

CRIMINAL COURTS

PRACTICE NOTE NO. 4 OF 2020

Summary Criminal Business in the sheriff courts: further provision regarding Intermediate Diets etc.

This Practice Note takes effect from 1 December 2020 and replaces Practice Note No. 2 of 2020

Introduction

[1] This Practice Note applies from 1 December 2020 to:

- a) new summary criminal business in the sheriff courts;
- b) any existing summary criminal business in the sheriff courts which is adjourned after that date and new intermediate and trial diets fixed; and
- c) any existing summary criminal business in the sheriff courts in respect of which intermediate and trial diets have been fixed for on or after 15 December 2020.

[2] The provisions of paragraphs [9] to [15] of Practice Note No. 2 of 2020 (Re-introduction of summary criminal business) will continue to apply to any existing summary criminal business in the sheriff courts in respect of which an intermediate diet has been fixed for a date in the period commencing on 1 December 2020 and ending on 14 December 2020, both dates inclusive.

[3] It is recognised that minimising physical contact with others will reduce the risk of spreading Coronavirus. This Practice Note seeks to support that objective. It is essential that parties prepare thoroughly and effectively in advance of intermediate

diets, and engage with each other. The aim of this Practice Note is to ensure that only those cases which cannot be resolved and are ready to go to trial proceed to the assigned trial diet and that agents are present at an intermediate diet only when necessary. In light of the backlog of cases which has built up as a result of COVID-19 restrictions, it is also vital to the efficient operation of the sheriff courts that valuable trial diets are not lost by last minute adjournments or late guilty pleas.

[4] While custody trials will remain the priority for court programmes, this Practice Note does not apply to cases where the accused is remanded in custody at the first calling. Such cases will call at the intermediate diet with the accused ordinarily participating by television link. The defence agent will be expected to be fully instructed so as to assist judicial case management. If the accused is liberated and new dates fixed for the intermediate diet and trial diet, paragraph [11] of this Practice Note will apply.

Pre Intermediate Diet Engagement

[5] From 1 December 2020, when a plea of not guilty is recorded, the court, in addition to fixing dates for the intermediate and trial diet, will record in the minute of proceedings the date on which the parties are expected to engage with each other in advance of the intermediate diet by way of a Pre Intermediate Diet Meeting ("PIDM"). This date will ordinarily be 14 days before the date of the intermediate diet. For cases to which reference is made in paragraph 1 (c), parties are expected to engage by way

of a PIDM 14 days before the intermediate diet, notwithstanding the fact that no PDIM has been timetabled by the court.

[6] The PIDM between Crown and defence can take whatever form is most convenient to the parties, but it should take place on the scheduled date unless, exceptionally, an earlier date is agreed. The defence agent should be fully instructed for the PIDM. The Crown will usually be available to engage in person at the court location but the PIDM may also take place by video call or telephone. The Crown will introduce an electronic booking system for every sheriff court to facilitate the PIDM. Agents will be able to book slots for the scheduled date.

[7] The outcome of the PIDM will be agreed between the Crown and the defence at its conclusion. The court will expect the engagement at the PIDM to result in each case being assigned to one of the following categories:

- i) plea agreed or proceedings to be discontinued;
- ii) ready for, and proceeding to, trial;
- iii) adjournment requested; or
- iv) no engagement between parties has taken place (including where the defence agent has no instructions);
- v) parties wish a specified contentious matter to be determined by the sheriff.

[8] Within two working days after the PIDM, the Crown will send to the sheriff clerk a report on the outcome of the PIDM. For cases ready for trial, this will include details of the number of Crown and defence witnesses, details of any vulnerable witness requirements, whether the case might proceed as a virtual trial, any remote attendance requirements (including, if relevant, representations in terms of the Coronavirus (Scotland) Act 2020, Schedule 4, Part 1, Paragraphs 2(3),2(7),3(1) and 3(6)), the estimated length of the Crown case, and the priority category of the trial. Parties should indicate that they are ready to proceed only where there are no known difficulties with disclosure, witness availability, or any other issues, that are likely to affect the trial proceeding. The details of the report will be sent to the defence agent.

[9] In any case where the position changes after the PIDM and before the trial, either party, or both parties jointly, should forthwith utilise procedures in terms of section 137 of the Criminal Procedure (Scotland) Act 1995 to bring this to the attention of the court.

[10] Following consideration by the sheriff of the case papers and the information in the report, and no later than two working days before the intermediate diet, the sheriff clerk will schedule, and intimate on the court rolls, specific calling times to those cases which are to call at the intermediate diet. The complaints which require to call at intermediate diet will be: cases where a plea of guilty has been agreed; where engagement between the parties has not taken place; or where the sheriff requires to

determine a matter or otherwise wishes the case to call. Efforts will be made to group together cases where the accused are represented by the same agent. It is anticipated that only in exceptional circumstances will an intermediate diet be continued.

[11] Those cases which parties have agreed are ready for trial will be administratively continued to the assigned trial diet. At least 5 working days in advance of the trial diet, the sheriff clerk will intimate the times of cases calling on the court rolls. Those cases which parties have agreed should be adjourned will have a new trial diet, intermediate diet and PIDM assigned.

[12] Where as a result of the agreement of parties at the PIDM, or following the case calling at an intermediate diet, a new trial diet and intermediate diet is fixed, the court will record in the minute of proceedings a further PIDM, to be conducted in accordance with paragraph [5] – [7] above. This date will ordinarily be 14 days before the date of the new intermediate diet. It is again anticipated that only in exceptional circumstances will an intermediate diet be continued.

Unrepresented accused persons

[13] In respect of unrepresented accused who are present in person at the first calling of the case, the sheriff will: (i) inform the accused of the dates for the PIDM, intermediate diet and trial diet; (ii) inform the accused that if they remain unrepresented at the date fixed for the PIDM they will not be required to engage

with the Crown; (iii) invite the accused to make representations relevant to a direction that they physically attend the intermediate diet under terms of Schedule 4, Part 1, Paragraph 2(1) of the 2020 Act; and (iv) having considered any such representations, make a decision on whether to issue such a direction or not. The court minute will record the making of any such direction and the accused will be provided with written intimation of the order of the court.

[14] In respect of unrepresented accused who plead not guilty by letter, the court minute will record that, when intimating the dates for the PIDM, intermediate diet and trial diet, the sheriff clerk must also inform the accused person: (i) that if they remain unrepresented at the date fixed for the PIDM they will not be required to engage with the Crown; (ii) that, as it is a possibility that they may be directed to attend the intermediate diet physically, they may, no later than the date fixed for the PDIM, make representations to the court about such a direction; and (iii) if they are directed to attend the intermediate physically, that will be intimated to them in writing no later than 5 days before the date of the intermediate diet.

[15] Further guidance, where appropriate, will be provided by Sheriffs Principal to reflect the individual circumstances in each sheriff court.

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