

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 4 - Miscellaneous and General**

##### ***Section 19 - First diet in sheriff court solemn proceedings: witnesses and bail***

159. **Section 19** amends section 71 of the 1995 Act by inserting a new subsection (1C) which requires the sheriff court at a first diet to ascertain which of the witnesses on the list of Crown witnesses are required by the prosecutor and the accused to attend the trial. Where the accused is on bail the court is required to review the conditions of bail and after hearing parties may, if it considers it appropriate, fix bail on different conditions.
160. The section also makes consequential amendments to subsections (2) and (3) of section 71 to incorporate reference to the new subsection (1C). It replicates for the sheriff court first diet provisions made for preliminary hearings in the High Court in new sections 72 and 72A of the 1995 Act as inserted by section 1 of this Act.

##### ***Section 20 - Sentence following guilty plea***

161. **Section 20** amends section 196 of the 1995 Act, which applies across solemn and summary procedure.
162. Subsection (2) amends subsection (1) of section 196 so as to require the sentencing judge to take into account the stage at which the accused indicates his intention to plead guilty. At present the judge has a discretion to consider the issue when determining sentence, but is not required to do so.
163. Subsection (3) introduces a new subsection (1A) which requires the judge to state when passing sentence whether his consideration of the stage and circumstances in which a guilty plea was tendered has led him to impose a sentence different from that which the convicted person would otherwise have received. In effect, he is required to state whether a sentence discount has been given. Where the sentence has not been altered by that consideration, the judge is required to make that fact clear and give reasons for the decision not to discount.

##### ***Section 21 - Increase in extended sentence which may be passed by sheriff court in certain cases***

164. **Section 21** of the Act amends section 210A(6) of the 1995 Act to increase the maximum extended sentence a sheriff may pass on certain sexual and violent offenders from three years to five years.
165. This relates to the bringing into force of section 13(1) of the Crime and Punishment (Scotland) Act 1997, on 1 May 2004 which had the effect of increasing the custodial sentencing power of a sheriff sitting with a jury from three years to five

years. At present section 210A(6) provides that a sheriff may not pass an extended sentence which exceeds the aggregate of the maximum custodial term he may set and an extension period not exceeding 3 years. This amendment simply brings the extended term which may be set in line with the increase in the maximum custodial term which may be imposed by the sheriffs.

### ***Section 22 - Citation of witnesses for precognition***

166. **Section 22** inserts a new section 267A into the 1995 Act which re-enacts in an updated form section 67A of the 1995 Act. In particular, section 267A provides that the 1995 Act is sufficient warrant to cite for precognition and that citation shall be in the form prescribed by Act of Adjournal or as nearly as possible in such form.

### ***Section 23 - Admissibility of prior statements of witnesses***

167. This section introduces a new subsection (5) into section 260 of the 1995 Act. Section 260 provides that in certain circumstances a prior statement by a witness may be admissible as any evidence of any matter stated in it of which oral direct evidence by a witness would be admissible if given in the course of criminal proceedings. There was some doubt as to whether the statement required to be included in the list of productions attached to the indictment. This new subsection is designed to remove that doubt and provides that the prior statement shall not be inadmissible only for the reason that it is not included in any list of productions.

### ***Section 24 - Protection of Children (Scotland) Act 2003: references following conviction***

168. This section amends section 10 of the Protection of Children (Scotland) Act 2003 which sets out the arrangements for referral of individuals convicted of an offence against a child for inclusion in the list of persons considered unsuitable to work with children. Section 10 of the 2003 Act specifies the circumstances in which a court shall propose to make a referral and those where there is a discretion allowing them to propose a reference. At the time of the conviction the court is to propose the referral but the actual referral is not made until the period for lodging an appeal against that proposed reference is exhausted. Section 19B amends section 10 of the 2003 Act to provide that the actual reference is to be made either when the period for bringing an appeal has expired without an appeal having been brought, or where an appeal has been brought timeously and has been dismissed or abandoned.
169. The Criminal Procedure (Scotland) Act 1995 allows for the time limits for bringing appeals to be extended. Section 19B makes relevant changes to sections 110 and 111 in relation to appeals from solemn proceedings, to section 181 in relation to appeals from summary proceedings and to section 186 in relation to appeals against sentence to make it clear that there can be no extension of the period in which an appeal can be made against a proposed reference. This does not affect the Court's power to extend periods during which appeals can be made against convictions, sentences or disposals.

### ***Section 25 - Further modifications of the 1995 Act***

170. This section introduces the schedule to the Act which makes modifications of a minor and consequential nature to the 1995 Act.

### ***Section 26 - Ancillary provision***

171. This allows Scottish Ministers to make ancillary provision in statutory instruments in consequence of the Act.

### ***Section 27 - Commencement and short title***

172. This provides for commencement by order.