

CRIMINAL COURTS

PRACTICE NOTE NO 2 OF 2020

Re-introduction of Summary Criminal Business

This Practice Note takes effect from 1 June 2020

Introduction

[1] In light of the introduction by Scottish Government of Phase 1 of the gradual easing of the restrictions due to Coronavirus (Covid-19), the following guidance will apply for summary criminal business in the Sheriff and Justice of the Peace courts.

[2] During this phase, all Sheriff and Justice of the Peace courts will be opened during the week commencing 1 June 2020, but for at least the first two weeks the courts, other than the existing hub courts or additional courts which are opened as hub courts, will be open only for sheriffs and members of staff of the Scottish Courts and Tribunals Service. Thereafter, there will be a gradual re-introduction of business, but subject to the government guidance on social distancing.

[3] Substantial progress has already been made in the development of information and communication technology to enable as much business as possible to be conducted remotely without physical attendance in the court buildings. That progress will continue in the coming weeks and months, including the introduction, if practicable, of virtual courts for cited, diet and intermediate diet courts where remote appearance by some or all of the parties will be facilitated, unless physical

attendance is essential. This month it is anticipated that pilot virtual summary trials will be conducted in Aberdeen and Inverness Sheriff Courts, which will inform the development of such trial courts on a national basis.

Initial Steps

[4] For the initial period, the length of which will be determined by experience, the following will apply.

[5] Custody trials will remain the priority for court programmes.

[6] Where practicable, sheriff courts will programme trial courts from the week commencing 15 June to enable the acceleration of cases which were administratively adjourned during the period of the lockdown. For such cases prosecutors and agents for the accused are expected to make a joint application in writing for the acceleration of a trial diet in terms of section 137 of the Criminal Procedure (Scotland) Act 1995. The application should be accompanied by written records completed by the prosecution and defence, all as set out in the Appendix. Where the court is satisfied that the trial should be accelerated to the proposed date, confirmation that the application has been granted will be intimated to the parties giving the date and time fixed for the trial.

[7] Where appropriate, local orders will be issued by Sheriffs Principal in order that intermediate diets fixed before the lockdown for dates on or after 15 June will call on the date originally fixed. The trials emanating from these intermediate diets courts

will, where the court accepts that the case is ready for the trial to take place, on the date previously fixed.

[8] It is expected that prosecutors and agents for the accused will take full advantage of the arrangements in place for the resolution of cases by use of the Guidance in respect of Facilitating Pleas of Guilty issued on 11 May 2020 and available here;

<http://www.scotcourts.gov.uk/docs/default-source/default-document-library/facilitating-pleas-of-guilty-in-summary-criminal-proceedings.pdf?sfvrsn=0>

Where the accused wishes to tender a plea of guilty to the complaint or an amended complaint, such intimation should be done electronically to the prosecutor and the court. The accused and the prosecutor are then required to follow the procedure set out in the Guidance.

Intermediate Diets

[9] Intermediate diets are most effective when parties have addressed their minds to the state of preparation before the day of the diet. That is particularly so in the context of the present circumstances of restricted physical access to courts.

[10] It is expected that the parties make every effort to have productive discussions in advance of the intermediate diet, identifying clearly those matters which are capable of agreement and those which remain in dispute.

[11] Where a plea cannot be agreed in advance of the intermediate diet the parties must complete a written record as per Appendix 2 which should be submitted

electronically no later than two working days prior to the intermediate diet to [the relevant email address as set out in Appendix 1. This will be considered by the court within one working day and if satisfied that the parties are ready for trial the case will be administratively continued to trial where it is likely that the trial can proceed on the date fixed. The court will schedule trials for time slots in support of the government guidance on social distancing in order to protect all court users. The court's decision will be intimated electronically by the clerk of court. The intimation will specify the time the trial will be called.

[12] Where necessary, the court might seek further information from the parties in advance of the decision, in which case the clerk of court and the parties will communicate electronically.

[13] For the avoidance of doubt, the accused is excused attendance at the intermediate diet unless the court otherwise directs.

[14] Where the court considers that the case should call remotely in the intermediate diet court, the parties will be advised of the time slot for their case. 6 cases will be fixed per hour. Efforts will be made to group together cases where the accused are represented by the same agent. If, exceptionally, the court decides that physical attendance is required it will, after giving all parties an opportunity to make representations, make a direction to that effect under the Coronavirus (Scotland) Act 2020, Schedule 4, Part 1, Paragraphs 2(1) and 2(4).

[15] Where a trial cannot proceed on the previously allocated date, a further date will be fixed and the court will consider whether a further intermediate diet should be fixed. Such diets should be regarded as exceptional and are discouraged.

Further Guidance

[16] Further guidance, where appropriate, will be provided by Sheriffs Principal to reflect the individual circumstances in each sheriff court. In particular, Sheriffs Principal will issue orders specifying when cited courts will recommence and guidance for cases calling as undertakings in each sheriff court.

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Lord Justice General

1 June 2020

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Appendix 2

Intermediate Diet Written Record

	PF Ref:		Sheriff
	ID date:		Court
	Trial date (where known):		Accused:
			Agent:
	Issue		Detail/Explanation
1	Is the Crown fully prepared so the trial can proceed on the date fixed	Y/N	
2	Is Disclosure complete	Y/N	
2.1	Outstanding disclosure	-	
3	What matters remain in dispute	-	
4	Date of last communication with agent	-	
5.1	Witnesses: Total number/cited	-	
5.2	Any known citation difficulties	Y/N	
6	Steps taken to agree evidence	Y/N	
7	Confirmation of special measures	Y/N	
8.1	Any CCTV issues	Y/N	
8.2	CCTV: confirm arrangements to play	-	
9	Any photos capable of agreement	Y/N	
10.1	Expert evidence (state type): instructed	Y/N	

10.2	Expert evidence: report status	-	
11	Anticipated length of trial		
12	Productions required in court	Y/N	
13	Interpreter required	Y/N	
14	Proposed arrangements for witness to give evidence (name of witness and proposed location for giving evidence)		1 2 3 4

PROCURATOR

FISCAL

DEPUTE

(Signed).....

Intermediate Diet Written Record

	PF Ref:		Sheriff
		Court	
	ID date:		Accused:
	Trial date (where known):		Agent:
	Issue		Detail/Explanation
1	Is the Defence fully prepared so the trial can proceed on the date fixed	Y/N	
1.1	Is legal aid in place or has the defence been put in funds? If no what is the impact on the trial taking place on the date fixed?	Y/N	
2	Is Disclosure complete	Y/N	
2.1	Outstanding disclosure	-	
3	What matters remain in dispute	-	
4	Date of last communication with Crown	-	

5.1	Witnesses: Total number/cited	-	
5.2	Any known citation difficulties	Y/N	
6	Steps taken to agree evidence	Y/N	
7	Confirmation of special measures	Y/N	
7.1	Is a statutory or special defence to be pled	Y/N	
	Has the Crown been given notice? If not, why not?	Y/N	
8.1	Any CCTV issues	Y/N	
8.2	CCTV: confirm arrangements to play	-	
9	Any photos capable of agreement	Y/N	
10.1	Expert evidence (state type): instructed	Y/N	
10.2	Expert evidence: report status	-	
11	Anticipated length of trial		
11.1	Are there any witnesses on the Crown list the defence require to be in attendance? If yes, please specify	Y/N	
12	Productions required in court	Y/N	
13	Interpreter required	Y/N	
14	Have any defence witness been cited and intimated to the Crown?	Y/N	

	If no, why not?		
14.1	Proposed arrangements for defence witness to give evidence (name of witness and proposed location for giving evidence)		1 2 3 4

DEFENCE AGENT (Signed).....