



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VII

#### SOLEMN PROCEEDINGS

##### *Pre-trial proceedings*

#### **[<sup>F1</sup>[<sup>F2</sup>72A]Preliminary hearing: appointment of trial diet**

- (1) [<sup>F3</sup>In proceedings to which this section] applies, the court shall, at the preliminary hearing—
- after complying with that subsection;
  - having regard to earlier proceedings at the preliminary hearing; and
  - subject to subsections (3) to (7) below,
- appoint a trial diet.

#### **[<sup>F4</sup>(1A) This section applies to proceedings in the High Court—**

- in which the accused is charged with a sexual offence to which section 288C of this Act applies,
  - to which section 288E of this Act applies, or
  - 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)—
- 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

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*Status: Point in time view as at 16/08/2013. This version of this provision has been superseded.*

**Changes to legislation:** Criminal Procedure (Scotland) Act 1995, Section 72A is up to date with all changes known to be in force on or before 15 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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- (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—
- (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

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“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

- F1** 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](#)
- F2** 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)
- F3** 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))
- F4** [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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