

SCHEDULE 2

CRIMINAL PROCEDURE RULES 1996

PART III

Solemn proceedings

CHAPTER 9

FIRST DIETS AND PRELIMINARY DIETS

Minute giving written notice

9.1.—(1) Any notice given under section 71(2) (notice of preliminary matter), or section 72(1) (preliminary diet: notice), of the Act of 1995 shall be by minute in Form 9.1.

(2) Any such minute that relates to a case set down for trial in the High Court at a sitting outside Edinburgh shall specify any productions required for the preliminary diet.

(3) That minute shall be lodged—

- (a) if it relates to a case set down for trial in the High Court, with the Clerk of Justiciary, or
- (b) if it relates to a case set down for trial in the sheriff court, with the sheriff clerk.

Intimation of minute

9.2.—(1) A formal execution of prior intimation of the minute to all other parties shall be lodged at the same time as the minute.

(2) If an execution mentioned in paragraph (1) is not presented with the minute, the Clerk of Justiciary or the sheriff clerk, as the case may be, shall refuse to accept the minute for lodging.

Procedure on lodging minute

9.3. On the lodging of the minute, the Clerk of Justiciary or the sheriff clerk, as the case may be, shall—

- (a) endorse on it the time and date on which it was received; and
- (b) as soon as possible, place the minute before a judge.

Order for preliminary diet

9.4.—(1) On considering the minute in the absence of the parties or of any person acting on their behalf, or otherwise as he thinks fit, the judge—

- (a) if the minute raises a matter mentioned in paragraph (a) of subsection (1) of section 72 of the Act of 1995 (competency and relevancy, etc.), shall make an order for a preliminary diet specifying the date and time of the diet and the period (if any) for which the trial diet is postponed in terms of subsection (4) of that section; or
- (b) if the minute raises a matter mentioned in paragraph (b), (c) or (d) of subsection (1) of that section, may make or refuse to make such an order.

(2) An order made under paragraph (1) shall not be invalid by reason only of having been made in the absence of the parties or of any person acting on their behalf.

(3) Any such order shall be—

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- (a) endorsed on the minute;
- (b) signed by the judge; and
- (c) attached with the minute to the record copy of the indictment.

Intimation of order for preliminary diet

9.5. The Clerk of Justiciary shall, as soon as possible after the making of any order under rule 9.4(1) (order for preliminary diet), intimate its terms to all parties and to the governor of any institution in which any accused is detained.

Order for preliminary diet to be warrant for citation

9.6. Any order made under rule 9.4(1) (order for preliminary diet) specifying the period for which the trial diet is postponed, and any order made under section 72(5) of the Act of 1995 (extension by High Court of period of postponement of trial diet), extending that period shall, for the purposes of section 66 of the Act of 1995 (service and lodging of indictment, etc.), be treated as being a warrant issued by the Clerk of Justiciary to officers of law to cite accused persons, witnesses and jurors for the date to which the trial diet has by virtue of that order been postponed; and any such order shall have effect for those purposes.

Calling postponed diet

9.7. If, in relation to any case a trial diet has been postponed by virtue of an order mentioned in rule 9.6 (order for preliminary diet to be warrant for citation), any requirement to call that diet at any sitting of the court shall have effect only in relation to a sitting on the date to which the diet has been postponed.

Warrant for conveyance and transmission

9.8. A copy of any order for a preliminary diet under rule 9.4(1) certified by the Clerk of Justiciary shall be warrant:—

- (a) for the conveyance to the preliminary diet of any accused who is in custody; and
- (b) in a case set down for trial by the High Court at a sitting outside Edinburgh in respect of which the preliminary diet has been ordered to be heard in Edinburgh, for the transmission to the Clerk of Justiciary of any productions specified in the minute.

Abandonment of matter to be raised

9.9.—(1) Where a diet has been fixed for a preliminary diet under section 72 of the Act of 1995 and the party raising the matter decides not to proceed with it, he shall give written notice of abandonment.

(2) The notice of abandonment shall be in Form 9.9.

(3) The notice shall be intimated forthwith to the clerk of court and to all other parties and to the governor of any institution in which the accused is detained.

(4) On such intimation, it shall not be necessary to convene the court for the preliminary diet unless another minute giving written notice under section 72(1) of the Act of 1995 has been lodged after the lodging of the first notice and before the notice of abandonment.

Procedure at first diet or preliminary diet

9.10.—(1) A first diet or preliminary diet shall commence on the diet being called.

(2) For the purposes of the application of section 93 of the Act of 1995 (record of trial) to a first diet or preliminary diet, the whole proceedings at the preliminary diet shall be proceedings at the trial for the purposes of that section.

(3) A record of those proceedings, including—

- (a) a note of the decision made by the court in respect of any notice placed before it,
- (b) any continuation or adjournment, and
- (c) the plea stated under section 71(6) or 73(1) of the Act of 1995 (accused to state how he pleads),

shall be kept in accordance with existing law and practice.

(4) At any time after the commencement of the first diet or preliminary diet, the judge may make an order continuing or adjourning the diet to another time or place; but the judge shall not require to make an order continuing that diet to the trial diet.

(5) A copy of an order continuing or adjourning the first diet or preliminary diet under paragraph (4) certified by the Clerk of Justiciary shall be warrant—

- (a) for the conveyance to the continued or adjourned diet of any accused who may be in custody; and
- (b) for the citation to that diet of any witnesses.

(6) In this rule, “first diet” means a first diet to which section 71(2) of the Act of 1995 (notice of preliminary matter) applies.

Applications for leave to appeal

9.11.—(1) An application for leave to appeal to the High Court under section 74(1) of the Act of 1995 (appeals in connection with first diets or preliminary diets) shall be made by motion to the judge at that diet immediately following the making of the decision in question, and shall be granted or refused at that time.

(2) Where leave to appeal is granted, the judge shall consider whether or not to postpone the diet of trial; and, if the judge decides that it is necessary or desirable to do so, he may discharge the trial diet and fix a new diet under section 80 of the Act of 1995 (alteration and postponement of trial diet).

(3) Rule 9.15 (intimation of order postponing trial diet) shall apply to an order postponing a trial diet under this rule as it applies to an order postponing a trial diet under that rule.

(4) An order made under this rule shall be recorded in the record of proceedings.

Note of appeal

9.12.—(1) An appeal under section 74(1) of the Act of 1995 (appeals in connection with first diets or preliminary diets) shall be made in Form 9.12.

(2) The note of appeal shall be lodged—

- (a) in a case set down for trial in the High Court, with the Clerk of Justiciary, or
- (b) in a case set down for trial in the sheriff court, with the sheriff clerk,

not later than two days after the making of the decision in question.

Procedure on lodging note of appeal

9.13.—(1) On the lodging of a note of appeal with the sheriff clerk, he shall endorse on it a certificate that leave to appeal has been granted and the date and time of lodging.

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(2) On the lodging of a note of appeal against a decision of a sheriff, the sheriff clerk shall, as soon as possible—

- (a) send a copy of the note of appeal to the other parties or their solicitors;
- (b) request a report on the circumstances relating to the decision from the sheriff; and
- (c) transmit the note of appeal to the Clerk of Justiciary with a certified copy of—
 - (i) the indictment;
 - (ii) the record of proceedings; and
 - (iii) any relevant document.

Report of sheriff

9.14.—(1) The sheriff, on receiving a request for a report under rule 9.13(2)(b) (report on circumstances relating to decision), shall, as soon as possible, send his report to the Clerk of Justiciary.

(2) The Clerk of Justiciary shall, on receiving the report of the sheriff—

- (a) send a copy of the report to the parties or their solicitors;
- (b) arrange for a hearing of the appeal as soon as possible; and
- (c) cause to be copied any documents necessary for the appeal.

Intimation of order postponing trial diet

9.15.—(1) Where, in relation to an appeal under section 74(1) of the Act of 1995 (appeals in connection with first diets or preliminary diets) in a case set down for hearing in the sheriff court, the High Court makes an order under section 74(3) of that Act postponing the trial diet, the Clerk of Justiciary shall send a copy of the order to—

- (a) the sheriff clerk;
- (b) all parties to the proceedings; and
- (c) the governor of any institution in which any accused is detained.

(2) Rule 9.6 (order for preliminary diet to be warrant for citation) and rule 9.7 (calling postponed diet) shall apply to an order mentioned in paragraph (1) of this rule as they apply to an order mentioned in rule 9.6.

Orders of appeal court

9.16.—(1) The Clerk of Justiciary shall intimate to the sheriff clerk the decision of the High Court disposing of an appeal under section 74(1) of the Act of 1995 in relation to a first diet.

(2) Where the High Court in disposing of an appeal under section 74(1) of the Act of 1995 reverses a decision that dismisses the case against the accused, and makes a direction to the court of first instance that it fix a trial diet, that direction shall be authority to the Clerk of Justiciary or the sheriff clerk, as the case may be, to issue a fresh warrant for citation under section 66 of that Act (service and lodging of indictment, etc.).

Abandonment of appeal

9.17.—(1) An appellant who has taken an appeal under section 74(1) of the Act of 1995 (appeals in connection with first diets or preliminary diets) may abandon the appeal at any time before the hearing of the appeal.

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(2) An abandonment of such an appeal shall be made by lodging a minute of abandonment with the Clerk of Justiciary in Form 9.17.

(3) The Clerk of Justiciary, on receiving such a minute of abandonment of an appeal in a case set down for trial in the sheriff court, shall inform the sheriff clerk and the other parties or their solicitors.

(4) The sheriff, on the sheriff clerk being so informed, may proceed as accords with the case.