

# CRIMINAL JUSTICE (SCOTLAND) ACT 2003

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## EXPLANATORY NOTES

### THE ACT THE ACT IS IN 12 PARTS.

#### **Part 8 – Evidential, Jurisdictional and Procedural Matters**

##### *Section 63 – Adjourning at first diet in summary proceedings*

333. **Section 63** amends sections 144 and 145 of the Criminal Procedure (Scotland) Act 1995 and introduces a new section 145A into that Act. Section 144 makes provision for the procedure to be followed at the first diet, or calling, of a case in summary proceedings. This section of the Act amends section 144(9) to permit a reference to section 145A and designates a diet adjourned under section 145A as a first calling of a case and hence, subject to the provisions of section 144.
334. Section 145 of the 1995 Act makes provision for the court to adjourn a case, where the accused is not present at the first or pleading diet, to allow the accused to appear in person to answer the complaint; to allow for time for enquiry into the case or for any other cause that the court thinks reasonable subject to the limits in subsections (2) and (3). Section 145(2) restricts the total period that an accused may be held in custody under this section to 21 days, with each particular adjournment being restricted to no more than seven days except on cause shown. Section 145(3) restricts the period to which a case may be adjourned in any one period to twenty-eight days, where the accused is released on bail or ordained to appear.
335. The new section 145A permits the court to adjourn the case at the first calling, where the accused is not present and irrespective of whether the procurator fiscal is able to provide evidence that the accused has been cited to attend court, subject to the restrictions provided in subsections (2) and (3). Subsection (2) specifies that the court may permit the adjournment where the purpose is to allow the accused the opportunity of answering the complaint or for further time for enquiry into the case or for any other reasonable cause. Subsection (3) restricts any one adjournment granted under this subsection to a period of 28 days, irrespective of whether the accused is in custody or at liberty.
336. The effect of the introduction of section 145A is to permit the court to continue the case in the absence of the accused or where the prosecutor is unable to provide evidence to the court that the accused has been cited to appear at the diet. In addition, section 145A permits adjournments of up to 28 days in order to allow the accused to answer the complaint, for further time for enquiry or for any other reasonable cause. The new provision does not detract from the sheriff's power to grant a warrant for the arrest of the accused where the accused has been lawfully cited and has failed to appear or where it is expedient to do so under section 139(1)(b) of the 1995 Act.