

CRIMINAL PROCEDURE (AMENDMENT) (SCOTLAND) ACT 2004

EXPLANATORY NOTES

THE ACT

3. The Act is in four parts.
4. **Part 1 (proceedings in the High Court)** deals with court procedures as they relate to the High Court of Justiciary. The Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) is amended to accommodate these changes. The Act provides for a mandatory preliminary hearing in High Court cases and the procedure for these hearings. It introduces a new procedure whereby the court will appoint an appropriate trial date at the preliminary hearing after having dealt with preliminary matters and having regard to the state of preparation of the case.
5. **Part 2 (solemn proceedings generally)** relates to trials under solemn procedure in the High Court and the sheriff court and amends the time limits and citation provisions which are common to both courts. In particular, it amends the present 110 day custody time limit for High Court cases to provide that a preliminary hearing must be held within that time. In such cases, it also provides that the trial must commence within a new custody time limit of 140 days. It extends the provisions of the 1995 Act allowing trials in absence and makes new provision in relation to obstructive witnesses. Under those new provisions the court may place a deliberately obstructive witness on bail, including bail subject to a remote monitoring requirement. Part 2 also makes provision as to the matters to be dealt with at the new preliminary hearing in the High Court and at the mandatory first diet in sheriff court
6. **Part 3 (bail)** amends the provisions of the 1995 Act in relation to bail. It provides power to require the remote monitoring of a condition of bail restricting a person’s movements. It provides a right for the prosecutor to be heard in applications for bail review by an accused and also in applications for review by a convicted person released on bail pending an appeal.
7. **Part 4 (miscellaneous and general)** includes provision that at the first diet in the sheriff court the court shall ascertain which witnesses are required and review bail conditions. This brings procedure in the sheriff court on these points in line with that introduced by the Act for the High Court. It amends the provision of the 1995 Act relating to sentencing following a guilty pleas so as to impose a requirement on the court to take into account the stage at which an accused intimates his intention to plead guilty, and imposes an obligation on the court, having done so, to state whether or not a different sentence has been imposed. It increases the power of the sheriff to impose extended sentences in certain cases from 3 to 5 years, in line with the implementation of section 13(1) of the Crime and Punishment Act 1997, which had the effect of increasing the sentencing power of the sheriff and jury court to five years. The Act makes new provision for the citation of witnesses for precognition. Minor and consequential amendments are contained in the schedule to the Act.