

# **CRIMINAL PROCEDURE (AMENDMENT) (SCOTLAND) ACT 2004**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 2 - Solemn Proceedings Generally**

##### ***Section 9 - Procedure where trial diet does not proceed***

75. **Section 9** substitutes a new section 81 into the 1995 Act which provides for the procedure where the trial diet does not proceed.
76. Subsection (1) provides that where the court has deserted the trial *simpliciter* the prosecutor can not raise another indictment in respect of these charges unless that decision is reversed on appeal.
77. Subsection (2) provides that where the court has deserted the diet *pro loco et tempore* (temporarily) the Court may appoint a further trial diet for a later date and the accused is required to attend that further diet.
78. Subsection (3) requires the court to have regard to the state of preparation of parties with respect to their cases and in particular the likelihood of the case being ready to proceed to trial on the date to be appointed for the trial. If there are any preliminary pleas, issues or other matters which require to be, or could be with advantage be, disposed of before the trial the judge may appoint a diet to be held before the trial diet for the purpose of disposing of them.
79. Subsections (4) and (5) provide that where a trial diet has been deserted *pro loco et tempore* and no further trial diet has been fixed under subsection (2), or where the indictment falls or has not been brought to trial and has not been continued, adjourned or postponed, the prosecutor may give notice, if the trial diet was in the High Court, to the accused within two months after the diet on another copy of the indictment to appear at a further preliminary hearing not less than seven clear days after service of the notice. Alternatively, if the charge is one that can be lawfully tried in the sheriff court, notice may be given to the accused to appear at a first diet in the sheriff court not less than 15 clear days after service and a trial diet not less than 29 clear days after service of the notice. If the trial diet was in the sheriff court, the notice may be given to appear and answer the indictment at a further trial diet in the sheriff court not less than seven clear days after service of the notice or to a preliminary hearing in the High Court not less than 21 days after service of the notice.
80. Subsection (6) provides that where notice is given to the accused to appear and answer the indictment in the sheriff court in a case where the trial diet referred to in subsection (4) was in the High Court, or to appear and answer the indictment at a preliminary hearing in the High Court in a case where that trial diet was in the sheriff court the giving of notice shall be taken, for the purposes of section 65(4), to be service of an indictment in, respectively, the sheriff court or the High Court and the previous service of the indictment is to be disregarded.

*These notes relate to the Criminal Procedure (Amendment) (Scotland)  
Act 2004 (asp 5) which received Royal Assent on 4th June 2004*

81. Subsection (7) provides that the notice is to be in a form prescribed by Act of Adjournal.
82. Subsection (8) makes provision as regards the start of the 2 month period.