



Criminal Procedure (Amendment) (Scotland) Act 2004

2004 asp 5

PART 2

SOLEMN PROCEEDINGS GENERALLY

9 Procedure where trial diet does not proceed

For section 81 (procedure where trial diet does not proceed) of the 1995 Act substitute—

“81 Procedure where trial diet does not proceed

- (1) The prosecutor shall not raise a fresh libel in a case in which the court has deserted the trial *simpliciter* unless the court's decision has been reversed on appeal.
- (2) Where a trial diet in any proceedings on indictment is deserted *pro loco et tempore* the court may appoint a further trial diet for a later date and the accused shall appear and answer the indictment at that diet.
- (3) In appointing a further trial diet under subsection (2) above, the court—
 - (a) shall have regard to the state of preparation of the prosecutor and the accused with respect to their cases and, in particular, to the likelihood of the case being ready to proceed to trial on the date to be appointed for the trial diet; and
 - (b) may, if it appears to the court that there are any preliminary pleas, preliminary issues or other matters which require to be, or could with advantage be, disposed of or ascertained before the trial diet, appoint a diet to be held before the trial diet for the purpose of disposing of or, as the case may be, ascertaining them.
- (4) Subsection (5) below applies where, in any proceedings on indictment in which a trial diet has been appointed—

Status: This is the original version (as it was originally enacted).

- (a) the diet has been deserted *pro loco et tempore* for any reason and no further trial diet has been appointed under subsection (2) above; or
 - (b) the indictment falls or is for any other reason not brought to trial and the diet has not been continued, adjourned or postponed.
- (5) Where this subsection applies, the prosecutor may, at any time within the period of two months after the relevant date, give notice to the accused on another copy of the indictment to appear and answer the indictment—
- (a) where the trial diet referred to in subsection (4) above was in the High Court—
 - (i) at a further preliminary hearing in that Court not less than seven clear days after service of the notice; or
 - (ii) where the charge is one that can lawfully be tried in the sheriff court, at a first diet not less than 15 clear days after service of the notice and not less than 10 clear days before the trial diet and at a trial diet not less than 29 clear days after service of the notice; or
 - (b) where the trial diet referred to in subsection (4) was in the sheriff court—
 - (i) at a further trial diet in that court not less than seven clear days after service of the notice; or
 - (ii) at a preliminary hearing in the High Court not less than 21 clear days after service of the notice.
- (6) Where notice is given to the accused under paragraph (a)(ii) or (b)(ii) of subsection (5) above, then for the purposes of section 65(4) of this Act—
- (a) the giving of the notice shall be taken to be service of an indictment in respect of—
 - (i) in the case of a notice under paragraph (a)(ii) of subsection (5) above, the sheriff court; or
 - (ii) in the case of a notice under paragraph (b)(ii) of that subsection, the High Court; and
 - (b) the previous service of the indictment in respect of—
 - (i) in the case of a notice under paragraph (a)(ii) of subsection (5), the High Court; or
 - (ii) in the case of a notice under paragraph (b)(ii) of that subsection, the sheriff court,
 shall be disregarded.
- (7) A notice under subsection (5) above shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form.
- (8) In subsection (5) above, “the relevant date” means—
- (a) where paragraph (a) of subsection (4) applies, the date on which the trial diet was deserted as mentioned in that paragraph; or
 - (b) where paragraph (b) of that subsection applies, the date of the trial diet referred to in that subsection.”.