



Criminal Proceedings etc. (Reform) (Scotland) Act 2007

2007 asp 6

PART 2

PROCEEDINGS

Miscellaneous

35 Evidence on commission

- (1) In section 66 (service and lodging of indictment, etc.) of the 1995 Act—
- (a) in subsection (6A)—
 - (i) in paragraph (a)(i), after the word “defence” there is inserted “ (including at any commissioner proceedings) ”,
 - (ii) in paragraph (a)(iii), after the word “trial” there is inserted “ (or at any related commissioner proceedings) ”,
 - (b) after subsection (14) there is added—

“(15) In subsection (6A) above, “commissioner proceedings” means proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act.”.
- (2) In section 140 (citation) of that Act—
- (a) in subsection (2A)—
 - (i) in paragraph (a), after the word “defence” there is inserted “ (including at any commissioner proceedings) ”,
 - (ii) in paragraph (c), after the word “trial” there is inserted “ (or at any related commissioner proceedings) ”,
 - (b) after subsection (2B) there is added—

“(2C) In subsection (2A) above, “commissioner proceedings” means proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act.”.
- (3) In section 271I (taking of evidence by a commissioner) of that Act—

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- (a) after subsection (1) there is inserted—
- “(1A) Proceedings before a commissioner appointed under subsection (1) above shall, if the court so directed when authorising such proceedings, take place by means of a live television link between the place where the commissioner is taking, and the place from which the witness is giving, evidence.”,
- (b) in subsection (3)(a), for the words “present in the room where such proceedings are taking place” there is substituted “present—
- (i) in the room where such proceedings are taking place;
or
- (ii) if such proceedings are taking place by means of a live television link, in the same room as the witness”,
- (c) after subsection (4) there is added—
- “(5) Sections—
- (a) 274;
(b) 275;
(c) 275B except subsection (2)(b);
(d) 275C;
(e) 288C;
(f) 288E; and
(g) 288F,
- of this Act apply in relation to proceedings before a commissioner appointed under subsection (1) above as they apply in relation to a trial.
- (6) In the application of those sections in relation to such proceedings—
- (a) the commissioner acting in the proceedings is to perform the functions of the court as provided for in those sections;
- (b) references—
- (i) in those sections, except section 275(3)(c) and (7)(c), to a trial or a trial diet;
- (ii) in those sections, except sections 275(3)(e) and 288F(2), (3) and (4), to the court,
- shall be read accordingly;
- (c) the reference in section 275B(1) to 14 days shall be read as a reference to 7 days.
- (7) In a case where it falls to the court to appoint a commissioner under subsection (1) above, the commissioner shall be a person described in subsection (8) below.
- (8) The persons are—
- (a) where the proceedings before the commissioner are for the purposes of a trial in the High Court, a judge of the High Court; or
- (b) in any other case, a sheriff.”.
- (4) In section 272 (evidence by letter of request or on commission) of that Act, after subsection (9) there is added—

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“(10) Sections—

- (a) 274;
- (b) 275;
- (c) 275B except subsection (2)(b);
- (d) 275C; and
- (e) 288C,

of this Act apply in relation to proceedings in which a commissioner examines a witness under subsection (1)(b) above as they apply in relation to a trial.

(11) In the application of those sections in relation to such proceedings—

- (a) the commissioner acting in the proceedings is to perform the functions of the court as provided for in those sections;
- (b) references—
 - (i) in those sections, except section 275(3)(c) and (7)(c), to a trial or a trial diet;
 - (ii) in those sections, except section 275(3)(e), to the court, shall be read accordingly;
- (c) the reference in section 275B(1) to 14 days shall be read as a reference to 7 days.

(12) In a case where it falls to the court to appoint a commissioner for the purposes of subsection (1)(b) above, the commissioner shall be a person described in subsection (13) below.

(13) The persons are—

- (a) where the proceedings before the commissioner are for the purposes of a trial in the High Court, a judge of the High Court; or
- (b) in any other case, a sheriff.”.

(5) In section 275A(1) (disclosure of accused's previous convictions where court allows questioning or evidence under section 275) of that Act, after the word “court” there is inserted “ (or, in proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act, a commissioner) ”.

(6) In section 288D (appointment of solicitor by court in such cases) of that Act—

- (a) in subsection (2), after paragraph (a)(ii) there is inserted—

“(iii) the conduct of his case at any commissioner proceedings; or”
- (b) in subsection (6), after the word “trial” there is inserted “ (or at any related commissioner proceedings) ”,
- (c) after that subsection there is inserted—

“(6A) Where, in relation to commissioner proceedings, the commissioner is satisfied that a solicitor so appointed is no longer able to act upon the instructions, or in the best interests, of the accused, the commissioner is (for the purpose of the application of subsection (6) above) to refer the case to the court.”
- (d) in subsection (7), for the word “(6)” in the first place where it occurs there is substituted “ (6A) ”,
- (e) after subsection (8) there is added—

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“(9) In this section, “commissioner proceedings” means proceedings before a commissioner appointed under section 271I(1) or by virtue of section 272(1)(b) of this Act.”.

Changes to legislation:

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