



# Criminal Justice (Scotland) Act 2016

## 2016 asp 1

### PART 3 **S**

#### SOLEMN PROCEDURE

#### 78 Proceedings on petition **S**

(1) In section 35 (judicial examination) of the 1995 Act, after subsection (6) there is inserted—

“(6A) In proceedings before the sheriff in examination or further examination, the accused is not to be given an opportunity to make a declaration in respect of any charge.”.

(2) The following provisions of the 1995 Act are repealed—

- (a) in section 35, subsections (3), (4) and (5),
- (b) sections 36, 37 and 38,
- (c) in section 68, subsection (1),
- (d) in section 79, paragraph (b)(iii) of subsection (2),
- (e) section 278.

#### Commencement Information

**II** S. 78 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch. (with art. 3)

#### 79 Pre-trial time limits **S**

(1) The 1995 Act is amended as follows.

(2) In section 65 (prevention of delay in trials)—

(a) in subsection (1), after paragraph (a) there is inserted—

“(aa) where an indictment has been served on the accused in respect of the sheriff court, a first diet is commenced within the period of 11 months;”.

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- (b) in subsection (1A), after the word “applies)” there is inserted “, the first diet (where subsection (1)(aa) above applies)”,
  - (c) in subsection (4)(b), for the words “110 days” there is substituted—
    - “(i) 110 days, unless a first diet in respect of the case is commenced within that period, which failing he shall be entitled to be admitted to bail; or
    - (ii) 140 days”,
  - (d) in subsection (9)—
    - (i) the word “and” immediately following paragraph (b) is repealed,
    - (ii) after paragraph (b) there is inserted—
      - “(ba) a first diet shall be taken to commence when it is called;”.
- (3) In section 66 (service and lodging of indictment, etc.), for sub-paragraphs (i) and (ii) of paragraph (a) of subsection (6) there is substituted “ at a first diet not less than 29 clear days after the service of the indictment, ”.
- (4) In section 72C (procedure where preliminary hearing does not proceed), for paragraph (b) of subsection (4) there is substituted—
- “(b) where the charge is one that can lawfully be tried in the sheriff court, at a first diet in that court not less than 29 clear days after the service of the notice.”.

#### Commencement Information

**I2** S. 79 in force at 29.5.2017 for specified purposes by [S.S.I. 2017/99](#), [art. 3\(1\)\(2\)](#) (with [arts. 3\(3\)\(4\), 6](#))

## 80 Duty of parties to communicate **S**

- (1) The 1995 Act is amended as follows.
- (2) In section 71 (first diet), after subsection (1) there is inserted—
  - “(1ZA) If a written record has been lodged in accordance with section 71C, the court must have regard to the written record when ascertaining the state of preparation of the parties.”.
- (3) Before section 72 there is inserted—

### “71C Written record of state of preparation: sheriff court

- (1) Subsection (2) applies where—
  - (a) the accused is indicted to the sheriff court, and
  - (b) a solicitor—
    - (i) has notified the court under section 72F(1) that the solicitor has been engaged by the accused for the purposes of conducting the accused's defence, and
    - (ii) has not subsequently been dismissed by the accused or withdrawn.

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- (2) The prosecutor and the accused's legal representative must, within the period described in subsection (3), communicate with each other and jointly prepare a written record of their state of preparation with respect to their cases (referred to in this section as “the written record”).
  - (3) The period referred to in subsection (2) begins on the day the accused is served with an indictment and expires at the end of the day falling 14 days later.
  - (4) The written record must—
    - (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 must state the manner in which the communication required by subsection (2) was conducted (for example, by telephone, email or a meeting in person).
  - (6) In subsection (2), “the accused's legal representative” means—
    - (a) the solicitor referred to in subsection (1), or
    - (b) where the solicitor has instructed counsel for the purposes of the conduct of the accused's case, either the solicitor or that counsel, or both of them.
  - (7) In subsection (6)(b), “counsel” includes a solicitor who has a right of audience in the High Court of Justiciary under section 25A of the Solicitors (Scotland) Act 1980.”
- (4) In section 75 (computation of certain periods), after the words “67(3),” there is inserted “ 71C(3) ”.

#### Commencement Information

**I3** S. 80 in force at 29.5.2017 for specified purposes by S.S.I. 2017/99, art. 3(1)(2) (with art. 6)

## 81 First diets **S**

- (1) The 1995 Act is amended as follows.
- (2) In section 66 (service and lodging of indictment, etc.)—
  - (a) after subsection (6AA) there is inserted—

“(6AB) A notice affixed under subsection (4)(b) or served under subsection (6), where the indictment is in respect of the sheriff court, must contain intimation to the accused that the first diet may proceed and a trial diet may be appointed in the accused's absence.”,
  - (b) in subsection (6B), for the words “or (6AA)” there is substituted “, (6AA) or (6AB) ”.
- (3) In section 71 (first diet)—
  - (a) in subsection (1), the words from “whether” to “particular” are repealed,

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- (b) in subsection (5), after the word “proceed” there is inserted “ , and a trial diet may be appointed, ”,
  - (c) in subsection (6), for the words from the beginning to “required” there is substituted “ Where the accused appears at the first diet, the accused is to be required at that diet ”,
  - (d) subsection (7) is repealed,
  - (e) in subsection (9), after the word “section” there is inserted “ and section 71B ”.
- (4) After section 71 there is inserted—

**“71B First diet: appointment of trial diet**

- (1) At a first diet, unless a plea of guilty is tendered and accepted, the court must—
  - (a) after complying with section 71, and
  - (b) subject to subsections (3) to (7),
 appoint a trial diet.
- (2) Where a trial diet is appointed at a first diet, the accused must appear at the trial diet and answer the indictment.
- (3) In appointing a trial diet under subsection (1), 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 must, subject to subsections (5) to (7), 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 must give the prosecutor an opportunity to make an application to the court under section 65(3) for an extension of the 12 month period.
- (4) Where paragraph (b) of subsection (3) applies—
  - (a) if such an application as is mentioned in that paragraph is made and granted, the court must, subject to subsections (5) to (7), 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 first diet simpliciter or pro loco et tempore, and
    - (ii) where the accused is committed until liberated in due course of law, the accused must be liberated forthwith.
- (5) Subsection (6) 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) 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 must appoint a trial diet for a date within that period as well as within the 12 month period, or

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- (b) if the court considers that the case would not be likely to be so ready, it must give the prosecutor an opportunity to make an application under section 65(5) for an extension of the 140 day period.
- (7) Where paragraph (b) of subsection (6) applies—
- (a) if such an application as is mentioned in that paragraph is made and granted, the court must 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 must proceed under subsection (3)(a) or (as the case may be) (4)(a) to appoint a trial diet for a date within the 12 month period, and
    - (ii) the accused is then entitled to be admitted to bail.
- (8) Where an accused is, by virtue of subsection (7)(b)(ii), entitled to be admitted to bail, the court must, before admitting the accused 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)), the court, after giving the parties an opportunity to be heard—
- (a) must review the conditions imposed on the accused's 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 and, in any case in which that period has been extended under subsection (3) of that section, includes that period as so extended, “the 140 day period” means the period specified in subsection (4)(b)(ii) of section 65 and, in any case in which that period has been extended under subsection (5) of that section, includes that period as so extended.”.
- (5) In subsection (3) of section 76 (procedure where accused desires to plead guilty), for the words from “or, where” to “Court,” there is substituted “ , the first diet or (as the case may be) ”.
- (6) After section 83A there is inserted—

**“83B Continuation of trial diet in the sheriff court**

- (1) In the sheriff court a trial diet and, if it is adjourned, the adjourned diet, may, without having been commenced, be continued from sitting day to sitting day—
- (a) by minute, in such form as may be prescribed by act of adjournal, signed by the sheriff clerk,
  - (b) up to such maximum number of sitting days after the day originally appointed for the trial diet as may be so prescribed.

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- (2) The indictment falls if a trial diet, or adjourned diet, is not commenced by the end of the last sitting day to which it may be continued by virtue of subsection (1).
- (3) For the purposes of this section, a trial diet or adjourned trial diet is to be taken to commence when it is called.
- (4) In this section, “sitting day” means any day on which the court is sitting but does not include any Saturday or Sunday or any day which is a court holiday.”.
- (7) The italic heading immediately preceding section 83A becomes “*Continuation of trial diet*”.

#### Commencement Information

- I4** S. 81(1)(2)(5) in force at 29.5.2017 for specified purposes by S.S.I. 2017/99, art. 3(1)(2) (with arts. 3(5), 6)
- I5** S. 81(3)(4) in force at 31.7.2017 by S.S.I. 2017/99, art. 4(1) (with arts. 4(2), 6)
- I6** S. 81(6)(7) in force at 28.8.2017 by S.S.I. 2017/99, art. 5

## 82 Preliminary hearings **S**

In section 72A (preliminary hearing: appointment of trial diet) of the 1995 Act—

- (a) in subsection (1), for the words from the beginning to “section” there is substituted “ In any case in which subsection (6) of section 72 ”,
- (b) subsection (1A) is repealed.

#### Commencement Information

- I7** S. 82 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

## 83 Plea of guilty **S**

In the 1995 Act—

- (a) in section 70 (proceedings against organisations), subsection (7) is repealed,
- (b) in subsection (1) of section 77 (plea of guilty), the words from “and, subject” to the end are repealed.

#### Commencement Information

- I8** S. 83 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act expiry of affecting provision 2022 asp 8, sch. para. 15 by [S.S.I. 2023/360 reg. 2\(a\)](#)