

Sheriff Court Solemn Procedure

Criminal Courts Practice Note

No 1 of 2024

This Practice Note takes effect from 14 October 2024.

It replaces Practice Note No 3 of 2015.

Introduction

[1] 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.

General Management of Solemn Business

[2] 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.

[3] It is critical that all diets, particularly Trial Diets, are fully utilised. The Sheriff Principal, in consultation with the Crown and the sheriff clerk, will determine the optimum loading for a First Diet court, including continued cases. If that loading is to be exceeded, the Crown must provide a written explanation to the sheriff clerk of the circumstances which give rise to it. Only in exceptional circumstances should cases be

indicted or continued to dates other than a programmed First Diet court.

[4] If a trial is identified as having the potential to be unusually complex or lengthy, the Crown must notify the sheriff clerk. The Sheriff Principal may assign the First Diet to a designated sheriff who will preside over all procedure to the conclusion of the trial.

[5] If the Crown becomes aware that an additional case may be added to a trial sitting, it must immediately inform the sheriff clerk and seek permission to do so, in order that contingency steps, such as citing additional jurors, can be taken.

Communication between the Crown and the defence

[6] Communication between the Crown and the defence is essential for effective case management. 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. Parties should be prepared to provide a detailed timeline specifying the dates of requests for further disclosure, instruction of experts etc. should the court so require.

Disclosure and defence statement

[7] Full disclosure should be made well in advance of the First Diet. The Crown is expected to comply in full with the provisions of the Code of Practice: Disclosure of Evidence in Criminal Proceedings. The defence must comply with section 70A of the Criminal Procedure (Scotland) Act 1995 by lodging a defence statement at least 14 days before the First Diet. The Crown will be expected to be in a position to provide the court with confirmation that it has complied with its obligation under section 124 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. Parties should expect active judicial scrutiny of their state of readiness for trial, at the First Diet. In the event that the defence case should change in any material respect, the defence statement must be updated.

First Diet

[8] The First Diet is intended to be the end-point of preparation rather than the starting point. In order to meet the requirements of the relevant statutory provisions it will be necessary for the Crown and the defence to carry out detailed preparations before a First Diet. If, without reasonable excuse, the Crown or the defence has failed to: (a) be fully prepared for the First Diet; (b) have full instructions; or (c) otherwise be in a position to discuss the issues likely to arise at the First Diet, the court will regard the position as unacceptable and will investigate and record the reasons for any such failure. The court may recall the First Diet at the end of the court roll where necessary.

[9] Section 71C of the 1995 Act requires the Crown and the defence to prepare and lodge a joint written record of their state of preparedness. The written record is central to the effective management of solemn proceedings. It must be lodged no later than two court days before the First Diet. It must be completed fully, unambiguously and in detail. It must not be treated as a formality or a tick box exercise.

[10] The Crown will cite the accused to attend the First Diet. The Crown may also cite any witness in respect of whom it is considered that a warrant may be required to secure their attendance at the Trial Diet. The Crown will be expected to liaise with the staff of the relevant sheriff court in relation to the management of such witnesses.

[11] First 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 First Diet.

[12] Before the accused is called upon to plead, the court will dispose of any preliminary pleas of which notice has been given. At the First Diet, the court will expect the Crown and the defence to be prepared to make full submissions on any preliminary pleas. A list of authorities upon which they propose to rely must be provided to the court at least two court days before the First Diet. The list of authorities should contain specific reference to the passages in the authorities on which reliance is to be placed.

[13] Where the accused intends to plead a special defence, a notice of special defence must be lodged at or before the First Diet. The special defence should be stated in conventional terms and should not be used as a vehicle in which to provide the jury with a narrative of the accused's account of events.

[14] Where the accused pleads not guilty, the court will ascertain the state of preparedness of the parties. The court will expect the Crown and the defence to be in a position to discuss all of the matters contained in the written record and to answer in detail any questions asked by the court relating to the contents of the written record.

[15] In particular, the court will expect to be fully addressed on:

- (a) any preliminary issues of which notice has been given;
- (b) any child witness notice or vulnerable witness application;
- (c) any objection to the admissibility of evidence which has been identified in the written record;
- (d) any applications made in terms of section 275 of the 1995 Act; and
- (e) any application for an order prohibiting the accused from conducting his own defence.

Only in exceptional circumstances will the court assign a continued First Diet for the hearing of such submissions.

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

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

[17] The Crown and the defence will be expected to confirm to the court that all necessary redactions have been made to remove irrelevant information from joint investigative interviews, evidence on commission recordings, police interviews and prior statements to be used at trial.

[18] The agreement of evidence is the most effective means of reducing the time required for a trial. It prevents the unnecessary attendance of witnesses, focusses the issues in dispute and provides a party with certainty that a fact will be established. The court will expect the Crown and the defence to have considered, in detail, the evidence which they may require to lead at the trial and whether they have complied with their duties under section 257 of the 1995 Act. The court will expect the Crown to produce and lodge with the court, a draft joint minute of agreed evidence two days before the First Diet. The court will expect to be addressed on the terms of the draft with a view to the joint minute being signed at, or on the same day of, the First Diet.

[19] In particular, having regard to the nature of the charges, the Crown and the defence will be expected to address the court on the following areas of evidence which

may be capable of agreement, where relevant:

- (a) the fact that an injury was sustained by a complainer (or by the accused) and/or any related medical evidence or the results of any medical examination (including the fact that no injury was noted);
- (b) recoveries made during police searches and answers to caution and charge;
- (c) surveillance evidence;
- (d) scientific analysis of drugs and their quantities;
- (e) the terms of police interviews and whether the interview requires to be edited or presented in shortened form to the jury; and
- (f) the content and conclusion of any expert report.

Parties must avoid the unnecessary attendance of witnesses and the unnecessary use of court time to address matters of fact which are not in dispute. Where agreement is sought on any fact, it should be given unless there is a clear reason for the fact to be disputed. Any such reason should be explained to the court at the First Diet having regard to the content of the written records and defence statement.

The purpose of a joint minute is to agree the facts stated. Entries which, for example, agree that a document is a “true and accurate record” without stating its content are agreed are meaningless; such statements should be avoided.

[20] Where the Crown or the defence have timeously intimated an objection under section 71(2) of the 1995 Act, or will seek leave under section 79(1) of the 1995 Act to take objection to the admissibility of evidence on a ground in respect of which the court may require to hear evidence, the court will expect to be informed at the First Diet of:

- (a) the nature and ground of the objection;
- (b) the identities of the witness who would give evidence at a trial within a

trial and whether the facts to which they would speak can be agreed; and
(c) the time likely to be occupied by the hearing of such evidence and
disposing of the objection,

so that consideration may be given to the appointment of a hearing to dispose of the objection by the court before the Trial Diet.

[21] At the First Diet, 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 court will expect to be provided with a reasonable estimate of how long the trial is likely to last.

Continued First Diets

[22] First Diets will be continued only in exceptional circumstances. Section 71B of the 1995 Act requires that a Trial Diet must be assigned at a First Diet unless a plea of guilty is tendered and accepted.

[23] Continuations for disclosure or to obtain outstanding information, such as expert reports, should not be necessary. The defence will be expected to make an application in terms of section 75A of the 1995 Act to discharge a First Diet if, notwithstanding repeated attempts, such material is not likely to be available prior to the First Diet. An application in terms of section 75A must narrate all steps taken to obtain the outstanding material prior to the First Diet and the reasons for the delay.

[24] Any motion to continue a First Diet must be supported with a full explanation as to why the matter giving rise to the motion was not, and could not reasonably have been, addressed prior to the First Diet. If such a motion is granted, the reasons for the continuation will be fully minuted to ensure that the history of the proceedings is before the court in the event of any further motion.

[25] First Diets will not ordinarily be continued to allow parties further time to negotiate a plea. Generally, the court will expect parties to negotiate and resolve plea discussions at or before the First Diet. If necessary, the court will recall the case at the end of the court roll to allow parties to do so.

[26] The court will in appropriate cases fix a timetable against which any outstanding information is to be provided or investigation is to be carried out and any additional witnesses or productions are to be intimated/lodged rather than continuing a First Diet for that purpose.

[27] Where a continuation is sought to await the outcome of psychiatric or psychological investigations of the accused's mental state, the sheriff should ordinarily fix a trial, allowing sufficient time for such reports to be obtained, and decline to fix a continued First Diet for the reasons set out in the Preliminary Hearings Bench Book at paragraph 6.6.4.

Trial Diet

[28] The court will expect the Crown and the defence to continue to communicate during preparations for the Trial Diet. In the event that the accused intends to tender a plea of guilty or the Crown elects to accept a plea of not guilty or to take no further proceedings, the court will expect parties to accelerate the Trial Diet by lodging a minute in terms of section 75A of the 1995 Act.

[29] Courts will commence at 10.00am on every day of the sitting. Court time will not be permitted to be used for preparation by, or discussions between, parties. Although legal representatives may attend to commitments in other courts, provided they are scheduled to conclude before the trial commences/recommences, this will not be expected to delay trial proceedings.

[30] Adjournments will not normally be granted during a trial in order for parties to carry out preparatory or other work which should have been completed before the trial. In particular, adjournments to “edit” transcripts, “sort” productions and related matters, which ought to have been completed in advance, will not normally be permitted.

[31] Adjournments for disclosure or to obtain outstanding information, such as expert reports, should not be necessary. The defence will be expected to make an application in terms of section 75A of the 1995 Act to discharge a Trial Diet if, notwithstanding repeated attempts, such material is not likely to be available prior to the Trial Diet. An application in terms of section 75A will be expected to narrate all steps taken to obtain the outstanding material prior to the Trial Diet and the reasons for the delay.

[32] 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 expect that lessons be learned in the event that it is found that any such change could have been avoided.

[33] The sheriff may make orders to transfer business between available courts within the sheriffdom to avoid unnecessary adjournments due to lack of court time and to secure the efficient disposal of business.

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25 September 2024