



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VII **S**

#### SOLEMN PROCEEDINGS

##### *Alteration, etc, of diet*

#### 80 Alteration and postponement of trial diet. **S**

<sup>F1</sup> .....

#### Textual Amendments

**F1** S. 80 repealed (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 26](#); [S.S.I. 2004/405](#), [art. 2](#), [Sch. 1](#) (subject to arts. 3-5)

#### [<sup>F2</sup>81 Procedure where trial diet does not proceed. **S**

- (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

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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 <sup>F3</sup>...—
- (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
    - <sup>F4</sup>(ii) where the charge is one that can lawfully be tried in the sheriff court, at a first diet in that court not less than 21 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 <sup>F5</sup>first 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.]

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#### Textual Amendments

- F2** S. 81 substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\), ss. 9, 27\(1\); S.S.I. 2004/405, art. 2, Sch. 1](#) (subject to arts. 3-5) (as amended (31.1.2005) by [S.S.I. 2005/40, art. 3\(2\)](#) (subject to [art. 1\(3\)](#)))
- F3** Words in s. 81(4) omitted (31.7.2017) by virtue of [The Criminal Justice \(Scotland\) Act 2016 \(Consequential and Transitional Provisions\) Regulations 2017 \(S.S.I. 2017/221\)](#), regs. 1(1), **2(2)(a)** (with reg. 3)
- F4** S. 81(5)(a)(ii) substituted (31.7.2017) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential and Transitional Provisions\) Regulations 2017 \(S.S.I. 2017/221\)](#), regs. 1(1), **2(2)(b)** (with reg. 4)
- F5** Words in s. 81(5)(b)(i) substituted (31.7.2017) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential and Transitional Provisions\) Regulations 2017 \(S.S.I. 2017/221\)](#), regs. 1(1), **2(2)(c)**

## 82 Desertion or postponement where accused in custody. **S**

Where—

- (a) a diet is deserted *pro loco et tempore*;
  - (b) a diet is [<sup>F6</sup>continued, accelerated,] postponed or adjourned; or
  - [<sup>F7</sup>(c) an order is issued changing the place at which the trial is to take place,]
- the warrant of committal on which the accused is at the time in custody till liberated in due course of law shall continue in force.

#### Textual Amendments

- F6** Words in s. 82(b) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\), ss. 25, 27\(1\), Sch. para. 27\(a\); S.S.I. 2004/405, art. 2, Sch. 1](#) (subject to arts. 3-5)
- F7** S. 82(c) substituted (31.7.2017) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential and Transitional Provisions\) Regulations 2017 \(S.S.I. 2017/221\)](#), regs. 1(1), **2(3)**

## 83 Transfer of sheriff court solemn proceedings. **S**

- (1) Where an accused person has been cited to attend a [<sup>F8</sup>diet] of the sheriff court the prosecutor may [<sup>F9</sup>apply to the sheriff for an order for the transfer of the proceedings to a sheriff court in another district in that sheriffdom <sup>F10</sup>. . . and for adjournment to a [<sup>F8</sup>diet] of that court].

[<sup>F11</sup>(1A) Where—

- (a) an accused person has been cited to attend a [<sup>F12</sup>diet] of the sheriff court; or
- (b) paragraph (a) above does not apply but it is competent so to cite an accused person,

and the prosecutor is informed by the sheriff clerk that, because of exceptional circumstances which could not reasonably have been foreseen, it is not practicable for that court (in subsection (2A)(b)(i) below referred to as the “relevant court”) or any other sheriff court in that sheriffdom to proceed with the case, the prosecutor—

- (i) may, where paragraph (b) above applies, so cite the accused; and
- (ii) shall, where paragraph (a) above applies or the accused is so cited by virtue of paragraph (i) above, as soon as practicable apply to the sheriff principal for an order for the transfer of the proceedings to a sheriff court in another sheriffdom <sup>F13</sup>. . . and for adjournment to a [<sup>F12</sup>diet] of that court.]

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- (2) On an application under subsection (1) above the sheriff may—
- (a) after giving the accused or his counsel or solicitor an opportunity to be heard; or
  - (b) on the joint application of the parties,  
[<sup>F14</sup>make such order as is mentioned in that subsection].
- [<sup>F15</sup>(2A) On an application under subsection (1A) above the sheriff principal may make the order sought—
- (a) provided that the sheriff principal of the other sheriffdom consents; but
  - (b) in a case where the trial (or part of the trial) would be transferred, shall do so only—
    - (i) if the sheriff of the relevant court, after giving the accused or his counsel an opportunity to be heard, consents to the transfer; or
    - (ii) on the joint application of the parties.
- (2B) On the application of the prosecutor, a sheriff principal who has made an order under subsection (2A) above may, if the sheriff principal of the other sheriffdom mentioned in that subsection consents—
- (a) revoke; or
  - (ii) vary so as to restrict the effect of,  
that order.]
- [<sup>F16</sup>(2C) The sheriff may proceed under subsection (2) above on a joint application of the parties without hearing the parties and, accordingly, he may dispense with any hearing previously appointed for the purposes of considering the application.]
- (3) <sup>F17</sup> .....

#### Textual Amendments

- F8** Words in s. 83(1) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 3\)](#), ss. 25, 27(1), [Sch. para. 28\(a\)\(i\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F9** Words in s. 83(1) substituted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), [ss. 58\(1\)\(a\)](#), 89; S.S.I. 2003/288, [art. 2](#), Sch.
- F10** Words in s. 83(1) repealed (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 3\)](#), ss. 25, 27(1), [Sch. para. 28\(a\)\(ii\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F11** S. 83(1A) inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), [ss. 58\(1\)\(b\)](#), 89; S.S.I. 2003/288, [art. 2](#), Sch.
- F12** Words in s. 83(1A) substituted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 3\)](#), ss. 25, 27(1), [Sch. para. 28\(b\)\(i\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F13** Words in s. 83(1A)(ii) repealed (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 3\)](#), ss. 25, 27(1), [Sch. para. 28\(b\)\(ii\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F14** Words in s. 83(2) substituted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), [ss. 58\(1\)\(c\)](#), 89; S.S.I. 2003/288, [art. 2](#), Sch.
- F15** S. 83(2A)-(2B) inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), [ss. 58\(1\)\(d\)](#), 89; S.S.I. 2003/288, [art. 2](#), Sch.
- F16** S. 83(2C) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 3\)](#), ss. 25, 27(1), [Sch. para. 28\(c\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F17** S. 83(3) repealed (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 3\)](#), ss. 25, 27(1), [Sch. para. 28\(d\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)

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[<sup>F18</sup>**83ZA**Transfer of sheriff court solemn proceedings within sheriffdom: power of sheriff principal **S**]

Where, because of exceptional circumstances which could not reasonably have been foreseen, it is not practicable for a sheriff court in a sheriffdom to proceed with some or all of the proceedings on indictment due to call at a diet, the sheriff principal may, of the sheriff principal's own accord, make an order for—

- (a) the transfer of the proceedings to a sheriff court in any other district in that sheriffdom; and
- (b) adjournment to a diet of that court.]

**Textual Amendments**

**F18** S. 83ZA inserted (25.3.2020) by [Act of Adjournal \(Criminal Procedure \(Scotland\) Act 1995 Amendment\) \(Miscellaneous\) 2020 \(S.S.I. 2020/93\)](#), paras. 1(2), **2(3)**

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