

(2) Nothing in subsection (1) above shall affect the right of the accused or the prosecutor to object to any juror on cause shown.

(3) If any objection is taken to a juror on cause shown and such objection is founded on the want of sufficient qualification as provided by

\[\text{109} \] Ibid
section 1(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980, such objection shall be proved only by the oath of the juror objected to.

(4) No objection to a juror shall be competent after he has been sworn to serve.

87 Non-availability of judge.

(1) Where the court is unable to proceed owing to the death, illness or absence of the presiding judge, the clerk of court may convene the court (if necessary) and--

(a) in a case where no evidence has been led, adjourn the diet and any other diet appointed for the same day to--

(i) a time later the same day, or a date not more than seven days later, when he believes a judge will be available; or

(ii) a later date not more than two months after the date of the adjournment; or

(b) in a case where evidence has been led--

(i) adjourn the diet and any other diet appointed for that sitting to a time later the same day, or a date not more than seven days later, when he believes a judge will be available; or

(ii) with the consent of the parties, desert the diet pro loco et tempore.

(2) Where a diet has been adjourned under sub-paragraph (i) of either paragraph (a) or paragraph (b) of subsection (1) above the clerk of court may, where the conditions of that subsection continue to be satisfied, further adjourn the diet under that sub-paragraph; but the total period of such adjournments shall not exceed seven days.

110 Substituted by paragraph 23(a) of the schedule to the CPA Bill

111 Substituted by paragraph 23(b) of the schedule to the CPA Bill
(3) Where a diet has been adjourned under subsection (1)(b)(i) above the court may, at the adjourned diet--

(a) further adjourn the diet; or

(b) desert the diet pro loco et tempore.

(4) Where a diet is deserted in pursuance of subsection (1)(b)(ii) or (3)(b) above, the Lord Advocate may raise and insist in a new indictment, and--

(a) where the accused is in custody it shall not be necessary to grant a new warrant for his incarceration, and the warrant or commitment on which he is at the time in custody till liberation in due course of law shall continue in force; and

(b) where the accused is at liberty on bail, his bail shall continue in force.

88 Plea of not guilty, balloting and swearing of jury, etc.

(1) Where the accused pleads not guilty, the clerk of court shall record that fact and proceed to ballot the jury.

(1A) Where-

(a) the accused fails to appear at the trial;

(b) the court proposes to proceed with the trial in the absence of the accused under subsection (2A) of section 92 of this Act; and

(c) no plea is entered on behalf of the accused,

the accused shall be treated for the purposes of subsection (1) above as having pled not guilty.

(2) The jurors for the trial shall be chosen in open court by ballot from the list of persons summoned in such manner as shall be prescribed by

---

112 Inserted by paragraph 24 of the schedule to the CPA Bill
Act of Adjournal, and the persons so chosen shall be the jury to try the accused, and their names shall be recorded in the minutes of the proceedings.

(3) It shall not be competent for the accused or the prosecutor to object to a juror on the ground that the juror has not been duly cited to attend.

(4) Notwithstanding subsection (1) above, the jurors chosen for any particular trial may, when that trial is disposed of, without a new ballot serve on the trials of other accused, provided that--

(a) the accused and the prosecutor consent;

(b) the names of the jurors are contained in the list of jurors; and

(c) the jurors are duly sworn to serve on each successive trial.

(5) When the jury has been balloted, the clerk of court shall inform the jury of the charge against the accused--

(a) by reading the words of the indictment (with the substitution of the third person for the second); or

(b) if the presiding judge, because of the length or complexity of the indictment, so directs, by reading to the jury a summary of the charge approved by the judge,

and copies of the indictment shall be provided for each member of the jury without lists of witnesses or productions.

(6) After reading the charge as mentioned in subsection (5) above and any special defence as mentioned in section 89(1) of this Act, the clerk of court shall administer the oath in common form.

(7) The court may excuse a juror from serving on a trial where the juror has stated the ground for being excused in open court.

(8) Where a trial which is proceeding is adjourned from one day to another, the jury shall not be secluded during the adjournment, unless, on the motion of the prosecutor or the accused or ex proprio motu the court sees fit to order that the jury be kept secluded.
89 Jury to be informed of special defence.

(1) Subject to subsection (2) below, where the accused has lodged a plea of special defence, the clerk of court shall, after informing the jury, in accordance with section 88(5) of this Act, of the charge against the accused, and before administering the oath, read to the jury the plea of special defence.

(2) Where the presiding judge on cause shown so directs, the plea of special defence shall not be read over to the jury in accordance with subsection (1) above; and in any such case the judge shall inform the jury of the lodging of the plea and of the general nature of the special defence.

(3) Copies of a plea of special defence shall be provided for each member of the jury.

90 Death or illness of jurors.

(1) Where in the course of a trial--

   (a) a juror dies; or

   (b) the court is satisfied that it is for any reason inappropriate for any juror to continue to serve as a juror,

the court may in its discretion, on an application made by the prosecutor or an accused, direct that the trial shall proceed before the remaining jurors. (if they are not less than twelve in number), and where such direction is given the remaining jurors shall be deemed in all respects to be a properly constituted jury for the purpose of the trial and shall have power to return a verdict accordingly whether unanimous or, subject to subsection (2) below, by majority.

(2) The remaining jurors shall not be entitled to return a verdict of guilty by majority unless at least eight of their number are in favour of such verdict and if, in any such case, the remaining jurors inform the court that--
(a) fewer than eight of their number are in favour of a verdict of guilty; and

(b) there is not a majority in favour of any other verdict,

they shall be deemed to have returned a verdict of not guilty.

90A 113 Apprehension of witnesses in solemn proceedings

(1) In any proceedings on indictment, the court may, on the application of any of the parties, issue a warrant for the apprehension of a witness if subsection (2) or (3) below applies in relation to the witness.

(2) This subsection applies if—

(a) the witness, having been duly cited to any diet in the proceedings, fails to appear at the diet; and

(b) no just excuse for failing to appear is given by or behalf of the witness.

(3) This subsection applies if the court is satisfied by evidence on oath that the witness is not likely to attend to give evidence at any diet in the proceedings without being compelled to do so.

(4) An application under subsection (1) above—

(a) may be made orally or in writing;

(b) if made in writing—

(i) shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form; and

(ii) may be disposed of in court or in chambers after such inquiry or hearing (if any) as the court considers appropriate.

(5) A warrant issued under this section shall be in such form as may be prescribed by Act of Adjournal or as nearly as may be in such form.

(6) A warrant issued under this section in the form mentioned in subsection (5) above shall imply warrant to officers of law—

(a) to search for and apprehend the witness in respect of whom it is issued;

(b) to bring the witness before the court;

113 Inserted by section 12 of the CPA Bill
(c) in the meantime, to detain the witness in a police station, police cell or other convenient place; and
(d) so far as is necessary for the execution of the warrant, to break open shut and lockfast places.

(7) It shall not be competent, in any proceedings on indictment, for a court to issue a warrant for the apprehension of a witness otherwise than in accordance with this section.

(8) A person apprehended under a warrant issued under this section shall wherever practicable be brought before the court not later than in the course of the first day on which—

(a) in the case of a warrant issued by a single judge of the High Court, that Court,
(b) in any other case, the court, is sitting after he is taken into custody.

(9) In this section and section 90B, “the court” means, except where the context requires otherwise—

(a) where the witness is to give evidence in the High Court, a single judge of that Court; or
(b) where the witness is to give evidence in proceedings on indictment in the sheriff court, any court with jurisdiction in relation to the proceedings.

90B Inserts by section 12 of the CPA Bill

(1) Where a witness is brought before the court in pursuance of a warrant issued under section 90A of this Act, the court shall, after giving the parties and the witness an opportunity to be heard, make an order—

(a) detaining the witness until the conclusion of the diet at which the witness is to give evidence;
(b) releasing the witness on bail; or
(c) liberating the witness.

(2) The court may make an order under subsection (1)(a) or (b) above only if it is satisfied that—

114 Inserted by section 12 of the CPA Bill
(a) the order is necessary with a view to securing that the
witness appears at the diet at which the witness is to give
evidence; and

(b) it is appropriate in all the circumstances to make the
order.

(3) Subsection (1) above is without prejudice to any power of the
court to—

(a) make a finding of contempt of court in respect of any
failure of a witness to appear at a diet to which he has been
duly cited; and

(b) dispose of the case accordingly.

(4) Where—

(a) an order under subsection (1)(a) above has been made
in respect of a witness; and

(b) at, but before the conclusion of, the diet at which the
which the witness is to give ev idence, the court in which the
diet is being held excuses the witness,

that court, on excusing the witness, may recall the order
under subsection (1)(a) above and liberate the witness.

(5) On making an order under subsection (1)(b) in respect of a
witness, the court shall impose such conditions as it considers
necessary with a view to securing that the witness appears at the
diet at which he is to give evidence.

(6) However, the court may not impose as such a condition a
requirement that the witness or a cautioner on his behalf deposit a
sum of money in court.

(7) Where the court makes an order under subsection (1)(a)
above in respect of a witness, the court shall, on the application of
the witness—

(a) consider whether the imposition of a requirement such
as is mentioned in paragraph (b)(ii) below would enable it to
make an order under subsection (1)(b) above releasing the
witness on bail subject to a condition under subsection (5)
above restricting the applicant’s movements; and

(b) if so—
(i) make an order under subsection (1)(b) above releasing the witness on bail subject to such a condition (as well as such other conditions required to be imposed under subsection (5) above); and

(ii) in the order, impose a requirement that compliance with the condition be remotely monitored.

(8) Subsections (2) to (13) and (15) of section 24A of this Act apply in relation to an order made, and the making of any order, under subsection (1)(b) above containing a requirement under subsection (7)(b)(ii) above as they apply to an order made, or the making of an order, under section 24A(1) of this Act, but with the following modifications—

(a) references to an order under section 24A(1) of this Act shall be read as if they were references to an order under subsection (1)(b) above containing a requirement under subsection (7)(b)(ii) above;

(b) references to the applicant shall be read as if they were references to the witness in respect of whom the order under subsection (1)(b) above is made;

(c) references to a requirement imposed under subsection 24A(1)(b)(ii) of this Act shall be read as if they were references to a requirement imposed under subsection (7)(b)(ii) above;

(d) in subsection (12), the reference to subsection (1)(b) of section 27 of this Act shall be read as if it were a reference to subsection (1)(b) of section 90C of this Act;

(e) subsection (13) shall be read as if—

(i) the reference to section 25 of this Act were a reference to that section as applied by virtue of subsection (9) below,

(ii) the reference to section 27 of this Act were a reference to section 90C(1) and (2) of this Act;

(iii) the reference to section 28 of this Act were a reference to that section as applied by virtue of section 90C(3) of this Act; and

(iv) the reference to sections 30 and 31 were a reference to section 90D of this Act.
(9) Section 25 of this Act (which makes provision for an order granting bail to specify the conditions imposed on bail and the accused’s proper domicile of citation) shall apply in relation to an order under subsection (1)(b) above as it applies to an order granting bail, but with the following modifications—

(a) references to the accused shall be read as if they were references to the witness in respect of whom the order under subsection (1)(b) above is made;

(b) references to the order granting bail shall be read as if they were references to the order under subsection (1)(b) above;

(c) subsection (3) shall be read as if for the words from “relating” to “offence” in the third place where it occurs there were substituted “at which the witness is to give evidence.

(10) In this section, reference to a condition restricting a witness’s movements include any condition requiring the witness to be, or not to be, “in any place or description of place for, or during, any period or periods or at any time.

90C

Breach of bail under section 90B(1)(b)

(1) A witness who, having been released on bail by virtue of an order under subsection (1)(b) of section 90B of this Act, fails without reasonable excuse—

(a) to appear at any diet to which he has been cited; or

(b) to comply with any condition imposed under subsection (5) of that section,

shall be guilty of an offence and liable on conviction on indictment to the penalties specified in subsection (2) below.

(2) Those penalties are—

(a) a fine; and

(b) imprisonment for a period not exceeding two years.

(3) Section 28 of this Act shall apply in respect of a witness who has been released on bail by virtue of an order under section 90B(1)(b) of this Act as it applies to an accused released on bail, but with the following modifications—

115 Inserted by section 12 of the CPA Bill
(a) references to an accused shall be read as if they were references to the witness;

(b) in subsection (2), the reference to the court to which the accused’s application for bail was first made shall be read as if it were a reference to the court which made the order under section 90B(1)(b) of this Act in respect of the witness; and

(c) in subsection (4)—

(i) references to the order granting bail and original order granting bail shall be read as if they were references to the order under section 90B(1)(b) and the original such order respectively;

(ii) paragraph (a) shall be read as if at the end there were inserted “and make an order under section 90B(1)(a) or (c) of this Act in respect of the witness”; and

(iii) paragraph (c) shall be read as if for the words from “complies” to the end there were substituted “appears at the diet at which the witness is to give evidence”.

90D\textsuperscript{116} Review of orders under section 90B(1)(a) or (b)

(1) Where a court has made an order under subsection (1)(a) of section 90B of this Act, the court may, on the application of the witness in respect of whom the order was made, on cause shown and after giving the parties and the witness an opportunity to be heard—

(a) recall the order; and

(b) make an order under subsection (1)(b) or (c) of that section in respect of the witness.

(2) Where a court has made an order under subsection (1)(b) of section 90B of this Act, the court may after giving the parties and the witness an opportunity to be heard—

(a) on the application of the witness in respect of whom the order was made and on cause shown—

(i) review the conditions imposed under subsection (5) of that section at the time the order was made; and

\textsuperscript{116} Inserted by section 12 of the CPA Bill
(ii) make a new order under subsection (1)(b) of that section and impose different conditions under subsection (5) of that section;

(b) on the application of the party who made the application under section 90A(1) of this Act in respect of the witness,, review the order and the conditions imposed under subsection (5) of that section at the time the order was made, and

(i) recall the order and make an order under subsection (1)(a) of that section in respect of the witness; or

(ii) make a new order under subsection (1)(b) of that section and impose different conditions under subsection (5) of that section.

(3) The court may not review an order by virtue of subsection (2)(b) above unless the party making the application puts before the court material information which was not available to it when it made the order which is the subject of the application.

(4) An application under this section by a witness—

(a) where it relates to the first order made under section 90B(1)(a) or (b) of this Act in respect of the witness, shall not be made before the fifth day after that order is made;

(b) where it relates to any subsequent such order, shall not be made before the fifteenth day after the order is made.

(5) On receipt of an application under subsection (2)(b) above the court shall—

(a) intimate the application to the witness in respect of whom the order which is the subject of the application was made;

(b) fix a diet for hearing the application and cite the witness to attend the diet; and

(c) where it considers that the interests of justice so require, grant warrant to arrest the witness.

(6) Nothing in this section shall affect any right of a person to appeal against an order under section 90B(1).
Appeals in respect of orders under section 90B(1)

(1) Any of the parties specified in subsection (2) below may appeal to the High Court against—

(a) any order made under subsection (1)(a) or (c) of section 90B of this Act; or

(b) where an order is made under subsection (1)(b) of that section—

(i) the order;

(ii) any of the conditions imposed under (5) of that section on the making of the order; or

(iii) both the order and any such conditions.

(2) The parties referred to in subsection (1) above are—

(a) the witness in respect of whom the order which is the subject of the appeal was made;

(b) the prosecutor; and

(c) the accused.

(3) A party making an appeal under subsection (1) above shall intimate it to the other parties specified in subsection (2) above and, for that purpose, intimation to the Lord Advocate shall be sufficient intimation to the prosecutor.

(4) An appeal under this section shall be disposed of by the High Court or any Lord Commissioner of Justiciary in court or in chambers after such inquiry and hearing of the parties as shall seem just.

(5) Where the witness in respect of whom the order which is the subject of an appeal under this section was made is under 21 years of age, section 51 of this Act shall apply to the High Court or, as the case may be, the Lord Commissioner of Justiciary when disposing of the appeal as it applies to a court when remanding or committing a person of the witness’s age for trial or sentence.

Trial to be continuous.

Every trial shall proceed from day to day until it is concluded unless the court sees cause to adjourn over a day or days.

117 Inserted by section 12 of the CPA Bill
92 Trial in presence of accused.

(1) Without prejudice to section 54 of this Act, and subject to subsections (2) and (2A)\textsuperscript{118} below, no part of a trial shall take place outwith the presence of the accused.

(2) If during the course of his trial an accused so misconducts himself that in the view of the court a proper trial cannot take place unless he is removed, the court may order--

(a) that he is removed from the court for so long as his conduct makes it necessary; and

(b) that the trial proceeds in his absence,

but if he is not legally represented the court shall appoint [   ]\textsuperscript{119} a solicitor to represent his interests during such absence.

(2A)\textsuperscript{120} If—

(a) the accused fails to appear at the trial diet; and

(b) the court is satisfied that—

(i) the accused was cited in accordance with section 66 of this Act; and

(ii) it is in the interests of justice to do so,

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

(2B) Where the court exercises the power under subsection (2A) above, it shall—

(a) if satisfied that there is a solicitor with authority to act for the purposes of 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.

\begin{tabular}{l}
\textsuperscript{118} Substituted by section 11(1) of the CPA Bill  \\
\textsuperscript{119} Words repealed by section 11(2) of the CPA Bill  \\
\textsuperscript{120} Inserted by section 11(3) of the CPA Bill
\end{tabular}
(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 of the accused’s defence at the trial.

(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.

(3) From the commencement of the leading of evidence in a trial for rape or the like the judge may, if he thinks fit, cause all persons other than the accused and counsel and solicitors to be removed from the court-room.

(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).

121 Inserted by section 11(4) of the CPA Bill
93 Record of trial.

(1) The proceedings at the trial of any person who, if convicted, is entitled to appeal under Part VIII of this Act, shall be recorded by means of shorthand notes or by mechanical means.

(2) A shorthand writer shall--

(a) sign the shorthand notes taken by him of such proceedings and certify them as being complete and correct; and

(b) retain the notes.

(3) A person recording such proceedings by mechanical means shall--

(a) certify that the record is true and complete;

(b) specify in the certificate the proceedings or, as the case may be, the part of the proceedings to which the record relates; and

(c) retain the record.

(4) The cost of making a record under subsection (1) above shall be defrayed, in accordance with scales of payment fixed for the time being by Treasury, out of money provided by Parliament.

(5) In subsection (1) above "proceedings at the trial" means the whole proceedings including, without prejudice to that generality--

(a) discussions--

(i) on any objection to the relevancy of the indictment;

(ii) with respect to any challenge of jurors; and

(iii) on all questions arising in the course of the trial;

(b) the decision of the court on any matter referred to in paragraph (a) above;

(c) the evidence led at the trial;
(d) any statement made by or on behalf of the accused whether before or after the verdict;

(e) the judge’s charge to the jury;

(f) the speeches of counsel or agent;

(g) the verdict of the jury;

(h) the sentence by the judge.

94 Transcripts of record and documentary productions.

(1) The Clerk of Justiciary may direct that a transcript of a record made under section 93(1) of this Act, or any part thereof, be made and delivered to him for the use of any judge.

(2) Subject to subsection (3) below, the Clerk of Justiciary shall, if requested to do so by--

(a) the Secretary of State or, subject to subsection (2B) below, the prosecutor; or

(b) any other person, not being a person convicted at the trial, on payment of such charges as may be fixed for the time being by Treasury,

direct that such a transcript be made and sent to the person who requested it.

[ 
(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).

(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).

] [FN1]

(3) The Secretary of State may, after consultation with the Lord Justice General, by order made by statutory instrument provide that in any class of proceedings specified in the order the Clerk of Justiciary
shall only make a direction under subsection (2)(b) above if satisfied that the person requesting the transcript is of a class of person so specified and, if purposes for which the transcript may be used are so specified, intends to use it only for such a purpose; and different purposes may be so specified for different classes of proceedings or classes of person.

(4) Where subsection (3) above applies as respects a direction, the person to whom the transcript is sent shall, if purposes for which that transcript may be used are specified by virtue of that subsection, use it only for such a purpose.

(5) A statutory instrument containing an order under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) A direction under subsection (1) or (2) above may require that the transcript be made by the person who made the record or by such competent person as may be specified in the direction; and that person shall comply with the direction.

(7) A transcript made in compliance with a direction under subsection (1) or (2) above--

(a) shall be in legible form; and

(b) shall be certified by the person making it as being a correct and complete transcript of the whole or, as the case may be, the part of the record purporting to have been made and certified, and in the case of shorthand notes signed, by the person who made the record.

(8) The cost of making a transcript in compliance with a direction under subsection (1) or (2)(a) above shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of money provided by Parliament.

(9) The Clerk of Justiciary shall, on payment of such charges as may be fixed for the time being by the Treasury, provide a copy of any documentary production lodged in connection with an appeal under this Part of this Act to such of the following persons as may request it--

(a) the prosecutor;
(b) any person convicted in the proceedings;

(c) any other person named in, or immediately affected by, any order made in the proceedings; and

(d) any person authorised to act on behalf of any of the persons mentioned in paragraphs (a) to (c) above.

[FN1] added by Criminal Justice (Scotland) Act (2003 ASP.7), Pt 8 s 65 (b)

95 Verdict by judge alone.

(1) Where, at any time after the jury has been sworn to serve in a trial, the prosecutor intimates to the court that he does not intend to proceed in respect of an offence charged in the indictment, the judge shall acquit the accused of that offence and the trial shall proceed only in respect of any other offence charged in the indictment.

(2) Where, at any time after the jury has been sworn to serve in a trial, the accused intimates to the court that he is prepared to tender a plea of guilty as libelled, or such other plea as the Crown is prepared to accept, in respect of any offence charged in the indictment, the judge shall accept the plea tendered and shall convict the accused accordingly.

(3) Where an accused is convicted under subsection (2) above of an offence--

(a) the trial shall proceed only in respect of any other offence charged in the indictment; and

(b) without prejudice to any other power of the court to adjourn the case or to defer sentence, the judge shall not sentence him or make any other order competent following conviction until a verdict has been returned in respect of every other offence mentioned in paragraph (a) above.

96 Amendment of indictment.
(1) No trial shall fail or the ends of justice be allowed to be defeated by reason of any discrepancy or variance between the indictment and the evidence.

(2) It shall be competent at any time prior to the determination of the case, unless the court see just cause to the contrary, to amend the indictment by deletion, alteration or addition, so as to--

(a) cure any error or defect in it;

(b) meet any objection to it; or

(c) cure any discrepancy or variance between the indictment and the evidence.

(3) Nothing in this section shall authorise an amendment which changes the character of the offence charged, and, if it appears to the court that the accused may in any way be prejudiced in his defence on the merits of the case by any amendment made under this section the court shall grant such remedy to the accused by adjournment or otherwise as appears to the court to be just.

(4) An amendment made under this section shall be sufficiently authenticated by the initials of the clerk of the court.

97 No case to answer.

(1) Immediately after the close of the evidence for the prosecution, the accused may intimate to the court his desire to make a submission that he has no case to answer both--

(a) on an offence charged in the indictment; and

(b) on any other offence of which he could be convicted under the indictment.

(2) If, after hearing both parties, the judge is satisfied that the evidence led by the prosecution is insufficient in law to justify the accused being convicted of the offence charged in respect of which the submission has been made or of such other offence as is mentioned, in
relation to that offence, in paragraph (b) of subsection (1) above, he shall acquit him of the offence charged in respect of which the submission has been made and the trial shall proceed only in respect of any other offence charged in the indictment.

(3) If, after hearing both parties, the judge is not satisfied as is mentioned in subsection (2) above, he shall reject the submission and the trial shall proceed, with the accused entitled to give evidence and call witnesses, as if such submission had not been made.

(4) A submission under subsection (1) above shall be heard by the judge in the absence of the jury.

98 Defence to speak last.

In any trial the accused or, where he is legally represented, his counsel or solicitor shall have the right to speak last.

99 Seclusion of jury to consider verdict.

(1) When the jury retire to consider their verdict, the clerk of court shall enclose the jury in a room by themselves and, except in so far as provided for, or is made necessary, by an instruction under subsection (4) below, neither he nor any other person shall be present with the jury while they are enclosed:

(2) Except in so far as is provided for, or is made necessary, by an instruction under subsection (4) below, while the jury are enclosed and until they intimate that they are ready to return their verdict--

(a) subject to subsection (3) below, no person shall visit the jury or communicate with them; and

(b) no juror shall come out of the jury room other than to receive or seek a direction from the judge or to make a request--

(i) for an instruction under subsection (4)(a), (c) or (d) below; or
(ii) regarding any matter in the cause.

(3) Nothing in paragraph (a) of subsection (2) above shall prohibit the judge, or any person authorised by him for the purpose, communicating with the jury for the purposes--

(a) of giving a direction, whether or not sought under paragraph (b) of that subsection; or

(b) responding to a request made under that paragraph.

(4) The judge may give such instructions as he considers appropriate as regards--

(a) the provision of meals and refreshments for the jury;

(b) the making of arrangements for overnight accommodation for the jury and, unless under subsection (7) below the court permits them to separate, for their continued seclusion if such accommodation is provided;

(c) the communication of a personal or business message, unconnected with any matter in the cause, from a juror to another person (or vice versa); or

(d) the provision of medical treatment, or other assistance, immediately required by a juror.

(5) If the prosecutor or any other person contravenes the provisions of this section, the accused shall be acquitted of the crime with which he is charged.

(6) During the period in which the jury are retired to consider their verdict, the judge may sit in any other proceedings; and the trial shall not fail by reason only of his so doing.

[72x39]100

(7) The court may, if it thinks fit, permit the jury to separate even after they have retired to consider their verdict.

] [FN1]
100 Verdict of jury.

(1) The verdict of the jury, whether the jury are unanimous or not, shall be returned orally by the foreman of the jury unless the court directs a written verdict to be returned.

(2) Where the jury are not unanimous in their verdict, the foreman shall announce that fact so that the relative entry may be made in the record.

(3) The verdict of the jury may be given orally through the foreman of the jury after consultation in the jury box without the necessity for the jury to retire.

101 Previous convictions: solemn proceedings.

(1) Previous convictions against the accused shall not, subject to subsection (2) below and section 275A(2) of this Act, be laid before the jury, nor shall reference be made to them in presence of the jury before the verdict is returned.

(2) Nothing in subsection (1) above shall prevent the prosecutor--

(a) asking the accused questions tending to show that he has been convicted of an offence other than that with which he is charged, where he is entitled to do so under section 266 of this Act; or

(b) leading evidence of previous convictions where it is competent to do so under section 270 of this Act,

and nothing in this section or in section 69 of this Act shall prevent evidence of previous convictions being led in any case where such evidence is competent in support of a substantive charge.

(3) Previous convictions shall not, subject to section 275A(1) of this
Act, be laid before the presiding judge until the prosecutor moves for sentence, and in that event the prosecutor shall lay before the judge a copy of the notice referred to in subsection (2) or (4) of section 69 of this Act.

(4) On the conviction of the accused it shall be competent for the court, subject to subsection (5) below, to amend a notice of previous convictions so laid by deletion or alteration for the purpose of curing any error or defect.

(6) Any conviction which is admitted in evidence by the court shall be entered in the record of the trial.

(7) Where a person is convicted of an offence, the court may have regard to any previous conviction in respect of that person in deciding on the disposal of the case.

(8) Where any such intimation as is mentioned in section 69 of this Act is given by the accused, it shall be competent to prove any previous conviction included in a notice under that section in the manner specified in section 285, or as the case may be 286A, of this Act, and the provisions of the [section in question] [FN1] shall apply accordingly.

[FN1] words substituted by Criminal Justice (Scotland) Act (2003 ASP.7), Pt 8 s 57 (2) (b)

102 Interruption of trial for other proceedings.

(1) When the jury have retired to consider their verdict, and the diet in another criminal cause has been called, then, subject to subsection (3) below, if it appears to the judge presiding at the trial to be appropriate, he may interrupt the proceedings in such other cause--

(a) in order to receive the verdict of the jury in the preceding trial, and thereafter to dispose of the case;

(b) to give a direction to the jury in the preceding trial upon any matter upon which the jury may wish a direction from the judge or to hear any request from the jury regarding any matter in the cause.
(2) Where in any case the diet of which has not been called, the accused intimates to the clerk of court that he is prepared to tender a plea of guilty as libelled or such qualified plea as the Crown is prepared to accept, or where a case is remitted to the High Court for sentence, then, subject to subsection (3) below, any trial then proceeding may be interrupted for the purpose of receiving such plea or dealing with the remitted case and pronouncing sentence or otherwise disposing of any such case.

(3) In no case shall any proceedings in the preceding trial take place in the presence of the jury in the interrupted trial, but in every case that jury shall be directed to retire by the presiding judge.

(4) On the interrupted trial being resumed the diet shall be called de novo.

(5) In any case an interruption under this section shall not be deemed an irregularity, nor entitle the accused to take any objection to the proceedings.

119 Provision where High Court authorises new prosecution.

(1) Subject to subsection (2) below, where authority is granted under section 118(1)(c) of this Act, a new prosecution may be brought charging the accused with the same or any similar offence arising out of the same facts; and the proceedings out of which the appeal arose shall not be a bar to such new prosecution.

(2) In a new prosecution under this section the accused shall not be charged with an offence more serious than that of which he was convicted in the earlier proceedings.

(3) No sentence may be passed on conviction under the new prosecution which could not have been passed on conviction under the earlier proceedings.

(4) A new prosecution may be brought under this section, notwithstanding that any time limit, other than the time limit mentioned in subsection (5) below, for the commencement of such proceedings has elapsed.

103
(5) Proceedings in a prosecution under this section shall be commenced within two months of the date on which authority to bring the prosecution was granted.

(6) In proceedings in a new prosecution under this section it shall, subject to subsection (7) below, be competent for either party to lead any evidence which it was competent for him to lead in the earlier proceedings.

(7) The indictment in a new prosecution under this section shall identify any matters as respects which the prosecutor intends to lead evidence by virtue of subsection (6) above which would not have been competent but for that subsection.

(8) For the purposes of subsection (5) above, proceedings shall be deemed to be commenced--

(a) in a case where a warrant to apprehend the accused is granted –
   (i) on the date on which the warrant is executed, or
   (ii) if it is executed without unreasonable delay, on the date on which it is granted;

(b) in any other case, on the date on which the accused is cited.

(9) Where the two months mentioned in subsection (5) above elapse and no new prosecution has been brought under this section, the order under section 118(1)(c) of this Act setting aside the verdict shall have the effect, for all purposes, of an acquittal.

(10) On granting authority under section 118(1)(c) of this Act to bring a new prosecution, the High Court shall, after giving the parties an opportunity of being heard, order the detention of the accused person in custody or admit him to bail.

(11) Subsections (4)(b) and (7) to (9) of section 65 of this Act

---

122 Substituted by paragraph 25 of the schedule to the CPA Bill
(prevention of delay in trials) shall apply to an accused person who is detained under subsection (10) above as they apply to an accused person detained by virtue of being committed until liberated in due course of law.

140 Citation

(1) This Act shall be a sufficient warrant for—

(a)\textsuperscript{123} the citation of the accused and witnesses in a summary prosecution to any ordinary sitting of the court or to any special diet fixed by the court or any adjournment thereof.

(2) [Without prejudice to section 141(2A) of this Act, such] [FN1] citation shall be in the form prescribed by Act of Adjournal or as nearly as may be in such form and shall, in the case of the accused, proceed on an induciae of at least 48 hours unless in the special circumstances of the case the court fixes a shorter induciae.

(2A) Where the charge in the complaint in respect of which an accused is cited is of committing a sexual offence to which section 288C of this Act applies, the citation shall include or be accompanied by notice to the accused--

(a) that, if he is tried for the offence, his defence may be conducted only by a lawyer;

(b) that it is, therefore, in his interests, if he has not already done so, to get the professional assistance of a solicitor; and

(c) that, if he does not engage a solicitor for the purposes of his defence at the trial, the court will do so.

(2B) A failure to comply with subsection (2A) above does not affect the validity or lawfulness of any such citation or any other element of the proceedings against the accused.

\textsuperscript{123} Repealed by paragraph 26 of the schedule to the CPA Bill
156 Apprehension of witness.

(1) Where a witness in a summary prosecution having been duly cited, fails to appear at the diet fixed for his attendance and no just excuse is offered by him or on his behalf, the court may; if it is satisfied that he received the citation or that its contents came to his knowledge, issue a warrant for his apprehension.

(2) Where the court is satisfied by evidence on oath that a witness in a summary prosecution is not likely to attend to give evidence without being compelled so to do, it may issue a warrant for his apprehension.

(3) A warrant of apprehension of a witness in a summary prosecution in the form mentioned in section 135(1) of this Act shall imply warrant to officers of law to search for and apprehend the witness, and to detain him in a police station, police cell, or other convenient place, until--

(a) the date fixed for the hearing of the case; or

(b) the date when security to the amount fixed under subsection (4) below is found,

whichever is the earlier.

(4) A witness apprehended under a warrant under subsection (1) or (2) above shall, wherever practicable, be brought immediately by the officer of law who executed that warrant before a justice, who shall fix such sum as he considers appropriate as security for the appearance of the witness at all diets.

196 Sentence following guilty plea.

(1) In determining what sentence to pass on, or what other disposal or order to make in relation to, an offender who has pled guilty to an offence, a court shall take into account--
(a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and

(b) the circumstances in which that indication was given.

(1A) In passing sentence on an offender referred to in subsection (1) above, the court shall-

(a) state whether, having taken account of the matters mentioned in paragraphs (a) and (b) of that subsection, the sentence imposed in respect of the offence is different from that which the court would otherwise have imposed; and

(b) if it is not, state reasons why it is not.

(2) Where the court is passing sentence on an offender under section 205B(2) of this Act and that offender has pled guilty to the offence for which he is being so sentenced, the court may, after taking into account the matters mentioned in paragraphs (a) and (b) of subsection (1) above, pass a sentence of less than seven years imprisonment or, as the case may be, detention but any such sentence shall not be of a term of imprisonment or period of detention of less than five years, two hundred and nineteen days.

[FN1]

[FN1] renumbering existing text as (1) and adding (2) by Crime and Punishment (Scotland) Act (1997 c.48), Pt I s 2 (2)

210A Extended sentences for sex and violent offenders.

(1) Where a person is convicted on indictment of a sexual or violent offence, the court may, if it--

(a) intends, in relation to--

(i) a sexual offence, to pass a determinate sentence of imprisonment; or

128 Inserted by section 17 (3) of the CPA Bill
(ii) a violent offence, to pass such a sentence for a term of four years or more; and

(b) considers that the period (if any) for which the offender would, apart from this section, be subject to a licence would not be adequate for the purpose of protecting the public from serious harm from the offender,

pass an extended sentence on the offender.

(2) An extended sentence is a sentence of imprisonment which is the aggregate of--

(a) the term of imprisonment ("the custodial term") which the court would have passed on the offender otherwise than by virtue of this section; and

(b) a further period ("the extension period") for which the offender is to be subject to a licence and which is, subject to the provisions of this section, of such length as the court considers necessary for the purpose mentioned in subsection (1)(b) above.

(3) The extension period shall not exceed, in the case of--

(a) a sexual offence, ten years; and

(b) a violent offence, [ten] [FN1] years.

(4) A court shall, before passing an extended sentence, consider a report by a relevant officer of a local authority about the offender and his circumstances and, if the court thinks it necessary, hear that officer.

(5) The term of an extended sentence passed for a statutory offence shall not exceed the maximum term of imprisonment provided for in the statute in respect of that offence.

(6) Subject to subsection (5) above, a sheriff may pass an extended sentence which is the aggregate of a custodial term not exceeding the maximum term of imprisonment which he may impose and an extension period not exceeding five\textsuperscript{129} years.

\textsuperscript{129} Substituted by section 18 of the CPA Bill
(7) The Secretary of State may by order--

(a) amend paragraph (b) of subsection (3) above by substituting a different period, not exceeding ten years, for the period for the time being specified in that paragraph; and

(b) make such transitional provision as appears to him to be necessary or expedient in connection with the amendment.

(8) The power to make an order under subsection (7) above shall be exercisable by statutory instrument; but no such order shall be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

(9) An extended sentence shall not be imposed where the sexual or violent offence was committed before the commencement of section 86 of the Crime and Disorder Act 1998.

(10) For the purposes of this section--

"licence" and "relevant officer" have the same meaning as in Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993;

"sexual offence" means--

(i) rape;

(ii) clandestine injury to women;

(iii) abduction of a woman or girl with intent to rape or ravish;

(iv) assault with intent to rape or ravish;

(v) indecent assault;

(vi) lewd, indecent or libidinous behaviour or practices;

(vii) shameless indecency;

(viii) sodomy;

(ix) an offence under section 170 of the Customs and Excise Management Act 1979 in relation to goods prohibited to be
imported under section 42 of the Customs Consolidation Act 1876, but only where the prohibited goods include indecent photographs of persons;

(x) an offence under section 52 of the Civic Government (Scotland) Act 1982 (taking and distribution of indecent images of children);

(xi) an offence under section 52A of that Act (possession of indecent images of children);

(xii) an offence under section 1 of the Criminal Law (Consolidation) (Scotland) Act 1995 (incest);

(xiii) an offence under section 2 of that Act (intercourse with a stepchild);

(xiv) an offence under section 3 of that Act (intercourse with child under 16 by person in position of trust);

(xv) an offence under section 5 of that Act (unlawful intercourse with girl under 16);

(xvi) an offence under section 6 of that Act (indecent behaviour towards girl between 12 and 16);

(xvii) an offence under section 8 of that Act (abduction of girl under 18 for purposes of unlawful intercourse);

(xviii) an offence under section 10 of that Act (person having parental responsibilities causing or encouraging sexual activity in relation to a girl under 16);

(xix) an offence under subsection (5) of section 13 of that Act (homosexual offences); and

(xx) an offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of position of trust).

"imprisonment" includes--

(i) detention under section 207 of this Act; and

(ii) detention under section 208 of this Act; and
"violent offence" means any offence (other than an offence which is a sexual offence within the meaning of this section) inferring personal violence.

(11) Any reference in subsection (10) above to a sexual offence includes--

(a) a reference to any attempt, conspiracy or incitement to commit that offence; and

(b) except in the case of an offence in paragraphs (i) to (viii) of the definition of "sexual offence" in that subsection, a reference to aiding and abetting, counselling or procuring the commission of that offence.

[FN1] word substituted by SSI 2003/48 (Extended Sentences for Violent Offenders (Scotland) Order), Art 2

255 Special capacity.

Where an offence is alleged to be committed in any special capacity, as by the holder of a licence, master of a vessel, occupier of a house, or the like, the fact that the accused possesses the qualification necessary to the commission of the offence shall, unless challenged--

(a) in the case of proceedings on indictment, by giving notice of a preliminary objection in accordance with section 71(2) or 72 (6)(b)(i)130 of this Act; or

(b) in summary proceedings, by preliminary objection before his plea is recorded,

be held as admitted.

255A Proof of age.

Where the age of any person is specified in an indictment or a

130 Substituted by paragraph 28 of the a schedule to the CPA Bill
complaint, it shall, unless challenged--

(a) in the case of proceedings on indictment by giving notice of a preliminary objection in accordance with section 71(2) or 72(6)(b)(i) of this Act\(^{131}\)

(b) in summary proceedings--

(i) by preliminary objection before the plea of the accused is recorded; or

(ii) by objection at such later time as the court may in special circumstances allow,

be held as admitted.

\[\text{[FN1]}\]

\[\text{[FN1]}\] and the title immediately preceding it by Crime and Punishment (Scotland) Act (1997 c.48), Pt II s 27

257 Duty to seek agreement of evidence.

(1) Subject to subsection (2) below, the prosecutor and the accused (or each of the accused if more than one) shall each identify any facts which are facts--

(a) which he would, apart from this section, be seeking to prove;

(b) which he considers unlikely to be disputed by the other party (or by any of the other parties); and

(c) in proof of which he does not wish to lead oral evidence,

and shall, without prejudice to section 258 of this Act, take all reasonable steps to secure the agreement of the other party (or each of the other parties) to them; and the other party (or each of the other parties) shall take all reasonable steps to reach such agreement.

\(^{131}\) Substituted by paragraph 29 of the schedule to the CPA Bill
(2) Subsection (1) above shall not apply in relation to proceedings as respects which the accused (or any of the accused if more than one) is not legally represented.

(3) The duty under subsection (1) above applies--

(a) in relation to proceedings on indictment, from the date of service of the indictment until the swearing of the jury or, where intimation is given under section 76 of this Act, the date of that intimation; and

(b) in relation to summary proceedings, from the date on which the accused pleads not guilty until the swearing of the first witness or, where the accused tenders a plea of guilty at any time before the first witness is sworn, the date when he does so.

(4) Without prejudice to subsection (3) above, in the case of proceedings in the High Court, the parties to the proceedings shall, in complying with the duty under subsection (1) above, seek to ensure that the facts to be identified, and the steps to be taken in relation to those facts, by that subsection are identified and taken before the preliminary hearing.

258 Uncontroversial evidence.

(1) This section applies where, in any criminal proceedings, a party (in this section referred to as "the first party") considers that facts which that party would otherwise be seeking to prove are unlikely to be disputed by the other parties to the proceedings.

(2) Where this section applies, the first party may prepare and sign a statement--

(a) specifying the facts concerned; or

(b) referring to such facts as set out in a document annexed to the statement,

and shall, not less than 14 days before the relevant diet, serve a copy of the statement and any such document on every other party.

132 Inserted by paragraph 30 of the schedule to the CPA Bill
133 Substituted by paragraph 31(a) of the schedule to the CPA Bill
(2A) In subsection (2) above, “the relevant diet” means –

(a) in the case of proceedings in the High Court, the preliminary hearing;

(b) in any other case, the trial diet.

(3) Unless any other party serves on the first party, not more than seven days after the date of service of the copy on him under subsection (2) above or by such later time as the court may in special circumstances allow, a notice that he challenges any fact specified or referred to in the statement, the facts so specified or referred to shall be deemed to have been conclusively proved.

(4) Where a notice is served under subsection (3) above, the facts specified or referred to in the statement shall be deemed to have been conclusively proved only in so far as unchallenged in the notice.

(5) Subsections (3) and (4) above shall not preclude a party from leading evidence of circumstances relevant to, or other evidence in explanation of, any fact specified or referred to in the statement.

(6) Notwithstanding subsections (3) and (4) above, the court—

(a) may, on the application of any party, where it is satisfied that there are special circumstances; and

(b) shall, on the joint application of all the parties, direct that the presumptions in those subsections shall not apply in relation to such fact specified or referred to in the statement as is specified in the direction.

(7) An application under subsection (6) above may be made at any time after the commencement of the trial and before the commencement of the prosecutor’s address to the court on the evidence.

(8) Where the court makes a direction under subsection (6) above it

---

134 Inserted by paragraph 31(b) of the schedule to the CPA Bill
shall, unless all the parties otherwise agree, adjourn the trial and may, without prejudice to section 268 of this Act, permit any party to lead evidence; as to any such fact as is specified in the direction, notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given.

(9) A copy of a statement or a notice required, under this section, to be served on any party shall be served in such a manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served such copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

259 Exceptions to the rule that hearsay evidence is inadmissible.

(1) Subject to the following provisions of this section, evidence of a statement made by a person otherwise than while giving oral evidence in court in criminal proceedings shall be admissible in those proceedings as evidence of any matter contained in the statement where the judge is satisfied--

(a) that the person who made the statement will not give evidence in the proceedings of such matter for any of the reasons mentioned in subsection (2) below;

(b) that evidence of the matter would be admissible in the proceedings if that person gave direct oral evidence of it;

(c) that the person who made the statement would have been, at the time the statement was made, a competent witness in such proceedings; and

(d) that there is evidence which would entitle a jury properly directed, or in summary proceedings would entitle the judge, to find that the statement was made and that either--

(i) it is contained in a document; or

(ii) a person who gave oral evidence in the proceedings as to the statement has direct personal knowledge of the
making of the statement.

(2) The reasons referred to in paragraph (a) of subsection (1) above are that the person who made the statement--

(a) is dead or is, by reason of his bodily or mental condition, unfit or unable to give evidence in any competent manner;

(b) is named and otherwise sufficiently identified, but is outwith the United Kingdom and it is not reasonably practicable to secure his attendance at the trial or to obtain his evidence in any other competent manner;

(c) is named and otherwise sufficiently identified, but cannot be found and all reasonable steps which, in the circumstances, could have been taken to find him have been so taken;

(d) having been authorised to do so by virtue of a ruling of the court in the proceedings that he is entitled to refuse to give evidence in connection with the subject matter of the statement on the grounds that such evidence might incriminate him, refuses to give such evidence; or

(e) is called as a witness and either--

(i) refuses to take the oath or affirmation; or

(ii) having been sworn as a witness and directed by the judge to give evidence in connection with the subject matter of the statement refuses to do so,

and in the application of this paragraph to a child, the reference to a witness refusing to take the oath or affirmation or, as the case may be, to having been sworn shall be construed as a reference to a child who has refused to accept an admonition to tell the truth or, having been so admonished, refuses to give evidence as mentioned above.

(3) Evidence of a statement shall not be admissible by virtue of subsection (1) above where the judge is satisfied that the occurrence of any of the circumstances mentioned in paragraphs (a) to (e) of subsection (2) above, by virtue of which the statement would otherwise be admissible, is caused by--
(a) the person in support of whose case the evidence would be given; or

(b) any other person acting on his behalf,

for the purpose of securing that the person who made the statement does not give evidence for the purposes of the proceedings either at all or in connection with the subject matter of the statement.

(4) Where in any proceedings evidence of a statement made by any person is admitted by reference to any of the reasons mentioned in paragraphs (a) to (c) and (e)(i) of subsection (2) above--

(a) any evidence which, if that person had given evidence in connection with the subject matter of the statement, would have been admissible as relevant to his credibility as a witness shall be admissible for that purpose in those proceedings;

(b) evidence may be given of any matter which, if that person had given evidence in connection with the subject matter of the statement, could have been put to him in cross-examination as relevant to his credibility as a witness but of which evidence could not have been adduced by the cross-examining party; and

(c) evidence tending to prove that that person, whether before or after making the statement, made in whatever manner some other statement which is inconsistent with it shall be admissible for the purpose of showing that he has contradicted himself.

(5) Subject to subsection (6) below, where a party intends to apply to have evidence of a statement admitted by virtue of subsection (1) above he shall, by the relevant time,135 give notice in writing of--

(a) that fact;

(b) the witnesses and productions to be adduced in connection with such evidence; and

(c) such other matters as may be prescribed by Act of Adjournal, to every other party to the proceedings and, for the purposes of this

135 Substituted by paragraph 32(a) of the schedule to the CPA Bill
subsection, such evidence may be led notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given.

(5A)\textsuperscript{136} In subsection (5) above, “the relevant time” means –

(a) in the case of proceedings in the High Court –

(i) not less than 7 days before the preliminary hearing; or

(ii) such later time, before the trial diet, as the judge may on cause shown allow;

(b) in any other case, before the trial diet.

(6) A party shall not be required to give notice as mentioned in subsection (5) above where--

(a) the grounds for seeking to have evidence of a statement admitted are as mentioned in paragraph (d) or (e) of subsection (2) above; or

(b) he satisfies the judge that there was good reason for not giving such notice.

(7) If no other party to the proceedings objects to the admission of evidence of a statement by virtue of subsection (1) above, the evidence shall be admitted without the judge requiring to be satisfied as mentioned in that subsection.

(8) For the purposes of the determination of any matter upon which the judge is required to be satisfied under subsection (1) above--

(a) except to the extent that any other party to the proceedings challenges them and insists in such challenge, it shall be presumed that the circumstances are as stated by the party seeking to introduce evidence of the statement; and

(b) where such a challenge is insisted in; the judge shall

\textsuperscript{136} Inserted by paragraph 32(b) of the schedule to the CPA Bill
determine the matter on the balance of probabilities, and he may draw any reasonable inference--

(i) from the circumstances in which the statement was made or otherwise came into being; or

(ii) from any other circumstances, including, where the statement is contained in a document, the form and contents of the document.

(9) Where evidence of a statement has been admitted by virtue of subsection (1) above on the application of one party to the proceedings, without prejudice to anything in any enactment or rule of law, the judge may permit any party to lead additional evidence of such description as the judge may specify, notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 67(5) and 78(4) of this Act has not been given.

(10) Any reference in subsections (5), (6) and (9) above to evidence shall include a reference to evidence led in connection with any determination required to be made for the purposes of subsection (1) above.

267 Witnesses in court during trial.

(1) The court may, on an application by any party to the proceedings, permit a witness to be in court during the proceedings or any part of the proceedings before he has given evidence if it appears to the court that the presence of the witness would not be contrary to the interests of justice.

(2) Without prejudice to subsection (1) above, where a witness has, without the permission of the court and without the consent of the parties to the proceedings, been present in court during the proceedings, the court may, in its discretion, admit the witness, where it appears to the court that the presence of the witness was not the result of culpable negligence or criminal intent, and that the witness has not been unduly instructed or influenced by what took place during his presence, or that injustice will not be done by his examination.
Citation of witness for precognition

(1) This Act shall be sufficient warrant for the citation of witnesses for precognition by the prosecutor, whether or not any person has been charged with the offence in relation to which the precognition is taken.

(2) Such citation shall be in the form prescribed by Act of Adjournal or as nearly as may be in such form.

(3) A witness who, having been duly cited –

(a) fails without reasonable excuse, after receiving at least 48 hours notice, to attend for precognition by a prosecutor at the time and place mentioned in the citation served on him; or

(b) refuses when so cited to give information within his knowledge regarding any matter relative to the commission of the offence in relation to which the precognition is taken,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to a term of imprisonment not exceeding 21 days.

Special measures for child witnesses

(1) Where a child witness is to give evidence at or for the purposes of a trial, the child witness is entitled, subject to –

(a) subsections (2) to (13) below, and

(b) section 271D of this Act, to the benefit of one or more of the special measures for the purpose of giving evidence.

(2) A party citing or intending to cite a child witness shall, no later than 14 clear days before the relevant diet, lodge with the court a notice (referred to in this Act as a “child witness notice”) –

---

137 Inserted by section 19 of the CPA Bill
138 Inserted by the Vulnerable Witnesses Bill
139 Substituted by paragraph 33(a) of the schedule to the CPA Bill
(a) specifying the special measure or measures which the party considers to be the most appropriate for the purpose of taking the child witness’s evidence, or

(b) if the child witness has expressed a wish to give evidence without the benefit of any special measure, stating the fact.

(2A) In subsection (2) above, “the relevant diet” means –

(a) in the case of proceedings in the High Court, the preliminary hearing;

(b) in any other case, the trial diet.

(3) A child witness notice shall contain or be accompanied by –

(a) a summary of any views expressed for the purposes of section 271E(2)(b) of this Act, and

(b) such other information as may be prescribed by Act of Adjournal.

(4) The court may, on cause shown, allow a child witness notice to be lodged after the time limit specified in subsection (2) above.

(5) The court shall, not later than 7 days after a child witness notice has been lodged, consider the notice in the absence of the parties and –

(a) if satisfied on the basis of the notice as to the matter mentioned in subsection (6) below, make an order –

(i) in the case of a child witness notice under subsection (2)(a) above, authorising the use of the special measure or measures specified in the notice for the purpose of taking the child witness’s evidence,

(ii) in the case of a child witness notice under subsection (2)(b) above, authorising the giving of evidence by the child witness without the benefit of any special measure, or

140 Inserted by paragraph 33(b) of the schedule to the CPA Bill
(b) if not satisfied as mentioned in paragraph (a) above, order that, before the trial diet, there shall be a diet under subsection (10) below and ordain the parties to attend.

(6) The matter referred to in subsection (5)(a) above is that –

(a) in the case of a child witness notice under subsection (2) above, the special measure or measures specified in the notice is or are the most appropriate for the purposes of taking the child witness’s evidence.

(b) in the case of a child witness notice under subsection (2)(b) above, it is appropriate for the child witness to give evidence without the benefit of any special measure.

(7) Subsection (8) below applies where –

(a) it appears to the court that a party intends to call a child witness to give evidence at or for the purposes of the trial,

(b) the party has not lodged a child witness notice in respect of the child witness by the time specified in subsection (2) above, and

(c) the court has not allowed a child witness notice in respect of the child witness to be lodged after that time under subsection (4) above.

(8) Where this subsection applies, the court shall –

(a) order the party to lodge a child witness notice in respect of the child witness by such time as the court may specify, or

(b) order that, before the trial diet, there shall be a diet under subsection (10) below and ordain the parties to attend.

(9) On making an order under subsection (5)(b) or (8)(b) above, the court may postpone the trial diet.

(10) At a diet under this subsection, the court shall, after giving the parties an opportunity to be heard, make an order –
(a) authorising the use of such special measure or measures as the court considers to be the most appropriate for the purpose of taking the child witness’s evidence, or

(b) that the child witness is to give evidence without the benefit of any special measure.

(11) The court may make an order under subsection (10)(b) above only if satisfied –

(a) where the child witness has expressed a wish to give evidence without the benefit of any special measure, that it is appropriate for the child witness so to give evidence, or

(b) in any other case, that –

   (i) the use of any special measure for the purpose of taking the evidence of the child witness would give rise to a significant risk of prejudice to the fairness of the trial or otherwise to the interests of justice, and

   (ii) that risk significantly outweighs any risk of prejudice to the interests of the child witness if the order is made.

(12) A diet under subsection (10) above may be conjoined with –

(a) in the case of proceedings in the High Court, a preliminary diet,

(b) in the case of proceedings on indictment in the sheriff court, a first diet,

(c) in the case of summary proceedings, an intermediate diet.

(13) A party lodging a child witness notice shall, at the same time, intimate the notice to the other parties to the proceedings.

271C Vulnerable witness other than child witness

141 Inserted by the Vulnerable Witnesses Bill
This section applies where a party citing or intending to cite a person (other than a child witness) to give evidence at, or for the purposes of, a trial (such a person being referred to in this section as “the witness”) considers –

(a) that the witness is likely to be a vulnerable witness, and

(b) that a special measure or combination of special measures ought to be used for the purpose of taking the witness’s evidence.

Where this section applies, the party citing or intending to cite the witness shall, not later than 14 clear days before the relevant diet, make an application (referred to as a “vulnerable witness application”) to the court for an order authorising the use of one or more of the special measures for the purpose of taking the witness’s evidence.

In subsection (2) above, “the relevant diet” means –

(a) in the case of proceedings in the High Court, the preliminary hearing;

(b) in any other case, the trial diet.

A vulnerable witness application shall –

(a) specify the special measure or measures which the party making the application considers to be the most appropriate for the purpose of taking the evidence of the witness to whom the application relates, and

(b) contain or be accompanied by –

(i) a summary of any views expressed for the purposes of section 271E(2)(b) of this Act, and

(ii) such other information as may be prescribed by Act of Adjournal.

The court may, on cause shown, allow a vulnerable witness application to be made after the time limit specified in subsection (2) above.

142 Substituted by paragraph 34(a) of the schedule of the “CPA Bill”

143 Inserted by paragraph 34(b) of the schedule to the “CPA Bill”
(5) The court shall, not later than 7 days after a vulnerable witness application is made to it, consider the application in the absence of the parties and –

(a) make an order authorising the use of the special measure or measures specified in the application if satisfied on the basis of the application that –

(i) the witness in respect of whom the application is made is a vulnerable witness,

(ii) the special measures or measures specified in the application are the most appropriate for the purpose of taking the witness’s evidence, and

(iii) it is appropriate to do so after having complied with the duty in subsection (7) below, or

(b) if not satisfied as mentioned in paragraph (a) above, order that, before the trial diet, there shall be a diet under subsection (6) below and ordain the parties to attend.

(6) At a diet under this subsection, the court may –

(a) after giving the parties an opportunity to be heard, and

(b) if satisfied that the witness in respect of whom the application is made is a vulnerable witness,

make an order authorising the use of such special measure or measures as the court considers to be the most appropriate for the purpose of taking the witness’s evidence.

(7) In deciding whether to make an order under subsection (5)(a) or (6) above, the court shall –

(a) have regard to –

(i) the possible effect on the witness if required to give evidence without the benefit of any special measure, and
(ii) whether it is likely that the witness would be better able to give evidence with the benefit of a special measure, and

(b) take into account the matters specified in subsection (2)(a) to (f) of section 271 of this Act.

(8) A diet under subsection (6) above may be conjoined with –

(a) in the case of proceedings in the High Court, a preliminary diet,

(b) in the case of proceedings on indictment in the sheriff court, a first diet,

(c) in the case of summary proceedings, an intermediate diet.

(9) A party making a vulnerable witness application shall, at the same time, intimate the application to the other parties to the proceedings.

275B Provisions supplementary to sections 275 and 275A

(1) An application for the purposes of subsection (1) of section 275 of this Act shall not, unless on special cause shown, be considered by the court unless made

(a) in the case of proceedings in the High Court, not less than 7 clear days before the preliminary hearing; or

(b) in any other case,\textsuperscript{144}

not less than 14 clear days before the trial diet.

(2) Where--

(a) such an application is considered; or

(b) any objection under subsection (2) of section 275A of this Act is entertained,

during the course of the trial, the court shall consider that application or, as the case may be, entertain that objection in the absence of the

\textsuperscript{144} Inserted by paragraph 35 (a) of the schedule to the CPA Bill
jury, the complainer, any person cited as a witness and the public.

[FN1]

[FN1] added by Sexual Offences (Procedure and Evidence) (Scotland) Act (2002 ASP.9), s 10 (4)

277 Transcript of police interview sufficient evidence.

(1) Subject to subsection (2) below, for the purposes of any criminal proceedings, a document certified by the person who made it as an accurate transcript made for the prosecutor of the contents of a tape (identified by means of a label) purporting to be a recording of an interview between--

(a) a police officer and an accused person; or

(b) a person commissioned, appointed or authorised under section 6(3) of the Customs and Excise Management Act 1979 and an accused person,

shall be received in evidence and be sufficient evidence of the making of the transcript and of its accuracy.

(2) Subsection (1) above shall not apply to a transcript--

(a) unless a copy of it has been served on the accused not less than 14 days before

(i) in the case of proceedings in the High Court, the preliminary hearing;

(ii) in any other case,145 his trial; or

(b) if the accused, not less than

(i) in the case of proceedings in the High court, seven days before the preliminary hearing;

145 Inserted by paragraph 36(a) of the schedule to the CPA Bill
(ii) in any other case, six days before his trial;\textsuperscript{146}

or (in either case) by such later time before his trial as the court may in special circumstances allow, has served notice on the prosecutor that the accused challenges the making of the transcript or its accuracy.

(3) A copy of the transcript or a notice under subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the transcript or notice, together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

(4) Where subsection (1) above does not apply to a transcript, if the person who made the transcript is called as a witness his evidence shall be sufficient evidence of the making of the transcript and of its accuracy.

\textbf{278 Record of proceedings at examination as evidence.}

(1) Subject to subsection (2) below, the record made, under section 37 of this Act (incorporating any rectification authorised under section 38(1) of this Act), of proceedings at the examination of an accused shall be received in evidence without being sworn to by witnesses, and it shall not be necessary in proceedings on indictment to insert the names of any witnesses to the record in any list of witnesses, either for the prosecution or for the defence.

(2) On the application of either an accused or the prosecutor--

(a) in proceedings on indictment, subject to sections 37(5) and 79(1)\textsuperscript{147} of this Act, the court may determine that the record or part of the record shall not be read to the jury; and

(b) in summary proceedings, subject to the said section 37(5) and to subsection (4) below, the court may refuse to admit the record or some part of the record as evidence.

(3) At the hearing of an application under subsection (2) above, it shall be competent for the prosecutor or the defence to adduce as witnesses

\textsuperscript{146} Substituted by paragraph 36(b) of the schedule to the CPA Bill
\textsuperscript{147} Substituted by paragraph 37 of the schedule to the CPA Bill
the persons who were present during the proceedings mentioned in subsection (1) above and for either party to examine those witnesses upon any matters regarding the said proceedings.

(4) In summary proceedings, except on cause shown, an application under subsection (2)(b) above shall not be heard unless notice of at least 10 clear days has been given to the court and to the other parties.

(5) In subsection (2) above, the "record" comprises--

(a) as regards any trial of an indictment, each record included, under section 68(1) of this Act, in the list of productions; and

(b) as regards a summary trial, each record which it is sought to have received under subsection (1) above.

280 Routine evidence.

(1) For the purposes of any proceedings for an offence under any of the enactments specified in column 1 of Schedule 9 to this Act, a certificate purporting to be signed by a person or persons specified in column 2 thereof, and certifying the matter specified in column 3 thereof shall, subject to subsection (6) below, be sufficient evidence of that matter and of the qualification or authority of that person or those persons.

(2) The Secretary of State may by order--

(a) amend or repeal the entry in Schedule 9 to this Act in respect of any enactment; or

(b) insert in that Schedule an entry in respect of a further enactment.

(3) An order under subsection (2) above may make such transitional, incidental or supplementary provision as the Secretary of State considers necessary or expedient in connection with the coming into force of the order.

(4) For the purposes of any criminal proceedings, a report purporting to be signed by two authorised forensic scientists shall, subject to
subsection (5) below, be sufficient evidence of any fact or conclusion as to fact contained in the report and of the authority of the signatories.

(5) A forensic scientist is authorised for the purposes of subsection (4) above if--

(a) he is authorised for those purposes by the Secretary of State; or

(b) he--

(i) is a constable or is employed by a police authority under section 9 of the Police (Scotland) Act 1967;

(ii) possesses such qualifications and experience as the Secretary of State may for the purposes of that subsection by order prescribe; and

(iii) is authorised for those purposes by the chief constable of the police force maintained for the police area of that authority.

(6) Subsections (1) and (4) above shall not apply to a certificate or, as the case may be, report tendered on behalf of the prosecutor or the accused--

(a) unless a copy has been served on the other party not less than fourteen days before

(i) in the case of proceedings in the High Court, the preliminary hearing;

(ii) in any other case, the trial; or

(b) where the other party, not more than seven days after the date of service of the copy on him under paragraph (a) above or by such later time as the court may in special circumstances allow, has served notice on the first party that [he] [FN1] challenges the matter, qualification or authority mentioned in subsection (1) above or as the case may be the fact, conclusion or authority mentioned in subsection (4) above.

148 Inserted by paragraph 38 of the schedule to the CPA Bill
(7) A copy of a certificate or, as the case may be, report required by subsection (6) above, to be served on the accused or the prosecutor or of a notice required by that subsection or by subsection (1) or (2) of section 281 of this Act to be served on the prosecutor shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served such certificate or notice, together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of such a copy.

(8) Where, following service of a notice under subsection (6)(b) above, evidence is given in relation to a report referred to in subsection (4) above by both of the forensic scientists purporting to have signed the report, the evidence of those forensic scientists shall be sufficient evidence of any fact (or conclusion as to fact) contained in the report.

(9) At any trial of an offence it shall be presumed that the person who appears in answer to the complaint is the person charged by the police with the offence unless the contrary is alleged.

(10) An order made under subsection (2) or (5)(b)(ii) above shall be made by statutory instrument.

(11) No order shall be made under subsection (2) above unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

(12) A statutory instrument containing an order under subsection (5)(b)(ii) above shall be subject to annulment pursuant to a resolution of either House of Parliament.

[FN1] words substituted by Crime and Punishment (Scotland) Act (1997 c.48), Sch 1 Para 21 (32)

281 Routine evidence: autopsy and forensic science reports.

(1) Where in a trial an autopsy report is lodged as a production by the prosecutor it shall be presumed that the body of the person identified in that report is the body of the deceased identified in the indictment or complaint, unless the accused not less than
(i) in the case of proceedings in the High Court, seven days before the preliminary hearing;

(ii) in any other case, six days before the trial;

or (in either case)\textsuperscript{149} by such later time before the trial as the court may in special circumstances allow, gives notice that the contrary is alleged.

(2) At the time of lodging an autopsy or forensic science report as a production the prosecutor may intimate to the accused that it is intended that only one of the pathologists or forensic scientists\textsuperscript{150} purporting to have signed the report shall be called to give evidence in respect thereof; and, where such intimation is given,\textsuperscript{151} the evidence of one of those pathologists or forensic scientists\textsuperscript{152} shall be sufficient evidence of any fact or conclusion as to fact contained in the report and of the qualifications of the signatories, unless the accused, not less than

(i) in the case of proceedings in the High Court, seven days before the preliminary hearing;

(ii) in any other case, six days before the trial;

or (in either case)\textsuperscript{153} by such later time before the trial as the court may in special circumstances allow, serves notice on the prosecutor that he requires the attendance at the trial of the other pathologist or forensic scientist also.

(3) Where, following service of a notice by the accused under subsection (2) above, evidence is given in relation to an autopsy or forensic science report by both of the pathologists or forensic scientists purporting to have signed the report, the evidence of those pathologists or forensic scientists shall be sufficient evidence of any fact (or conclusion as to fact) contained in the report.

\textbf{281A Routines evidence: reports of identification prior to trial}

\textsuperscript{149} Substituted by paragraph 39(a) of the schedule to the CPA Bill

\textsuperscript{150} Repealed by paragraph 39(b) of the schedule to the CPA Bill

\textsuperscript{151} Inserted by paragraph 39(b) of the schedule to the CPA Bill

\textsuperscript{152} Substituted by paragraph 39(b) of the CPA Bill

\textsuperscript{153} Ibid
(1) Where in a trial the prosecutor lodges as a production a report naming –

(a) a person identified in an identification parade or other identification procedure by a witness, and

(b) that witness,

it shall be presumed, subject to subsection (2) below, that the person named in the report as having been identified by the witness is the person of the same name who appears in answer to the indictment or complaint.

(2) That presumption shall not apply –

(a) unless the prosecutor has, not less than 14 clear days before the relevant diet, served on the accused a copy of the report and a notice that he intends to rely on the presumption, or

(b) if the accused –

(i) not more than 7 days after the date of service of the copy of the report, or

(ii) by such later time as the court may in special circumstances allow,

has served notice on the prosecutor that he intends to challenge the facts stated in the report.

(3) In subsection (2)(a) above, “the relevant diet” means –

(a) in the case of proceedings in the High Court, the preliminary hearing;

(b) in any other case, the trial diet.

282 Evidence as to controlled drugs and medicinal products.

(1) For the purposes of any criminal proceedings, evidence given by

---

154 Inserted by paragraph 40(a) of the schedule to the CPA Bill
155 Inserted by paragraph 40(b) of the schedule to the CPA Bill
an authorised forensic scientist, either orally or in a report purporting to be signed by him, that a substance which satisfies either of the conditions specified in subsection (2) below is--

(a) a particular controlled drug or medicinal product; or

(b) a particular product which is listed in the British Pharmacopoeia as containing a particular controlled drug or medicinal product,

shall, subject to subsection (3) below, be sufficient evidence of that fact notwithstanding that no analysis of the substance has been carried out.

(2) Those conditions are--

(a) that the substance is in a sealed container bearing a label identifying the contents of the container; or

(b) that the substance has a characteristic appearance having regard to its size, shape, colour and manufacturer's mark.

(3) A party proposing to rely on subsection (1) above ("the first party") shall, not less than 14 days before the relevant\(^{156}\) diet, serve on the other party ("the second party")--

(a) a notice to that effect; and

(b) where the evidence is contained in a report, a copy of the report,

and if the second party serves on the first party, not more than seven days after the date of service of the notice on him, a notice that he does not accept the evidence as to the identity of the substance, subsection (1) above shall not apply in relation to that evidence.

(3A)\(^{157}\) In subsection (3) above, "the relevant diet" means –

(a) in the case of proceedings in the High Court, the preliminary hearing;

(b) in any other case, the trial diet.

\(^{156}\) Substituted by paragraph 41(a) of the schedule to the CPA Bill

\(^{157}\) Inserted by paragraph 41(b) of the schedule to the CPA Bill
(4) A notice or copy report served in accordance with subsection (3) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the notice or copy together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

(5) In this section--

"controlled drug" has the same meaning as in the Misuse of Drugs Act 1971; and

"medicinal product" has the same meaning as in the Medicines Act 1968.

283 Evidence as to time and place of video surveillance recordings.

(1) For the purposes of any criminal proceedings, a certificate purporting to be signed by a person responsible for the operation of a video surveillance system and certifying--

(a) the location of the camera;

(b) the nature and extent of the person’s responsibility for the system; and

(c) that visual images recorded on a particular video tape are images, recorded by the system, of events which occurred at a place specified in the certificate at a time and date so specified, shall, subject to subsection (2) below, be sufficient evidence of the matters contained in the certificate.

(2) A party proposing to rely on subsection (1) above ("the first party") shall, not less than 14 days before the relevant \(^{158}\) diet, serve on the other party ("the second party") a copy of the certificate and, if the second party serves on the first party, not more than seven days after the date of service of the copy certificate on him, a notice that he does

\(^{158}\) Inserted by paragraph 42(a) of the schedule to the CPA Bill
not accept the evidence contained in the certificate, subsection (1) above shall not apply in relation to that evidence.

(2A) In subsection (2) above, “the relevant diet” means –

(a) in the case of proceedings in the High Court, the preliminary hearing;

(b) in any other case, the trial diet.

(3) A copy certificate or notice served in accordance with subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

(4) In this section, "video surveillance system" means apparatus consisting of a camera mounted in a fixed position and associated equipment for transmitting and recording visual images of events occurring in any place.

284 Evidence in relation to fingerprints.

(1) For the purposes of any criminal proceedings, a certificate purporting to be signed by a person authorised in that behalf by a chief constable and certifying that relevant physical data (within the meaning of section 18(7A) of this Act) was taken from or provided by a person designated in the certificate at a time, date and place specified therein shall, subject to subsection (2) below, be sufficient evidence of the facts contained in the certificate.

(2) A party proposing to rely on subsection (1) above ("the first party") shall, not less than 14 days before the relevant diet, serve on any other party to the proceedings a copy of the certificate, and [ if that other party serves on the first party, not more than seven days after the date of service of the copy on him, a notice that he does not accept the evidence contained in the certificate, subsection (1) above shall not apply in relation to that evidence.] [FN1]

---

159 Inserted by paragraph 42(b) of the schedule to the CPA Bill
160 Substituted by paragraph 43(a) of the schedule to the CPA Bill
(2A) Where the first party does not serve a copy of the certificate on any other party as mentioned in subsection (2) above, he shall not be entitled to rely on subsection (1) above as respects that party.

(2B) In subsection (2) above, “the relevant diet” means –

(a) in the case of proceedings in the High Court, the preliminary hearing;

(b) in any other case, the trial diet.

(3) A copy certificate or notice served in accordance with subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

[FN1] words substituted subject to the savings and transitional provisions specified in SSI 2003/287 art.3 by Criminal Justice (Scotland) Act (2003 ASP.7), Pt 8 s 54

285 Previous convictions: proof, general.

(1) A previous conviction may be proved against any person in any criminal proceedings by the production of such evidence of the conviction as is mentioned in this subsection and subsections (2) to (6) below and by showing that his fingerprints and those of the person convicted are the fingerprints of the same person.

(2) A certificate purporting to be signed by the Secretary of State or by a person authorised by him to sign such a certificate or the Commissioner of Police of the Metropolis, containing particulars relating to a conviction extracted from the criminal records kept in pursuance of a service provided and maintained by the Secretary of State under or by

161 Inserted by paragraph 43(b) of the schedule to the CPA Bill
virtue of section 36 of the Police (Scotland) Act 1967 or by or on behalf of the Commissioner of Police of the Metropolis, and certifying that the copies of the fingerprints contained in the certificate are copies of the fingerprints appearing from the said records to have been taken in pursuance of rules for the time being in force under sections 12 and 39 of the Prisons (Scotland) Act 1989, or regulations for the time being in force under section 16 of the Prison Act 1952, from the person convicted on the occasion of the conviction or on the occasion of his last conviction, shall be sufficient evidence of the conviction or, as the case may be, of his last conviction and of all preceding convictions and that the copies of the fingerprints produced on the certificate are copies of the fingerprints of the person convicted.

(3) Where a person has been apprehended and detained in the custody of the police in connection with any criminal proceedings, a certificate purporting to be signed by the chief constable concerned or a person authorised on his behalf, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.

(4) A certificate purporting to be signed by or on behalf of the governor of a prison or of a remand centre in which any person has been detained in connection with any criminal proceedings, certifying that the fingerprints produced thereon were taken from him while he was so detained, shall be sufficient evidence in those proceedings that the fingerprints produced on the certificate are the fingerprints of that person.

(5) A certificate purporting to be signed by the Secretary of State or by a person authorised by him to sign such a certificate, and certifying that the fingerprints, copies of which are certified as mentioned in subsection (2) above by [the Secretary of State or by a person authorised by him to sign such a certificate or by or on behalf of] [FN1] or the Commissioner of Police of the Metropolis to be copies of the fingerprints of a person previously convicted and the fingerprints certified by or on behalf of a chief constable or a governor as mentioned in subsection (3) or (4) above, or otherwise shown, to be the fingerprints of the person against whom the previous conviction is sought to be proved, are the fingerprints of the same person, shall be sufficient evidence of the matter so certified.

(6) An extract conviction of any crime committed in any part of the
United Kingdom bearing to have been issued by an officer whose duties include the issue of extract convictions shall be received in evidence without being sworn to by witnesses.

(7) It shall be competent to prove a previous conviction or any fact relevant to the admissibility of the conviction by witnesses, although the name of any such witness is not included in the list served on the accused; and the accused shall be entitled to examine witnesses with regard to such conviction or fact.

(8) An official of any prison in which the accused has been detained on such conviction shall be a competent and sufficient witness to prove its application to the accused, although he may not have been present in court at the trial to which such conviction relates.

(9) The method of proving a previous conviction authorised by this section shall be in addition to any other method of proving the conviction.

(10) In this section "fingerprint" includes any record of the skin of a person’s finger created by a device approved by the Secretary of State under section 18(7B) of this Act.

[FN1] words substituted by Crime and Punishment (Scotland) Act (1997 c.48), Pt VI s 59 (3) (b)

286 Previous convictions: proof in support of substantive charge.

(1) Without prejudice to section 285(6) to (9) or, as the case may be, section 166 of this Act, where proof of a previous conviction is competent in support of a substantive charge, any such conviction or an extract of it shall, if--

(a) it purports to relate to the accused and to be signed by the clerk of court having custody of the record containing the conviction; and

(b) a copy of it has been served on the accused not less than 14
be sufficient evidence of the application of the conviction to the accused unless, within seven days of the date of service of the copy on him, he serves notice on the prosecutor that he denies that it applies to him.

(1A) In subsection (1)(b) above, “the relevant diet” means –

(a) in the case of proceedings in the High Court, the preliminary hearing;

(b) in any other case, the trial diet.

(2) A copy of a conviction or extract conviction served under subsection (1) above shall be served on the accused in such manner as may be prescribed by Act of Adjournal, and a written execution purporting to be signed by the person who served the copy together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of the copy.

[ ]

(3) The reference in subsection (1)(a) above to "the clerk of court having custody of the record containing the conviction" includes, in relation to a previous conviction by a court in another member State of the European Union, a reference to any officer of that court or of that State having such custody.

] [FN1]

[FN1] added by Criminal Justice (Scotland) Act (2003 ASP.7), Pt 8 s 57 (3)

288 Intimation of proceedings in High Court to Lord Advocate.

(1) In any proceeding in the High Court (other than a proceeding to which the Lord Advocate or a procurator fiscal is a party) it shall be competent for the court to order intimation of such proceeding to the

162 Substituted by paragraph 44(a) of the schedule to the CPA Bill
163 Inserted by paragraph 44(b) of the schedule to the CPA Bill
On intimation being made to the Lord Advocate under subsection (1) above, the Lord Advocate shall be entitled to appear and be heard in such proceeding.

288A Rights of appeal for Advocate General: devolution issues

(1) This section applies where--

(a) a person is acquitted or convicted of a charge (whether on indictment or in summary proceedings), and

(b) the Advocate General for Scotland was a party to the proceedings in pursuance of paragraph 6 of Schedule 6 to the Scotland Act 1998 (devolution issues).

(2) The Advocate General for Scotland may refer any devolution issue which has arisen in the proceedings to the High Court for their opinion; and the Clerk of Justiciary shall send to the person acquitted or convicted and to any solicitor who acted for that person at the trial, a copy of the reference and intimation of the date fixed by the Court for a hearing.

(3) The person may, not later than seven days before the date so fixed, intimate in writing to the Clerk of Justiciary and to the Advocate General for Scotland either--

(a) that he elects to appear personally at the hearing, or

(b) that he elects to be represented by counsel at the hearing, but, except by leave of the Court on cause shown, and without prejudice to his right to attend, he shall not appear or be represented at the hearing other than by and in conformity with an election under this subsection.

(4) Where there is no intimation under subsection (3)(b), the High Court shall appoint counsel to act at the hearing as amicus curiae.

(5) The costs of representation elected under subsection (3)(b) or of an appointment under subsection (4) shall, after being taxed by the
Auditor of the Court of Session, be paid by the Advocate General for Scotland out of money provided by Parliament.

(6) The opinion on the point referred under subsection (2) shall not affect the acquittal or (as the case may be) conviction in the trial.

[FN1]

[FN1] and the section-group title immediately preceding them by Scotland Act (1998 c.46), Sch 8 Para 32 (2)

288B Appeals to Judicial Committee of the Privy Council

(1) This section applies where the Judicial Committee of the Privy Council determines an appeal under paragraph 13(a) of Schedule 6 to the Scotland Act 1998 against a determination of a devolution issue by the High Court in the ordinary course of proceedings.

(2) The determination of the appeal shall not affect any earlier acquittal or earlier quashing of any conviction in the proceedings.

(3) Subject to subsection (2) above, the High Court shall have the same powers in relation to the proceedings when remitted to it by the Judicial Committee as it would have if it were considering the proceedings otherwise than as a trial court.

[FN1]

[FN1] and the section-group title immediately preceding them by Scotland Act (1998 c.46), Sch 8 Para 32 (2)

288C Prohibition of personal conduct of defence in cases of certain sexual offences

(1) An accused charged with a sexual offence to which this section applies is prohibited from conducting-

(a) his case in person at or for the purposes of a preliminary hearing; and
(b)\textsuperscript{164} his defence in person at the trial.

(2) This section applies to the following sexual offences--

(a) rape;

(b) sodomy;

(c) clandestine injury to women;

(d) abduction of a woman or girl with intent to rape;

(e) assault with intent to rape;

(f) indecent assault;

(g) indecent behaviour (including any lewd, indecent or libidinous practice or behaviour);

(h) an offence under section 106(1)(a) or 107 of the Mental Health (Scotland) Act 1984 (c.36) (unlawful sexual intercourse with mentally handicapped female or with patient);

   (i) an offence under any of the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)--

   (i) sections 1 to 3 (incest and related offences);

   (ii) section 5 (unlawful sexual intercourse with girl under 13 or 16);

   (iii) section 6 (indecent behaviour toward girl between 12 and 16);

   (iv) section 7(2) and (3) (procuring by threats etc.);

   (v) section 8 (abduction and unlawful detention);

   (vi) section 10 (seduction, prostitution, etc. of girl under 16);

\textsuperscript{164} Inserted by section 4(1) of the CPA Bill
(vii) section 13(5)(b) or (c) (homosexual offences);

(j) attempting to commit any of the offences set out in paragraphs (a) to (i) above.

(3) This section applies also to an offence in respect of which a court having jurisdiction to try that offence has made an order under subsection (4) below.

(4) Where, in the case of any offence, other than one set out in subsection (2) above, that court is satisfied that there appears to be such a substantial sexual element in the alleged commission of the offence that it ought to be treated, for the purposes of this section, in the same way as an offence set out in that subsection, the court shall, either on the application of the prosecutor or ex proprio motu, make an order under this subsection.

(5) The making of such an order does not affect the validity of anything which--

(a) was done in relation to the alleged offence to which the order relates; and

(b) was done before the order was made.

(6) The Scottish Ministers may by order made by statutory instrument vary the sexual offences to which this section applies by virtue of subsection (2) above by modifying that subsection.

(7) No such statutory instrument shall be made, however, unless a draft of it has been laid before and approved by resolution of the Scottish Parliament.

] [FN1]

[FN1] added by Sexual Offences (Procedure and Evidence) (Scotland) Act (2002 ASP.9), s 1

288D Appointment of solicitor by court in such cases
(1) This section applies in the case of proceedings in respect of a sexual offence to which section 288C above applies.

(2) Where the court ascertains that--

(a) the accused has not engaged a solicitor for the purposes of

(i) the conduct of his case at or for the purposes of a preliminary hearing; or

(ii) his defence at the trial; or

(b) having engaged a solicitor for those purposes, the accused has dismissed him; or

(c) the accused’s solicitor has withdrawn,

then, where the court is not satisfied that the accused intends to engage a solicitor or, as the case may be, another solicitor for those purposes, it shall, at its own hand, appoint a solicitor for those purposes.

(3) A solicitor so appointed is not susceptible to dismissal by the accused or obliged to comply with any instruction by the accused to dismiss counsel.

(4) Subject to subsection (3) above, it is the duty of a solicitor so appointed--

(a) to ascertain and act upon the instructions of the accused; and

(b) where the accused gives no instructions or inadequate or perverse instructions, to act in the best interests of the accused.

(5) 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.

(6) Where the court is satisfied that a solicitor so appointed is no

165 Inserted by section 4(2) of the CPA Bill
longer able to act upon the instructions, or in the best interests, of the accused, the court may relieve that solicitor of his appointment and appoint another solicitor for the purposes of the accused’s defence at the trial.

(7) The references in subsections (3) to (6) above to "a solicitor so appointed" include references to a solicitor appointed under subsection (6) above.

(8) In this section "counsel" includes a solicitor who has right of audience in the High Court of Justiciary under section 25A (rights of audience in various courts including the High Court of Justiciary) of the Solicitors (Scotland) Act 1980 (c.46).

[FN1] added by Sexual Offences (Procedure and Evidence) (Scotland) Act (2002 ASP.9), s 2 (1)

288E Power to prohibit personal conduct of defence in cases involving vulnerable witnesses

(1) This section applies in the case of proceedings in respect of any offence, other than a sexual offence to which section 288C of this Act applies, where a vulnerable witness is to give evidence at, or for the purposes of, the trial.

(2) If satisfied that it is in the interests of the vulnerable witness to do so, the court may –

(a) on the application of the prosecutor, or

(b) of its own motion,

make an order prohibiting the accused from conducting his defence in person at the trial.

(3) However, the court shall not make an order under subsection (2) above if it considers that –

(a) the order would give rise to a significant risk of prejudice to the fairness of the trial or otherwise to the interests of justice, and
(b) that risk significantly outweighs any risk of prejudice to the interests of the vulnerable witness if the order is not made.

(4) The court may make an order under subsection (2) above after, as well as before, proceedings at the trial have commenced.

(4A) Where, in any proceedings in the High Court, an order is made under subsection (2) above before or at the preliminary hearing, the accused is also prohibited from conducting or, as the case may be, continuing to conduct, his case in person at or for the purposes of the preliminary hearing.

(5) Section 288D of this Act applies in the case of proceedings in respect of which an order is made under this section as it applies in the case of proceedings in respect of a sexual offence to which section 288C of this Act applies.

(6) Where an order is made under subsection (2) above before the trial diet in any case, the relevant section of this Act applies in relation to the case as it applies in the case of a sexual offence to which section 288C of this Act applies.

(7) The relevant section for the purposes of subsection (6) is –

(a) where the case is to be tried under solemn procedure in the sheriff court, section 71A,

(b) where the case is to be tried in the High Court, section 72A, or

(c) where the case is to be tried under summary procedure in the sheriff court, section 148A.

307 Interpretation.

(1) In this Act, unless the context otherwise requires--

"appropriate court" means a court named as such in pursuance of section 228(4) of this Act or of Schedule 6 to this Act in a probation

---

166 Inserted by section 4(3) of the CPA Bill.
order or in an amendment of any such order made on a change of residence of a probationer;

"bail" means release of an accused or an appellant on conditions, or conditions imposed on bail, as the context requires;

"chartered psychologist" means a person for the time being listed in the British Psychological Society’s Register of Chartered Psychologists;

"child", except in section 46(3) of and Schedule 1 to this Act, has the meaning assigned to that expression for the purposes of Chapters 2 and 3 of Part II of the Children (Scotland) Act 1995;

"children’s hearing" has the meaning assigned to it in Part II of the Children (Scotland) Act 1995;

"Clerk of Justiciary" shall include assistant clerk of justiciary and shall extend and apply to any person duly authorised to execute the duties of Clerk of Justiciary or assistant clerk of justiciary;

"the Commission" has the meaning given by section 194A(1) of this Act;

"commit for trial" means commit until liberation in due course of law;

"community service order" means an order made under section 238 of this Act;

"complaint" includes a copy of the complaint laid before the court;

"constable" has the same meaning as in the Police (Scotland) Act 1967;

"court of summary jurisdiction" means a court of summary criminal jurisdiction;

"court of summary criminal jurisdiction" includes the sheriff court and district court;

"crime" means any crime or offence at common law or under any Act of Parliament whether passed before or after this Act, and
includes an attempt to commit any crime or offence;

"devolution issue" has the same meaning as in Schedule 6 to the Scotland Act 1998;

"diet" includes any continuation of a diet;

"drug treatment and testing order" has the meaning assigned to it in section 234B(2) of this Act;

"enactment" includes an enactment contained in a local Act and any order, regulation or other instrument having effect by virtue of an Act;

"examination of facts" means an examination of facts held under section 55 of this Act;

"existing" means existing immediately before the commencement of this Act;

"extract conviction" and "extract of previous conviction" include certified copy conviction, certificate of conviction, and any other document lawfully issued from any court of justice of the United Kingdom as evidence of a conviction and also include a conviction extracted and issued as mentioned in section 286A(3)(a) and (b) of this Act;

"fine" includes--

(a) any pecuniary penalty, (but not a pecuniary forfeiture or pecuniary compensation); and

(b) an instalment of a fine;

"governor" means, in relation to a contracted out prison within the meaning of section 106(4) of the Criminal Justice and Public Order Act 1994, the director of the prison;

"guardian", in relation to a child, includes any person who, in the opinion of the court having cognizance of any case in relation to the child or in which the child is concerned, has for the time being the charge of or control over the child;
"guardianship order" has the meaning assigned to it by section 58 of this Act;

"High Court" and "Court of Justiciary" shall mean "High Court of Justiciary" and shall include any court held by the Lords Commissioners of Justiciary, or any of them;

"hospital" means --

(a) any hospital vested in the Secretary of State under the National Health Service (Scotland) Act 1978;

(aa) any hospital managed by a National Health Service Trust established under section 12A of that Act;

(b) any private hospital as defined in section 12(2) of the Mental Health (Scotland) Act 1984; and

(c) any State hospital;

"hospital direction" has the meaning assigned to it by section 59A(1) of this Act;

"hospital order" has the meaning assigned to it by section 58 of this Act;

"impose detention" or "impose imprisonment" means pass a sentence of detention or imprisonment, as the case may be, or make an order for committal in default of payment of any sum of money or for contempt of court;

"indictment" includes any indictment whether in the sheriff court or the High Court framed in the form set out an Act of Adjournal or as nearly as may be in such form;

"judge", in relation to solemn procedure, means a judge of a court of solemn criminal jurisdiction and, in relation to summary procedure, means any sheriff or any judge of a district court;

"justice" includes the sheriff and any stipendiary magistrate or justice of the peace;

"justice of the peace" means any of Her Majesty's justices of the
peace for any commission area in Scotland within such commission area;

"legalised police cells" has the like meaning as in the Prisons (Scotland) Act 1989;

"local authority" has the meaning assigned to it by section 1(2) of the Social Work (Scotland) Act 1968;

"local probation board" means a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000.

"Lord Commissioner of Justiciary" includes Lord Justice General and Lord Justice Clerk;

"offence" means any act, attempt or omission punishable by law;

"officer of law" includes, in relation to the service and execution of any warrant, citation, petition, indictment, complaint, list of witnesses, order, notice, or other proceeding or document--

(a) any macer, messenger-at-arms, sheriff officer or other person having authority to execute a warrant of the court;

(b) any constable;

(ba) any person commissioned by the Commissioners of Customs and Excise;

(c) any person who is employed or appointed under section 9 of the Police (Scotland) Act 1967 for the assistance of the constables of a police force and who either is authorised by the chief constable of that police force in relation to service and execution as mentioned above or is a police custody and security officer;

(d) where the person upon whom service or execution is effected is in prison at the time of service on him, any prison officer; and

(e) any person or class of persons authorised in that regard for the time being by the Lord Advocate or by the Secretary of State;

"order" means any order, byelaw, rule or regulation having
statutory authority;

"patient" means a person suffering or appearing to be suffering from mental disorder;

"place of safety", in relation to a person not being a child, means any police station, prison or remand centre, or any hospital the board of management of which are willing temporarily to receive him, and in relation to a child means a place of safety within the meaning of Part II of the Children (Scotland) Act 1995;

"postal operator" has the meaning assigned to it by section 125(1) of the Postal Services Act 2000.

“preliminary hearing” shall be construed in accordance with section 66(6)(b) of this Act;

“preliminary issue” shall be construed in accordance with section 79(2)(b) of this Act;

“preliminary plea” shall be construed in accordance with section 79(2)(a) of this Act;\(^{167}\)

"the prescribed sum" has the meaning given by section 225(8) of this Act;

"prison" does not include a naval, military or air force prison;

"prison officer" and "officer of a prison" means in relation to a contracted out prison within the meaning of section 106(4) of the Criminal Justice and Public Order Act 1994, a prisoner custody officer within the meaning of section 114(1) of that Act;

"probationer" means a person who is under supervision by virtue of a probation order or who was under such supervision at the time of the commission of any relevant offence or failure to comply with such order;

"probation order" has the meaning assigned to it by section 228 of this Act;

\(^{167}\) Inserted by paragraph 45 of the schedule to the “CPA Bill”
"probation period" means the period for which a probationer is placed under supervision by a probation order;

"procurator fiscal" means the procurator fiscal for a sheriff court district, and includes assistant procurator fiscal and procurator fiscal depute and any person duly authorised to execute the duties of the procurator fiscal;

"prosecutor"--

(a) for the purposes of proceedings other than summary proceedings, includes Crown Counsel, procurator fiscal, any other person prosecuting in the public interest and any private prosecutor; and

(b) for the purposes of summary proceedings, includes procurator fiscal, and any other person prosecuting in the public interest and complainer and any person duly authorised to represent or act for any public prosecutor;

"remand" means an order adjourning the proceedings or continuing the case and giving direction as to detention in custody or liberation during the period of adjournment or continuation and references to remanding a person or remanding in custody or on bail shall be construed accordingly;

"remand centre" has the like meaning as in the Prisons (Scotland) Act 1989;

"residential establishment" means an establishment within the meaning of that expression for the purposes of the Social Work (Scotland) Act 1968 or, as the case may be, of Part II of the Children (Scotland) Act 1995;

"responsible medical officer" has the meaning assigned to it by section 59 of the Mental Health (Scotland) Act 1984;

"restriction order" has the meaning assigned to it by section 59 of this Act;

"sentence", whether of detention or of imprisonment, means a sentence passed in respect of a crime or offence and does not include an order for committal in default of payment of any sum of
money or for contempt of court;

"sheriff clerk" includes sheriff clerk depute, and extends and applies to any person duly authorised to execute the duties of sheriff clerk;

"sheriff court district" extends to the limits within which the sheriff has jurisdiction in criminal matters whether by statute or at common law;

"State hospital" has the meaning assigned to it in Part VIII of the Mental Health (Scotland) Act 1984;

"statute" means any Act of Parliament, public general, local, or private, and any Provisional Order confirmed by Act of Parliament;

"supervision requirement" has the meaning assigned to it in Part II of the Children (Scotland) Act 1995;

"training school order" has the same meaning as in the Social Work (Scotland) Act 1968;

"witness" includes haver;

"young offenders institution" has the like meaning as in the Prisons (Scotland) Act 1989.

(2) References in this Act to a court do not include references to a court- martial; and nothing in this Act shall be construed as affecting the punishment which may be awarded by a court-martial under the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955 for a civil offence within the meaning of those Acts.

(3) For the purposes of this Act, except section 228(6), where a probation order has been made on appeal, the order shall be deemed to have been made by the court from which the appeal was brought.

(4) Any reference in this Act to a previous sentence of imprisonment shall be construed as including a reference to a previous sentence of penal servitude; any such reference to a previous sentence of Borstal training shall be construed as including a reference to a previous sentence of detention in a Borstal institution.
(5) Any reference in this Act to a previous conviction or sentence shall be construed as a reference to a previous conviction by a court in any part of the United Kingdom and to a previous sentence passed by any such court except—[FN1]

[ (a) where the context otherwise requires; and

(b) in sections 69(2) and 166, where such a reference includes a reference to a previous conviction, by a court in another member State of the European Union, of an act punishable under the law in force in that State (an act so punishable being taken to constitute an offence under that law however described in that law). ][FN2]

(6) References in this Act to an offence punishable with imprisonment shall be construed, in relation to any offender, without regard to any prohibition or restriction imposed by or under any enactment, including this Act, upon the imprisonment of offenders of his age.

(7) Without prejudice to section 46 of this Act, where the age of any person at any time is material for the purposes of any provision of this Act regulating the powers of a court, his age at the material time shall be deemed to be or to have been that which appears to the court, after considering any available evidence, to be or to have been his age at that time.

(8) References in this Act to findings of guilty and findings that an offence has been committed shall be construed as including references to pleas of guilty and admissions that an offence has been committed.

[FN1] added by Criminal Justice (Scotland) Act (2003 ASP.7), Pt 8 s 57 (5) (b)

[FN2] added by Criminal Justice (Scotland) Act (2003 ASP.7), Pt 8 s 57 (5) (b)
1. Lord Bonomy’s report highlighted a number of problems in relation to the management of High Court business as well as a perception that the system focused on the convenience of lawyers, not the interests of justice or the rights of victims. His proposals sought to address the root cause of the current problems, and to deliver proposals that would achieve a change in culture in our High Court, and a system which would, above all, improve arrangements for victims, witnesses and next-of-kin. While the Bill will put in place some procedural mechanisms that seek to improve efficiency by ensuring greater judicial management of cases, it should be borne in mind that the Bill forms part of a larger package of reforms, and an assessment of how it will work in practice must be seen in the context of that bigger picture.

2. COPFS is already in the process of undergoing a significant programme of change and the improvement of our treatment of the most serious cases is a fundamental part of this work. We consider that the work we are doing in this area has already made us more open in our work with the defence, and the changes made to facilitate the implementation of Lord Bonomy’s proposals will build on this.

3. COPFS is committed to modernisation of its approach to serious crime, and we have for some time been engaged in our own process to improve our work in the High Court. This has included strengthening the High Court Unit in Glasgow and bringing it and the equivalent Unit at Edinburgh High Court under direct control of a strengthened High Court Unit in Crown Office. We have piloted new ways of team-working in the investigation (precognition) of serious cases and we have prepared new detailed guidance and templates for the production of precognition. We have modernised the system for appointment of advocate Deputes, extending the pool of eligibility to career prosecutors and creating a new office of Senior Advocate Depute and we have significantly enhanced the team of Advocate Deputes. We have reorganised their work to allow for pre-trial preparation time and greater contact with the defence to resolve matters, so far as possible, before trial sittings. We will be building on all of this work to develop further a team based approach to the investigation and preparation of the most serious cases.

Preliminary Hearing

4. At the core of the Bill’s provisions is the preliminary hearing. This hearing will be the instrument by which the court will be able effectively to manage and direct High Court business; in order for the Bill to deliver its goal,
it is vital that the preliminary hearing system works. We recognise that the procedural changes in the Bill and greater judicial proactivity will not be sufficient on their own to ensure the preliminary hearing system is successful. The key to this is thorough preparation at an early stage by, and communication between, Crown and defence.

5. The success of the preliminary hearing will be contingent on an effective managed meeting or discussion between the Crown and defence. Parties must come to court thoroughly prepared and with a clear idea of the evidence in the case, and the issues in dispute. Without this, the Court will be unable to assess whether they are ready for trial and the hearing will be a waste of time. In order for there to be an effective managed meeting both parties must know and have considered the evidence in the case and for this to happen we recognise there is a need for early disclosure of information to the defence.

Disclosure of information

6. Lord Bonomy recognised in his report how important disclosure was for the operation of the system he proposed. He made the following recommendations:

- 2 (b) The Crown should routinely issue a provisional list of witnesses to the defence shortly after completion of the initiating petition procedure in the Sheriff Court.
- 2 (c) The Crown should also provide to the defence information about material developments in the investigation of the case as they occur, and let them have access to all relevant evidence as it becomes available.
- 2 (d) Along with the courtesy copy of the indictment the defence solicitor should receive a copy of all documentary productions which he has not already received.
- 2 (e) Any other evidence, coming into the hands of the Crown subsequently, should be intimated to the defence immediately.

COPFS accept the need for improved disclosure to the defence. We have already started work within COPFS and with the Association of Chief Police Officers in Scotland to set in place the structures that will enable us to provide reliable information and evidence to the defence at the earliest possible stage.

7. The Crown has an existing duty to disclose information that points to the exculpation of the accused, or will undermine the prosecution case. In the High Court the Crown also provides the defence with copies of documentary productions considered material to its preparation, and it is considered good practice to provide any such information at the earliest opportunity, although it is recognised that early provision may be difficult to achieve in a complex case where investigation is still proceeding. We are committed to putting arrangements in place which will support the earliest provision of material which is consistent with the Crown’s duty of investigation.
8. We will publish a practice note formalising the arrangements for the provision of information to the defence. This note will address the recommendations of Lord Bonomy and will cover:

- procedures for issuing a provisional list of witnesses. It is proposed that as full as possible a list will be provided within 14 days of full committal or liberation on bail. Details of relevant additional witnesses will be intimated when known (where and when possible copy witness statements taken by the police will be provided and this will supersede the simple provision of a list).
- arrangements for complying with the duty to disclose material information that comes to light during the course of the investigation. While early disclosure is, of course important, it should be remembered that the Crown’s principal focus in the early stages is the investigation of the case, and some developments may require further investigation before they can be disclosed.
- procedures in relation to the early provision of copy witness statements taken by the police.
- procedures in relation to early provision of copies of significant documents When the indictment is served, there will be formal
- intimation at the time of service of the indictment of the arrangements for provision by the Crown of copies of any documentary productions not previously copied to the defence (so far as reasonably copiable) and for arranging access for inspection of other evidence

Witness statements

9. We accept the principle that there should generally be early and full disclosure of Crown witness statements taken by the police. In this regard, we are intending to go further than Lord Bonomy’s recommendation which was only that consideration should be given to the circumstances in which statements might be disclosed. Statements taken by police officers have not generally been disclosed in the past, because of the defence right to precognosce witnesses confidentially. Many statements have not been taken to a standard which could properly be referred to in court and statements may, at present, include confidential or sensitive information, or information about third parties, unrelated to the case, because they are prepared only for the information of the Crown. Statements may also refer to offences or charges that are not ultimately libelled on the indictment, and so this evidence will not form part of the case. It may also be important in the case of vulnerable witnesses, such as children, that the Crown has an opportunity to consider the content of the statement in order that inappropriate or irrelevant information is not passed onto the defence. We have been working with ACPOS to address the necessary changes in procedures, for the police and COPFS, which will facilitate early disclosure of statements.
10. We recognise the importance of the early provision of information for the proper investigation of the accused’s defence. In particular, in order for the system of managed meetings and preliminary diets to work successfully, disclosure must be improved. We are well on our way to ensuring that the appropriate systems are in place to provide the necessary improvements.

Wider improvements to High Court work

11. COPFS have already completed work aimed at improving our treatment of High Court cases. Our strategies are to:
   - Improve the quality and timeliness of precognitions
   - Ensure early involvement of Senior Crown Counsel in complex-serious cases
   - Providing significant preparation time for Crown Counsel.
   - Improve the marking arrangements (whereby decisions are taken as to the final form of charges to appear on Indictment) operated by Crown Counsel and COPFS staff.
   - Ensure good management of High Court Sittings and support to Crown Counsel at court.
   - Improve the management of cases post-Indictment, to ensure instructed work is completed and evaluated.
   - Provide significant preparation time for Crown Counsel, including to engage proactively with the defence (negotiate pleas etc) and to take account of further investigation or analysis.
   - Improve certainty of trial commencing, through proactive engagement with defence in week prior to allocated Sitting

12. We consider that these established strategies are entirely consistent with Lord Bonomy’s recommendations. In particular, an illustration of the way in which our present initiatives tie in with the proposals in the Bill is our strategy of allowing Advocate Deputies greater time to prepare for trial. This is directly relevant to the concept of parties preparing for, and taking part in, a managed meeting. We have already made a number of achievements in relation to our High Court work:

   - New arrangements for appointment and role of Advocate Deputies introduced 1 January 2003.
   - Since 1 January, appointments completed of 2 Senior Advocate Deputies, 8 Advocate Deputies, 4 ad hoc Advocate Deputies from COPFS, and 16 further ad hoc Advocate Deputies from Faculty of Advocates.
   - Revised guidance and instructions for preparing precognitions, including agreeing a new format better suited to use by Crown Counsel in court.
   - Revised guidance prepared on marking High Court cases; plus revised criteria for sensitive, complex and serious cases.
   - Additional resources devoted to Crown Office High Court Unit for indictment of cases; pilot co-location of Indicter with High Court Unit in Saltmarket.
- Revised management of Sitting Management function: Glasgow High Court Unit (now ‘High Court West’) under direct control of Crown Office on 9 December 02; Edinburgh High Court Unit on 14 April 03; additional resources devoted to improve Sitting Management.
- Revising arrangements for post-Indictment and post-adjournment case management.

**Implementation**

13. Ensuring that the new system works, from day one, will be a challenge. We have been working closely with our criminal justice partners to put the appropriate procedures in place to allow the new system to function. As outlined above, this work involves not only the new mechanisms set out in the Bill, but also the wider Bonomy proposals that are necessary to make the Bill work. The following work is already underway:

- We are working with criminal justice partners to establish a workable model for how court programming will work. We recognise the importance of this issue, and want to get it right.
- We are working with our colleagues at the Justice Department to consider what issues should be dealt with at the managed meeting, how this will be reported to the court and how best to take account of the interests of our colleagues in the defence in such discussions.
- We have established a COPFS working group dedicated to our improvement of solemn business, and taking the Bonomy vision forward. This group will supervise work on communication with victims and witnesses and disclosure to the defence. It will also deal with the practicalities involved in ensuring cases are prepared in advance to ensure that Advocate Deputes are prepared to conduct the managed meeting, and thereafter the preliminary hearing.

**Conclusion**

14. We do not see the Bill’s provisions in isolation. We consider that they form part of a package that seeks to deliver a change of culture in the treatment of our most serious cases in the High Court, to improve efficiency and improve conditions for victims, witnesses and next-of-kin. We have already acknowledged the need for change and modernisation in this area, and are working on delivering this both through the development of internal systems and working with other partners. The success of the Bill’s provisions will of course rely on all of those working in the criminal justice system to engage fully with the new arrangements.
The Howard League for Penal Reform in Scotland

From the Secretary and Hon Director: Robin Macleod
2 Barnton Gardens, Edinburgh EH4 6AF
Tel 0131 312 6837
robin.macleod@howardleaguescotland.org.uk

Ms Cathy Jamieson MSP
Minister for Justice
St Andrew’s House
Regent Road
Edinburgh EH1 3DG

22nd July 2003

CATHY JAMIESON
2 2 JUL 2003
MIN FOR JUSTICE

Dear Minister,

The League considered the Executive’s response to Lord Bonomy’s report at a recent meeting of its Executive Committee and asked me to write to you to express its concerns over certain of the proposals. The League welcomes any measure likely to improve the quality of justice delivered by the courts in Scotland and many of the changes proposed by Lord Bonomy and adopted by the Executive appear helpful in that regard. The League is, however, disturbed at the proposal to increase Sheriff’s sentencing powers and to depart from the 110 day rule.

As regards Sheriffs’ sentencing powers the League does not believe that it is appropriate to implement now a measure introduced by a Conservative administration at Westminster over 6 years ago. Such an important change should be examined afresh by the Scottish Parliament and the implications fully considered.

The League’s principal concern is that the increases would not simply allow a redistribution of work between the courts but would lead to longer sentences than have previously been imposed for offences coming before the High Court and the Sheriff court on indictment leading to a further increase in the prison population. The Executive appears to have no policy to either contain or reduce the prison population and the League finds it worrying that it is prepared to contemplate changes of this kind with scant regard to the effects on levels of imprisonment. If the Executive nonetheless proceeds with such a change the League asks that any increase be restricted to 4 rather than 5 years and that, prior to implementation, the Executive ensures that the courts are in possession of comprehensive guidance on the exercise of their powers of imprisonment. It would clearly be unsatisfactory to allow guidance on the use of extended powers to imprison to be left to the decisions of the High Court on appeal. The High Court has failed to make use of the power to provide sentencing guidelines and is reluctant on appeal to interfere with sentencing decisions of the inferior courts unless they are quite clearly unreasonable. The High Court appears unable without the intervention of the Executive to deliver the guidance needed to ensure just and rational sentencing.

The League proposes that the planned sentencing Commission be asked to bring forward proposals to deal with the need for better guidance to sentencers and that any increase in Sheriffs’ powers of imprisonment should await the outcome of such consideration by the Commission.
The proposed departure from the 110 day rule is also a matter of concern to the League. It is a not change requested by the Crown who appeared to be prepared to continue to work within the 110 day limit. The League recognises the difficulties which have led to the rule being relaxed in individual cases and welcomes the various measures designed to reduce delays and minimise extensions. For this reason it considers that the other proposals should be allowed time to work rather than moving to a new longer limit. To depart from the present rule seems to be to admit defeat in advance and surrender a measure that has been the envy of other jurisdictions.

At the same time the League would ask you to consider remedying an anomaly in the present operation of the rule. Under existing case law the rule’s operation is suspended if the accused is recalled to custody to continue serving a prior sentence. The practical effect is that the Crown give a very much lower priority to dealing with such a case. The rationale might be summed up as being that “he would have been in prison anyway so there is no rush to bring him to trial”. Such reasoning is flawed and ignores the fact that recall under the prior sentence may well have been a consequence of being accused of a further offence. Consideration by the Parole Board for release from the recalled sentence is almost bound to be influenced by the outcome of any trial. It appears to us therefore that rather than being of lower priority it is doubly important that the fresh indictment be determined at a trial within the time limit.

The League looks forward to hearing your response in due course.

Yours sincerely

Robin MacEwen
Remit:

1. The remit of the Finance Committee is to consider and report on-

   (a) any report or other document laid before the Parliament by members of
       the Scottish Executive containing proposals for, or budgets of, public
       expenditure or proposals for the making of a tax-varying resolution, taking
       into account any report or recommendations concerning such documents
       made to them by any other committee with power to consider such
       documents or any part of them;

   (b) any report made by a committee setting out proposals concerning public
       expenditure;

   (c) Budget Bills; and

   (d) any other matter relating to or affecting the expenditure of the Scottish
       Administration or other expenditure payable out of the Scottish
       Consolidated Fund.

2. The Committee may also consider and, where it sees fit, report to the
   Parliament on the timetable for the Stages of Budget Bills and on the handling of
   financial business.

3. In these Rules, "public expenditure" means expenditure of the Scottish
   Administration, other expenditure payable out of the Scottish Consolidated Fund
   and any other expenditure met out of taxes, charges and other public revenue.

   (Standing Orders of the Scottish Parliament, Rule 6.6)

Membership:

Des McNulty (Convener)
Wendy Alexander
Ted Brocklebank
Fergus Ewing (Deputy Convener)
Kate Maclean
Jim Mather
Dr Elaine Murray
Jeremy Purvis
John Swinburne

Committee Clerking Team:

Clerk to the Committee
Susan Duffy

Senior Assistant Clerk
Jane Sutherland

Assistant Clerk
Emma Berry
Report on the Financial Memorandum of the Criminal Procedure (Amendment) (Scotland) Bill

The Committee reports to the Justice 1 Committee as follows—

Background

1. Under Standing Orders, Rule 9.6, the lead committee in relation to a Bill must consider and report on the Bill’s Financial Memorandum at Stage 1. In doing so, it is obliged to take account of any views submitted to it by the Finance Committee.

2. This report sets out the views of the Finance Committee in relation to the Financial Memorandum published to accompany the Criminal Procedure (Amendment) (Scotland) Bill, for which the Justice 1 Committee has been designated by the Parliamentary Bureau as the lead Committee at Stage 1.

Introduction

3. At its meeting on 4 November 2003, the Finance Committee took evidence on the Financial Memorandum from—

   John Ewing, Chief Executive and John Anderson, Principal Clerk of the Session and Justiciary, Scottish Court Service.


   Douglas Haggarty, Head of Legal Services (Technical), Scottish Legal Aid Board.

4. At a separate session on 11 November 2003, the Committee took evidence from the following Scottish Executive officials—

   Wilma Dickson, Head of Criminal Procedure Division; Tom Fyffee, Bill Team Member and Sharon Grant, Community Justice Services, Scottish Executive.
5. In addition to the oral evidence taken at these meetings, the Committee received written evidence from the Scottish Prison Service, Scottish Legal Aid Board, Crown Office and Procurator Fiscal Service, the Law Society of Scotland and the Scottish Court Service. These submissions are reproduced at Appendix 1 and we would like to express our gratitude to all who took time to provide us with evidence in relation to this Financial Memorandum.

Financial Memorandum

6. The Financial Memorandum published to accompany the Bill sets out the cost of its implementation as well as any annual recurring costs. It acknowledges that, as well as the Scottish Executive, there will be costs on the Scottish Court Service, Crown Office and Procurator Fiscals Office, and the Scottish Legal Aid Board. It acknowledges that there will also be additional expenditure on judicial salaries.

7. The Memorandum contains tables summarising the annual running costs and the one-off costs, giving non recurrent costs of £2.73M and recurrent costs of £0.258M. The Memorandum also provides some detail on the planning assumptions used to calculate these costs. The majority of costs are calculated on the changes expected in the number of cases heard in the High Court and then uprated by the anticipated annual increases in cases. It is assumed that a preliminary hearing will be held in every case.


Summary of Evidence

Scottish Court Service (SCS)

9. The financial implications of this Bill on the SCS are estimated to be £150,000 for the first two years following introduction. The Financial Memorandum asserts that there are currently inefficiencies in the court system that would be reduced as a result of the new mandatory preliminary hearings resulting in longer term efficiency savings.

10. In oral evidence to the Committee, the SCS provided a further breakdown of its £150,000 additional funding indicating that it would provide additional clerks to support the anticipated additional judges, additional support staff in the justiciary office (primarily in Glasgow) and investment in IT to support the programming of business¹.

11. The SCS then asserted that after the initial two years, it would expect these costs to be recovered through efficiency gains within the organisation.

12. In relation to the additional £500,000 for judicial salaries, the SCS explained that this is the cost of deploying 2 to 2.5 extra temporary judges in the system².

---

¹ Ewing, Col 444, Official Report, 4 November 2003
² Ewing, Col 449, Official Report, 4 November 2003
13. The Committee sought further information from the SCS on the amount of the potential efficiency gains and where in the organisations these savings would appear. In response the SCS stated that whilst it could give an estimate of the figure (of savings), such an estimate would not be a realisable estimate as a result of increasing case loads year on year as well as other factors. In addition such savings would not be cost savings but more resource savings. The SCS indicated that it would expect that as a result of these savings it would be able to divert resources that are currently being spent on first instance crime to other areas of concern, such as the court of criminal appeal and the civil courts.

14. The Committee expressed concern that it would be difficult to identify if such resource savings were actually attained or if additional resources were simply aiding the implementation of the new procedures without any resulting efficiency gains.

15. The Committee also sought further clarification on the role of the SCS in ensuring it makes prudent use of resources. The SCS in response noted that it is accountable to the Minister for Justice in the way that it delivers its services but accepted the Committee’s assertion that the people who make the key decisions that incur expenditure (such as lawyers and judges), do not have budgetary control responsibilities, or incentives to ensure best value.

16. The Scottish Executive responded by indicating that the criminal justice system board will soon meet for the first time. The purpose of this board is to examine management information across the system, to identify the blockages and the problems and find ways forward. The Scottish Executive did acknowledge that this board is primarily about seeking efficiencies in the system and not about saving money. However, the Executive saw the Board as a first attempt at addressing value for money. The Scottish Executive went on to explain that it was difficult to consider the criminal justice system as a system because of the necessary constitutional independence of the relevant players.

17. The Committee, whilst recognising that constitutional safeguards are necessary, was strongly of the view that an opportunity to be more innovative in relation to budget management within the new proposed procedures has been missed.

18. Further the Committee believes that as this Bill forms part of a raft of legislation looking at modernising the justice system, more innovative and cost effective measures should be considered when considering the mechanisms to implement the recommendations of Lord Bonomy’s report. This is particularly highlighted by the presumption in the Bill towards holding preliminary hearings which may not be necessary in all cases.

Scottish Legal Aid Board (SLAB)

19. It is estimated in the Financial Memorandum that the SLAB will require additional funding of £1m per year for the first two years following introduction.

---

3 Ewing, Col 446, Official Report, 4 November 2003
4 Ewing, Col 445, Official Report, 4 November 2003
5 Dickson, Col 545, Official Report, 11 November 2003
20. In evidence to the Committee, the SLAB explained that these initial costs arise primarily as a result of the new mandatory preliminary hearing and managed meeting with other costs arising from the new procedures and payments to counsel to ensure fixed trial diet availability. The SLAB, however, then went on to indicate that they expected to make increased savings following the initial two years from the number of cases remitted to the Sheriff Court from the High Court.

21. Given that these substantial savings are as a result of the Crime and Punishment (Scotland) Act 1997 the Committee questioned whether this actually represented savings as a result of this legislation. The SLAB did identify other savings as a result of early settlement following pre-trial pleas and a reduced number of adjournments however acknowledged that the bulk of their savings would be as a result of the 1997 Act.

22. Again the Committee has concerns that whilst the SLAB could indicate that savings would be anticipated 2 years after the introduction of this legislation, there would be difficulty identifying whether any actual efficiency gains had been made as these savings would be redirected elsewhere within the SLAB the Committee.

23. The Committee also questioned the SLAB on its role in ensuring that its resources are used prudently. In evidence to the Committee, both the SLAB and the Scottish Executive officials indicated that a longer term review of legal aid payments is being discussed but is not dealt with by this Bill.

Crown Office and Procurator Fiscal Service (COPFS)

24. In relation to implementing the Bill, the Financial Memorandum asserts that the COPFS will require additional non recurrent funding of £250,000 per year for the first two years with recurrent funding of £258,000 per year. In addition, it asserts the COPFS will also require additional one off capital expenditure of £830,000 for developing software to support the new system.

25. In evidence to the Committee, COPFS stated that the main impact of the Bill for them is the greater preparation time required for each case and the need to service the new, mandatory hearing.

26. The COPFS estimated that of the £508,000 which would be required for each of the first two years £250,000 may be offset in the longer term by greater efficiency at the trial court stage which will mean that resources wasted on adjourned hearings will offset the initial costs involved in the new procedures.

27. The remaining £258,000 required each year thereafter arises as a result of the need for (commitment of) additional Advocate Deputes and support, both administrative and legal, to ensure the continued success of the new system. The COPFS do recognise that they may be able to adsorb these costs from efficiency gains elsewhere as a result of their programme of modernisation.

28. As with the SCS and the SLAB the Committee questions how such efficiency savings would be identified given that these potential savings would be redirected

---

6 Crown Office and Procurator Fiscal Service, written evidence
7 Crown Office and Procurator Fiscal Service, written evidence
8 Crown Office and Procurator Fiscal Service, written evidence
elsewhere within the organisation. In evidence the COPFS indicated that it was working with the SCS to develop the core of management information that will be necessary to measure such savings following the Bills introduction.

29. The Committee also sought further clarification of the additional £830,000 required for the new IT system. In oral evidence to the Committee the COPFS stated that they needed sophisticated management systems to ensure that they disclose statements properly, that they have not missed any and that they can track when they are disclosed. This has led the COPFS to adjust their existing IT programme to ensure that these new requirements are addressed. The COPFS acknowledged that whilst these IT changes are not specifically part of this Bill they are an essential part of delivering this Bill’s intentions.

Recommendations

30. Many of the financial implications of this Bill arise from the new procedures that it introduces and the view that these new procedures will lead to longer term efficiency savings. The Committee however found it difficult to assess whether any efficiency savings would be made as a result of this particular piece of legislation and how resources saved as a result of efficiencies would be redeployed.

31. The Committee therefore would recommend that the Justice 1 Committee pursue further with the Minister what specific mechanisms will identify whether resources are saved following the Bill’s implementation.

32. Further to this the Committee would also recommend that, as this legislation forms part of a wider modernising programme of the Justice System, the Minister consider more innovative and creative ways of implementing Lord Bonomy’s recommendations which involve some best value considerations rather than adding additional procedures.

33. Whilst the Committee recognises that the financial assumptions contained within the Financial Memorandum are accurate in relation to costing the Bill’s specific policy intentions, the Committee remains greatly concerned that the opportunity to introduce budgetary control across the justice system at a more fundamental level has been missed.

34. In the light of this concern, the Committee recommends to the Justice 1 Committee that further consideration should be given to specific provisions in this Bill, with the aim of ensuring that (i) judicial management arrangements meet best value criteria, (ii) key decision makers give due consideration to the budgetary consequences of procedural arrangements, especially those involving court hearings where alternative mechanisms such as managed meetings may be equally or more appropriate, and (iii) legal fees and administrative costs are not racked up because of inefficiencies in the judicial management system or the adoption of costly default arrangements for procedural hearings which can only be set aside with the agreement of all parties to a case.
APPENDIX 1

SUBMISSION FROM CROWN OFFICE AND PROCURATOR FISCAL SERVICE

The Crown Office and Procurator Fiscal Service welcomes the proposed changes to High Court Procedures to be brought in by the Criminal Procedure (Amendment)(Scotland) Bill. We have been actively involved with our criminal justice partners in the development of the terms of the Bill, and are confident that, if implemented, it will deliver significant benefits to the prosecution of the most serious crime in Scotland.

COPFS is committed to working to ensure a more effective, more efficient, High Court in Scotland.

The improvements and changes envisaged by the Bill do not come without a price, and COPFS has assessed the anticipated impact on our organisation, on the basis of current information, in order to ensure that we will be able to implement effectively the new procedures. This is a period of significant change for this Department, and we are working hard, using the enhanced funding which we have already secured, to make real improvements to our service and to modernise the prosecution of serious crime. It is our view that these wider changes will provide the appropriate environment within which the new procedures envisaged by the Bill will work to deliver the desired objective of a more efficient High Court.

At the start of this year, we brought forward a package of reforms in relation to the appointment and role of Advocate Deputes, including an increase in number, increased preparation time and improved induction and training. Related changes have been introduced in relation to improving the quality of precognitions and improving post-indictment case management, enhancing our High Court support and bringing our units at Glasgow and Edinburgh High Courts under the command of the High Court Unit in Crown Office.

The main impact for COPFS of the Bill is the greater preparation time required for each case and the need to service the new, mandatory, hearing – the preliminary hearing, with an associated requirement for the Crown and defence to make contact to discuss the case and complete a report for the court in advance of this hearing. We have therefore produced figures that reflect the resources that will be required to make the new preliminary hearing system function properly.

As indicated in the Financial Memorandum, we are of the view that we will require additional Advocate Deputes and legal and administrative staff to support them. It is estimated that these additional requirements will amount to £508,000 per year. This is broken down into recurrent and non-recurrent costs of £258,000 and £250,000 respectively.

In relation to the non-recurrent costs, as it is not proposed that there will be phased implementation, we recognise that it is imperative that we ensure we are able to operate the new system as soon as it is brought in. The assumption, for these calculations, is that there will be a preliminary hearing in every case. Additional staff will therefore be required to cope with the initial significant increase in preparation work and actually covering the new hearings for all High Court cases. However, clearly the aim of this legislation is to eliminate the ‘churn’ phenomenon, reducing unnecessary repeated adjournments and providing greater certainty in the arrangement of trials. It looks to deliver a change of culture in our legal system, and once this has happened we should see greater efficiency at the trial court stage, which will mean that resources wasted on adjourned hearings will offset the initial costs involved in the new procedures. We are therefore of the view that after the initial 2 year period, the system should be sufficiently efficient that the £250,000 will be offset by the consequential savings.

Preparation and communication are the keys to making this Bill work. Even after the initial 2 year period, there will be a need for commitment of additional Advocate Deputes and support, both administrative and legal, to ensure the continued success of the new system. We anticipate continuing recurrent costs of £258,000 per annum. We expect to be able to absorb these costs from efficiency gains elsewhere in consequence of our programme of modernisation and from the anticipated reduction of High Court business following the planned commencement section 13(1) of the Crime and Punishment (Scotland) Act 1997 which will enhance Sheriffs’ sentencing powers.
We have stated that we will incur capital expenditure of £830,000. This will allow for the development and roll out of software, which will support the management of witnesses and evidence and the greater level of assistance to the defence, which Lord Bonomy recommended.

Norman McFadyen
Crown Agent

SUBMISSION FROM SCOTTISH PRISON SERVICE

Thank you for providing SPS with the opportunity to comment on the financial implications of this bill to the Scottish Prison Service. The SPS have examined the financial memorandum and we are satisfied that the potential impact on prisoner numbers is accurately reflected.

We do not consider that the proposed modernisation of the 110 day rule will have significant cost implications for us. So far as we can see we will be able to meet any costs from within our existing budget. We assess the worst case scenario as being an additional 20 remand places. This would cost an estimated £600,000 (based on an average annual cost of about £30,000 per prisoner place) which is a small proportion of our existing operational budget. And it is likely that an additional 20 remand places would be offset by a corresponding reduction of 14 sentenced places. This is because 70% of those proceeded against in the High Court received a custodial sentence, which is usually backdated to cover the period spent on remand. If this offsetting effect is taken into account, the worst case impact would be a net increase of 6 prison places.

Tony Cameron
Chief Executive
24 October 2004

SUBMISSION FROM SCOTTISH LEGAL AID BOARD

The Criminal Procedure (Amendment) (Scotland) Bill contains a number of provisions substantially implementing the recommendations of Lord Bonomy’s Report on the Review of the High Court of Justiciary. Not all of the provisions impact on the Legal Aid Fund. The provisions which are likely to have an impact on the Fund have been identified in the following tables and, to the extent possible, costed. The system envisaged by the Bill will be very different from the current system, requiring certain assumptions to be made. These are annexed to the tables relating to costs and potential savings. Calculations have been based on the experience of Board staff and available statistics.

Provisions impacting on Legal Aid costs

The key areas which, it is anticipated, will impact on legal aid costs are:

1. Introduction of a mandatory preliminary hearing. This does not presently exist and will involve additional costs in the form of fees of solicitors and counsel for attendance at court and preparation.

2. Provision for a managed meeting between the Crown and the defence. Although in some cases such a meeting does take place from time to time prior to the first hearing, the proposals envisage a meeting as a matter of course. This, again, will involve the time of solicitors and counsel and, therefore, additional costs.

3. It is proposed that preliminary hearings should generally be held in Edinburgh and Glasgow rather than elsewhere in Scotland. If preliminary hearings are held in Edinburgh/Glasgow rather than, say, Aberdeen, Inverness or Dumfries, this will involve travelling on the part of the solicitor who will normally be situated near the local court. On the other hand, counsel’s place of business is in Edinburgh and the additional costs of
solicitors’ travel are likely to be offset by the savings in counsel’s fees travelling from Edinburgh to the local courts elsewhere in Scotland.

4. New procedures for accelerating diets. The further procedure will involve additional fees payable to solicitors and counsel but only involves written work.

5. Payments to counsel to remain available for fixed trial diet. One of the benefits of the proposals is that trials be set down for a particular day rather than the current system where the trial may proceed at any stage over the period of the “sitting”. To ensure the availability of counsel and to avoid a situation where counsel has commenced a trial in another case, say the day before, some provision may have to be made for payments to counsel to remain available to ensure the trial can proceed.

The areas in which there is potential for savings are:

1. It is proposed that the Sheriff’s sentencing powers be increased from three to five years and that there be a corresponding transfer of cases from the high court to the sheriff and jury court. High court cases are more expensive and the transfer of cases to the sheriff court is likely to result in savings to the Fund.

A substantial element in the higher costs of high court proceedings compared to sheriff court solemn cases is the involvement of counsel. Junior counsel is automatically available in terms of the legal aid legislation in high court proceedings. This is not the case in sheriff court proceedings and the prior authority of the Board (referred to in the legal aid legislation as the “sanction” of the Board) would be required before junior counsel would be available in a sheriff and jury case. Counsel will not always be necessary, nor indeed appropriate, in the cases which are being transferred from the high court to the sheriff court. Some cases are raised in the high court not due to any inherent complexity of the case but due to the record of the accused and, therefore, the likely sentence. The additional costs of counsel in the cases to be transferred to the sheriff court where counsel has been sanctioned has been factored in and set against the savings.

2. Pre-trial pleas/early settlement. The proposals anticipate an increase in pre-trial pleas of guilty and early settlement as a result of the earlier availability of information and increased communication between Crown and defence. The avoidance of a trial will produce savings.

3. Reduced number of adjournments. The Report draws attention to the significant number of adjournments in the high court. Any savings on the number of adjournments will result in savings to the Legal Aid Fund given that the payments from the Fund are largely in respect of fees for solicitors and counsel for attendance at court.

The current system where a case is set down for a “sitting” of the high court and can proceed at any time during the period of the sitting will be replaced by a system where a date will be set when the trial will commence. It is likely that this will lead to savings on legal aid costs as there are occasions when solicitors and counsel require to attend the court at various stages throughout the sitting but where the case does not call and is not identified as an adjournment as such.

4. It is intended that cases be adjourned for sentence to the local court. It is considered that this will be cost neutral as the additional costs for counsel to travel to, say, Aberdeen or Dumfries, will be offset by a reduction in solicitor’s travelling time.

**Basis of Costings**

More detail on the assumptions used in the costings are annexed to the appendices.

Calculations have been made on current fees structures and tables. It should be borne in mind, and factored into these figures, that Graduated Fees proposals for counsel are under consideration by the Executive and discussions will require to take place at some stage regarding solicitor’s fees
in solemn proceedings. Although Lord Bonomy does highlight the issues as to the availability of experienced counsel and the perception that fees do not reflect the work done, these initiatives do not arise from the Bonomy Report or its implementation. Any new fees structures will be subject to separate costings.

Due to the lack of available relevant data a number of assumptions have required to be made to arrive at the “potential” savings. These potential savings assume there would be no other changes to solicitor’s or counsel’s practices of which account has not otherwise been taken.

**Basis of payment of solicitors and counsel**

The costs to the Fund are largely incurred by expenditure on fees for the time of solicitors and counsel. It might be helpful, therefore, to briefly outline the basis on which solicitors and counsel are paid.

For solemn cases in either the high court or the sheriff court solicitors are paid per hour for individual items of work carried out eg. conducting a trial, preparation, perusal of documentation, meeting with client, letters, telephone calls etc.

Counsel are paid per day. This payment subsumes not only the conduct of the trial or hearing but also the preparation for it and other ancillary work, which is not individually chargeable, in connection with correspondence, perusal of documentation etc. No matter where counsel live, their place of business is Edinburgh and there is a prescribed fee for a “trial per day” in Edinburgh. Higher prescribed fees, increasing the further the court is from Edinburgh and subsuming travel, subsistence and accommodation, are laid down for Glasgow, elsewhere within 60 miles from Edinburgh, “Aberdeen, Inverness or Dumfries” and outwith 60 miles from Edinburgh. The cost of counsel, therefore, increases the further the court is from Edinburgh. Counsel are also paid for consultations and for a limited number of individual pieces of work.

Although the legal aid regulations lay down prescribed fees for counsel, there is provision for the fees to be increased because of the particular complexity or difficulty of the work or other particular circumstances.

**Conclusion**

Much of the Bill deals with the introduction of mandatory preliminary hearings in the High Court. Together with the formal exchanges between prosecution and defence which precede them and with other new procedures designed to increase flexibility, and ensure earlier availability of information to the defence, these clearly have cost implications for the Legal Aid Fund. The underlying approach to the costings is that there will be additional costs to the Fund generated by the additional procedures but that there is the potential for savings from the greater efficiencies which the proposals consider can be delivered to the process. The greater the efficiencies and, in particular, reduction in the number of adjournments, more cases settled before trial and shorter trials, the greater will be the savings. However, the greatest source of potential savings will be the transfer of cases to the sheriff court.

The costs outlined in Appendix 1 to the submissions will be incurred from the outset due to the introduction of the various procedures which have been identified. Whilst additional costs will be incurred immediately, especially over the transitional period, the compensating savings are likely to be more gradual. There is, however, the potential for savings from the outset which are likely to increase as the system develops beyond the transitional stage and the new procedures have the opportunity of bedding in. Earlier provision of information to the defence, more time to prepare, disposal of procedural matters at the preliminary hearing and fixed trial diets can all lead to savings in the time of solicitors and counsel.

It is difficult to be more precise about the level of costs and savings to the Legal Aid Fund. However, the estimate of net costs of £1 million per year for the first two years is prudent although, perhaps, at the higher end of the spectrum and should be able to accommodate unforeseen
additional costs which cannot be anticipated at this stage. Thereafter, and assuming that the system operates as intended, the effect on the Legal Aid Fund is likely to be cost neutral.

We think there will be some minor additional staffing requirements in view of the increased number of sanction requests for the employment of counsel in the sheriff court.

JDH/CS
30 October 2003

Annexe 1 Costs
Annexe 2 Savings

Annexe 1

<table>
<thead>
<tr>
<th>Costs</th>
<th>Assumptions</th>
<th>Total £’000</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. A mandatory preliminary hearing</td>
<td>1</td>
<td>575,000</td>
</tr>
<tr>
<td>2. Managed meeting</td>
<td>2</td>
<td>300,000</td>
</tr>
<tr>
<td>3. Travel costs for cases where preliminary hearing held in Edinburgh or Glasgow</td>
<td>3</td>
<td>Nil</td>
</tr>
<tr>
<td>4. New Procedures for accelerating diets</td>
<td>4</td>
<td>25,000</td>
</tr>
<tr>
<td>5. Payments to counsel to remain available for fixed trial diet – “retainer fee”.</td>
<td>5</td>
<td>100,000</td>
</tr>
<tr>
<td>6. Estimated Total Costs</td>
<td></td>
<td>1,000,000</td>
</tr>
</tbody>
</table>

Note: All calculations based on 1,667 cases (Annual Report 2001/02)

Assumptions

1. About one-third of cases currently have either a hearing on a minute of postponement or a preliminary diet. It is understood that the mandatory Preliminary Hearing may be lengthier and could involve greater preparation. We have therefore assumed that this will be an additional cost in 66% of cases and an increased cost in the remaining one-third of cases. All the Board’s assumptions have been based on 1,667 high court cases during the year 2001/2002, taking into account the likely costs of solicitor’s and counsel’s time.

2. We have assumed, on the same number of cases, one managed meeting per case and taking into account the likely costs of solicitors and counsel. A meeting already takes place in some cases so the total additional cost may be lower than stated.

3. Based on the same number of cases we have calculated the likely difference between counsel attending court in Glasgow and Edinburgh as against courts further afield. We have set against this the likely savings in costs incurred by solicitors requiring to travel to
Glasgow or Edinburgh. The calculations suggest this provision will have a cost neutral outcome.

4. The procedure it is understood will involve the defence contacting the Crown and being involved in the preparation of a joint written application to the court to accelerate the diet. We have assumed 10% of cases featuring this procedure which is probably an upper figure.

5. It is difficult to assess the likely costs involved. On the basis that the proposals allow for a “stand by” fee to ensure the availability of counsel, calculations have been carried out on the basis of the prescribed fee for a day being paid in 20% of cases. Again this is likely to be an upper figure.

Annexe 2

<table>
<thead>
<tr>
<th>Savings</th>
<th>Assumptions</th>
<th>Total (£’000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Cases remitted from High to Sheriff Court.</td>
<td>1</td>
<td>1,000,000</td>
</tr>
<tr>
<td>2. Pre-trial pleas – early settlement</td>
<td>2</td>
<td>150,000</td>
</tr>
<tr>
<td>3. Reduced No. Of adjournments</td>
<td>3</td>
<td>100,000</td>
</tr>
<tr>
<td>4. Adjournments held in same court</td>
<td>4</td>
<td>Nil</td>
</tr>
<tr>
<td>5. Total Savings</td>
<td></td>
<td>1,250,000</td>
</tr>
</tbody>
</table>

Note: All calculations based on 1,667 cases (Annual Report 2001/02)

Assumptions

1. High court cases are much more expensive than sheriff court cases. The average cost of a High Court case includes the tranche of cases which are of a very high value. We have assumed these will largely continue to be heard in the High Court. For the purposes of this costing exercise we have therefore taken the average cost of the High Court cases “pushed down” to be at the lower end of High Court cases, and deducted the average costs of a Sheriff Court solemn case.

On the other hand, more cases in the Sheriff Court will involve counsel, a prime element in the cost, and this has to be added back in again. Not all cases moved down to the Sheriff Court will require counsel. We have assumed 20% of High Court cases being pushed down to the Sheriff Court.

2. Our estimations (based on manual sample of cases) are that 75% of the case costs will have been incurred at the pre trial plea stage. Savings have therefore been based on the assumption that 25% of High Court cases may plead x 25% of average case costs (savings to be made) in solemn cases.

3. The savings in the reduced number of adjournments has been arrived at using the tables produced on page 133 of Lord Bonomy’s Report. Cases in excess of 2 adjournments (which has been adopted as a break even point allowing for the new compulsory preliminary hearing and one adjournment, to err on the side of caution) have the ability to
produce savings. We assumed that the new provisions will reduce the cases involving 3 or more adjournments by 75%.

4. Counsel’s fees (if sanctioned to appear) are likely to increase as a result of this proposal. The vast majority of cases are adjourned for sentence to Edinburgh/Glasgow at present which means counsel will charge significantly less than they would if adjourned to the “local court” in say Aberdeen/Dumfries. It is, however, likely to be cost neutral overall in any given case as increased costs of counsel will be offset by savings on local solicitor’s costs given the solicitor may not need to travel.

SUBMISSION FROM THE LAW SOCIETY OF SCOTLAND

Criminal Procedure (Amendment) (Scotland) Bill

Thank you for your letter of 14 October seeking the views of the Society in relation to the Criminal Procedure (Amendment) (Scotland) Bill. The Society’s Criminal Law Committee (“the Committee”) welcomes the opportunity of commenting on the financial implications of implementation of the Bill as currently drafted and has the following comments to offer:-

The Bill makes provision for a number of measures which are designed to improve the efficiency and effectiveness of the High Court of Justiciary. The financial memorandum makes it clear that the introduction of preliminary hearings in High Court cases and the provision for pre-trial meetings between the prosecution and defence will have resource implications for the Scottish Court Service, the Crown Office and Procurator Fiscal Service (“COPFS”) and the legal aid fund. Information in relation to the anticipated level of additional resources and details of the estimated increase in expenditure has been provided by the Scottish Executive and these other departments, both in the financial memorandum and in written evidence to the Finance Committee. It is noted that most of the costs identified are expected to be offset after an initial two year period by increased efficiency and a reduction in the number of adjourned cases.

In the Committee’s view, there are a number of factors which will be important in assessing the cost of implementing these proposals.

1. Early disclosure of information.

The Committee believes that much will depend on whether the principle of early disclosure, disclosure as originally canvassed by Lord Bonomy⁹, is introduced in legislation. The adoption of a system of timetabled disclosure to the defence of Crown statements and productions could have considerable benefits and potentially result in savings to the public purse from a variety of sources, such as time saved by witnesses (for example, police officers, forensic scientists, doctors and other witnesses) who may not require to be precognosced.

Although the Bill makes provision for a pre-trial meeting, it does not oblige early disclosure by the COPFS. The Policy Memorandum indicates that the proposals contained in the Bill are inter-dependent and that removing one element of the proposals would considerably weaken the Bill as a whole. The inclusion of the reference to the principle of early disclosure would, in the Committee’s view, strengthen the Bill and assist in improving the efficiency and cost effectiveness of High Court proceedings.

2. The Impact of Implementation of Section 13(1) of the Crime and Punishment (Scotland) Act 1997

The financial memorandum correctly identifies that account must be taken of the impact of the proposed implementation of section 13(1) of the Crime and Punishment (Scotland) Act 1997. This will increase the sentencing power of a sheriff sitting with a jury from three to five years and would enable an estimated 20% of cases currently dealt with in the High Court to be dealt with in the Sheriff Court.

⁹ At Recommendation 2
Whilst this change alone may reduce the theoretical workload of the High Court\textsuperscript{10}, consideration should also be given to the effect that this will have from a financial perspective on the sheriff courts throughout Scotland. It may be that the burden of dispersed cases from the High Court will fall on those courts which are already busy. The impact of the increased level of business on the administration and resources of the sheriff courts should, therefore, be monitored closely over the initial two year period so that the cost of disposing of solemn cases can be considered in a comprehensive manner.

3. Legal Aid

The Committee would question whether the legal aid costs in the financial memorandum have been calculated on the basis of current rates payable under criminal legal aid. Lord Bonomy recommended in his report\textsuperscript{11} that the rates payable to lawyers for criminal legal aid work should be the subject of general review in the context of determining rates for the additional or different elements of work proposed. When looking at the cost of implementation of these legislative proposals, this may have a bearing on the estimated expenditure for the legal aid budget.

I hope that these comments are of some assistance and should you require any further clarification, please do not hesitate to contact me.

Yours sincerely

Mrs Anne Keenan
Depute Director

SUBMISSION FROM THE SCOTTISH COURT SERVICE

CRIMINAL PROCEDURE (AMENDMENT) (SCOTLAND) BILL

During my evidence to the Finance Committee on 4 November I undertook to provide a breakdown of the judicial salaries and support costs set out in the Bill’s Financial Memorandum (paragraph 190). This information is enclosed in a form which I hope is helpful to the Committee.

JOHN EWING

Breakdown of costs for judicial salaries and for the Scottish Court Service

Background

The Financial Memorandum to the Criminal Procedure (Amendment) Scotland) Bill includes the following non-recurrent costs in each of the first two years:

- Judicial salaries: £500,000
- Scottish Court Service: £150,000

The context of the costs is explained in paragraph 190 of the Memorandum in the following terms:

“Until judge time is freed up by the reduction in the number of unnecessary trial hearings, there will be a need to assign additional judge time to the new preliminary hearings. Judicial management of

\textsuperscript{10} Depending on Crown Office policy.

\textsuperscript{11} At Recommendation 17(b)
cases is a key element of the proposed reforms. This is expected to cost an additional £500,000 in each of the first 2 years of the scheme. This falls to be paid from the Scottish Consolidated Fund. In addition, the Scottish Court Service will require an additional £150,000 in each of the first 2 years for judicial support costs and IT costs associated with the new preliminary hearings.”

**Breakdown**

**Judicial Salaries**

The estimated cost of the additional judicial time was arrived at by projecting caseload and judicial/court time required per case. The analysis drew on the profile of High Court indictments referred to in the Financial Memorandum, and experience of the existing first diet procedure in sheriff court indictments. This experience indicated that a margin was required for continuations of the preliminary diet in some cases. It was also necessary to make an allowance for judicial preparation time.

This analysis produced a projected demand for some 490-540 days of court time for preliminary hearings in the High Court of Justiciary.

For planning purposes it was assumed that one judge could spend up to 210 days each year presiding in court. This planning assumption allows for annual leave and public holidays. On that basis between 2.3 and 2.6 judges would be required.

The judicial cost applied is £207,000 including salary, national insurance, pension etc.

On the basis of these planning assumptions the judicial salary cost for the preliminary hearings is in the range of £475,000 to £535,000.

This has been rounded to £500,000.

**Scottish Court Service**

Each judge requires the support of a clerk of court and a court officer (known as a macer). The full cost to the Scottish Court Service of a clerk is £34,000; and of a macer £14,000. An allowance has also been made for additional administrative support costing some £17,000. Total staff costs for each year in support of the introduction of preliminary hearings assumes the equivalent of 5 members of staff at a total cost of £113,000.

The remainder of the non-recurring increases to the operating costs of the Scottish Court Service arise from the need to enhance the existing computer support systems in the High Court. A comprehensive diary and court programme management system is required to enable the clerks to take on the new task of programming the trials of all High Court sittings. As the same judges sit in both the High Court and the Court of Session a comprehensive system is required to mange the overall programme of the Supreme Courts most effectively. The Bonomy report also identified the need to enhance the present management information system.

We have estimated the costs of consultancy and development on the basis of previous experience and market rates at some £35-£40,000 in each of the first two years.

The estimates have been rounded to £150,000 for each year.

Scottish Court Service
November 2003
HIGH COURT TIME LIMITS

**All cases – current time limits**

- trial to start within 12 months of accused’s first appearance on petition
- indictment to be served at least 29 days in advance of the trial

**All cases – proposed time limits**

- trial to start within 12 months of accused’s first appearance on petition
- preliminary hearing to start within 12 months of accused’s first appearance on petition
- indictment to be served at least 29 days in advance of the preliminary hearing

**Custody cases – current time limits**

- trial to start within 110 days of full committal
- indictment to be served within 80 days of full committal

**Custody cases – proposed time limits**

- trial to start within 140 days of full committal
- preliminary hearing to start within 110 days of full committal
- indictment to be served within 80 days of full committal

Note: The requirement that the indictment is served at least 29 days in advance of the trial (current time limits) or preliminary hearing (proposed time limits) also applies in relation to custody cases. Thus, if the trial/preliminary hearing is to be held earlier than required by the 110-day time limit this will have a knock-on effect for the date by which the indictment must be served.
Provisional Agenda
Justice and Home Affairs Council
Brussels – 27/28 November

Please note that this Pre Council Report is based on a provisional agenda set in July 2003. The agenda will be subject to substantial change.

Follow up to Thessaloniki:
- Commission communication on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external border and the return of illegal residents
- Commission communication towards more accessible, equitable and managed asylum systems. Outcome of Seminar on asylum applications submitted outside the European Union
- Commission Communication on Immigration, Integration and Employment

The SE has a co-ordination role with regard to the provision of services for asylum seekers and refugees. Any changes to operations in Scotland will be for the Home Office to implement.

Follow-up to the Commission’s feasibility study on improving sea border control

Follow-up to the study on the creation of a common European system for an exchange of visa data (VIS)

Readmission Agreements: state of play

Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities (Possible)


Proposal for a Council Directive on assistance in cases of transit for the purposes of removal by land

Proposal for a Council Decision on the organisation of joint return flights (Possible)

Adoption of a Common Handbook for the Immigration Liaison Officers

Proposal for a Council Regulation or Conclusions on simplified procedures of border control following enlargement
Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of study and vocational training

Proposal for a Council Directive on the compensation of financial imbalances due to the mutual recognition of expulsion decisions (Possible)

Proposal for a Council regulation on local border traffic

Proposal for a Council Decision amending Part V, point 1.4 of the Common Consular Instruction relating to the possession of a travel insurance to obtain a visa

The SE has a co-ordination role with regard to the provision of services for asylum seekers and refugees. Any changes to operations in Scotland will be for the Home Office to implement.

POLICE CO-OPERATION

Recommendation on a Code of Conduct on Joint Investigation Teams on Terrorism

This is reserved and there are no distinctly Scottish aspects. The proposal was introduced by the Italian Presidency. Its main aim is to produce an operational manual for the Counter-Terrorist Joint Investigation Teams (CT JITs). The operational manual will set out legal provisions relevant to work of the CT JITs in each Member State and Accession Countries. The UK Government has been broadly supportive of this proposal, but has emphasised the need for any procedures governing the work of CT JITs (including any Memorandum of Understanding) to be flexible and at the discretion of the countries participating in the teams.

List of Terrorist Organisations – updating with indication potential threat

This is a reserved issue with no distinctly Scottish aspects.

Proposal for a Council Resolution on the exchange of personal data in the framework of re-establishment of internal border control on the occasion of European Councils or similar events

An Italian Presidency initiative stimulated by disturbances at European Council meetings and other major events. The disturbances highlighted the need for better co-ordination and co-operation between Member States’ police forces. The resolution aims to prevent public order disruption by those whose aims or actions constitute an offence or involve the use of violence to be achieved by the targeted exchange of information. The UK currently has a Parliamentary reservation in place. There is no special Scottish interest.

Proposal for a Council Decision on the exchange of lists of hooligans and the adoption of common rules to prohibit the admittance to sport installations to persons who have been responsible for violent acts

This proposal seeks to prevent persons banned from attending football matches in their own country from attending matches played in other Member States. The UK supports (with
Scrutiny Reserve) the proposal in principle – and strongly believes that the onus must be on
the Member State with a domestic hooligan problem to take steps to prevent the export of that
problem. This is not currently an issue for Scotland, whose football fans generally have an
excellent reputation for their behaviour both at home and abroad (which is why the Football
(Disorder) Act 2000 and banning orders do not apply in Scotland – it was introduced to
tackle what was perceived to be predominately an English problem). Scottish police are,
however, keeping the situation under review in case the law in Scotland needs strengthening
in the future – for example to deal with a British Football league or cup or a future Euro
Tournament in Scotland. The Scottish Police work closely with their counterparts South of
the border, and the National Criminal Intelligence Service (NCIS) Scotland Office has
adopted the role of centrally co-ordinating football intelligence in Scotland.

Proposal for a Council Resolution on drug related undercover operations and
controlled deliveries

This is unlikely to be on the final agenda. We have no evidence of it having been considered
in any third pillar for a including Article 36 Committee.

Triennial report on CEPOL and eventual follow-up

The European Police College Network (CEPOL) was set up on 1 January 2001. It was
established to help train senior police officers of the Member States (although provision has
been made for other ranks) by optimising co-operation between its various component police
training institutes. It supports the development of a European approach to the main
problems facing Member States in the fight against crime, crime prevention, and the
maintenance of law and order and public security, in particular the cross-border dimensions
of those problems. The Director of the Scottish Police College is a member of the Governing
Board. A permanent secretariat to assist CEPOL with the administrative tasks is to be set up
by the Governing Board. The permanent secretariat may be set up within one of the national
police academies and the UK Government are keen to see this being established at Bramshill
with a representative of the Scottish Police College being a member of the secretariat. Costs
will be met by CEPOL.

Development of SIS II

SIS II is the new generation Schengen which is planned for implementation at the end of
2006. The latest position is that the SIS II invitation to tender has been issued and the Home
Office agreed to set-up a project team to cover the UK’s interests. The present SIS allows
information exchange, through the use of queries to the SIS database, with a view to policing
the free movement of persons as well as maintaining public security, and in particular
assisting national authorities in the fight against trans-national crime. SIS II will allow for
new functionalities such as:

- The addition of new categories of alerts, both on persons and objects (including the
  possibility that certain alerts be automatically deleted after a specific event/date)
- The inter-linking of any alerts, ensuring that this does not change the existing access
  rights to the different categories of alerts;
- The modification of the duration of the alerts;
- New authorities to get access to the SIS (including the possibility to give partial
  access or access with a purpose from the original one set in the alerts); and
The storage, transfer and possible querying of biometric data, especially photographs and fingerprints.

The benefits of these additional functions will accrue to Scotland.

Proposal for a Council Decision or Conclusions on Europol participation to the start and development of national inquiries

Proposal for a Council Decision or Conclusions on the exchange of information between Europol and Member States

These items are unlikely to be on the final agenda. We have seen no specific consideration of these items in any third pillar for a (including Article 36 Committee).

Role of European Police Chief's Task Force

Unlikely to be on final agenda. If discussed the focus will be on the future role of the Task Force and the emphasis will be on it having a more strategic role that at present.

Outcome of seminar on the creation of a European Neighbouring Police model

It is unlikely that this item will be on the final agenda. We are unsighted as to the outcome of the seminar.

Framework Decision on criminal liability for ship-source pollution

The Framework Decision seeks to approximate criminal sanctions for the unlawful discharge of polluting substances into the environment by shipping across the EU. The FD as drafted requires Member States to conduct a criminal investigation, when informed of a suspected offence within its state and also details the criminal procedures to be followed during the investigation.

CRIMINAL AND JUDICIAL CO-OPERATION

Proposal for a Council Framework Decision on minimum standards for procedural guarantees in criminal proceedings

The Commission published a Green Paper in February 2003 which considered the need for EU action on establishing common minimum standards of procedure for suspects and defendants in criminal proceedings and identified the areas in which they might be applied. The Commission believed that common minimum standards were desirable to strengthen the trust between Member States in their fairness of their judicial systems.

The Green Paper took as its starting point that the Member States of the EU were all signatories to the ECHR and other instruments such as the International Covenant on Civil and Political Rights. It identified those rights which it regarded as “so fundamental that they should be given priority”. These were:

- Access to legal representation
- Access to interpretation and translation
Protection of vulnerable groups
Consular assistance to foreign detainees; and
Providing suspects with a “letter of rights”.

The Green Paper did not seek to create new rights or monitor compliance with the rights that existed under the ECHR or other instruments but rather to identify the existing rights the Commission considered as basic and to promote their visibility.

The Executive contributed to the UK response and the subject area is devolved.

At the time of writing the anticipated draft FD has not yet been published, but the Executive is ready to engage fully in analysing it and ensuring that Scottish interests are fully reflected in the UK position.

Proposal for a Council Framework Decision on mutual recognition of decisions aimed to the obtaining of evidence

This proposal was first published as a Commission non-paper in December 2002. It proposed that the FD on the freezing of assets and evidence should be built on and supplemented to provide a single mechanism to obtain and transfer evidence to the issuing state.
The non-paper asked for responses to various questions, such as whether the dual criminality provision should be relaxed for certain cases in relation to such requests, and whether there should be certain minimum standards in relation to matters such as proportionality, necessity and specificity.

The Executive contributed to the UK response. Obtaining evidence in Scotland is of course a devolved matter and this proposal will probably relate in particular to the area of search and seizure.

The FD has yet to be published and it is unlikely that this item will be on the final agenda.

Framework Decision on criminal liability for sea pollution

Unlikely to be on final agenda.

Proposal for a Council Framework Decision on the creation of a European uniform system for the fight against money laundering for large amounts of money: political agreement

We are unsighted on this issue. There is a new Directive expected but we have yet to see this emerge from the Commission. Unlikely to be on the final agenda.

CIVIL LAW MATTERS

Decision in the perspective of signing the 1996 Hague Convention

This is closely associated with the new Parental Responsibility Regulation, political agreement on which was reached last month. There is still a Dutch parliamentary scrutiny reserve over this decision. There is also a problem to be resolved between the UK and Spain
over Gibraltar. The Convention will require the establishment of Central Authorities to promote administrative co-operation, and the dispute relates to the extent to which a Gibraltar Central Authority would have links with the outside world. Discussions are ongoing in an effort to resolve this. There are also some difficulties with the very tight proposed timescale for ratification of the Convention, as measures to implement it into domestic law will first be needed.

Proposal for a Council Regulation creating a European Enforcement Order for uncontested claims: possible common position

In December 2002 the European Commission adopted a green paper on a European Order for payment procedure and measures to simplify and speed up small claims litigation. The proposal was published on 22 September 2002 with an experts meeting held in Brussels on 13 October 2002 to discuss the proposal. The main impact of the proposed changes would be on the relevant sheriff court procedures. The outcome will essentially be concerned with issues of jurisdiction and procedure and the way the courts deal with these matters. The Executive contributed to the joint UK response to the Green Paper which included views from members of the Sheriff Court Rules Council. There was also close liaison with Whitehall colleagues on ensuring a joint UK strategy for the experts meeting held on the 13 October.

Proposal for a Council Regulation on the Law applicable to non-contractual obligations (Rome II): orientation debate

The first Working Group meeting on this initiative was held on 30 September. The central element of the proposal (that the law applicable to a delictual action should generally be that of the place where direct damage occurs) is broadly speaking in line with current law in the UK jurisdictions and should be acceptable. There are some concerns about the universal scope of the proposed Regulation, which as presently drafted would apply whenever a court in a Member State was exercising jurisdiction, regardless of whether the parties or cause of action had any connection with the EU. There are also a number of specific problems relating to the law applicable in defamation cases, the inclusion of unjust enrichment actions in the proposal and other matters. We hope to be able to resolve most of these problems in the course of negotiations.

Proposal for a decision on the signature of the Paris Convention

This proposal actually relates to a new protocol to the Paris Convention, not the Convention itself. The Paris Convention deals with civil liability for nuclear accidents. The difficulties in authorising signature by the Member States have stemmed largely from the fact that the EU’s three non-nuclear states (the Republic of Ireland, Austria and Luxembourg) are not parties to the Paris Convention, whereas all other Member States are. These problems are now resolved. The UK Government has been very much in the lead on this given that nuclear energy is a reserved matter.

Decision for the signature of the Council of Europe Convention on children

EU signature will have very little practical effect, as the subject matter of the Convention is largely within Member State competence. The main effect of EU signature would be that Community legislation in this area would be interpreted in the light of principles set down in
the Convention. Neither the Scottish Executive nor the UK Government has any difficulty with EU signature, although no decision has been taken as yet on whether the UK will become party to the Convention.
Justice 1 Committee

The Criminal Procedure (Amendment) (Scotland) Bill

Submission by George C. Gebbie

The Justice 1 Committee seeks the views of interested parties on the above Bill.

I am an Advocate practising criminal law with more than twenty years of experience covering both the prosecution and defence side of cases as a member of the Procurator Fiscal Service, as a defence solicitor and as a member of the Faculty of Advocates.

The above Bill,

"aims to allow for more thorough preparation of High Court cases, such as the introduction of a mandatory preliminary hearing, before the trial diet. Other proposed amendments aim to modernise time limits, and provide greater certainty that trials will proceed"

These aims can be achieved, at least in part, by the repeal or amendment of Section 67(5) of the Criminal Procedure (Scotland) Act 1995.

Section 67(5) of the Criminal Procedure (Scotland) Act 1995 provides:

"(5) Without prejudice to—
   (a) any enactment or rule of law permitting the prosecutor to examine any witness not included in the list of witnesses; or
   (b) subsection (6) below,

in any trial it shall be competent with the leave of the court for the prosecutor to examine any witness or to put in evidence any production not included in the lists lodged by him, provided that written notice, containing in the case of a witness his name and address as mentioned in subsection (1) above, has been given to the accused not less than two clear days before the day on which the jury is sworn to try the case."

This section is a repetition of a previous statutory provision, which initially was used only in the most exceptional of cases. Today its use has become the norm.

Twenty years ago, if an indictment was sent out that was not fully prepared some very hard questions would have been asked of the persons responsible. It was considered a matter of professionalism that an indictment was served
only when the case was fully prepared by the prosecution. If such a provision as s.67(5) required to be used that was regarded as a failure by the persons responsible, unless there was most exceptional of unforeseeable circumstances to justify its use. Today many indictments are served with lists of labels and productions attached which include several items specified as "not allocated".

If one knows not only how many productions there are but also exactly where in the number order of the list they are "not allocated" to, then why are they not allocated?

Whatever the answer to that question, the result of this practice and the routine use of s.67(5) to introduce and "allocate" that which was "not allocated" when the indictment was served, is often to force the defence into the position of having to make a motion to adjourn the trial to deal with the new information. This means the prosecution's actings can engineer an adjournment and the defence "take the blame" for it. Section 67(5) notices can be and often are accompanied by reams of documentary productions, hours of video tape evidence, complex forensic reports and lengthy lists of witnesses. On occasion, it is only on service of such notices that the defence really receive notification of the substance of the prosecution case. This situation is contrary to the stated aims of the Bill.

The above practice skews public perception and disguises the time taken by the prosecution to bring cases to trial.

To verify the frequency of the use of the Section 67(5) procedure the Committee can obtain the statistics from the Scottish Court Service as each occasion it is used with leave of the Court and so is minuted. It can also be seen that it is not uncommon for their to be multiplicity of such notices served by the prosecution.

Lest there be some suggestion that the Court acts as an effective filter for such applications, it should be borne in mind that there is no requirement that the prosecution show cause, let alone special cause before the Court can grant leave. Plus, the Court at the stage of the motion by the prosecution knows almost nothing about the case because the trial has not started. The defence is often unable to give any cogent argument in opposition because it hasn't had an opportunity to review the "new" material and the only remedy is for the case to be adjourned on defence motion.

THE SOLUTION to this situation would be to amend the provision by stipulating that, when granting leave for its use the Court shall, without further motion by any party, adjourn the case for the same period as the minimum period of notice required in respect of service of the indictment viz. 29 clear days (cf. s.66(6)(b) CP(S)A 1995). This would have the effect of a powerful incentive upon the prosecution only to serve indictments that are completely prepared and give proper notice to accused persons, while preserving a safety net for truly exceptional cases. Further it has the benefit of consistency and predictability. Some judges may be more prone than others to grant leave
on (special) cause shown and their views of a reasonable adjournment would also be variable. These problems are especially difficult at this pre-trial stage when the judge has not heard any of the evidence in the case. Where there is a statutory requirement of notice on service, leaving such matters entirely to the judiciary would seem to be inconsistent with everyone being equal under the law. Perhaps most radically, it would provide a degree of certainty and predictability that would be appreciated by witnesses who could plan their own lives and affairs more easily instead of being left entirely to the mercy of others.

George C. Gebbie,
Advocate
6 November 2003
Criminal Procedure (Amendment) (Scotland) Bill

Suggested witnesses

Note by the Clerk

Background

At its meeting on 8 October the Committee agreed to a provisional list of witnesses to give oral evidence at Stage 1 of the Criminal Procedure (Amendment) (Scotland) Bill. Outlined below is a more detailed breakdown of proposed evidence sessions. Witnesses not previously agreed by the Committee have been added in italics. Members are invited to consider and agree the updated list of witnesses. The dates and timings of these sessions are subject to the availability of witnesses.

The Committee will also hold a seminar to canvas the views of practitioners in the High Court on Friday 9 January.

Proposed witnesses

Wednesday 3 December
Court Service Officials: to comment on the current procedure in the High Court and the impact of the provisions in the Bill
Law Society of Scotland: to comment on whether the provisions of the Bill will work in practice and the impact of the proposed changes to procedure
Scottish Law Agents Society (if available): to comment on whether the provisions of the Bill will work in practice and the impact of the proposed changes to procedure

Wednesday 10 December
Procurators Fiscal Society: to comment on the current procedure in the High Court and the impact of the provisions in the Bill
Professor Peter Duff, University of Aberdeen Law School: co-author of research on Intermediate Diets, First Diets and Agreement of Evidence in Criminal Cases: an Evaluation
Police Organisations: Scottish Police Federation; Association of Chief Police Officers in Scotland; Association of Scottish Police Superintendents (as a panel): to comment on the impact of delays on police and of the proposed new procedure on the police and the provision of early information to the defence
Wednesday 17 December
**Sheriffs’ Association**: to comment on the impact of increased sentencing powers in the Sheriff Court and in general on the impact of the proposed changes to procedure

**Professor Martin Wasik, Chair, and Professor Andrew Ashworth, member, Sentencing Advisory Panel** (non-departmental public body in England and Wales with the overall objective of promoting consistency in sentencing in England and Wales): to comment on the provisions in the Bill relating to sentencing

**Scottish Human Rights Centre**: to answer questions on the human rights implications of proposals such as conducting trials in absentia and the extension of the 110 day rule

Wednesday 7 January

**Faculty of Advocates**: to comment on the proposed changes to criminal procedure and the potential impact of these changes

**SACRO (Safeguarding Communities and Reducing Offending in Scotland)**: to comment on the impact on prisoners of the proposals in the Bill, specifically on proposals to increase the sentencing powers of sheriffs and the extension of the 110 day rule

**Victim Support Scotland with Rape Crisis Scotland and Scottish Women’s Aid (as a panel)**: to comment on the impact of the provisions in the Bill on victims and witnesses, specifically addressing proposals regarding certainty of trial dates; measures for dealing with reluctant witnesses and issues relating to early disclosure to the defence

Wednesday 14 January

**Christine Vallely, School of Legal Studies, University of Wolverhampton**: author of research on reluctant witnesses for the Home Office

**Minister for Justice**