CRIMINAL PROCEDURE (AMENDMENT) (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Criminal Procedure (Amendment) (Scotland) Bill introduced in the Scottish Parliament on 25 February 2002:

- Explanatory Notes;
- a Financial Memorandum;
- an Executive Statement on legislative competence; and
- the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 49–PM.
These documents relate to the Criminal Procedure (Amendment) (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 25 February 2002

EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

THE BILL

4. Intermediate diets are hearings set by a court, in summary criminal proceedings, for the purpose of ascertaining, so far as is reasonably practicable, whether the case is likely to proceed to trial on the date assigned as a trial diet. If an accused does not appear as required for an intermediate diet, the court may grant a warrant for his or her arrest. In the case of Reynolds v Procurator Fiscal Linlithgow, the Appeal Court held that where such a warrant was issued, it did not, by implication, discharge the trial diet. If this was not done explicitly and the case was not called on the day appointed for the trial diet, the instance would fall. It would not then be competent for the court to hear further proceedings in relation to the complaint in question.

5. The Bill provides that the issue of a warrant following the failure of an accused to appear at an intermediate diet will automatically discharge the trial diet, unless otherwise ordered by the court. The Bill is retrospective in effect.

COMMENTARY ON SECTIONS

Section 1 Effect of grant of arrest warrant at an intermediate diet

6. Section 1(1) of the Bill amends section 150 of the Criminal Procedure (Scotland) Act 1995 (c.46) so as to provide that where an accused fails to appear at an intermediate diet fixed under section 148 of that Act and the court grants a warrant under section 150(3) of that Act then, in the absence of any other order of the court in relation to the trial diet, the grant of such warrant has the effect of discharging that diet.

7. Section 1(2) makes the amendment of section 150 of the 1995 Act retrospective by providing that section 150 is to be regarded as always having had effect as amended by section 1(1) of the Bill. Therefore, all warrants granted under section 150(3) of the 1995 Act before the date on which section 1 comes into force will, on and after that date, be treated as having the effect of discharging the trial diet.

8. Intermediate diets were introduced in 1981 following amendment made to the Criminal Procedure (Scotland) Act 1975 (c.21) by section 15 of the Criminal Justice (Scotland) Act 1980 (c.62). Section 1(3) of the Bill therefore provides that section 338(1) of the 1975 Act (which was
re-enacted by section 150 of the 1995 Act) is to be regarded as having provided that any warrants granted under section 338(1)(c) have the effect of discharging the trial diet. The provision is to be regarded as having had that effect since the coming into force of section 15 of the 1980 Act (on 1 February 1981).

9. Section 1(4) provides that the Bill will not render incompetent any proceedings in cases that have been called or completed.

Section 2 Short title and commencement

10. This section sets out the title by which the Bill may be cited once it has been enacted. The new Act will come into force the day after Royal Assent.

FINANCIAL MEMORANDUM

COSTS ON THE SCOTTISH ADMINISTRATION

11. The Bill will give rise to no costs on the Scottish Administration.

COSTS ON LOCAL AUTHORITIES

12. This Bill will give rise to no costs on local authorities.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

13. This Bill will give rise to no costs on other bodies, individuals or businesses.

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

14. On 25 February 2002, the Minister for Justice (Mr Jim Wallace) made the following statement:

“In my view, the provisions of the Criminal Procedure (Amendment) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

15. On 25 February 2002, the Presiding Officer (Sir David Steel) made the following statement:

“In my view, the provisions of the Criminal Procedure (Amendment) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
These documents relate to the Criminal Procedure (Amendment) (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 25 February 2002

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