

SEXUAL OFFENCES (PROCEDURE AND EVIDENCE) (SCOTLAND) ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SCHEDULE

Paragraph 7

51. Paragraph 7 inserts a new section 72A into the 1995 Act. This will make the holding of a pre-trial diet mandatory in all sexual offence cases to be tried in the High Court, unless dispensed with by the court when the accused has a solicitor who applies to do so. The accused must attend. The diet is to be used to establish whether the accused has legal representation for the trial. Subsection (3) of the new section confers on the court a discretion (dependent on the circumstances of the case) to grant the accused an adjournment for a maximum of 48 hours to enable him or her to appoint a solicitor. Where the accused still makes no appointment, the court will proceed to appoint itself under section 2 of the Act (new section 288D).
52. Subsection (4) contains the timescale within which the new pre-trial diet must be held. This corresponds to that applicable to the first diet in sheriff court jury cases.
53. Subsection (5) provides that a pre-trial diet may take place at the same time as any other preliminary hearing (known as a preliminary diet) which may have been fixed by the court in the same case, subject to the applicable timescale.
54. Subsection (7) requires a solicitor who is dismissed or withdraws from acting after applying for the pre-trial diet to be dispensed with, but before it has taken place or been dispensed with, to notify the court.
55. Subsection (8) requires a solicitor who is dismissed or withdraws from acting after the pre-trial diet takes place, or after it has been dispensed with, to notify the court. Subsections (7) and (8) will enable the court to deal with the situation by refusing any outstanding application to dispense with the diet, or by fixing a new pre-trial diet to consider the accused's legal representation afresh (section 72A(9)).