

## SCHEDULES

### SCHEDULE 4

Section 12.

#### ABOLITION OF MANDATORY FIRST DIET

In the 1975 Act—

- 1 In section 68(3) (notice of previous convictions)—
  - (a) the words " where the accused pleads not guilty at the first diet" shall cease to have effect;
  - (b) for the words " second diet" in each of the three places where they occur, there shall be substituted the words " trial diet "; and
  - (c) for the words " the first diet", in the second place where they occur, there shall be substituted the words " any diet ".
- 2 In section 69 (warrants for citation) for the words " second diet " there shall be substituted the words " trial diet ".
- 3 In section 74 (proceedings against bodies corporate)—
  - (a) subsection (3) shall cease to have effect; and
  - (b) in subsection (4), for the words " second diet" there shall be substituted the words " trial diet ".
- 4 For section 75 there shall be substituted the following section—

**“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 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.”.

- 5 For section 76 (notice for first diet) there shall be substituted the following sections—

**“76 Preliminary diet.**

- (1) Subject to section 20B(2) of this Act and to subsections (4) and (5) below, where a party within the appropriate period gives written notice to the court before which the trial is to take place and to the other parties—
  - (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 or to make an

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application under section 151(2) of this Act, 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) or (b) 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.

- (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 (c) of that subsection, the period from service of the indictment to the trial diet.

#### **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 Adjournal under this Act, appeal to the High Court against a decision at a preliminary diet; but any such appeal must be taken not later than 2 days after such decision.

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- (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.
- (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).”.

6 For section 77 (alteration of diet) there shall be substituted the following section—

**“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—

- (a) in the case of the High Court, two months; or
- (b) in the case of the sheriff court, one month,

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.”.

7 After section 77, there shall be inserted the following section—

**“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.”.

8 For section 78 there shall be substituted the following section—

**“78 Record copy of indictment and list of witnesses.**

- (1) Except in a case to which section 102 of this Act applies, the record copy of the indictment shall on or before the date of service of the indictment be lodged with the clerk of the court before which the trial is to take place ; and a copy of the list of witnesses and a copy of the list of productions shall be lodged with him not less than 10 clear days before the trial diet.

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(2) The list of productions shall include the record, made under section 20B of this Act (with any rectification, authorised under subsection (4) of that section, incorporated), of proceedings at the examination of the accused.”.

9 For section 80 there shall be substituted the following section—

**“80 Objection to witness.**

(1) Any objection in respect of misnomer or misdescription of—

- (a) any person named in the indictment; or
- (b) any witness in the list of witnesses,

shall be intimated in writing to the court before which the trial is to take place, to the prosecutor and to any other accused not less than 10 clear days before the trial diet; and, except on cause shown, no such objection shall be admitted at the trial diet unless so intimated.

(2) Where such intimation has been given or cause is shown and the court is satisfied that the accused making the objection has not been supplied with sufficient information to enable him to identify the person named in the indictment or to find such witness in sufficient time to precognose him before the trial, the court may grant such remedy by postponement, adjournment or otherwise as appears to it to be appropriate.”.

10 In section 82(2) and (3) (written notice of witnesses and productions) for the words " second diet" in each of the four places where they occur there shall be substituted the words " trial diet " .

11 In section 83 (accused to see productions) for the words " second diet", in both places where they occur, there shall be substituted the words " trial diet " .

12 In section 84 (proof as to productions) for the words " second diet", in each of the four places where they occur, there shall be substituted the words " trial diet " .

13 In section 96 (notice of jury list) for the words from " Clerk of Justiciary " to " sheriff court " .there shall be substituted the words " clerk of the court before which the trial is to take place," and for the words " second diet" where they occur for the fourth time, there shall be substituted the words " trial diet " .

14 For section 103, there shall be substituted the following section—

**“103 Pleas of guilty.**

(1) Where at any diet the accused tenders a plea of guilty to the indictment or any part thereof he shall be required to sign a written copy of the plea (if he is able to do so); and the judge shall countersign such copy.

(2) Where the plea is to part only of the charge and the prosecutor does not accept such plea, such non-acceptance shall be recorded.

(3) Where a person charged on indictment with any offence tenders a plea of guilty to any other offence of which he could competently be found guilty on the trial of such indictment, and that plea is accepted by the prosecutor, it shall be competent to convict such person of the offence to which he has so pled guilty and to sentence him accordingly.

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(4) Nothing in subsection (1) above shall require a plea by or on behalf of a company to be signed.”.

15 For section 104 there shall be substituted the following section—

**“104 Remit to High Court for sentence.**

(1) Where at any diet in proceedings on indictment in the sheriff court, sentence falls to be imposed but the sheriff holds that any competent sentence which he can impose is inadequate so that the question of sentence is appropriate for the High Court, he shall—

- (a) endorse upon the record copy of the indictment a certificate of the plea or the verdict (as the case may be);
- (b) by interlocutor written on such record copy remit the convicted person to the High Court for sentence ; and
- (c) append to such interlocutor a note of his reasons for such remit;

and such remit shall be sufficient warrant to bring the accused before the High Court for sentence and shall remain in force until the convicted person is sentenced.

(2) When the Clerk of Justiciary receives the record copy of the indictment he shall send a copy of the note of reasons to the convicted person or his solicitor and to the Crown Agent,

(3) Subject to subsection (2) above, the note of reasons shall be available only to the High Court and the parties.”.

16 Section 105 (High Court case) shall cease to have effect.

17 Section 106 (pleas of guilty) shall cease to have effect.

18 Section 107 (solicitor of place of second diet may defend at both diets) shall cease to have effect.

19 Section 108 (certain objections competent only at first diet) shall be amended as follows—

- (a) for the words " unless the same be stated to the sheriff at the first diet before the accused is called upon to plead " there shall be substituted the words " except by leave of the court on cause shown, unless his intention to raise the objection is stated in a notice under section 76(1)(a) of this Act ";
- (b) the words of section 108 as amended by sub-paragraph (a) of this paragraph shall be subsection (1) of that section and after that subsection there shall be inserted the following subsection—

“(2) Except by leave of the court on cause shown—

- (a) no matter relating to the competency or relevancy of the indictment shall be raised;
- (b) no plea in bar of trial shall be submitted; and
- (c) no application for separation or conjunction of charges or trials shall be submitted,

unless the intention to do so has been stated in a notice under section 76(1) of this Act.”.

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- 20 In section 110 (where sentence delayed, original warrant of commitment stands) for the words "the first" there shall be substituted the word " any ".
- 21 In section 115 (sittings dispensed with) for the words "sheriff at the first", there shall be substituted the word " trial ".
- 22 In section 116 (adjournment of second diet)—
- (a) for the words " the second "—
    - (i) where they occur for the first time there shall be substituted the words " the trial "; and
    - (ii) where they occur for the second time there shall be substituted the words " any further "; and
  - (b) for the words " at the first diet" there shall be substituted the words " before that diet ".
- 23 In section 117 (sitting transferred where few cases) for the words " at the first" there shall be substituted the words " before the trial " ; and for the words " the second diets " there shall be substituted the words " any further diets in ".
- 24 Section 120 (notification after first diet of intention to plead guilty) shall cease to have effect.
- 25 Section 121 (second diet—transcript of procedure at first diet) shall cease to have effect.
- 26 Section 122 (review at second diet in High Court) shall cease to have effect.
- 27 In section 127(1) (procedure where trial does not take place)—
- (a) for the words " second diet" in each of the three places where they occur there shall be substituted the words " trial diet "; and
  - (b) for the words " of the causes set forth in section 122 of this Act," there shall be substituted the word " cause ; ".