

SCHEDULE 2

CRIMINAL PROCEDURE RULES 1996

PART III

Solemn proceedings

CHAPTER 12

ALTERATION AND POSTPONEMENT OF SOLEMN TRIAL DIET

Alteration of trial diet

12.1.—(1) Where circumstances arise in which the court may adjourn the trial diet to a subsequent sitting under section 80(1) of the Act of 1995 (alteration and postponement of trial diet), and the prosecutor proposes such an adjournment, he may for that purpose require the trial diet to be called at the sitting for which it was originally fixed at such time as he thinks appropriate.

(2) If, on the trial being so called, the prosecutor—

(a) informs the court that a warrant for an appropriate subsequent sitting of the court has been issued, and

(b) moves the court to adjourn the trial diet to that subsequent sitting,

the court shall grant his motion.

(3) The presence of the accused in court when the trial diet was so called and adjourned shall be sufficient intimation to him of the adjourned diet.

(4) If the trial diet was so called and adjourned in the absence of the accused, the prosecutor shall immediately serve on the accused an intimation of adjournment in Form 12.1.

(5) The calling and the adjournment of the trial diet including a record as to the presence or absence of the accused, as the case may be, shall be endorsed by the clerk of court on the record copy indictment and entered in the record of proceedings in accordance with existing law and practice.

(6) A copy of the order of the court adjourning the trial diet to a subsequent sitting under section 80(1) of the Act of 1995 shall be sent by the Clerk of Justiciary or sheriff clerk, as the case may be, to the governor of any institution in which the accused is detained.

Applications for postponement of trial diet

12.2.—(1) Subject to paragraph (2), an application under section 80(2) of the Act of 1995 (application for postponement of trial diet) shall be made by minute in Form 12.2-A.

(2) Where all the parties join in the application, the application shall be made by joint minute in Form 12.2-B.

(3) A minute under this rule shall be lodged—

(a) in a case set down for trial in the High Court, with the Clerk of Justiciary, or

(b) in a case set down for trial in the sheriff court, with the appropriate sheriff clerk.

Orders fixing diet for hearing of application to postpone trial diet

12.3. Where a minute referred to in rule 12.2 (applications for postponement of trial diet) has been lodged, the court shall, or, in a case in which all parties join in the application, may, make an order endorsed on the minute—

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- (a) fixing a diet for a hearing of the application; and
- (b) for service of the minute with the date of the diet on all parties.

Calling of diet for hearing application

12.4.—(1) A diet fixed under rule 12.3 (orders fixing diet for hearing application to postpone trial diet) shall be held in open court in the presence of all parties (unless the court permits the hearing to proceed in the absence of the accused under section 80(5) of the Act of 1995), and shall be commenced by the calling of the diet.

- (2) On the calling of the diet, the prosecutor shall inform the court—
 - (a) whether any other cases have been set down for trial at the sitting in respect of which the application for postponement of the trial diet is made; and
 - (b) whether a warrant has been issued under section 66(1) of the Act of 1995 (warrant to cite accused and witnesses for trial) for a subsequent sitting of the court.

Orders relating to postponed trial diet

12.5.—(1) Where the court is informed by the prosecutor that no other cases have been set down for trial at the sitting in respect of which the application for postponement of the trial diet is made and has granted the application under section 80(2) of the Act of 1995 (application for postponement of trial diet), the court shall make an order authorising—

- (a) if citations have been issued to jurors for the original trial diet, the issue to those jurors of intimation that they are not required to attend at the original diet but are required to attend at the new diet; and
- (b) if such citations have not been issued, the issue to the jurors shown on the original list of jurors of citations requiring them to attend at the new trial diet.

(2) Where the court is informed by the prosecutor that other cases have been set down for trial at that sitting and the court has granted the application under section 80(2) of the Act of 1995, the court shall, in fixing a new trial diet, have regard to the time required to issue citations to jurors who have not been summoned under section 84(3) of that Act (sitting of High Court at town in which it does not usually sit) for the sitting in which the new diet is being fixed.

- (3) Where—
 - (a) the court is of opinion that the original trial diet should not proceed, and
 - (b) the court has been informed that a warrant has been issued under section 66(1) of the Act of 1995 (warrant to cite accused and witnesses for trial diet) for a subsequent sitting of the court within the period mentioned in relation to that court in section 80(1) of that Act (alteration and postponement of trial diet),

the court may, without prejudice to the powers under section 80(3) of that Act (power to discharge trial diet and fix, or give leave to prosecutor to serve notice fixing, new trial diet), make an order postponing the trial diet to that subsequent sitting; and that order shall have effect as if it had been made under section 80(1) of that Act.

Notice fixing new trial diet

12.6.—(1) Where the court gives leave to the prosecutor to serve a notice fixing a new trial diet under section 80(3) of the Act of 1995, the prosecutor shall consult with the Clerk of Justiciary or sheriff clerk, as the case may be, as to an appropriate date before fixing that diet.

- (2) A notice mentioned in paragraph (1) shall be in Form 12.6, and—

- (a) shall be served by the prosecutor on all parties and on the governor of any institution in which the accused is detained; and
- (b) a copy of the notice and certificate of execution of service shall be lodged by the prosecutor as soon as possible with the clerk of court.

(3) A notice served under paragraph (2) shall, for the purpose of section 66(1) of the Act of 1995 (warrant to cite accused and witnesses for trial diet), be treated as being a warrant issued by the Clerk of Justiciary or sheriff clerk, as the case may be, to officers of law to cite accused persons, witnesses and jurors for the date specified in the notice for the new trial diet, and shall have effect for those purposes.

(4) The clerk of court shall, on receiving a copy of such a notice, attach it to the record copy of the indictment.

Record of proceedings under this Chapter

12.7. The clerk of court shall record by endorsement on the record copy of the indictment—

- (a) the calling of the diet of the hearing of an application under section 80(2) of the Act of 1995 (application for postponement of trial diet),
- (b) the proceedings at the hearing, and
- (c) the decision of the court;

and that record shall be signed by the judge, and entered in the record of proceedings.

Joint applications without hearing

12.8.—(1) Where, in the case of a joint application under subsection (2) of section 80 of the Act of 1995 (application for postponement of trial diet), the court proposes to proceed without hearing the parties by virtue of subsection (4) of that section (joint application for postponement of trial diet), the Clerk of Justiciary or sheriff clerk, as the case may be, shall on the lodging of the minute attach it to the record copy of the indictment and place it before a judge in chambers.

(2) The order made by the judge in chambers in respect of the joint application shall be—

- (a) recorded by endorsement on the record copy of the indictment;
- (b) signed by the clerk of court;
- (c) entered in the record of proceedings; and
- (d) intimated by the clerk of court to the applicants or their solicitors.

(3) The clerk of court shall send to the governor of any institution in which any accused is detained a copy of the following orders of the court:—

- (a) an order under rule 12.3 (order fixing diet for hearing of application to postpone trial diet);
- (b) an order under section 80(3) of the Act of 1995 discharging a trial diet and fixing a new trial diet; and
- (c) an order under rule 12.5(3) adjourning a trial diet to a subsequent sitting.

Calling of adjourned diet

12.9. If, in relation to any case, a trial diet has been discharged or adjourned under this Chapter, any requirement to call that diet at any sitting of the court shall have effect only in relation to the sitting at which the new trial diet has been fixed.

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Form of notice of diet where trial does not take place

12.10. A notice referred to in section 81(1) of the Act of 1995 (procedure where trial does not take place) shall be in Form 8.2-B and signed by the prosecutor.