



# Criminal Procedure (Scotland) Act 1975

## 1975 CHAPTER 21

### PROCEDURE PRIOR TO TRIAL

#### *Fixing the Diets*

#### [<sup>F1</sup>75 Notice of trial diet.

Except where the indictment is served under section 102(1) of this Act, the notice served on the accused with the indictment shall call upon him to appear and answer to such indictment at

- [<sup>F2</sup>(a) where the case is to be tried in the sheriff court, a first diet not less than 15 clear days after the service of the indictment and not less than 10 clear days before the trial diet; and
- (b)] a trial diet (either in the High Court or in the sheriff court) not less than 29 clear days after the service of such indictment and notice.]

#### Textual Amendments

- F1** S. 75 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 4 para. 4, [Sch. 6 para. 1](#)
- F2** S. 75(a) and the word (b) inserted (31.3.1996 subject to transitional provisions in the commencing S.I.) by [1995 c. 20, s. 13\(1\)](#); [S.I. 1996/517, arts. 3\(2\)](#), 4-6 Sch. 2

#### [<sup>F3</sup>75A First diet.

- (1) At a first diet the court shall, so far as is reasonably practicable, ascertain whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular—
  - (a) the state of preparation of the prosecutor and of the accused with respect to their cases; and
  - (b) the extent to which the prosecutor and the accused have complied with the duty under section 84A(1) of this Act.

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- (2) In addition to the matters mentioned in subsection (1) above the court shall, at a first diet, consider any matter mentioned in subsection (3) below of which a party has, not less than two clear days before the first diet, given notice to the court and to the other parties.
- (3) The matters referred to in subsection (2) above are—
- (a) that the party intends to raise a matter relating to the competency or relevancy of the indictment or to raise an objection such as is mentioned in section 108(1) of this Act;
  - (b) that he intends to submit a plea in bar of trial or to apply for separation or conjunction of charges or trials or to raise a preliminary objection under section 67 of this Act or to make an application under section 151(2) of this Act;
  - (c) that there are documents the truth of the contents of which ought in his view to be admitted, or that there is any other matter which in his view ought to be agreed; and
  - (d) that there is some other matter which could in his opinion be resolved with advantage before the trial.
- (4) At a first diet the court may ask the prosecutor and the accused any question in connection with any matter which it is required to ascertain or consider under subsection (1) or (2) above.
- (5) The accused shall attend a first diet of which he has been given notice and the court may, if he fails to do so, grant a warrant to apprehend him.
- (6) A first diet may proceed notwithstanding the absence of the accused.
- (7) The accused shall, at the first diet, be required to state how he pleads to the indictment, and section 103 of this Act shall apply where he tenders a plea of guilty.
- (8) Where at a first diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—
- (a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and
  - (b) may fix a further first diet.
- (9) Subject to subsection (8) above, the court may, if it considers it appropriate to do so, adjourn a first diet.
- (10) In this section “the court” means the sheriff court.]

#### Textual Amendments

**F3** S. 75A inserted (31.3.1996 subject to transitional provisions in the commencing S.I.) by 1995 c. 20, s. 13(2); S.I. 1996/517, arts. 3(2) 4-6, Sch. 2

#### [<sup>F4</sup>76 Preliminary diet.

- (1) Subject to section 20B(2) of this Act and to subsections (4) and (5) below, where a party [<sup>F5</sup>to a case which is to be tried in the High Court] within the appropriate period gives written notice to the [<sup>F6</sup>High Court] and to the other parties—

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- (a) that he intends to raise a matter relating to the competency or relevancy of the indictment or to raise an objection such as is mentioned in section 108(1) of this Act, the court shall order that there be a diet before the trial diet;
- (b) that he intends to submit a plea in bar of trial or to apply for separation or conjunction of charges or trials [<sup>F7</sup>or to raise a preliminary objection under section 67 of this Act] or to make an application under section 151(2) of this Act, the court may make such order as is mentioned in paragraph (a) above;
- [<sup>F8</sup>(bb) that there are documents the truth of the contents of which ought in his view to be admitted, or that there is any other matter which in his view ought to be agreed, the court may make such order as is mentioned in paragraph (a) above;]
- (c) that there is some point, as regards any matter not mentioned in paragraph (a) [<sup>F9</sup>, (b) or (bb)] above, which could in his opinion be resolved with advantage before the trial and that he therefore applies for a diet to be held before the trial diet, the court may make such order as is mentioned in paragraph (a) above.

A party giving notice under this subsection shall specify in the notice the matter (or, as the case may be, the grounds of submission or the point) to which the notice relates.

- (2) A diet ordered under subsection (1) above is in this Act referred to as a “preliminary diet”.
- (3) The fact that a preliminary diet has been ordered on a particular notice under subsection (1) above shall not preclude the court’s consideration at that diet of any other such notice as is mentioned in that subsection, which has been intimated to the court and to the other parties at least 24 hours before that diet.
- (4) Subject to subsection (5) below, the court may on ordering a preliminary diet postpone the trial diet for a period not exceeding 21 days; and any such postponement (including postponement for a period which by virtue of the said subsection (5) exceeds 21 days) shall not count towards any time limit applying in respect of the case.
- (5) Any period mentioned in subsection (4) above may be extended by the High Court in respect of the case.
- (6) Where a preliminary diet is ordered the accused (or all the accused as the case may be) shall attend it; and he (or they as the case may be) shall be required at the conclusion thereof to state how he pleads (or they plead) to the indictment:

Provided that if the court so permits the diet may proceed notwithstanding the absence of an accused.

[<sup>F10</sup>(6A) At a preliminary diet the court shall, in addition to disposing of any matter specified in a notice given under subsection (1) above or referred to in subsection (3) above, ascertain, so far as is reasonably practicable, whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular—

- (a) the state of preparation of the prosecutor and of the accused with respect to their cases; and
  - (b) the extent to which the prosecutor and the accused have complied with the duty under section 84A(1) of this Act.
- (6B) At a preliminary diet the court may ask the prosecutor and the accused any question in connection with any matter specified in a notice under subsection (1) above or referred to in subsection (3) above or which it is required to ascertain under subsection (6A) above.

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- (6C) Where at a preliminary diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—
- (a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and
  - (b) may fix a further preliminary diet.
- (6D) Subject to subsection (6C) above, the court may, if it considers it appropriate to do so, adjourn a preliminary diet.]
- (7) In subsection (1) above, “appropriate period” means as regards notice—
- (a) under paragraph (a) of that subsection, the period of 15 clear days after service of the indictment;
  - (b) under paragraph (b) of that subsection, the period from service of the indictment to 10 clear days before the trial diet; and
  - (c) under paragraph [F11(bb) or](c) of that subsection, the period from service of the indictment to the trial diet.]

#### Textual Amendments

- F4** Ss. 76, 76A substituted for s. 76 by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 4 para. 5](#), [Sch. 6 para. 1](#)
- F5** Words in [S. 76\(1\)](#) inserted (31.3.1996 subject to transitional provisions in the commencing S.I.) by [1995 c. 20, s. 13\(3\)\(a\)\(i\)](#); [S.I. 1996/517](#), art. 3(2), 4-6, [Sch. 2](#)
- F6** Words in [S. 76\(1\)](#) substituted (31.3.1996 subject to transitional provisions in the commencing S.I.) by [1995 c. 20, s. 13\(3\)\(a\)\(ii\)](#); [S.I. 1996/517](#), arts. 3(2), 4-6, [Sch. 2](#)
- F7** Words in [s. 76\(1\)\(b\)](#) inserted (18.9.1993) by [1993 c. 9, s. 47\(1\)](#), [Sch. 5 para. 1\(3\)](#) (with [s. 47\(2\)](#), [Sch. 6 paras. 1, 2](#)); [S.I. 1993/2050](#), arts. 3(3), 4(1)(c), [Sch. 2](#)
- F8** [S. 76\(1\)\(bb\)](#) inserted (18.9.1993) by [1993 c. 9, s. 39\(2\)\(a\)](#) (with [s. 47\(2\)](#), [Sch. 6 paras. 1, 2](#)); [S.I. 1993/2050](#), art. 3(3), [Sch. 2](#)
- F9** Words in [s. 76\(1\)\(c\)](#) substituted (18.9.1993) by [1993 c. 9, s. 39\(2\)\(b\)](#) (with [s. 47\(2\)](#), [Sch. 6 paras. 1, 2](#)); [S.I. 1993/2050](#), art. 3(3), [Sch. 2](#)
- F10** [S. 76\(6A\)-\(6D\)](#) inserted (31.3.1996 subject to transitional provisions in the commencing S.I.) by [1995 c. 20, s. 13\(3\)\(b\)](#); [S.I. 1996/517](#), arts. 3(2), 4-6, [Sch. 2](#)
- F11** Words in [s. 76\(7\)\(c\)](#) inserted (18.9.1993) by [1993 c. 9, s. 39\(3\)](#) (with [s. 47\(2\)](#), [Sch. 6 paras. 1, 2](#)); [S.I. 1993/2050](#), art. 3(3), [Sch. 2](#)

#### 76A Appeal in connection with preliminary diet.

- (1) Without prejudice to any right of appeal under section 228 or 280A of this Act, a party may, with the leave of the court of first instance (granted either on the motion of that party or ex proprio motu) and in accordance with such procedure as may be prescribed by Act of Adjournment under this Act, appeal to the High Court against a decision at a [F12 first diet or a preliminary diet, other than a decision to adjourn the diet or to postpone the trial diet]; but any such appeal must be taken not later than 2 days after such decision.
- (2) Where an appeal is taken under subsection (1) above, the High Court may postpone the trial diet for such period as appears to them to be appropriate and may, if they think fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.

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- (3) In disposing of an appeal under subsection (1) above the High Court may affirm the decision of the court of first instance or may remit the case to it with such directions in the matter as they think fit; and where the court of first instance has dismissed the indictment or any part of it, may reverse that decision and direct that the court of first instance fix a trial diet (if it has not already fixed one as regards so much of the indictment as it has not dismissed).

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**Textual Amendments**

- F12** Words in [S. 76A\(1\)](#) substituted (31.3.1996 subject to transitional provisions in the commencing S.I.) by [1995 c. 20, s. 13\(4\)](#); [S.I. 1996/517, arts. 3\(2\), 4-6, Sch. 2](#)

**[<sup>F13</sup>77 Alteration of trial diet.**

Where an indictment is not brought to trial at the trial diet and a warrant for a subsequent sitting of the court, on a day within [<sup>F14</sup>two months] after the date of the aforesaid trial diet has been issued under section 69 of this Act by the clerk of court it shall be lawful for the court to adjourn the trial diet to the subsequent sitting; and the warrant shall have effect as if the trial diet had originally been fixed for the date of the subsequent sitting.]

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**Textual Amendments**

- F13** [S. 77](#) substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), Sch. 4 para. 6, Sch. 6 para. 1](#)
- F14** [S. 77](#): Words “two months” substituted (31.3.1996 subject to transitional provisions in the commencing S.I.) for paragraphs (a) and (b) by [1995 c. 20, s. 117\(1\), Sch. 6 Pt. I para. 29](#); [S.I. 1996/517, arts. 3\(2\), 4-6, Sch. 2](#)

**[<sup>F15</sup>77A Application for postponement of trial diet.**

- (1) At any time before the trial diet, a party may apply to the court before which the trial is to take place for postponement of the trial diet.
- (2) Subject to subsection (3) below, after hearing all the parties, the court may discharge the trial diet and either fix a new trial diet or give leave to the prosecutor to serve a notice fixing a new trial diet.
- (3) Where all the parties join in an application to postpone the trial diet, the court may proceed under subsection (2) above without hearing the parties.
- (4) Where there is a hearing under this section the accused (or all the accused as the case may be) shall attend it;

Provided that if the court so permits the hearing may proceed notwithstanding his (or their) absence.]

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**Textual Amendments**

- F15** [S. 77A](#) inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), Sch. 4 para. 7, Sch. 6 para. 1](#)

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**Modifications etc. (not altering text)**

C1 S. 77A(2) excluded by S.I. 1988/110, [rule 45\(3\)](#)

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

- Act certain function transferred. by [1994 c. 39 s. 127\(1\)128](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 168(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(6\)\(b\)](#)
- s. 364(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(14\)\(b\)](#)
- s. 413(3) (defn. of "the appropriate local authority") para. (a)(b) amended by [1994 c. 39 Sch. 13 para. 97\(5\)](#)
- s. 413(3) (defns. of "care" and "the 1968 Act") repealed (prosp.) by [1995 c. 36 s. 105\(4\)\(5\)Sch. 4 para. 24\(17\)\(b\)\(i\)Sch. 5](#)
- s. 462 (defns. of "child" "children's hearing" "place of safety" "residential establishment" and "supervision requirement") amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(18\)](#)
- s. 462 (defns. of "crime" and "prosecutor") applied (prosp.) by [1995 c. 36 s. 53\(7\)](#)