



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VII

#### SOLEMN PROCEEDINGS

##### *Pre-trial proceedings*

#### 71 First diet.

[<sup>F1</sup>(A1) At a first diet [<sup>F2</sup>in proceedings to which subsection (B1) below applies], the court shall, <sup>F3</sup> . . . ascertain whether [<sup>F4</sup>the accused] has engaged a solicitor for the purposes of [<sup>F5</sup>the conduct of his case at any relevant hearing in the course of the proceedings].]

[<sup>F6</sup>(B1) This subsection applies to proceedings—

- (a) in which the accused is charged with a sexual offence to which section 288C of this Act applies,
- (b) to which section 288E of this Act applies, or
- (c) in which an order under section 288F(2) of this Act has been made [<sup>F7</sup>in relation to any hearing in the course of the proceedings].]

(1) At a first diet the court shall, so far as is reasonably practicable, ascertain whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular—

- (a) the state of preparation of the prosecutor and of the accused with respect to their cases; and
- (b) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of this Act.

[<sup>F8</sup>(1A) At a first diet, the court shall also—

- (a) ascertain whether subsection (1B) below applies to any person who is to give evidence at or for the purposes of [<sup>F9</sup>any hearing in the course of the proceedings] or to the accused, and
- (b) if so, consider whether it should make an order under section 271A(7) or 271D(2) of this Act in relation to the person or, as the case may be, the accused.

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(1B) This subsection applies—

- (a) to a person who is to give evidence at or for the purposes of [<sup>F10</sup>any hearing in the course of the proceedings] if that person is, or is likely to be, a vulnerable witness,
- (b) to the accused if, were he to give evidence at or for the purposes of the trial, he would be, or would be likely to be, a vulnerable witness.]

[<sup>F11</sup>(1C) At a first diet, the court—

- (a) shall ascertain which of the witnesses included in the list of witnesses are required by the prosecutor or the accused to attend the trial; and
- (b) shall, where the accused has been admitted to bail, review the conditions imposed on his bail and may—
  - (i) after giving the parties an opportunity to be heard; and
  - (ii) if it considers it appropriate to do so, fix bail on different conditions.]

(2) In addition to the matters mentioned in subsection (1) [<sup>F12</sup>, (1A) and (1C)] above the court shall, at a first diet, consider any [<sup>F13</sup>preliminary plea or preliminary issue (within the meanings given to those terms in section 79(2) of this Act)] of which a party has, not less than two clear days before the first diet, given notice to the court and to the other parties.

[<sup>F14</sup>(2XA) At a first diet the court shall also dispose of any [<sup>F15</sup>vulnerable] witness notice under section 271A(2) or vulnerable witness application under section 271C(2) appointed to be disposed of at that diet.]

[<sup>F16</sup>(2YA) At a first diet, the court shall also ascertain whether there is any objection to the admissibility of any evidence which any party wishes to raise despite not having given the notice referred to in subsection (2) above, and—

- (a) if so, decide whether to grant leave under section 79(1) of this Act for the objection to be raised; and
- (b) if leave is granted, dispose of the objection unless it considers it inappropriate to do so at the first diet.

(2ZA) Where the court, having granted leave for the objection to be raised, decides not to dispose of it at the first diet, the court may—

- (a) appoint a further diet to be held before the trial diet for the purpose of disposing of the objection; or
- (b) appoint the objection to be disposed of at the trial diet.]

[<sup>F17</sup>(2A) At a first diet the court may consider an application for the purposes of subsection (1) of section 275 of this Act.]

(3) At a first diet the court may ask the prosecutor and the accused any question in connection with any matter which it is required to ascertain or consider under subsection (1) [<sup>F18</sup>, (1A)] [<sup>F19</sup>, (1C)] [<sup>F20</sup>, (2) or (2YA)] above [<sup>F21</sup>or which is relevant to an application for the purposes of subsection (1) of the said section 275].

(4) The accused shall attend a first diet of which he has been given notice <sup>F22</sup> . . .

(5) A first diet may proceed notwithstanding the absence of the accused.

[<sup>F23</sup>(5A) Where, however—

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- [<sup>F24</sup>(a) the proceedings in which the first diet is being held are proceedings to which subsection (B1) above applies;]
- (b) the court has not ascertained (whether at that diet or earlier) that he has engaged a solicitor for the purposes of [<sup>F25</sup>the conduct of his case at any relevant hearing in the course of the proceeding],
- a first diet may not proceed in his absence; and, in such a case, the court shall adjourn the diet and ordain the accused then to attend.]
- (6) The accused shall, at the first diet, be required to state how he pleads to the indictment, and section 77 of this Act shall apply where he tenders a plea of guilty.
- (7) Where at a first diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—
- (a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and
- (b) may fix a further first diet.
- [<sup>F26</sup>(7A) In subsections (A1) and (5A)(b), “relevant hearing” means—
- (a) in relation to proceedings mentioned in paragraph (a) of subsection (B1), any hearing at, or for the purposes of, which a witness is to give evidence,
- (b) in relation to proceedings mentioned in paragraph (b) of that subsection, a hearing referred to in section 288E(2A),
- (c) in relation to proceedings mentioned in paragraph (c) of that subsection, a hearing in respect of which an order is made under section 288F.]
- <sup>F27</sup>(8) .....
- <sup>F27</sup>(8A) .....
- (9) In this section “the court” means the sheriff court.

#### Textual Amendments

- F1** S. 71(A1) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 3, [Sch. para. 5\(a\)](#); S.S.I. 2002/443, [art. 3](#)
- F2** Words in s. 71(A1) inserted (1.4.2005 for certain purposes and 1.4.2006 for further certain purposes and otherwise prosp.) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), [ss. 7\(1\)\(a\)\(i\)](#), 25; S.S.I. 2005/168, [art. 2](#), [Sch. \(with art. 4\)](#); S.S.I. 2006/59, [art. 2](#), [Sch. \(with art. 4\(1\)\)](#)
- F3** Words in s. 71(A1) repealed (1.4.2005 for certain purposes and 1.4.2006 for further certain purposes and otherwise prosp.) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), [ss. 7\(1\)\(a\)\(ii\)](#), 25; S.S.I. 2005/168, [art. 2](#), [Sch. \(with art. 4\)](#); S.S.I. 2006/59, [art. 2](#), [Sch. \(with art. 4\(1\)\)](#)
- F4** Word in s. 71(A1) substituted (1.4.2005 for certain purposes and 1.4.2006 for further certain purposes and otherwise prosp.) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), [ss. 7\(1\)\(a\)\(iii\)](#), 25; S.S.I. 2005/168, [art. 2](#), [Sch. \(with art. 4\)](#); S.S.I. 2006/59, [art. 2](#), [Sch. \(with art. 4\(1\)\)](#)
- F5** Words in s. 71(A1) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 7 para. 45\(a\)](#); S.S.I. 2011/178, [art. 2](#), [sch.](#)
- F6** S. 71(B1) inserted (1.4.2005 for certain purposes and 1.4.2006 for further certain purposes and otherwise prosp.) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), [ss. 7\(1\)\(b\)](#), 25; S.S.I. 2005/168, [art. 2](#), [Sch. \(with art. 4\)](#); S.S.I. 2006/59, [art. 2](#), [Sch. \(with art. 4\(1\)\)](#)
- F7** Words in s. 71(B1)(c) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 7 para. 45\(b\)](#); S.S.I. 2011/178, [art. 2](#), [sch.](#)

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- F8** S. 71(1A)(1B) inserted (1.4.2005 and 1.4.2006 for certain purposes, otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 2(1)(a)**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art 4(1)); S.S.I. 2008/57, **art. 2** (with art. 3)
- F9** Words in s. 71(1A)(a) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **sch. 7 para. 45(c)**; S.S.I. 2011/178, art. 2, sch.
- F10** Words in s. 71(1B)(a) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **sch. 7 para. 45(d)**; S.S.I. 2011/178, art. 2, sch.
- F11** S. 71(1C) inserted after (1B) (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 19(2)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F12** Words in s. 71(2) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 19(3)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F13** Words in s. 71(2) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 25, 27(1), Sch. para. 20(a)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F14** S. 71(2XA) inserted (1.2.2005 for certain purposes in accordance with art. 1(3) of the amending S.S.I.) by The Criminal Procedure (Amendment) (Scotland) Act 2004 (Incidental, Supplemental and Consequential Provisions) Order 2005 (S.S.I. 2005/40), **art. 4(3)**; S.S.I. 2004/405, art. 2, Schs. 1, 2
- F15** Word in s. 71(2XA) substituted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), **ss. 11(1)**, 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)
- F16** S. 71(2YA)(2ZA) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 14(1)(a)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F17** S. 71(2A) inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), **s. 8(2)(a)**; S.S.I. 2002/443, **art. 3** (with art. 4(5))
- F18** Words in s. 71(3) inserted (1.4.2005 and 1.4.2006 for certain purposes and otherwise 1.4.2008) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 2(1)(c)**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2008/57, **art. 2** (with art. 3)
- F19** Words in s. 71(3) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 19(4)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F20** Words in s. 71(3) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 14(1)(b)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F21** Words in s. 71(3) inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), **s. 8(2)(b)**; S.S.I. 2002/443, **art. 3** (with art. 4(5))
- F22** Words in s. 71(4) repealed (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 80, 84, Sch. para. 12(2)**; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)
- F23** S. 71(5A) inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. 3, **Sch. para. 5(b)**; S.S.I. 2002/443, **art. 3**
- F24** S. 71(5A)(a) substituted (1.4.2005 for certain purposes and 1.4.2006 for further certain purposes and otherwise prosp.) by Vulnerable Witnesses (Scotland) Act 2004 (asp 3), **ss. 7(1)(c)**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1))
- F25** Words in s. 71(5A)(b) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **sch. 7 para. 45(e)**; S.S.I. 2011/178, art. 2, sch.
- F26** S. 71(7A) inserted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **sch. 7 para. 45(f)**; S.S.I. 2011/178, art. 2, sch.
- F27** S. 71(8)(8A) repealed (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 25, 27(1), Sch. para. 20(b)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

[<sup>F28</sup>**71A Further pre-trial diet: dismissal or withdrawal of solicitor representing accused in case of sexual offence**

<sup>F29</sup> .....

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#### Textual Amendments

- F28** S. 71A inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 3, [Sch. para. 6](#); [S.S.I. 2002/443](#), [art. 3](#)
- F29** S. 71A repealed (4.12.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 21](#); [S.S.I. 2004/405](#), [art. 2](#), [Sch. 1](#) (subject to arts. 3-5)

### [<sup>F30</sup>72 Preliminary hearing: procedure up to appointment of trial diet

- (1) A preliminary hearing shall be conducted in accordance with this section and section 72A.
- (2) The court shall—
  - (a) where the accused is charged with an offence to which section 288C of this Act applies; or
  - (b) in any case—
    - (i) in respect of which section 288E of this Act applies; or
    - (ii) in which an order has been made under section 288F(2) of this Act, before taking any further step under this section, ascertain whether the accused has engaged a solicitor for the purposes of the conduct of his case at or for the purposes of the preliminary hearing.
- (3) After complying with subsection (2) above, the court shall dispose of any preliminary pleas (within the meaning of section 79(2)(a) of this Act) of which a party has given notice not less than 7 clear days before the preliminary hearing to the court and to the other parties.
- (4) After disposing of any preliminary pleas under subsection (3) above, the court shall require the accused to state how he pleads to the indictment.
- (5) If the accused tenders a plea of guilty, section 77 of this Act shall apply.
- (6) After the accused has stated how he pleads to the indictment, the court shall, unless a plea of guilty is tendered and accepted—
  - (a) in any case—
    - (i) where the accused is charged with an offence to which section 288C of this Act applies;
    - (ii) in respect of which section 288E of this Act applies; or
    - (iii) in which an order has been made under section 288F(2) of this Act, ascertain whether the accused has engaged a solicitor for the purposes of his defence at the trial;
  - (b) unless it considers it inappropriate to do so at the preliminary hearing, dispose of—
    - (i) any preliminary issues (within the meaning of section 79(2)(b) of this Act) of which a party has given notice not less than 7 clear days before the preliminary hearing to the court and to the other parties;
    - (ii) any [<sup>F31</sup>vulnerable] witness notice under section 271A(2) or vulnerable witness application under section 271C(2) appointed to be disposed of at the preliminary hearing;
    - (iii) subject to subsection (8) below, any application under section 275(1) or 288F(2) of this Act made before the preliminary hearing; and

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- (iv) any other matter which, in the opinion of the court, could be disposed of with advantage before the trial;
  - (c) ascertain whether there is any objection to the admissibility of any evidence which any party wishes to raise despite not having given the notice referred to in paragraph (b)(i) above, and—
    - (i) if so, decide whether to grant leave under section 79(1) of this Act for the objection to be raised; and
    - (ii) if leave is granted, dispose of the objection unless it considers it inappropriate to do so at the preliminary hearing;
  - (d) ascertain which of the witnesses included in the list of witnesses are required by the prosecutor or the accused to attend the trial;
  - (e) ascertain whether subsection (7) below applies to any person who is to give evidence at or for the purposes of the trial or to the accused and, if so, consider whether it should make an order under section 271A(7) or 271D(2) of this Act in relation to the person or, as the case may be, the accused; and
  - (f) ascertain, so far as is reasonably practicable—
    - (i) the state of preparation of the prosecutor and the accused with respect to their cases; and
    - (ii) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of this Act.
- (7) This subsection applies—
- (a) to a person who is to give evidence at or for the purposes of the trial if that person is, or is likely to be, a vulnerable witness;
  - (b) to the accused if, were he to give evidence at or for the purposes of the trial, he would be, or would be likely to be, a vulnerable witness.
- (8) Where any application or notice such as is mentioned in subsection (6)(b)(iii) above is required by the provision under which it is made or lodged, or by any other provision of this Act, to be made or lodged by a certain time, the court—
- (a) shall not be required under that subsection to dispose of it unless it has been made or lodged by that time; but
  - (b) shall have power to dispose of it to the extent that the provision under which it was made, or any other provision of this Act, allows it to be disposed of notwithstanding that it was not made or lodged in time.
- (9) Where the court decides not to dispose of any preliminary issue, application, notice, objection or other matter referred to in subsection (6)(b) or (c) above at the preliminary hearing, it may—
- (a) appoint a further diet, to be held before the trial diet appointed under section 72A of this Act, for the purpose of disposing of the issue, application, notice, objection or matter; or
  - (b) appoint the issue, application, notice, objection or other matter to be disposed of at the trial diet.]

#### Textual Amendments

**F30** Ss. 72-72D substituted for ss. 72-73A (1.2.2005, 1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 1(3), 27(1)**; [S.S.I. 2004/405](#), **art. 2**, Sch. 1 (subject to arts. 3-5); [S.S.I. 2005/168](#), **art. 2**, Sch. (with

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art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4(1)); S.S.I. 2007/101, art. 2, Sch. (with art. 4); S.S.I. 2007/329, art. 2, Sch. (with art. 4); S.S.I. 2008/57, art. 2 (with art. 3)

**F31** Word in s. 72(6)(b)(ii) substituted (1.9.2015) by Victims and Witnesses (Scotland) Act 2014 (asp 1), ss. 11(2), 34; S.S.I. 2015/200, art. 2(2), sch. (with arts. 1(3), 4)

## **[<sup>F32</sup>[<sup>F33</sup>72A Preliminary hearing: appointment of trial diet**

(1) [<sup>F34</sup>In proceedings to which this section] applies, the court shall, at the preliminary hearing—

- (a) after complying with that subsection;
- (b) having regard to earlier proceedings at the preliminary hearing; and
- (c) subject to subsections (3) to (7) below,

appoint a trial diet.

[<sup>F35</sup>(1A) This section applies to proceedings in the High Court—

- (a) in which the accused is charged with a sexual offence to which section 288C of this Act applies,
- (b) to which section 288E of this Act applies, or
- (c) in which an order under section 288F(2) of this Act has been made before the trial diet.]

(2) In appointing a trial diet under subsection (1) above, the court may, if satisfied that it is appropriate to do so, indicate that the diet is to be a floating diet for the purposes of section 83A of this Act.

(3) In any case in which the 12 month period applies (whether or not the 140 day period also applies in the case)—

- (a) if the court considers that the case would be likely to be ready to proceed to trial within that period, it shall, subject to subsections (5) to (7) below, appoint a trial diet for a date within that period; or
- (b) if the court considers that the case would not be likely to be so ready, it shall give the prosecutor an opportunity to make an application to the court under section 65(3) of this Act for an extension of the 12 month period.

(4) Where paragraph (b) of subsection (3) above applies—

- (a) if such an application as is mentioned in that paragraph is made and granted, the court shall, subject to subsections (5) to (7) below, appoint a trial diet for a date within the 12 month period as extended; or
- (b) if no such application is made or if one is made but is refused by the court—
  - (i) the court may desert the preliminary hearing *simpliciter* or *pro loco et tempore*; and
  - (ii) where the accused is committed until liberated in due course of law, he shall be liberated forthwith.

(5) Subsection (6) below applies in any case in which—

- (a) the 140 day period as well as the 12 month period applies; and
- (b) the court is required, by virtue of subsection (3)(a) or (4)(a) above, to appoint a trial diet within the 12 month period.

(6) In such a case—

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- (a) if the court considers that the case would be likely to be ready to proceed to trial within the 140 day period, it shall appoint a trial diet for a date within that period as well as within the 12 month period; or
  - (b) if the court considers that the case would not be likely to be so ready, it shall give the prosecutor an opportunity to make an application under section 65(5) of this Act for an extension of the 140 day period.
- (7) Where paragraph (b) of subsection (6) above applies—
- (a) if such an application as is mentioned in that paragraph is made and granted, the court shall appoint a trial diet for a date within the 140 day period as extended as well as within the 12 month period;
  - (b) if no such application is made or if one is made but is refused by the court—
    - (i) the court shall proceed under subsection (3)(a) or, as the case may be, (4)(a) above to appoint a trial diet for a date within the 12 month period; and
    - (ii) the accused shall then be entitled to be admitted to bail.
- (8) Where an accused is, by virtue of subsection (7)(b)(ii) above, entitled to be admitted to bail, the court shall, before admitting him to bail, give the prosecutor an opportunity to be heard.
- (9) On appointing a trial diet under this section in a case where the accused has been admitted to bail (otherwise than by virtue of subsection (7)(b)(ii) above), the court, after giving the parties an opportunity to be heard—
- (a) shall review the conditions imposed on his bail; and
  - (b) having done so, may, if it considers it appropriate to do so, fix bail on different conditions.
- (10) In this section—
- “the 12 month period” means the period specified in subsection (1)(b) of section 65 of this Act and, in any case in which that period has been extended under subsection (3) of that section, includes that period as so extended; and
- “the 140 day period” means the period specified in subsection (4)(aa)(ii) of that section and, in any case in which that period has been extended under subsection (5) of that section, includes that period as so extended.]]

#### Textual Amendments

- F32** S. 72A inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 3, [Sch. para. 7](#); S.S.I. 2002/443, [art. 3](#)
- F33** Ss. 72-72D substituted for ss. 72-73A (1.2.2005, 1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [ss. 1\(3\)](#), 27(1); S.S.I. 2004/405, [art. 2](#), [Sch. 1](#) (subject to arts. 3-5); S.S.I. 2005/168, [art. 2](#), [Sch.](#) (with [art. 4](#)); S.S.I. 2006/59, [art. 2](#), [Sch.](#) (with [art. 4\(1\)](#)); S.S.I. 2007/101, [art. 2](#), [Sch.](#) (with [art. 4](#)); S.S.I. 2007/329, [art. 2](#), [Sch.](#) (with [art. 4](#)); S.S.I. 2008/57, [art. 2](#) (with [art. 3](#))
- F34** Words in [s. 72A\(1\)](#) substituted (1.4.2005 for certain purposes and 1.4.2006 for further certain purposes and otherwise prosp.) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), [ss. 7\(3\)\(a\)](#), 25; S.S.I. 2005/168, [art. 2](#), [Sch.](#) (with [art. 4](#)); S.S.I. 2006/59, [art. 2](#), [Sch.](#) (with [art. 4\(1\)](#))
- F35** [S. 72A\(1A\)](#) inserted (1.4.2005 for certain purposes and 1.4.2006 for further certain purposes and otherwise prosp.) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), [ss. 7\(3\)\(b\)](#), 25; S.S.I. 2005/168, [art. 2](#), [Sch.](#) (with [art. 4](#)); S.S.I. 2006/59, [art. 2](#), [Sch.](#) (with [art. 4\(1\)](#))



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## **[<sup>F36</sup>72B Power to dispense with preliminary hearing**

- (1) The court may, on an application made to it jointly by the parties, dispense with a preliminary hearing and appoint a trial diet if the court is satisfied on the basis of the application that—
  - (a) the state of preparation of the prosecutor and the accused with respect to their cases is such that the case is likely to be ready to proceed to trial on the date to be appointed for the trial diet;
  - (b) there are no preliminary pleas, preliminary issues or other matters which require to be, or could with advantage be, disposed of before the trial; and
  - (c) there are no persons to whom section 72(7) of this Act applies.
- (2) An application under subsection (1) above shall identify which (if any) of the witnesses included in the list of witnesses are required by the prosecutor or the accused to attend the trial.
- (3) Where a trial diet is to be appointed under subsection (1) above, it shall be appointed in accordance with such procedure as may be prescribed by Act of Adjournal.
- (4) Where a trial diet is appointed under subsection (1) above, the accused shall appear at the diet and answer the indictment.
- (5) The fact that a preliminary hearing in any case has been dispensed with under subsection (1) above shall not affect the calculation in that case of any time limit for the giving of any notice or the doing of any other thing under this Act, being a time limit fixed by reference to the preliminary hearing.
- (6) Accordingly, any such time limit shall have effect in any such case as if it were fixed by reference to the date on which the preliminary hearing would have been held if it had not been dispensed with.

### **Textual Amendments**

**F36** Ss. 72-72D substituted for ss. 72-73A (1.2.2005, 1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [ss. 1\(3\)](#), 27(1); [S.S.I. 2004/405](#), [art. 2](#), Sch. 1 (subject to [arts. 3-5](#)); [S.S.I. 2005/168](#), [art. 2](#), Sch. (with [art. 4](#)); [S.S.I. 2006/59](#), [art. 2](#), Sch. (with [art. 4\(1\)](#)); [S.S.I. 2007/101](#), [art. 2](#), Sch. (with [art. 4](#)); [S.S.I. 2007/329](#), [art. 2](#), Sch. (with [art. 4](#)); [S.S.I. 2008/57](#), [art. 2](#) (with [art. 3](#))

## **72C Procedure where preliminary hearing does not proceed**

- (1) The prosecutor shall not raise a fresh libel in any case in which the court has deserted a preliminary hearing *simpliciter* unless the court's decision has been reversed on appeal.
- (2) Where a preliminary hearing is deserted *pro loco et tempore*, the court may appoint a further preliminary hearing for a later date and the accused shall appear and answer the indictment at that hearing.
- (3) Subsection (4) below applies where, at a preliminary hearing—
  - (a) the hearing has been deserted *pro loco et tempore* for any reason and no further preliminary hearing has been appointed under subsection (2) above; or
  - (b) the indictment is for any reason not proceeded with and the hearing has not been adjourned or postponed.

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- (4) Where this subsection applies, the prosecutor may, at any time within the period of two months after the relevant date, give notice to the accused on another copy of the indictment to appear and answer the indictment—
- (a) at a further preliminary hearing in the High Court not less than seven clear days after the date of service of the notice; or
  - (b) at—
    - (i) a first diet not less than 15 clear days after the service of the notice and not less than 10 clear days before the trial diet; and
    - (ii) a trial diet not less than 29 clear days after the service of the notice, in the sheriff court where the charge is one that can lawfully be tried in that court.
- (5) Where notice is given to the accused under subsection (4)(b) above, then for the purposes of section 65(4) of this Act—
- (a) the giving of the notice shall be taken to be service of an indictment in respect of the sheriff court; and
  - (b) the previous service of the indictment in respect of the High Court shall be disregarded.
- (6) In subsection (4) above, “the relevant date” means—
- (a) where paragraph (a) of subsection (3) above applies, the date on which the diet was deserted as mentioned in that paragraph; or
  - (b) where paragraph (b) of that subsection applies, the date of the preliminary hearing referred to in that paragraph.
- (7) A notice referred to in subsection (4) above shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form.

#### Textual Amendments

**F36** Ss. 72-72D substituted for ss. 72-73A (1.2.2005, 1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [ss. 1\(3\)](#), 27(1); [S.S.I. 2004/405](#), [art. 2](#), Sch. 1 (subject to [arts. 3-5](#)); [S.S.I. 2005/168](#), [art. 2](#), Sch. (with [art. 4](#)); [S.S.I. 2006/59](#), [art. 2](#), Sch. (with [art. 4\(1\)](#)); [S.S.I. 2007/101](#), [art. 2](#), Sch. (with [art. 4](#)); [S.S.I. 2007/329](#), [art. 2](#), Sch. (with [art. 4](#)); [S.S.I. 2008/57](#), [art. 2](#) (with [art. 3](#))

## 72D Preliminary hearing: further provision

- (1) The court may, on cause shown, allow a preliminary hearing to proceed notwithstanding the absence of the accused.
- (2) Where—
- (a) the accused is a body corporate;
  - (b) it fails to appear at a preliminary hearing;
  - (c) the court allows the hearing to proceed in its absence under subsection (1) above; and
  - (d) no plea is entered on its behalf at the hearing,
- it shall be treated for the purposes of proceedings at the preliminary hearing as having pled not guilty.

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- (3) Where, at a preliminary hearing, a trial diet is appointed, the accused shall appear at the trial diet and answer the indictment.
- (4) At a preliminary hearing, the court—
  - (a) shall take into account any written record lodged under section 72E of this Act; and
  - (b) may ask the prosecutor and the accused any question in connection with any matter which it is required to dispose of or ascertain under section 72 of this Act.
- (5) The proceedings at a preliminary hearing shall be recorded by means of shorthand notes or by mechanical means.
- (6) Subsections (2) to (4) of section 93 of this Act shall apply for the purposes of the recording of proceedings at a preliminary hearing in accordance with subsection (5) above as they apply for the purposes of the recording of proceedings at the trial in accordance with subsection (1) of that section.
- (7) The Clerk of Justiciary shall prepare, in such form and manner as may be prescribed by Act of Adjournal, a minute of proceedings at a preliminary hearing, which shall record, in particular, whether any preliminary pleas or issues were disposed of and, if so, how they were disposed of.
- (8) In this section, references to a preliminary hearing include an adjourned preliminary hearing.
- (9) In this section and sections 72 to 72C, “the court” means the High Court.]

#### Textual Amendments

**F36** Ss. 72-72D substituted for ss. 72-73A (1.2.2005, 1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 1(3), 27(1)**; [S.S.I. 2004/405](#), **art. 2, Sch. 1** (subject to arts. 3-5); [S.S.I. 2005/168](#), **art. 2, Sch.** (with art. 4); [S.S.I. 2006/59](#), **art. 2, Sch.** (with art. 4(1)); [S.S.I. 2007/101](#), **art. 2, Sch.** (with art. 4); [S.S.I. 2007/329](#), **art. 2, Sch.** (with art. 4); [S.S.I. 2008/57](#), **art. 2** (with art. 3)

#### [<sup>F37</sup>72E Written record of state of preparation in certain cases

- (1) This section applies where, in any proceedings in the High Court, a solicitor has notified the Court under section 72F(1) of this Act that he has been engaged by the accused for the purposes of the conduct of his case at the preliminary hearing.
- (2) The prosecutor and the accused’s legal representative shall, not less than two days before the preliminary hearing—
  - (a) communicate with each other with a view to jointly preparing a written record of their state of preparation with respect to their cases (referred to in this section as “the written record”); and
  - (b) lodge the written record with the Clerk of Justiciary.
- (3) The High Court may, on cause shown, allow the written record to be lodged after the time referred to in subsection (2) above.
- (4) The written record shall—

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- (a) be in such form, or as nearly as may be in such form;
  - (b) contain such information; and
  - (c) be lodged in such manner,
- as may be prescribed by Act of Adjournal.
- (5) The written record may contain, in addition to the information required by virtue of subsection (4)(b) above, such other information as the prosecutor and the accused's legal representative consider appropriate.
- (6) In this section—
- “the accused's legal representative” means—
- (a) the solicitor referred to in subsection (1) above; or
  - (b) where the solicitor has instructed counsel for the purposes of the conduct of the accused's case at the preliminary hearing, either the solicitor or that counsel, or both of them; and
- “counsel” includes a solicitor who has a right of audience in the High Court of Justiciary under section 25A (rights of audience in various courts including the High Court of Justiciary) of the Solicitors (Scotland) Act 1980 (c. 46).]

#### Textual Amendments

**F37** S. 72E inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\), ss. 2, 27\(1\); S.S.I. 2004/405, art. 2, Sch. 1](#) (subject to [arts. 3-5](#))

#### [<sup>F38</sup>72F Engagement, dismissal and withdrawal of solicitor representing accused

- (1) In any [<sup>F39</sup>solemn proceedings], it is the duty of a solicitor who is engaged by the accused for the purposes of his defence at any part of the proceedings to notify the court and the prosecutor of that fact forthwith in writing.
- (2) A solicitor is to be taken to have complied with the duty under subsection (1) to notify the prosecutor of his engagement if, before service of the indictment, he—
- (a) notified in writing the procurator fiscal for the district in which the charge against the accused was then being investigated that he was then engaged by the accused for the purposes of his defence; and
  - (b) had not notified that procurator fiscal in writing that he had been dismissed by the accused or had withdrawn from acting.
- (3) Where any such solicitor as is referred to in subsection (1) above—
- (a) is dismissed by the accused; or
  - (b) withdraws,
- it is the duty of the solicitor to inform the court and the prosecutor of those facts forthwith in writing.
- (4) The prosecutor shall, for the purposes of subsections (1) and (3), be taken to be notified or informed of any fact in accordance with those subsections if—
- (a) in proceedings in the High Court, the Crown Agent; or
  - (b) in [<sup>F40</sup>solemn proceedings] in the sheriff court, the procurator fiscal for the district in which the trial diet is to be held,
- is so notified or, as the case may be, informed of the fact.

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- (5) On being informed in accordance with subsection (3) above of the dismissal or withdrawal of the accused's solicitor in any case to which subsections (6) and (7) below apply, the court shall order that, before the trial diet, there shall be a further pre-trial diet under this section.
- (6) This subsection applies to any case—
- (a) where the accused is charged with an offence to which section 288C of this Act applies;
  - (b) in respect of which section 288E of this Act applies; or
  - (c) in which an order has been made under section 288F(2) of this Act.
- (7) This subsection applies to any case in which—
- (a) the solicitor was engaged for the purposes of the defence of the accused—
    - (i) in the case of proceedings in the High Court, at the time of a preliminary hearing or, if a preliminary hearing was dispensed with under section 72B(1) of this Act, at the time it was so dispensed with;
    - (ii) in the case of solemn proceedings in the sheriff court, at the time of a first diet;
    - (iii) at the time of a diet under this section; or
    - (iv) in the case of a diet which, under subsection (11) below, is dispensed with, at the time when it was so dispensed with; and
  - (b) the court is informed as mentioned in subsection (3) above after that time but before the trial diet.
- (8) At a diet under this section, the court shall ascertain whether or not the accused has engaged another solicitor for the purposes of his defence at the trial.
- (9) A diet under this section shall be not less than 10 clear days before the trial diet.
- (10) A court may, at a diet under this section, postpone the trial diet for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.
- (11) The court may dispense with a diet under this section previously ordered, but only if a solicitor engaged by the accused for the purposes of the defence of the accused at the trial has, in writing—
- (a) confirmed his engagement for that purpose; and
  - (b) requested that the diet be dispensed with.]

#### Textual Amendments

**F38** S. 72F inserted (4.12.2004) "after s. 72E" by virtue of [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 8, 27(1)**; S.S.I. 2004/405, **art. 2, Sch. 1** (subject to arts. 3-5)

**F39** Words in s. 72F(1) substituted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 80, 84, Sch. para. 13(1)**; S.S.I. 2007/479, **art. 3(1), Sch.** (as amended by S.S.I. 2007/527)

**F40** Words in s. 72F(4)(b) substituted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 80, 84, Sch. para. 13(1)**; S.S.I. 2007/479, **art. 3(1), Sch.** (as amended by S.S.I. 2007/527)

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## [<sup>F41</sup>72G Service etc. on accused through a solicitor

- (1) In any [<sup>F42</sup>solemn proceedings], anything which is to be served on or given, notified or otherwise intimated to, the accused shall be taken to be so served, given, notified or intimated if it is, in such form and manner as may be prescribed by Act of Adjournal, served on or given, notified or intimated to (as the case may be) the solicitor described in subsection (2) below at that solicitor's place of business.
- (2) That solicitor is any solicitor—
- (a) who—
- (i) has notified the prosecutor under subsection (1) of section 72F of this Act that he is engaged by the accused for the purposes of his defence; and
  - (ii) has not informed the prosecutor under subsection (3) of that section that he has been dismissed by, or has withdrawn from acting for, the accused; or
- (b) who—
- (i) has been appointed to act for the purposes of the accused's defence at the trial under section 92 or 288D of this Act; and
  - (ii) has not been relieved of the appointment by the court.]

### Textual Amendments

- F41** S. 72G inserted (4.12.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 12, 27(1)**; [S.S.I. 2004/405](#), **art. 2**, **Sch. 1** (subject to **arts. 3-5**)
- F42** Words in s. 72G(1) substituted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 80, 84**, **Sch. para. 13(2)**; [S.S.I. 2007/479](#), **art. 3(1)**, **Sch.** (as amended by [S.S.I. 2007/527](#))

## 74 Appeals in connection with preliminary diets.

- (1) Without prejudice to—
- (a) any right of appeal under section 106 or 108 of this Act; and
  - (b) section 131 of this Act,
- and subject to subsection (2) below, a party may with the leave of the court of first instance (granted either on the motion of the party or *ex proprio motu*) in accordance with such procedure as may be prescribed by Act of Adjournal, appeal to the High Court against a decision at a first diet or a preliminary [<sup>F46</sup>hearing] .
- (2) An appeal under subsection (1) above—
- (a) may not be taken against a decision to adjourn the first [<sup>F47</sup>diet] or, as the case may be, preliminary [<sup>F48</sup>hearing] or to [<sup>F49</sup>accelerate or] postpone the trial diet;
  - [<sup>F50</sup>(aa) may not be taken against a decision taken by virtue of—
    - (i) in the case of a first diet, section 71(1A),
    - (ii) in the case of a preliminary [<sup>F51</sup>hearing, section 72(6)(e) ] ,
 of this Act;]
  - [<sup>F52</sup>(ab) may not be taken against a decision at a preliminary hearing, in appointing a trial diet, to appoint or not to appoint it as a floating diet for the purposes of section 83A(2) of this Act;]

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- (b) must be taken not later than [<sup>F53</sup>seven] days after the decision.
- (3) Where an appeal is taken under subsection (1) above, the High Court may postpone [<sup>F54</sup>any trial diet that has been appointed] for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.
- [<sup>F55</sup>(3A) Where an appeal is taken under subsection (1) above against a decision at a preliminary hearing, the High Court may adjourn, or further adjourn, the preliminary hearing for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.]
- (4) In disposing of an appeal under subsection (1) above the High Court—
- (a) may affirm the decision of the court of first instance or may remit the case to it with such directions in the matter as it thinks fit; <sup>F56</sup> . . .
- (b) where the court of first instance has dismissed the indictment or any part of it, may reverse that decision and direct that the court of first instance fix
- [<sup>F57</sup>(i) where the indictment is in respect of the High Court, a further preliminary hearing; or
- (ii) where the indictment is in respect of the sheriff court,]
- a trial diet, if it has not already fixed one as regards so much of the indictment as it has not dismissed.
- [<sup>F58</sup>(c) may on cause shown extend the period mentioned in section 65(1) of this Act.]

#### Textual Amendments

- F46** Word in s. 74(1) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 3(2)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1
- F47** Word in s. 74(2)(a) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 3(3)(a)(i)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1
- F48** Word in s. 74(2)(a) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 3(3)(a)(ii)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1
- F49** Words in s. 74(2)(a) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 25**, 27(1), **Sch. para. 22**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F50** S. 74(2)(aa) inserted (1.4.2005 and 1.4.2006 for certain purposes and otherwise 1.4.2008) by [Vulnerable Witnesses \(Scotland\) Act 2004 \(asp 3\)](#), **ss. 2(4)**, 25; S.S.I. 2005/168, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art 4(1)); S.S.I. 2008/57, **art. 2** (with art. 3)
- F51** Words s. 74(2)(aa)(ii) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 3(3)(a)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1
- F52** S. 74(2)(ab) inserted (1.2.2005) after (aa) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 3(3)(c)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1
- F53** Word in s. 74(2)(b) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 72(2)**, 206(1); S.S.I. 2011/178, **art. 2**, sch.
- F54** Words in s. 74(3) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 3(4)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1
- F55** S. 74(3A) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 3(5)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1
- F56** Word in s. 74(4) repealed (1.8.1997) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 21(10)(a), **Sch. 3**; S.I. 1997/1712, **art. 3**, **Sch.** (subject to arts. 4, 5)
- F57** Words in s. 74(4)(b) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 3(6)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1

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**F58** S. 74(4)(c) inserted (1.8.1997) by 1997 c. 48, s. 62(1)(2), **Sch. 1 para. 21(10)(b)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)

## 75 Computation of certain periods.

Where the last day of any period mentioned in section 66(6), 67(3), <sup>F59</sup> . . . or 74 of this Act falls on a Saturday, Sunday or court holiday, such period shall extend to and include the next day which is not a Saturday, Sunday or court holiday.

### Textual Amendments

**F59** Word in s. 75(1) repealed (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), **Sch. para. 23**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)



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