

# **CRIMINAL PROCEDURE (AMENDMENT) (SCOTLAND) ACT 2004**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 2 - Solemn Proceedings Generally**

##### ***Section 7 - Citation***

62. **Section 7** of the Act amends section 66 of the 1995 Act which makes provision in relation to service and lodging of the indictment etc.
63. Subsection (1) of section 66 at present provides for the issue by the Clerk of Justiciary or, for solemn proceedings in the sheriff court, the sheriff clerk of a warrant to cite the accused witnesses and jurors when sittings of the relevant court have been appointed to be held for the purposes of trial of persons accused on indictment.
64. In terms of the Act, when a case is indicted in the High Court no trial diet will have been set. The accused will be cited to a preliminary hearing at which the trial diet shall be appointed by the court if appropriate. That diet will be appointed not to a sitting but to a specified date (which may under new section 83A inserted in the 1995 Act by section 5 of the Act be a date fixed as a date on which the diet must call).
65. Subsection (2) substitutes in relation to High Court and sheriff court solemn proceedings a new subsection (1) in section 66 which provides that the Act shall be sufficient authority for the citation of accused, witness and jurors. This removes the need for a warrant to be issued by the Clerk of Justiciary or sheriff clerk.
66. Subsections (3) and (4) amend the provisions relating to service where the accused is not in custody and provide that the accused may be cited by a constable affixing the notice referred to in subsection (4)(b) of section 66 at the accused's proper domicile of citation or in any other case at any premises which a constable reasonably believes to be the accused's dwelling house or place of business.
67. Subsection (5) inserts new subsections (6C) to (6E) into section 66. Subsections (6C) and (6D) provide that an accused will be taken as having been served with the indictment and notice of compearance referred to in section 66(6) if they are served on a solicitor who has intimated to the procurator fiscal that he is acting for the accused and has not informed that procurator fiscal that he has been dismissed or is no longer acting for the accused. Subsection (6E) imposes a duty on a solicitor who has, prior to service of the indictment, informed the prosecutor that he is engaged by the accused, to inform the procurator fiscal if he is dismissed by, or withdraws from acting for, the accused.
68. Subsection (6) provides for the consequential repeal of subsection (8) which relates to the warrant issued under the present subsection (1).