
EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force various provisions of the Criminal Justice (Scotland) Act 2016 (“the 2016 Act”).

Article 2 brings into force on 11th May 2017 sections 65 to 69 and 72 of the 2016 Act which make provision about the circumstances in which a constable may search a person who is not in police custody and requires the Police Service of Scotland to publish information about the number of searches of that type which have taken place each year.

Article 3 brings into force on 29th May 2017 sections 79, 80 and 81(1), (2) and (5) of the 2016 Act. Section 79 amends section 65 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”), extending the periods for which an accused may be kept in custody following service of an indictment in solemn proceedings in the sheriff court to 110 days unless a first diet is commenced in respect of the accused’s case and 140 days unless a trial diet is commenced. Section 79 of the 2016 Act also amends section 65 of the 1995 Act to require a first diet to be commenced within a period of 11 months from the date of indictment. These new time limits will apply in relation to all indictments served on or after 29th May 2017.

Section 79 of the 2016 Act also amends, along with section 81(1), (2) and (5) of that Act, the 1995 Act to change the procedure for indicting cases in solemn proceedings in the sheriff court, requiring those cases to be indicted to a first diet only at least 29 days from the date of indictment (rather than to a first diet and trial diet, as is current practice). Despite these changes, article 3(3) to (5) of this Order makes transitional provision permitting prosecutors to continue to indict cases under the existing procedure of citing an accused to appear at both a first diet and a trial diet by service of a “relevant notice” to that effect between 29th May 2017 and 30th July 2017. The relevant notices for these purposes are set out in article 1(3) and include notices under sections 66(4)(b) or (6) or 72C(4)(b) of the 1995 Act.

Section 80 of the 2016 Act amends the 1995 Act to introduce new requirements on prosecutors and defence agents to communicate and produce a written record of their state of preparation. This applies in relation to indictments served on and after 29th May 2017.

Article 4 brings into force on 31st July 2017 section 81(3) and (4) of the 2016 Act. This provision amends the 1995 Act to make changes to the procedure to be followed at first diets in solemn proceedings in the sheriff court, in particular by requiring the court at a first diet to appoint a trial diet (if it considers the parties to be sufficiently prepared). Article 4(2) is a saving provision specifying that, until 27th August 2017, these amendments do not apply to cases indicted by the prosecutor to both a first diet and a trial diet (whether before 29th May 2017 or between that date and 30th July 2017 in accordance with article 3(3) to (5)).

Article 5 brings into force on 28th August 2017 section 81(6) and (7) of the 2016 Act which makes changes to trial procedure in solemn cases in the sheriff court, in particular allowing for a trial diet to be continued from sitting day to sitting day by a minute signed by the sheriff clerk.

Article 6 makes transitory provision about the adjournment and alteration of diets where an accused has been cited by a relevant notice to appear at both a first diet and a trial diet. Until 27th August 2017, under section 71(7)(a) of the 1995 Act a court may, instead of postponing a previously appointed trial diet to a later date, discharge that diet and fix a new first diet. Similarly, until that date, a court adjourning a first diet under section 75A(2) of the 1995 Act may discharge a previously appointed trial diet and a court discharging a trial diet under section 75A(5) of that Act may decline to appoint

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a further trial diet and instead fix a new first diet. Article 6(5) provides that where a court discharges a trial diet in any of those circumstances, any adjourned or new first diet is not affected by article 4(2), meaning that the amendments made by sections 81(3) and (4) of the 2016 Act in relation to first diet procedure would apply in relation to that first diet. Courts may by this mechanism bring cases previously indicted to both first diet and trial diet within the new first diet procedure before 28th August 2017 (when article 4(2) will cease to apply for all purposes). This applies also in a case where a court makes an order under section 102A(6) of the 1995 Act fixing a new trial diet between 31st July 2017 and 27th August 2017 and discharging any previously appointed trial diet.

Article 6(6) deals with any case where a first diet is adjourned or postponed to a date on or after 28th August 2017 if the accused was cited to appear at both a first diet and trial diet by a relevant notice. In such a case, any previously appointed trial diet is to be treated as having been discharged, ensuring that all first diets on or after 28th August will operate under the new first diet procedure introduced by the 2016 Act.

The Bill for the 2016 Act received Royal Assent on 13th January 2016. Sections 71, 73 to 77 and 115 to 118 came into force on the following day.