



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

2007 asp 6

## PART 2

### PROCEEDINGS

#### *Miscellaneous*

#### **40 Power of court to excuse procedural irregularities**

After section 300 of the 1995 Act there is inserted—

#### *“Excusal of irregularities*

#### **300A Power of court to excuse procedural irregularities**

- (1) Any court may excuse a procedural irregularity—
  - (a) of a kind described in subsection (5) below; and
  - (b) which has occurred in relation to proceedings before that court,if the conditions mentioned in subsection (4) below are met.
- (2) In appeal proceedings, the High Court may excuse a procedural irregularity—
  - (a) of that kind; and
  - (b) which has occurred in relation to earlier proceedings in the case that is the subject of the appeal,if those conditions are met.
- (3) A court may proceed under subsection (1) or (2) above on the application of the prosecutor or an accused person (having given the other an opportunity to be heard).
- (4) The conditions are that—
  - (a) it appears to the court that the irregularity arose because of—
    - (i) mistake or oversight; or

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- (ii) other excusable reason; and
  - (b) the court is satisfied in the circumstances of the case that it would be in the interests of justice to excuse the irregularity.
- (5) A procedural irregularity is an irregularity arising at any stage of proceedings—
  - (a) from—
    - (i) failure to call or discharge a diet properly;
    - (ii) improper adjournment or continuation of a case;
    - (iii) a diet being fixed for a non-sitting day;
  - (b) from failure of—
    - (i) the court; or
    - (ii) the prosecutor or the accused,
 to do something within a particular period or otherwise comply with a time limit;
  - (c) from failure of the prosecutor to serve properly a notice or other thing;
  - (d) from failure of the accused to—
    - (i) intimate properly a preliminary objection;
    - (ii) intimate properly a plea or defence;
    - (iii) serve properly a notice or other thing;
  - (e) from failure of—
    - (i) the court; or
    - (ii) the prosecutor or the accused,
 to fulfil any other procedural requirement.
- (6) Subsection (1) above does not authorise a court to excuse an irregularity arising by reason of the detention in custody of an accused person for a period exceeding that fixed by this Act.
- (7) Subsection (1) above does not apply in relation to any requirement as to proof including, in particular, any matter relating to—
  - (a) admissibility of evidence;
  - (b) sufficiency of evidence; or
  - (c) any other evidential factor.
- (8) Where a court excuses an irregularity under subsection (1) above, it may make such order as is necessary or expedient for the purpose of—
  - (a) restoring the proceedings as if the irregularity had never occurred;
  - (b) facilitating the continuation of the proceedings as if it had never occurred, for example—
    - (i) altering a diet;
    - (ii) extending any time limit;
    - (iii) appointing a diet for further procedure or granting an adjournment or continuation of a diet;
  - (c) protecting the rights of the parties.
- (9) For the purposes of this section—
  - (a) a reference to an accused person, except the reference in subsection (6) above, includes reference to a person who has been convicted of an offence;

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- (b) something is done properly if it is done in accordance with a requirement of an enactment or any rule of law.
- (10) In subsection (5)(a)(iii) above, a “non-sitting day” is a day on which the court is under this Act not required to sit.
- (11) This section is without prejudice to any provision of this Act under which a court may—
- (a) alter a diet; or
  - (b) extend—
    - (i) a period within which something requires to be done; or
    - (ii) any other time limit.
- (12) This section is without prejudice to any rule of law by virtue of which it may be determined by a court that breach, in relation to criminal proceedings—
- (a) of a requirement of an enactment; or
  - (b) of a rule of law,
- does not render the proceedings, or anything done (or purported to have been done) for the purposes of or in connection with proceedings, invalid.”.

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**Commencement Information**

- II** S. 40 wholly in force at 10.12.2007, see s. 84 and S.S.I. 2007/479. {art. 3}, Sch. (subject to savings in art. 11)

**Changes to legislation:**

There are currently no known outstanding effects for the *Criminal Proceedings etc. (Reform) (Scotland) Act 2007, Section 40*.