



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.”.