

ACT OF ADJOURNMENT (CRIMINAL PROCEDURE RULES) 1996 SI 1996/513

SCHEDULE 2

CRIMINAL PROCEDURE RULES 1996

PART III Solemn proceedings

CHAPTER 12 ADJOURNMENT AND ALTERATION OF DIETS IN SOLEMN PROCEEDINGS

Adjournment

12.1 (1) Where circumstances arise in which the court may adjourn a diet under section 75A(2) of the Act of 1995 (adjournment and alteration of diets), and the prosecutor proposes such an adjournment, he may for that purpose require the diet to be called on the date for which it was originally fixed at such time as he thinks appropriate.

(2) The presence of the accused in court when the diet was so called and adjourned shall be sufficient intimation to him of the adjourned diet.

(3) If the diet was so called and adjourned in the absence of the accused, the prosecutor shall forthwith serve on the accused an intimation of adjournment in Form 12.1.

(4) The calling and the adjournment of the diet including a record as to the presence or absence of the accused, as the case may be, shall be endorsed by the clerk of court on the record copy indictment and entered in the record of proceedings in accordance with existing law and practice.

(5) A copy of the order of the court adjourning the diet under section 75A(2) of the Act of 1995 shall be sent by the clerk of court to the governor of any institution in which the accused is detained.

Applications for alteration of diet

12.2 (1) Subject to paragraph (2), an application under section 75A(5) of the Act of 1995 (application for alteration of diet) shall be made by minute in Form 12.2-A.

(2) Where all parties join in the application, the application shall be made by joint minute in Form 12.2-B.

(3) A minute under this rule shall be lodged-

(a) in the case of proceedings in the High Court, with the Clerk of Justiciary,

(b) in the case of proceedings in the sheriff court, with the sheriff clerk.

Orders fixing diet for hearing application to alter diet

12.3 Where a minute referred to in rule 12.2 (applications for alteration of diet) has been lodged, the court shall, or, in a case in which all parties join in the application, may, make an order endorsed on the minute-

- (a) fixing a diet for a hearing of the application; and
- (b) for service of the minute with the date of the diet on all parties.

Calling of diet for hearing application

12.4 A diet fixed under rule 12.3 (orders fixing diet for hearing application to alter diet) shall be held in open court in the presence of all parties unless the court permits the hearing to proceed in the absence of the accused under section 75A(8) of the Act of 1995, and shall be commenced by the calling of the diet.

Joint applications without hearing

12.5 (1) Where, in the case of a joint application under subsection (5) of section 75A of the Act of 1995 (application for alteration of diet), the court proposes to proceed without hearing the parties by virtue of subsection (7) of that section (joint application for alteration of diet), the clerk of court shall on the lodging of the minute attach it to the record copy of the indictment and place it before a judge in chambers.

(2) The order made by the judge in chambers in respect of the joint application shall be-

- (a) recorded by endorsement on the record copy of the indictment;
- (b) signed by the clerk of court;
- (c) entered in the record of proceedings; and
- (d) intimated by the clerk of court to the applicants or their solicitors.

(3) The clerk of court shall send to the governor of any institution in which the accused is detained a copy of the following orders of the court-

- (a) an order under rule 12.3 (order fixing diet for hearing of application to alter diet);
- (b) an order under section 65(3) or (5) of the Act of 1995 (extension of time limits); and
- (c) an order under section 75A(5) of the Act of 1995 (discharging a diet and fixing a new diet).

Form of notice where trial diet does not take place

12.6 A notice referred to in section 81(5) of the Act of 1995 (notice to appear where trial diet has not taken place) shall be in Form 8.2-B or, where the charge is of committing a sexual offence to which section 288C of that Act (prohibition of personal conduct of defence in cases of certain sexual offences) applies, Form 8.2-C.

Floating diets in the High Court of Justiciary

12.7 (1) A minute referred to in section 83A(2)(a) of the Act of 1995 (minute of continuation of floating trial diet) shall be in Form 12.7.

(2) The maximum number of days for which a floating diet may be continued from sitting day to sitting day shall be four days after the day originally appointed for the trial diet.