CRIMINAL PROCEDURE (AMENDMENT) (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Criminal Procedure (Amendment) (Scotland) Bill introduced in the Scottish Parliament on 25 February 2002. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 49–EN.

POLICY OBJECTIVES OF THE BILL

2. This Bill deals with procedure in relation to intermediate diets, which are part of the summary criminal justice system. Intermediate diets are hearings set by a summary court for the purpose of ascertaining, so far as is reasonably practicable, whether the case is likely to proceed to trial on a date assigned as a trial diet, and in particular the state of preparation of the accused and prosecutor, and whether the accused intends to adhere to a not guilty plea.

3. If an accused does not appear as required for an intermediate diet, the court may grant the issue of 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.

4. The Appeal Court judgement was contrary to widespread practice in the summary courts, where it had been assumed that the issue of an arrest warrant in the described circumstances had the effect of automatically discharging the trial diet, and there was therefore no requirement to record this fact in the court minute. It is believed that at present there are at least 5,000 cases that might be affected and many more concluded cases that are also potentially affected.

5. The Bill amends the Criminal Procedure (Scotland) Act 1995 so that the position in law is as had been understood in paragraph 4 above. The Bill will make it clear 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.
ALTERNATIVE APPROACHES

6. It was considered that it was unacceptable in the circumstances not to legislate. Not to do so would be likely to result in potentially large numbers of those accused or convicted of crimes escaping justice on what would be regarded as a technicality. While there existed the possibility that the Crown might be seek to reverse the decision in Reynolds in another case before the Appeal Court, there is clearly no guarantee that the Appeal Court would take a different view and in the meantime there could be a considerable number of cases lost.

CONSULTATION

7. Because of the need for immediate legislation, no formal consultation has taken place.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

8. There are no particular effects on equal opportunities, human rights, island communities, local government or sustainable development. The Bill aims to restore the position to that widely understood to have applied before the Appeal Court judgement.
This document relates to the Criminal Procedure (Amendment) (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 25 February 2002

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