SCOTTISH STATUTORY INSTRUMENTS

2004 No. 405 (C. 28)

CRIMINAL LAW

The Criminal Procedure (Amendment) (Scotland) Act 2004 (Commencement, Transitional Provisions and Savings) Order 2004

Made - - - - *22nd September 2004*

The Scottish Ministers, in exercise of the powers conferred by section 27(1) and (2) of the Criminal Procedure (Amendment) (Scotland) Act 2004(**1**), hereby make the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Criminal Procedure (Amendment) (Scotland) Act 2004 (Commencement, Transitional Provisions and Savings) Order 2004.

(2) In this Order–

"the 1995 Act" means the Criminal Procedure (Scotland) Act 1995(**2**); and

"the 2004 Act" means the Criminal Procedure (Amendment) (Scotland) Act 2004.

(3) In this Order, unless the context otherwise requires, words and expressions have the same meaning as in the 1995 Act (as amended by the 2004 Act).

Appointed day

2.—(1) Subject to the transitional provisions and savings contained in articles 3 to 5, the day appointed for the coming into force of the provisions of the 2004 Act set out in column 1 of Schedule 1 to this Order is the day specified in column 2 of that Schedule, but where an exception is specified in relation to a provision in column 1, that provision shall come into force on the appointed day subject to that exception.

(2) The day appointed for the coming into force of the provisions of the 2004 Act set out in column 1 of Schedule 2 to this Order shall be the same day as that appointed for the coming into force of the provisions in the Vulnerable Witnesses (Scotland) Act 2004(**3**) specified in column 2 of Schedule 2, but where any provision in column 2 comes into force only for a particular purpose, the corresponding provision in column 1 shall come into force only for that purpose.

(**1**) 2004 asp 5.
(**2**) 1995 c. 46.
(**3**) 2004 asp 3.

Transitional provision and savings

3.—(1) No preliminary hearing shall take place before 1st April 2005.

(2) The provisions of the 2004 Act which come into force on 1st February 2005 shall apply for the purposes of a first diet, preliminary hearing or trial diet that commences after 31st March 2005.

(3) The provisions of the 1995 Act shall continue to apply as if this Order had not been made where (and only where)–

(a) the accused is cited on or before 1st March 2005 to a diet in the High Court or the sheriff court which commences before 1st April 2005; or

(b) the period mentioned in subsections (1) or (4) of section 65 of the 1995 Act as so continued (taking into account any extension under subsections (3), (5) or (7)) expires before 1st April 2005.

(4) Sub paragraph (3) does not apply to the provisions of the 1995 Act that are repealed, substituted or amended by provisions of the 2004 Act that come into force on a day other than 1st February 2005.

(5) The reference in sub paragraph (3)(a) to citation to a diet which commences before 1st April 2005 includes–

(a) any further, adjourned, postponed or altered diet which commences before that date;

(b) re-indictment to any diet which commences before that date; and

(c) a first diet in the sheriff court which commences before that date and any subsequent trial diet in the sheriff court, provided the trial diet also commences before that date.

(6) For the purposes of this article–

(a) a diet other than a trial diet shall be taken to commence when it is called; and

(b) a trial diet shall be taken to commence when the jury is sworn.

Transitional provision relating to procedure where trial diet does not proceed

4.—(1) This article applies where a trial diet has been fixed for a date on or after 1st February 2005 but before 1st April 2005 and the trial does not proceed on that date.

(2) Where the High Court appoints a further trial diet for a date after 31st March 2005 it may, if it is satisfied that it is appropriate to do so, indicate that the diet is to be a floating diet for the purposes of section 83A of the 1995 Act.

(3) Where section 81(5)(a)(i) of the 1995 Act applies (as amended by the 2004 Act) it shall be read without reference to the word "further".

(4) The application of the 1995 Act (as amended by the 2004 Act) in circumstances to which this article applies shall not have the effect of requiring a preliminary hearing to commence within a period of 11 months of the first appearance of the accused on petition in respect of the offence.

Transitional provision relating to engagement, dismissal and withdrawal of solicitor representing accused

5. Where any notification requirement arises by virtue of the coming into force of section 8 of the 2004 Act, that requirement is complied with if–

(a) notification has been given prior to the coming into force of section 8 in a manner that satisfies the requirements of section 72F of the 1995 Act (as substituted by section 8 of the 2004 Act); or

(b) notification is given forthwith.