

## [Criminal Procedure \(Amendment\) \(Scotland\) Bill](#)

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Bill Number: SP Bill 10  
Introduced on: 7 October 2003  
Introduced by: Cathy Jamieson (Executive Bill)  
Passed: 28 April 2004  
Royal Assent: 4 June 2004

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### **Passage of the Bill**

The [Criminal Procedure \(Amendment\) \(Scotland\) Bill](#) [SP Bill 10] was introduced in the Parliament on 7 October 2003. The Justice 1 Committee, as lead committee, commenced taking Stage 1 oral evidence on the general principles of the Bill at its meeting on 26 November 2003. The Stage 1 (general principles) debate took place on [25 February 2004](#) and [the Bill was passed](#) following the Stage 3 parliamentary debate on [28 April 2004](#).

### **Purpose and objectives of the Bill**

The Scottish Executive initiated a review of the practices and procedures of the High Court in late 2001. The report of this review, '[Improving Practice: 2002 Review of the Practices and Procedure of the High Court of Justiciary](#)' (also referred to as 'the Bonomy Report'), was published in December 2002. It set out various recommendations, some - but not all - of which would require legislation.

The Executive consulted on the recommendations produced by the review and, in June 2003, published a White Paper ('[Modernising Justice in Scotland](#)') setting out its proposals for reform. This was followed by the introduction of the Bill, to amend the Criminal Procedure (Scotland) Act 1995.

The Executive stated that the Bill is a key part of the overall package of reform to High Court procedures set out in the White Paper and is intended to introduce greater certainty into High Court proceedings, helping to develop a more managed system with emphasis on better communication between prosecution and defence and earlier preparation by both parties.

### **Provisions of the Bill**

Part 1 of the Bill provides for changes to court procedures in the High Court, including a new mandatory pre-trial procedural hearing (to be known as a 'preliminary hearing') and changes to how trial dates are set.

Part 2 of the Bill includes provisions for changes to statutory time limits applying to the prosecution of cases, for the extension of existing provisions allowing trials in the absence of the accused, and to add new measures in relation to obstructive witnesses. It includes provisions applying to High Court cases and to cases prosecuted in the sheriff courts under solemn procedure.

Part 3 of the Bill provides courts, in relation to both solemn and summary procedure cases, with the power to require as a condition of bail, electronic monitoring ('tagging') restricting a person's movements. It also contains provision for prosecutors to have a right to be heard on certain applications relating to bail.

Part 4 of the Bill includes provisions relating to matters which should be dealt with during 'first diets' (an existing pre-trial procedural hearing held in sheriff court cases under solemn procedure); sentencing following a guilty plea; and the sentencing powers of a sheriff under solemn procedure

### **Parliamentary consideration**

The Justice 1 Committee noted in its [Stage 1 Report](#) that, almost without exception, the aims of the Bill were welcomed in evidence to the Committee. However, various aspects of the Bill did give rise to substantial debate. These included the proposal to extend the '110-day rule'. This is the rule that, where an accused has been remanded in custody to await trial, the trial must start within 110 days of full committal. Although the Justice 1 Committee noted in its Stage 1 Report that it had reservations about the proposed change, a majority of its members concluded that the advantages of the new system being introduced justified the extension of the time limit. The proposed change to the 110-day rule was included in the Bill as passed.

The Bill as passed does, however, include a number of significant changes from the Bill as introduced. These include changes to the provisions on trial in absence of the accused. The Bill as introduced made provision for a solemn trial to proceed or be concluded in the absence of the accused, in circumstances where the accused has been properly cited to appear and the court considers that it is in the interests of justice to proceed. The Justice 1 Committee acknowledged, in its Stage 1 Report, the problems experienced by victims and witnesses where an accused fails to appear for trial. It stated that it saw some merit in allowing a trial to continue in the absence of the accused where all the evidence has been led, but rejected the proposal that an accused should be tried in absence from the outset. The Deputy Minister for Justice noted during the Stage 3 parliamentary debate, that the Executive had accepted that the provision should be changed to restrict it to cases where evidence against the accused has already been led. The Bill as passed restricts the provision to cases where evidence has already been led which 'substantially implicates the accused' in respect of an offence charged in the indictment.