

PRACTICE NOTE

No.1 of 2004

ADJOURNMENT AND POSTPONEMENT OF TRIALS IN THE HIGH COURT OF JUSTICIARY

1. In recent times, there have been a considerable number of applications for the adjournment or postponement of trials in the High Court of Justiciary. Such applications are generally associated with consequential applications to the court to extend time limits under section 65 of the Criminal Procedure (Scotland) Act 1995^(a) (“the 1995 Act”). On occasions, successive applications have been made to different judges, in some instances without a disclosure of the previous history of the case. This practice note is intended to remind parties that the granting of such applications is a matter for the court, in the light of an adequate account of the background against which applications are presented. The practice of the court will be in accordance with the following:–
 - (a) A party who seeks the adjournment of a trial will be expected to disclose to the court the full history of the case since the accused first appeared on petition, including information about earlier applications for adjournment and the reasons put forward in support of those applications. The court will consider that history in the light of the court’s own records relating to the case.
 - (b) The mere fact that the Crown and the defence are in agreement that the court should adjourn or postpone the trial, and have agreed that the defence will not seek to object to any application by the Crown to extend the relevant time limits under section 65 of the 1995 Act, does not mean that the court will necessarily accede to such motions. The court will expect to be provided with an explanation of the reasons given for the adjournment or postponement of any trial.
 - (c) It is to be expected that if the court is asked to adjourn a trial out of a sitting and extend the relevant time limits it will require to be satisfied—
 - (i) that as matters stand there is a real prospect that the case will require to proceed to trial, and
 - (ii) that it is not possible for the trial to take place later within the anticipated duration of that sitting.
 - (d) If a motion for adjournment has been refused, any subsequent motion for adjournment should, if possible, be heard by the same judge. Such a motion is unlikely to be granted unless there has been a material change of circumstances since the earlier refusal.
 - (e) If a motion for adjournment is withdrawn before a judge in court, any subsequent application for adjournment will require to be supported with an adequate explanation for the change of position.
 - (f) A minute of postponement of a trial should, wherever possible, be heard by the judge who is due to preside at the trial.
2. The content of this practice note will be brought to the attention of the clerks of court and court managers.
3. This practice note will be revised when the relevant provisions of the Criminal Procedure (Amendment)(Scotland) Act 2004^(b) come into force.

Lord Justice General

Edinburgh
7th October 2004

(a) 1995 c.46.
(b) 2004 asp 5.