

# **Criminal Courts Practice Note**

## **No 3 of 2015**

### **Sheriff Court Solemn Procedure**

#### **Introduction**

Proper judicial control over the use of court time is an important part of the entitlement to a fair and public hearing within a reasonable time. The objective of this Practice Note is to promote greater efficiency and the better use of available resources. It provides guidance on the contribution which the Crown and the defence will be expected to make to enable the sheriff to perform an active case management role, commencing at a First Diet, consistent with the sheriff's duty to manage solemn criminal proceedings.

The likely implementation in 2016 of the recommendations of the 2010 Independent Review of Sheriff and Jury Procedure will enhance the sheriff's case management function. These are likely to place on a statutory (Act of Adjournal) footing the obligations of communication and cooperation between the Crown and the defence. This Practice Note should be seen as a precursor to that implementation.

This Practice Note takes effect from 1 December 2015.

#### **General Management of Solemn Business**

The sheriffs in each court within a Sheriffdom will assist the Sheriff Principal in the discharge of the statutory function to secure the efficient disposal of business. With the assistance of the sheriff clerk, they will be actively involved in the general management of the solemn business of the court, notably at the First Diet stage.

It is critical that all diets, particularly trial diets, are fully employed and, so far as reasonably practicable, not left without any business to be conducted in them. Equally, diets should not be overloaded. The Crown will agree with the sheriff clerk the number of cases, including continued cases, deemed to constitute the optimum loading for a First Diet court. If that loading is to be exceeded, the Crown will be expected to provide a written explanation to the sheriff clerk of the circumstances which give rise to it. Only in exceptional circumstances should cases be indicted to dates other than a programmed First Diet court.

In the event that the Crown becomes aware that there is a possibility of an additional case being added to a trial sitting, it will immediately inform the sheriff clerk in order that contingency steps, such as the citation of more jurors, can be taken.

### **Communication between the Crown and the defence**

Communication between the Crown and the defence is essential for effective case management. The court expects that a culture of effective and timeous communication will continue to develop. It will be regarded as unacceptable if the first time that there is meaningful communication between the Crown and the defence is at the First Diet. The court will expect to be advised at that diet of when, how and by what means communication has taken place since (i) any appearance on petition; and (ii) service of the indictment.

Whilst there is, at present, in Sheriff and Jury cases no statutory duty on the Crown and the defence to prepare a joint written record of the state of preparation, this duty may be introduced by the Criminal Justice Bill. In anticipation of this change, the court will, as a matter of good practice, expect both the Crown and the defence to be in a position to address the court fully on the matters set out in the Joint Written Record of State of Preparation appended hereto. In particular, the court will expect full details from both the Crown and defence of the steps taken to comply with the duty, under section 257 of the Criminal Procedure (Scotland) Act 1995 ( “the 1995 Act”), to agree facts which are unlikely to be disputed. In the event that such agreement has been reached, a joint minute must be lodged as soon as possible.

### **Disclosure and defence statement**

Disclosure should be made well in advance of the First Diet. The Crown will be expected to have complied in full with the provisions of the Code of Practice: Disclosure of Evidence in Criminal Proceedings. The defence must timeously lodge a defence statement as required by s70A of the 1995 Act. The Crown will be expected to be in a position to provide the court with confirmation that it has complied with its obligation under s124 of the Criminal Justice and Licensing (Scotland) Act 2010 to review all relevant information in the light of the defence statement. The defence will be expected to have intimated to the Crown in writing, and in precise terms, in advance of the First Diet any alleged deficiencies in disclosure.

### **Conduct of First Diets**

The First Diet is intended to be the end-point of preparation rather than the starting point. Such diets should not routinely be continued. If a further First Diet (s 71(7)(b) of the 1995 Act) is sought by either the Crown or the defence, the court will require (i) an explanation as to why the action in respect of which a further diet is sought

could not have been completed before the hearing and ;(ii) a precise timetable for its completion.

The Crown will cite the accused to attend the First Diet. Diets will normally be assigned on the assumption that each will last no longer than 20 minutes. If it is anticipated that further time will be required, the Crown or the defence (as the case may be) should advise the sheriff clerk in writing in advance of the diet.

Before the accused is called upon to plead, the court will dispose of any preliminary pleas and issues of which notice has been given.

Where the accused pleads not guilty, the court will ascertain the state of preparation of the parties. In particular, the court will ascertain whether the Crown and the defence:

- (i) have considered, in detail, the evidence which they may require to lead at the trial;
- (ii) have taken steps to ascertain whether any of the witnesses, whom they may require to lead at the trial, will require special measures by reason of he or she being a child or a vulnerable person and have lodged all necessary notices and made all the appropriate applications in that regard;
- (iii) have taken steps to ascertain whether any of the witnesses whom they may require to lead at the trial will require the services of an interpreter; and
- (iv) have given consideration to whether any preliminary plea, preliminary issue or other matter which might with advantage be disposed of before the trial should be raised.

The court will expect the Crown and the defence to draw to its attention any other matters which, if not dealt with at the First Diet, might result in the waste of court time, inconvenience to witnesses or jurors, or delay in the progress of the case.

The Crown and the defence must each be in a position to state at the First Diet:

- (i) whether they have intimated to all other parties a full list of the witnesses they intend to call, and if not, why not, and when any further lists of witnesses will be intimated;
- (ii) which Crown and defence witnesses they require to be present at the trial diet; and
- (iii) whether there are any perceived difficulties regarding the attendance of witnesses through other commitments or anticipated reluctance to attend or for any other reason.

They must provide a reasonable estimate of how long the trial is likely to last.

The responsibility for determining the running order of trials at a sitting will remain with the Crown. In exercising this responsibility the Crown must have full regard to the need to secure the efficient use of court time during the sitting.

### **Conduct of trial diets**

The sheriff will retain oversight of the management of the sitting during its progress. In particular, the sheriff will expect the Crown - and the defence, where appropriate, - to be able fully to account for any change in the running order of trials and the anticipated length of each trial as estimated at the First Diet. The sheriff will also expect that lessons be learned in the event that it is found that any such change could have been avoided.

### **Section 67 Notices**

The sheriff will expect the Crown to give reasons for seeking leave of the court for the leading of evidence from a witness intimated by a notice under s 67 of the 1995 Act at whatever stage the notice is lodged.

CJM Sutherland

Lord Justice Clerk

Edinburgh

26 August 2015

**JOINT WRITTEN RECORD OF STATE OF PREPARATION**

**SHERIFF AND JURY TRIALS**

<b>Part 1 (Crown)</b>	
<b>Plea</b>  1. Has a plea of guilty been accepted. <b>If yes, the following questions are not applicable.</b>	Yes/No
<b>Communication with the defence</b>  2. When and by what means did the Crown and defence communicate prior to the first diet.	
<b>Preliminary Issues</b>  3. Has notice been given by the Crown of a preliminary issue.  If yes, attach a copy of each notice.	Yes/No
<b>Objections to admissibility of evidence</b>  4. Do you wish to raise any objection to the admissibility of any evidence despite not having given notice of a preliminary issue.  If yes, specify each objection and provide the reason for not giving notice:-	Yes/No
<b>Other applications/notices</b>  5. Has any of the following been lodged. <ul style="list-style-type: none"><li>• A child witness notice</li><li>• A vulnerable witness application</li><li>• An application to admit evidence relating to the character and conduct of complainer</li></ul>	Yes/No

<ul style="list-style-type: none"> <li>• An application for an order prohibiting the accused from conducting his defence in person</li> <li>• An application for a witness anonymity order</li> </ul> <p>If yes, attach a copy of each application or notice.</p>	
<p><b>Other matters</b></p> <p>6. Are there any other matters which might be disposed of with advantage before the trial (eg compatibility minutes, section 67 notices or applications for recovery of documents.</p> <p>If yes, specify each matter:-</p>	<p>Yes/No</p>
<p><b>Agreements and admissions of evidence</b></p> <p>7. Have any facts or documents been the subject of a minute of admission or agreement.</p> <p>If yes, attached a copy of each minute.</p> <p>If no, specify the reason.</p>	<p>Yes/No</p>
<p><b>Duty to seek agreement of evidence</b></p> <p>8. What steps have been taken to seek agreement of evidence:-</p> <p>If "none", specify the reason.</p>	
<p><b>Uncontroversial evidence</b></p> <p>9. Has either party served a statement of uncontroversial evidence.</p> <p>If yes,</p> <ul style="list-style-type: none"> <li>(i) attach a copy of each statement</li> <li>(ii) specify any matters which are deemed to have been conclusively proved:-</li> <li>(iii) attach a copy of any notice of challenge and</li> <li>(iv) attach a copy of any application for direction to disregard</li> </ul> <p>If no, specify the reason.</p>	<p>Yes/No</p>

<p><b>Witnesses</b></p> <p>10. Specify by number which of the witnesses are required:-</p> <p><i>[Indicate which, if any, of these witnesses is a child witness: (“CW”) or vulnerable witness (“WV”)]</i></p>	
<p><b>Availability of witnesses</b></p> <p>11. Specify any dates on which any of the required witnesses are not available and state the reason (if known):-</p>	
<p><b>Preparation for trial</b></p> <p>12. Are you ready to proceed to trial.</p> <p>If no, specify the reason and the date by which you anticipate you will be ready.</p> <p>State also the date when the accused appeared on petition and any response to the defence position in Part II question 15.</p>	<p>Yes/No</p>
<p><b>Estimated length of trial</b></p> <p>13. How long do you estimate that the trial will last.</p>	
<p><b>Disclosure</b></p> <p>14. Has the Crown complied</p> <ul style="list-style-type: none"> <li>• with the provisions of the Code of Practice: Disclosure of Evidence in Criminal Proceedings.</li> <li>• its obligation to review all relevant information in the light of the defence statement.</li> </ul> <p>If no, specify the reason.</p>	<p>Yes/No</p>

<p><b>Equipment</b></p> <p>15. Are any of the following required at the trial.</p> <ul style="list-style-type: none"> <li>• Screens</li> <li>• display of video-tape evidence</li> <li>• playback of police interview audio-tape</li> <li>• document camera</li> <li>• CD/DVD evidence in computer format (parties must supply laptop PC or other means of display)</li> <li>• equipment for giving evidence by closed circuit television camera</li> <li>• other equipment (specify)</li> </ul>	<p>Yes/No</p>
<p><b>Interpreters</b></p> <p>16. Will an interpreter be required for the trial.</p> <p>If yes, please provide details:-</p>	<p>Yes/No</p>

NAME OF RESPONSIBLE

PROCURATOR FISCAL DEPUTE.....

For the Crown



<b>Part 2 (Defence)</b>	
<b>Plea</b>  1. Has the Crown accepted a plea of guilty. <b>If yes, the following questions are not applicable.</b>	Yes/No
<b>Section 196</b>  2. Is the accused aware of the potential discount of sentence in the event of a plea of guilty.	Yes/No
<b>Preliminary Issues</b>  3. Has notice been given of a preliminary plea. If yes, attached a copy of each notice.	Yes/No
<b>Communication with the Crown</b>  4. When and by what means did the Crown and defence communicate prior to the first diet.	
<b>Preliminary Issues</b>  5. Has notice been given on behalf of the accused of a preliminary issue. If yes, attach a copy of each notice.	Yes/No
<b>Objections to admissibility of evidence</b>  6. Do you wish to raise any objection to the admissibility of any evidence despite not having given notice. If yes, specify each objection and provide the reason for not giving notice.	Yes/No

<p><b>Other applications/notices</b></p> <p>7. Has any of the following been lodged with the court on behalf of the accused.</p> <ul style="list-style-type: none"> <li>• A child witness notice</li> <li>• A vulnerable witness application</li> <li>• An application to admit evidence relating to the character and conduct of complainer</li> <li>• An application for an order prohibiting the accused from conducting his defence in person at trial</li> <li>• An application for a witness anonymity order</li> </ul> <p>If yes, attach a copy of each application or notice.</p>	<p>Yes/No</p>
<p><b>Defence</b></p> <p>8. Has any of the following been lodged.</p> <ul style="list-style-type: none"> <li>• a plea of special defence or notice of intention to incriminate a co-accused</li> <li>• notice of witnesses or productions</li> <li>• defence statement</li> </ul> <p>If yes, attach a copy of each plea and notice.</p> <p>If no defence statement has been lodged, explain why.</p>	<p>Yes/No</p>
<p><b>Other matters</b></p> <p>9. Are there any other matters which might be disposed of with advantage before the trial (eg compatibility minutes, section 67 notices or applications for recovery of documents).</p> <p>If yes, specify each matter:-</p>	<p>Yes/No</p>

<p><b>Agreements and admissions of evidence</b></p> <p>10. Have any facts and documents been the subject of a minute of admission or agreement.</p> <p>If yes, attached a copy of each minute.</p> <p>If no, specify the reason.</p>	<p>Yes/No</p>
<p><b>Duty to seek agreement of evidence</b></p> <p>11. Specify any steps which have been taken to seek agreement of evidence:-</p> <p>If “none”, specify the reason.</p>	
<p><b>Uncontroversial evidence</b></p> <p>12. Has either party served a statement of uncontroversial evidence.</p> <p>If yes,</p> <ul style="list-style-type: none"> <li>(i) attach a copy of each statement</li> <li>(ii) specify any matters which are deemed to have been conclusively proved:-</li> <li>(iii) attach a copy of any notice of challenge and</li> <li>(iv) attach a copy of any application for a direction to disregard</li> </ul> <p>If no, specify the reason.</p>	<p>Yes/No</p>
<p><b>Witnesses</b></p> <p>13. Specify by number which witnesses are required:-</p> <p><i>[Indicate which, if any, of these witnesses is a child witness: (“CW”) or vulnerable witness (“WV”)]</i></p>	

<p><b>Availability of witnesses</b></p> <p>14. Specify any dates on which any of the required witnesses are not available and state the reason (if known):-</p>	
<p><b>Preparation for trial</b></p> <p>15. Are you ready to proceed to trial.</p> <p>If no, specify the reason and the date by which you anticipate you will be ready.</p>	<p>Yes/No</p>
<p><b>Estimated length of trial</b></p> <p>16. Specify how long you estimate that the trial will last.</p>	
<p><b>Equipment</b></p> <p>17. Will any of the following be required at the trial.</p> <ul style="list-style-type: none"> <li>• Screens</li> <li>• display of video-tape evidence</li> <li>• playback of police interview audio-tape</li> <li>• document camera</li> <li>• CD/DVD evidence in computer format (parties must supply laptop PC or other means of display)</li> <li>• equipment for giving evidence by closed circuit television camera</li> <li>• other equipment (specify)</li> </ul>	<p>Yes/No</p>

<b>Interpreters</b>	
<p data-bbox="236 327 906 365">18. Will an interpreter be required for the trial diet.</p> <p data-bbox="236 383 632 421">If yes, please provide details:-</p>	<p data-bbox="1107 327 1209 365">Yes/No</p>

NAME OF RESPONSIBLE AGENT .....

Legal Representative of [A.B.]