

Changes to Summary Justice: The Criminal Proceedings etc. (Reform) (Scotland) Act 2007

> Introduction

This briefing paper will explain the main elements of this piece of legislation. It has been compiled using information gained from the Scottish Government, The Crown Office, The Scottish Courts, and the Public Defence Solicitor's Office.

> History

The Act came about as the result of a review of the summary justice system undertaken by an independent committee, chaired by Sheriff Principal John McInnes. The committee published a report¹ with a number of recommendations relating to how improvements could be made in the system. Within the report, Sheriff McInnes and his colleagues provided a number of recommendations which would be central to the new Act. The recommendations included:

- Making changes to the law relating to Criminal Proceedings – in order that cases would be dealt with as quickly and effectively as possible
- Increasing the sentencing powers of Sheriff Summary Courts
- Extending the range of alternatives to prosecution which can be offered – increasing the powers of procurators fiscal
- Reforming the way in which fines and other monetary penalties can be collected and enforced
- Establishing Justice of the Peace (JP) Courts in place of District Courts
- Reforming the ways in which JPs are recruited, appointed, trained, and monitored
- Changing the system of bail and remand in both summary and solemn cases.

The Criminal Proceedings etc. (Reform) (Scotland) Act was granted Royal Assent in February 2007. The first phase, which focussed on bail was introduced in December, with the second phase, which included increases to fiscal powers, being introduced in March 2008.

> What is summary justice?

Summary justice can be defined as all non-jury criminal prosecutions. These account for approximately 96% of all prosecutions taking place within Scotland². The reforms focus primarily on less serious cases. These include: road traffic offences; theft/ shoplifting; breach of the peace, and minor assaults. The aims of the legislation relating to summary justice reforms are that they are:

- **Fair** to the accused, victims and witnesses
- **Effective** in deterring, punishing and helping to rehabilitate offenders
- **Efficient** in the use of time and resources
- **Quick and simple** in delivery.

¹ The Summary Justice Review Committee – Report to Ministers 2007
<http://www.scotland.gov.uk/Resource/Doc/47171/0031637.pdf>

² Scottish Courts Summary Justice Reform: http://www.scotcourts.gov.uk/summary_justice_reform/index.asp

> The main areas of reform

Under the Act the following are the main areas of summary justice under reform. It should be noted that this paper will focus primarily on issues which may have relevance to Sacro and the services it currently delivers.

- Bail
- Alternatives to prosecution
- Summary Criminal Court procedure
- Sentencing powers
- Fines enforcement
- JP Court.

Bail

- The attitude of the Crown (Procurator Fiscal) to bail no longer restricts the court's discretion to grant bail
- Bail should be granted unless there is a good reason to refuse it
- When considering granting bail, consideration must be given to public interest and public safety
- When granting bail the court shall explain to the accused in ordinary language the effect of the bail conditions imposed, and the consequences of breaching those conditions
- Where the accused moves house he/she should apply to the court within seven days for permission to amend his/her domicile. Failure to do so is an offence, punishable by up to 12 months imprisonment.

Breach of Bail

The new Act alters the powers of the court and the penalties it may impose when bail is breached. These include:

- Failing to appear
- Commission of further offence whilst on bail
- Breaching special or additional bail conditions.

Breaches of the above can now be sentenced to up to 12 months imprisonment (increased from three months under the previous legislation). It should also be noted that any sentence committed as a result of the above must be served consecutively. The maximum penalty for breach of bail and/or failure to appear for a court hearing, in solemn cases, is increased from two to five years imprisonment.

The Act also stipulates that, in petition or indictment cases, where an accused is charged with either a sexual or violent offence, or one involving drug trafficking, and has an analogous conviction on indictment, bail may only be granted if there are exceptional circumstances.

> Alternatives to prosecution

a. Fiscal Fines and Compensation Offers

One of the primary intentions of the new legislation is to assist in the efficiency by which cases are dealt with by the court. One way of achieving this is by the substantial increase in “direct measures”. This is the term given to the enhanced powers for procurators fiscal to use alternatives to prosecution. Serious or persistent offenders will not be offered a “direct measure”. However, all alleged offenders offered a direct measure will be entitled to take their cases to court instead if they wish. Procurators fiscal may now “offer” fixed penalty fines of up to £300. They may also offer “compensation offers” to accused, of up to £5,000, if deemed appropriate. If accepted by the accused, no prosecution can take place, and no conviction will be recorded. In other words, the alleged offender will only be prosecuted and have their case called to court if they reject the offer of either a fiscal fine or a compensation offer.

b. Work Orders

The new legislation, for the first time, provides procurators fiscal with the opportunity to offer a community based alternative to prosecution. From June 2008 this scheme has been piloted in South Lanarkshire, West Lothian, West Dunbartonshire and the Highlands. These “Fiscal Work Orders” are primarily designed to deal with relatively minor offences such as graffiti, vandalism and minor shoplifting, and are used where the offer of a monetary penalty such as a “Fiscal Fine” or compensation offer are not deemed appropriate, often on grounds of perceived inability to pay. They can range from between 10 and 50 hours. If the hours are completed satisfactorily the alleged offender will not face prosecution for the alleged offence. If however the order is not completed satisfactorily, the procurator fiscal will have the option of prosecuting the alleged offender.

> Summary Criminal Court procedure

The Act makes a number of changes to the summary court procedure. These include:

- Increasing the sentencing powers of the summary courts. These include increasing the maximum sentence for “common law” offences from three to 12 months; a 12 month maximum sentence to first offenders, and an increase in the maximum fine which can be imposed – from £5,000 to £10,000
- Increased use of bail undertakings by police. Police can now fix a date for the accused to attend court, which should result in cases coming to court earlier
- Evidence provided by the procurator fiscal to be made available to the accused at the outset of a case
- Greater powers to allow cases to proceed in the absence of the accused. In such cases the court can appoint a solicitor. However custodial sentences cannot be imposed without the presence of the accused.

> Sentencing powers

The Act makes a number of changes of sentencing powers available to the summary courts. These include:

- Increasing the maximum sentence for "common law" offences from three to 12 months
- A 12 month maximum sentence to first offenders
- An increase in the maximum fine which can be imposed – from £5,000 to £10,000
- The maximum District or JP Court period of imprisonment remains at 60 days, although Scottish Government Ministers have the power to increase this to six months
- District/JP Courts are now able to impose a driving disqualification in certain road traffic act cases
- The Stipendiary Court (relevant to Glasgow only) now has the same powers as a Sheriff Court.

> Fines enforcement

The aims of the changes to the law in relation to the enforcement of fines are to:

- Make collection and enforcement of fines are more efficient
- Assist those who have a genuine difficulty in paying monetary penalties
- Use sanctions against those who can, but won't, pay
- Minimise the involvement of the courts and the police in pursuing offenders who default on their fine repayments
- Increase the collection rate of fines.

It is anticipated that much of the above will be achieved by the introduction of new "Fine Enforcement Orders". The Act also establishes provision of a new post within the court. Fines will now be managed by "Fine Enforcement Officers" (FEOs). Their role will be to provide information and advice to offenders about payment of fines or other penalties, and secure compliance with the terms of the Fine Enforcement Order. Their powers will include:

- Seizure of an offender's vehicle
- Ability to deduct fines directly from benefits
- Ability to arrest wages directly from an offender's employer
- Ability to arrest bank accounts.

The fine enforcement officer will manage all requests to vary the instalment rate, or further time to pay the fine. The fine will only be remitted to the court if the FEO assesses that it is unlikely that payment will be received. The offender has the right to apply to the court in writing to review decisions made by the FEO.

> JP Court

The more extensive use of non-court options is envisaged to create a significant capacity in the District and JP Courts. JP Courts will replace the current District Courts, on a phased basis, sheriffdom by sheriffdom, although this process will take until the end of 2010. JP Courts will still function using lay justices (Justices of the Peace), although there will be an increased focus and requirements on JPs relating to training, appraisal and availability. The theory is that JP Courts will have more opportunity to deal with different types of cases than they do at the present time, as their current of cases will, under the new legislation, be dealt with by "direct measures".

> More Information

Given that this piece of legislation is very new, there currently is limited information as to how it is working in practice. However the following links may be of use:

The Criminal Proceedings etc. (Reform) (Scotland) Act 2007:

http://www.opsi.gov.uk/legislation/scotland/acts2007/asp_20070006_en_1

The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 – Explanatory notes:

http://www.opsi.gov.uk/legislation/scotland/acts2007/en/aspn_20070006_en.pdf

Scottish Government information relating to the above:

<http://openscotland.gov.uk/Publications/2007/09/06092618/2>

<http://www.scotland.gov.uk/Publications/2008/03/04141729/1>

The Crown Office and Procurator Fiscal Service:

<http://www.copfs.gov.uk/>

The Scottish Courts:

<http://www.scotcourts.gov.uk/>

Public Defence Solicitors office:

<http://www.pdso.org.uk>

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