



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VII

#### SOLEMN PROCEEDINGS

##### *Pre-trial proceedings*

#### 71 First diet.

[<sup>F1</sup>(A1) At a first diet, the court shall, where the accused is charged with a sexual offence to which section 288C of this Act applies, ascertain whether he has engaged a solicitor for the purposes of his defence at the trial.]

- (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 257(1) of this Act.

- (2) In addition to the matters mentioned in subsection (1) above the court shall, at a first diet, consider any matter mentioned in any of paragraphs (a) to (d) of section 72(1) of this Act 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.

[<sup>F2</sup>(2A) At a first diet the court may consider an application for the purposes of subsection (1) of section 275 of this Act.]

- (3) 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 [<sup>F3</sup>or which is relevant to an application for the purposes of subsection (1) of the said section 275] .
- (4) 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.

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(5) A first diet may proceed notwithstanding the absence of the accused.

[<sup>F4</sup>(5A) Where, however—

- (a) the accused is charged with a sexual offence to which section 288C of this Act applies; and
- (b) the court has not ascertained (whether at that diet or earlier) that he has engaged a solicitor for the purposes of his defence at the trial,

a first diet may not proceed in his absence; and, in such a case, the court shall adjourn the diet and ordain the accused then to attend.]

(6) The accused shall, at the first diet, be required to state how he pleads to the indictment, and section 77 of this Act shall apply where he tenders a plea of guilty.

(7) 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.

(8) Subject to subsection (7) above, the court may, if it considers it appropriate to do so, adjourn a first diet.

[<sup>F5</sup>(8A) Where the court adjourns a first diet under subsection (8) above by reason only that, following inquiries for the purposes of subsection (A1) above, it appears to the court that the accused has not engaged a solicitor for the purposes of his defence at his trial, that adjournment shall be for a period of not more than 48 hours and the accused shall be ordained to then attend.]

(9) In this section “the court” means the sheriff court.

#### Textual Amendments

- F1** S. 71(A1) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 3, [Sch. para. 5\(a\)](#); S.S.I. 2002/443, [art. 3](#)
- F2** S. 71(2A) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 8(2)(a); S.S.I. 2002/443, [art. 3](#) (with art. 4(5))
- F3** Words in s. 71(3) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 8(2)(b); S.S.I. 2002/443, [art. 3](#) (with art. 4(5))
- F4** S. 71(5A) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 3, [Sch. para. 5\(b\)](#); S.S.I. 2002/443, [art. 3](#)
- F5** S. 71(8A) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 3, [Sch. para. 5\(c\)](#); S.S.I. 2002/443, [art. 3](#)

#### [<sup>F6</sup>71A Further pre-trial diet: dismissal or withdrawal of solicitor representing accused in case of sexual offence

(1) It is the duty of a solicitor who—

- (a) was engaged for the purposes of the defence of an accused charged with a sexual offence to which section 288C of this Act applies—
  - (i) at the time of a first diet,
  - (ii) at the time of a diet under this section, or

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- (iii) in the case of a diet which, under subsection (7) below, is dispensed with, at the time when it was so dispensed with; and
- (b) after that time but before the trial diet—
  - (i) is dismissed by the accused; or
  - (ii) withdraws,forthwith to inform the court in writing of those facts.
- (2) On being so informed, the court shall order that, before the trial diet, there shall be a further pre-trial diet under this section and ordain the accused then to attend.
- (3) At a diet under this section, the court shall ascertain whether or not the accused has engaged another solicitor for the purposes of his defence at the trial.
- (4) Where, following inquiries for the purposes of subsection (3) above, it appears to the court that the accused has not engaged another solicitor for the purposes of his defence at his trial, it may adjourn the diet under this section for a period of not more than 48 hours and ordain the accused then to attend.
- (5) A diet under this section shall be not less than 10 clear days before the trial diet.
- (6) A court may, at a diet under this section, postpone the trial diet.
- (7) The court may dispense with a diet under this section previously ordered, but only if a solicitor engaged by the accused for the purposes of the defence of the accused at the trial has, in writing—
  - (a) confirmed his engagement for that purpose; and
  - (b) requested that the diet be dispensed with.
- (8) Where—
  - (a) a solicitor has requested, under subsection (7) above, that a diet under this section be dispensed with; and
  - (b) before that diet has been held or dispensed with, the solicitor—
    - (i) is dismissed by the accused; or
    - (ii) withdraws,the solicitor shall forthwith inform the court in writing of those facts.]

#### Textual Amendments

- F6** S. 71A inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 3, [Sch. para. 6](#); [S.S.I. 2002/443](#), [art. 3](#)

## 72 Preliminary diet: notice

- (1) Subject to subsections (4) and (5) below, where a party to a case which is to be tried in the High Court within the appropriate period gives written notice to the court and to the other parties—
  - (a) that he intends to raise—
    - (i) a matter relating to the competency or relevancy of the indictment; or
    - (ii) an objection to the validity of the citation against him, on the ground of any discrepancy between the record copy of the indictment and the

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copy served on him, or on account of any error or deficiency in such service copy or in the notice of citation;

- (b) that he intends—
  - (i) to submit a plea in bar of trial;
  - (ii) to apply for separation or conjunction of charges or trials;
  - (iii) to raise a preliminary objection under section 255 of this Act; or
  - (iv) to make an application under section 278(2) of this Act;
- (c) that there are documents the truth of the contents of which ought to be admitted, or that there is any other matter which in his view ought to be agreed;
- (d) that there is some point, as regards any matter not mentioned in paragraph (a) to (c) 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 shall in a case to which paragraph (a) above applies, and in any other case may, order that there be a diet before the trial diet, and a diet ordered under this subsection [<sup>F7</sup>or subsection (2A) below] is in this Act referred to as a “preliminary diet”.

- (2) A party giving notice under subsection (1) above 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.

[<sup>F8</sup>(2A) The court may order that there shall be a diet before the trial diet for the purpose of considering an application for the purposes of subsection (1) of section 275 of this Act.]

- (3) The fact that a preliminary diet has been ordered [<sup>F9</sup>under subsection (2A) above or] on a particular notice under subsection (1) above shall not preclude the court’s consideration at that diet of [<sup>F10</sup>any, or any other,] such notice as is mentioned in [<sup>F11</sup>subsection (1) above], 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) 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) or (d) of that subsection, the period from service of the indictment to the trial diet.

#### Textual Amendments

**F7** Words in s. 72(1) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 8(3)(a); S.S.I. 2002/443, art. 3 (with art. 4(5))

**F8** S. 72(2A) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 8(3)(b); S.S.I. 2002/443, art. 3 (with art. 4(5))

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| <b>F9</b>  | Words in s. 72(3) inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. 8(3)(c)(i); S.S.I. 2002/443, art. 3 (with art. 4(5))      |
| <b>F10</b> | Words in s. 72(3) substituted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. 8(3)(c)(ii); S.S.I. 2002/443, art. 3 (with art. 4(5))  |
| <b>F11</b> | Words in s. 72(3) substituted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. 8(3)(c)(iii); S.S.I. 2002/443, art. 3 (with art. 4(5)) |

## [<sup>F12</sup>72A Pre-trial diet: inquiry about legal representation of accused in cases of sexual offences

- (1) Where a case to be tried in the High Court is in respect of a sexual offence to which section 288C of this Act applies, the court shall order that, before the trial diet, there shall be a diet under this section and ordain the accused then to attend.
- (2) At a diet under this section, the court shall ascertain whether or not the accused has engaged a solicitor for the purposes of his defence at the trial.
- (3) Where, following inquiries for the purposes of subsection (2) above, it appears to the court that the accused has not engaged a solicitor for the purposes of his defence at his trial, it may adjourn the diet under this section for a period of not more than 48 hours and ordain the accused then to attend.
- (4) A diet under this section shall be not less than 15 clear days after the service of the indictment and not less than 10 clear days before the trial diet.
- (5) A diet under this section may be conjoined with a preliminary diet.
- (6) A court may, at a diet under this section, postpone the trial diet.
- (7) The court may dispense with a diet under this section previously ordered, but only if a solicitor engaged by the accused for the purposes of the defence of the accused at the trial has, in writing—
  - (a) confirmed his engagement for that purpose; and
  - (b) requested that the diet be dispensed with.
- (8) Where—
  - (a) a solicitor has requested, under subsection (7) above, that a diet under this section be dispensed with; and
  - (b) before that diet has been held or dispensed with, the solicitor—
    - (i) is dismissed by the accused; or
    - (ii) withdraws,the solicitor shall forthwith inform the court in writing of those facts.
- (9) It is the duty of a solicitor who—
  - (a) was engaged for the purposes of the defence of the accused at the trial—
    - (i) at the time of a diet under this section; or
    - (ii) in the case of a diet which, under subsection (7) above, is dispensed with, at the time when it was so dispensed with; and
  - (b) after that time but before the trial diet—
    - (i) is dismissed by the accused; or
    - (ii) withdraws,forthwith to inform the court in writing of those facts.

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(10) On being so informed, the court shall order a further diet under this section.]

#### Textual Amendments

**F12** S. 72A inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), s. 3, [Sch. para. 7](#); S.S.I. 2002/443, [art. 3](#)

VALID FROM 01/02/2005

#### [<sup>F13</sup>72B Power to dispense with preliminary hearing

- (1) The court may, on an application made to it jointly by the parties, dispense with a preliminary hearing and appoint a trial diet if the court is satisfied on the basis of the application that—
  - (a) the state of preparation of the prosecutor and the accused with respect to their cases is such that the case is likely to be ready to proceed to trial on the date to be appointed for the trial diet;
  - (b) there are no preliminary pleas, preliminary issues or other matters which require to be, or could with advantage be, disposed of before the trial; and
  - (c) there are no persons to whom section 72(7) of this Act applies.
- (2) An application under subsection (1) above shall identify which (if any) of the witnesses included in the list of witnesses are required by the prosecutor or the accused to attend the trial.
- (3) Where a trial diet is to be appointed under subsection (1) above, it shall be appointed in accordance with such procedure as may be prescribed by Act of Adjournal.
- (4) Where a trial diet is appointed under subsection (1) above, the accused shall appear at the diet and answer the indictment.
- (5) The fact that a preliminary hearing in any case has been dispensed with under subsection (1) above shall not affect the calculation in that case of any time limit for the giving of any notice or the doing of any other thing under this Act, being a time limit fixed by reference to the preliminary hearing.
- (6) Accordingly, any such time limit shall have effect in any such case as if it were fixed by reference to the date on which the preliminary hearing would have been held if it had not been dispensed with.

#### Textual Amendments

**F13** Ss. 72-72D substituted for ss. 72-73A (1.2.2005, 1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [ss. 1\(3\)](#), 27(1); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5); S.S.I. 2005/168, [art. 2](#), Sch. (with art. 4); S.S.I. 2006/59, [art. 2](#), Sch. (with art. 4(1)); S.S.I. 2007/101, [art. 2](#), Sch. (with art. 4); S.S.I. 2007/329, [art. 2](#), Sch. (with art. 4); S.S.I. 2008/57, [art. 2](#) (with art. 3)

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VALID FROM 01/02/2005

## **72C Procedure where preliminary hearing does not proceed**

- (1) The prosecutor shall not raise a fresh libel in any case in which the court has deserted a preliminary hearing *simpliciter* unless the court's decision has been reversed on appeal.
- (2) Where a preliminary hearing is deserted *pro loco et tempore*, the court may appoint a further preliminary hearing for a later date and the accused shall appear and answer the indictment at that hearing.
- (3) Subsection (4) below applies where, at a preliminary hearing—
  - (a) the hearing has been deserted *pro loco et tempore* for any reason and no further preliminary hearing has been appointed under subsection (2) above; or
  - (b) the indictment is for any reason not proceeded with and the hearing has not been adjourned or postponed.
- (4) 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) at a further preliminary hearing in the High Court not less than seven clear days after the date of service of the notice; or
  - (b) at—
    - (i) a first diet not less than 15 clear days after the service of the notice and not less than 10 clear days before the trial diet; and
    - (ii) a trial diet not less than 29 clear days after the service of the notice, in the sheriff court where the charge is one that can lawfully be tried in that court.
- (5) Where notice is given to the accused under subsection (4)(b) 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 the sheriff court; and
  - (b) the previous service of the indictment in respect of the High Court shall be disregarded.
- (6) In subsection (4) above, “the relevant date” means—
  - (a) where paragraph (a) of subsection (3) above applies, the date on which the diet was deserted as mentioned in that paragraph; or
  - (b) where paragraph (b) of that subsection applies, the date of the preliminary hearing referred to in that paragraph.
- (7) A notice referred to in subsection (4) above shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form.

### **Textual Amendments**

**F13** Ss. 72-72D substituted for ss. 72-73A (1.2.2005, 1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss.

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**1(3)**, 27(1); S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5); S.S.I. 2005/168, **art. 2**, Sch. (with art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

## **72D Preliminary hearing: further provision**

- (1) The court may, on cause shown, allow a preliminary hearing to proceed notwithstanding the absence of the accused.
- (2) Where—
  - (a) the accused is a body corporate;
  - (b) it fails to appear at a preliminary hearing;
  - (c) the court allows the hearing to proceed in its absence under subsection (1) above; and
  - (d) no plea is entered on its behalf at the hearing,
 it shall be treated for the purposes of proceedings at the preliminary hearing as having pled not guilty.
- (3) Where, at a preliminary hearing, a trial diet is appointed, the accused shall appear at the trial diet and answer the indictment.
- (4) At a preliminary hearing, the court—
  - (a) shall take into account any written record lodged under section 72E of this Act; and
  - (b) may ask the prosecutor and the accused any question in connection with any matter which it is required to dispose of or ascertain under section 72 of this Act.
- (5) The proceedings at a preliminary hearing shall be recorded by means of shorthand notes or by mechanical means.
- (6) Subsections (2) to (4) of section 93 of this Act shall apply for the purposes of the recording of proceedings at a preliminary hearing in accordance with subsection (5) above as they apply for the purposes of the recording of proceedings at the trial in accordance with subsection (1) of that section.
- (7) The Clerk of Justiciary shall prepare, in such form and manner as may be prescribed by Act of Adjournal, a minute of proceedings at a preliminary hearing, which shall record, in particular, whether any preliminary pleas or issues were disposed of and, if so, how they were disposed of.
- (8) In this section, references to a preliminary hearing include an adjourned preliminary hearing.
- (9) In this section and sections 72 to 72C, “the court” means the High Court.



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VALID FROM 01/02/2005

## **[<sup>F14</sup>72E Written record of state of preparation in certain cases**

- (1) This section applies where, in any proceedings in the High Court, a solicitor has notified the Court under section 72F(1) of this Act that he has been engaged by the accused for the purposes of the conduct of his case at the preliminary hearing.
- (2) The prosecutor and the accused’s legal representative shall, not less than two days before the preliminary hearing—
  - (a) communicate with each other with a view to jointly preparing a written record of their state of preparation with respect to their cases (referred to in this section as “the written record”); and
  - (b) lodge the written record with the Clerk of Justiciary.
- (3) The High Court may, on cause shown, allow the written record to be lodged after the time referred to in subsection (2) above.
- (4) The written record shall—
  - (a) be in such form, or as nearly as may be in such form;
  - (b) contain such information; and
  - (c) be lodged in such manner,as may be prescribed by Act of Adjournal.
- (5) The written record may contain, in addition to the information required by virtue of subsection (4)(b) above, such other information as the prosecutor and the accused’s legal representative consider appropriate.
- (6) In this section—

“the accused’s legal representative” means—

  - (a) the solicitor referred to in subsection (1) above; or
  - (b) where the solicitor has instructed counsel for the purposes of the conduct of the accused’s case at the preliminary hearing, either the solicitor or that counsel, or both of them; and

“counsel” includes a solicitor who has a right of audience in the High Court of Justiciary under section 25A (rights of audience in various courts including the High Court of Justiciary) of the Solicitors (Scotland) Act 1980 (c. 46).]

### **Textual Amendments**

**F14** S. 72E inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 2**, 27(1); [S.S.I. 2004/405](#), **art. 2**, Sch. 1 (subject to arts. 3-5)

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VALID FROM 04/12/2004

## **[<sup>F15</sup>72F Engagement, dismissal and withdrawal of solicitor representing accused**

- (1) In any proceedings on indictment, it is the duty of a solicitor who is engaged by the accused for the purposes of his defence at any part of the proceedings to notify the court and the prosecutor of that fact forthwith in writing.
- (2) A solicitor is to be taken to have complied with the duty under subsection (1) to notify the prosecutor of his engagement if, before service of the indictment, he—
  - (a) notified in writing the procurator fiscal for the district in which the charge against the accused was then being investigated that he was then engaged by the accused for the purposes of his defence; and
  - (b) had not notified that procurator fiscal in writing that he had been dismissed by the accused or had withdrawn from acting.
- (3) Where any such solicitor as is referred to in subsection (1) above—
  - (a) is dismissed by the accused; or
  - (b) withdraws,
 it is the duty of the solicitor to inform the court and the prosecutor of those facts forthwith in writing.
- (4) The prosecutor shall, for the purposes of subsections (1) and (3), be taken to be notified or informed of any fact in accordance with those subsections if—
  - (a) in proceedings in the High Court, the Crown Agent; or
  - (b) in proceedings on indictment in the sheriff court, the procurator fiscal for the district in which the trial diet is to be held,
 is so notified or, as the case may be, informed of the fact.
- (5) On being informed in accordance with subsection (3) above of the dismissal or withdrawal of the accused's solicitor in any case to which subsections (6) and (7) below apply, the court shall order that, before the trial diet, there shall be a further pre-trial diet under this section.
- (6) This subsection applies to any case—
  - (a) where the accused is charged with an offence to which section 288C of this Act applies;
  - (b) in respect of which section 288E of this Act applies; or
  - (c) in which an order has been made under section 288F(2) of this Act.
- (7) This subsection applies to any case in which—
  - (a) the solicitor was engaged for the purposes of the defence of the accused—
    - (i) in the case of proceedings in the High Court, at the time of a preliminary hearing or, if a preliminary hearing was dispensed with under section 72B(1) of this Act, at the time it was so dispensed with;
    - (ii) in the case of solemn proceedings in the sheriff court, at the time of a first diet;
    - (iii) at the time of a diet under this section; or
    - (iv) in the case of a diet which, under subsection (11) below, is dispensed with, at the time when it was so dispensed with; and

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- (b) the court is informed as mentioned in subsection (3) above after that time but before the trial diet.
- (8) At a diet under this section, the court shall ascertain whether or not the accused has engaged another solicitor for the purposes of his defence at the trial.
- (9) A diet under this section shall be not less than 10 clear days before the trial diet.
- (10) A court may, at a diet under this section, postpone the trial diet for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.
- (11) The court may dispense with a diet under this section previously ordered, but only if a solicitor engaged by the accused for the purposes of the defence of the accused at the trial has, in writing—
  - (a) confirmed his engagement for that purpose; and
  - (b) requested that the diet be dispensed with.]

#### Textual Amendments

- F15** S. 72F inserted (4.12.2004) "after s. 72E" by virtue of [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 8, 27(1)**; [S.S.I. 2004/405](#), **art. 2, Sch. 1** (subject to [arts. 3-5](#))

VALID FROM 04/12/2004

#### [<sup>F16</sup>72G Service etc. on accused through a solicitor

- (1) In any proceedings on indictment, anything which is to be served on or given, notified or otherwise intimated to, the accused shall be taken to be so served, given, notified or intimated if it is, in such form and manner as may be prescribed by Act of Adjournal, served on or given, notified or intimated to (as the case may be) the solicitor described in subsection (2) below at that solicitor's place of business.
- (2) That solicitor is any solicitor—
  - (a) who—
    - (i) has notified the prosecutor under subsection (1) of section 72F of this Act that he is engaged by the accused for the purposes of his defence; and
    - (ii) has not informed the prosecutor under subsection (3) of that section that he has been dismissed by, or has withdrawn from acting for, the accused; or
  - (b) who—
    - (i) has been appointed to act for the purposes of the accused's defence at the trial under section 92 or 288D of this Act; and
    - (ii) has not been relieved of the appointment by the court.]

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#### Textual Amendments

**F16** S. 72G inserted (4.12.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 12, 27(1)**; [S.S.I. 2004/405](#), **art. 2, Sch. 1** (subject to **arts. 3-5**)

#### <sup>F17</sup>73 Preliminary diet: procedure.

- (1) Where a preliminary diet is ordered, subject to subsection (2) below, the accused shall attend it, and he shall be required at the conclusion of the diet to state how he pleads to the indictment.
- (2) The court may permit the diet to proceed notwithstanding the absence of an accused.
- (3) At a preliminary diet the court shall, in addition to disposing of any matter specified in a notice given under subsection (1) of section 72 of this Act or referred to in subsection (3) of that section [<sup>F18</sup>or to considering an application for the purposes of subsection (1) of section 275 of this Act], 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 257(1) of this Act.
- (4) 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) of the said section 72 or referred to in subsection (3) of that section [<sup>F19</sup>or which is relevant to an application for the purposes of subsection (1) of the said section 275] or which it is required to ascertain under subsection (3) above.
- (5) 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.
- (6) Subject to subsection (5) above, the court may, if it considers it appropriate to do so, adjourn a preliminary diet.
- (7) Where an objection is taken to the relevancy of the indictment under subsection (1) (a)(i) of the said section 72, the clerk of court shall minute whether the objection is sustained or repelled and sign the minute.
- (8) In subsection (1) above, the reference to the accused shall, without prejudice to section 6(c) of the <sup>M1</sup>Interpretation Act 1978, in any case where there is more than one accused include a reference to all of them.

#### Textual Amendments

**F17** Ss. 72-72D substituted for ss. 72-73A (1.2.2005, 1.4.2005, 1.4.2006, 1.4.2007 and 2.7.2007 for certain purposes, otherwise 1.4.2008) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 1(3), 27(1)**; [S.S.I. 2004/405](#), **art. 2, Sch. 1** (subject to **arts. 3-5**); [S.S.I. 2005/168](#), **art. 2, Sch.** (with

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art. 4); S.S.I. 2006/59, **art. 2**, Sch. (with art. 4(1)); S.S.I. 2007/101, **art. 2**, Sch. (with art. 4); S.S.I. 2007/329, **art. 2**, Sch. (with art. 4); S.S.I. 2008/57, **art. 2** (with art. 3)

**F18** Words in s. 73(3) inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), **s. 8(4)(a)**; S.S.I. 2002/443, **art. 3** (with art. 4(5))

**F19** Words in s. 73(4) inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), **s. 8(4)(b)**; S.S.I. 2002/443, **art. 3** (with art. 4(5))

#### Marginal Citations

**M1** 1978 c.30.

## 74 Appeals in connection with preliminary diets.

(1) Without prejudice to—

- (a) any right of appeal under section 106 or 108 of this Act; and
- (b) section 131 of this Act,

and subject to subsection (2) below, a party may with the leave of the court of first instance (granted either on the motion of the party or *ex proprio motu*) in accordance with such procedure as may be prescribed by Act of Adjournal, appeal to the High Court against a decision at a first diet or a preliminary diet.

(2) An appeal under subsection (1) above—

- (a) may not be taken against a decision to adjourn the first or, as the case may be, preliminary diet or to postpone the trial diet;
- (b) must be taken not later than 2 days after the decision.

(3) Where an appeal is taken under subsection (1) above, the High Court may postpone the trial diet for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.

(4) In disposing of an appeal under subsection (1) above the High Court—

- (a) may affirm the decision of the court of first instance or may remit the case to it with such directions in the matter as it thinks fit; <sup>F20</sup> . . .
- (b) 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.

[<sup>F21</sup>(c) may on cause shown extend the period mentioned in section 65(1) of this Act.]

#### Textual Amendments

**F20** Word in s. 74(4) repealed (1.8.1997) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 21(10)(a), **Sch. 3**; S.I. 1997/1712, **art. 3**, **Sch.** (subject to arts. 4, 5)

**F21** S. 74(4)(c) inserted (1.8.1997) by 1997 c. 48, s. 62(1)(2), **Sch. 1 para. 21(10)(b)**; S.I. 1997/1712, **art. 3**, **Sch.** (subject to arts. 4, 5)

## 75 Computation of certain periods.

Where the last day of any period mentioned in section 66(6), 67(3), 72 or 74 of this Act falls on a Saturday, Sunday or court holiday, such period shall extend to and include the next day which is not a Saturday, Sunday or court holiday.

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