
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2017 No.

CRIMINAL LAW

The Criminal Justice (Scotland) Act 2016 (Consequential and Transitional Provisions) Regulations 2017

Made - - - - 2017

Coming into force - - 31st July 2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 115(1) of the Criminal Justice (Scotland) Act 2016(a) and all other powers enabling them to do so.

In accordance with section 115(2)(a) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Criminal Justice (Scotland) Act 2016 (Consequential and Transitional Provisions) Regulations 2017 and come into force on 31st July 2017.

(2) In these Regulations, “the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(b).

Amendment of the 1995 Act

2.—(1) The 1995 Act is amended as follows.

(2) In section 81 (procedure where trial diet does not proceed)(c)—

(a) in subsection (4), omit the words “or the accused has been cited to a trial diet in the sheriff court”;

(b) for subsection (5)(a)(ii) substitute—

“(ii) where the charge is one that can lawfully be tried in the sheriff court, at a first diet in that court not less than 21 clear days after service of the notice; or”;
and

(c) in subsection (5)(b)(i), for “further trial diet” substitute “first diet”.

(a) 2016 asp 1 (“the 2016 Act”).

(b) 1995 c.46.

(c) Section 81 was amended by the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5) (“the 2004 Act”), section 9.

(3) In section 82 (desertion or postponement where accused in custody)(a), for paragraph (c) substitute—

“(c) an order is issued changing the place at which the trial is to take place.”.

Transitional provision - section 81(4) of the 1995 Act

3. The reference in section 81(4) of the 1995 Act to a trial diet being appointed is to be read as including an accused having been cited, before 31st July 2017, to attend a trial diet in the sheriff court.

Transitional provision - section 81(5)(a)(ii) of the 1995 Act

4.—(1) This regulation applies where an accused is given notice under section 81(5)(a)(ii) of the 1995 Act, before 31st July 2017, to appear and answer an indictment at both a first diet and a trial diet in the sheriff court.

(2) Where this regulation applies—

- (a) the court need not appoint a trial diet under section 71B(1)(b) of the 1995 Act; but
- (b) if the court does, the trial diet of which the accused was given notice under section 81(5) is discharged.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

(a) Section 82 was amended by the 2004 Act, schedule 1, paragraph 27.
(b) Section 71B was inserted by the 2016 Act, section 81(4).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations make consequential changes to the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) in relation to the reform of solemn procedure in the sheriff court provided for in Part 3 of the Criminal Justice (Scotland) Act 2016. These amendments reflect in particular the change in solemn procedure in the sheriff court which requires the court to appoint trial diets at first diets (when previously the prosecutor would have done so at the stage of indictment).

Regulation 3 makes transitional provision in relation to section 81(4) of the 1995 Act to ensure that that section operates in relation to cases which have, before these Regulations came into force, been indicted to both a first diet and a trial diet by the prosecutor. Regulation 4 makes transitional provision in relation to section 81(5)(a)(ii) of the 1995 Act to ensure that the court is not required at a first diet to appoint a trial diet in cases which have been indicted, and a trial diet appointed, before these Regulations came into force (and specifies that if the court does appoint a trial diet at a first diet in such cases, and previously appointed trial diet is discharged).

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