

CRIMINAL COURTS

PRACTICE NOTE

NO. 3 OF 2022

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

This Practice Note takes effect from 14 October 2022 and replaces Practice Note No. 4 of 2020

Introduction

- [1] This Practice Note applies from 14 October 2022 to:
- (a) new summary criminal business in the sheriff courts; and
 - (b) any existing summary criminal business in the sheriff courts in respect of which intermediate and trial diets have been fixed for on or after 28 October 2022.
- [2] This Practice Note does not apply to cases where the accused is remanded in custody at the first calling.
- [3] The aim of this Practice Note is to ensure that: (i) meaningful communication takes place between defence agents and the Crown to resolve cases early; (ii) only those cases which cannot be resolved, and are ready to go to trial, proceed to the assigned trial diet; and (iii) parties are present at an intermediate diet only when necessary. In order to achieve this, it is essential that parties prepare thoroughly and effectively in advance of the intermediate diet and engage meaningfully with each other. It is vital to the efficient operation of summary criminal business in the sheriff courts that valuable trial diets are not lost by last minute adjournments or late guilty pleas.

[4] The defence agent and the Crown will be expected to be fully prepared to assist judicial case management. If the accused is liberated and new dates are fixed for the intermediate diet and trial diet, paragraph [5] will apply.

Pre Intermediate Diet Engagement

[5] When a plea of not guilty is recorded, the court will, in addition to fixing dates for the intermediate and trial diet, 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 intermediate diet.

[6] The PIDM between the Crown and the defence can take the form that is most convenient to the parties. It should take place on the scheduled date unless, exceptionally, another date is agreed. The Crown may be available to engage in the PIDM in person either at the court location or at their local offices, or remotely by telephone or video call. The Crown has established an electronic booking system for every sheriff court to facilitate the PIDM. Agents or their administrative representatives are able to book a PIDM for the scheduled dates using this booking system.

[7] The court will expect the parties to engage at the PIDM by speaking directly to each other, as they would if they were discussing the case at court. Parties should be in a position to: review and confirm their readiness for trial; discuss the scope for resolution and the scope for the agreement of evidence in accordance with their continuing duty to do so¹; confirm that there are no known difficulties with outstanding disclosure; identify whether the trial will require more than one day; and identify whether there are any outstanding applications for special measures

¹ Section 257 of the Criminal Procedure (Scotland) Act 1995.

for vulnerable witnesses that require to be brought to the court's attention. The defence agent should obtain full instructions prior to taking part in the PIDM. The Crown should have up to date information on witness citations and disclosure.

[8] The outcome of the PIDM will be agreed between the Crown and the defence at its conclusion.

[9] Within two working days of the PIDM, the Crown will send to the court a report, the detail of which will be shared with the defence, reflecting the agreed position ("the PIDM Report"). The PIDM Report will confirm whether:

- (i) a PIDM has taken place;
- (ii) the case is ready for trial;
- (iii) the case may be dealt with administratively (without parties requiring to attend) and continued to the assigned trial diet or adjourned to a new trial diet; or
- (iv) the case requires to call for a specified reason.

[10] A case should be regarded as not requiring to call at the intermediate diet and may be dealt with administratively where:

- (i) it is to be discontinued;
- (ii) the parties have confirmed they are ready for trial; or
- (iii) the parties, either on joint or unopposed motion, confirm that a new trial diet is necessary.

[11] A case does require to call at the intermediate diet where:

- (i) a plea of guilty is to be tendered;
- (ii) a PIDM has not been held;
- (iii) there is a contested motion including one to postpone the trial diet;

- (iv) there are three or more accused; or
- (v) a virtual trial is proposed or a party is seeking to lead any evidence remotely.

[12] Parties should indicate that they are ready to proceed to trial only where there are no known difficulties with outstanding disclosure, essential witness availability, or any other issues that are likely to affect the trial proceeding. Where there is any uncertainty about their state of preparation, the parties should reach a view on whether the position will be resolved before the trial and report to the court accordingly. Cases should not require to call at an intermediate diet simply to check on progress.

[13] It is recognised that the parties' positions may change after the PIDM. If so, they must intimate that position to each other and to the court to ensure that cases do not call unnecessarily and witnesses are not inconvenienced. In any case where the position changes after the PIDM and before the trial, either party, or both parties jointly, should make an appropriate application in terms of section 137 of the Criminal Procedure (Scotland) Act 1995 to bring this to the attention of the court.

Judicial Consideration

[14] Following receipt of the PIDM Report and consideration of the nature and procedural history of the case, if the sheriff is satisfied that it is appropriate to do so:

- (i) cases which are ready for trial will be continued to the assigned trial diet;
- (ii) cases which parties have agreed should be adjourned will have a new trial diet assigned and, if appropriate, a new intermediate diet and PIDM assigned; and
- (iii) the sheriff clerk will intimate on the court rolls all cases which require

to call at the intermediate diet.

Intermediate Diets

[15] Where cases are required to call at the intermediate diet because of a lack of engagement, or for a contested motion to adjourn due to lack of instructions, legal aid difficulties or incomplete disclosure, parties will be expected to provide the court with a full account of why that has occurred and what steps are being taken to resolve the issue. Where legal aid is outstanding, the court will expect to be provided with details of correspondence with the Scottish Legal Aid Board.

[16] Where a case calls at an intermediate diet and a new trial diet and intermediate diet are assigned and the sheriff considers it appropriate to assign a further PIDM, the court will record in the minute of proceedings the scheduled date for that further PIDM.

[17] An intermediate diet will only be continued in exceptional circumstances.

Trial diet

[18] The trial diet will be expected to proceed. If the parties' position at trial does not match the position indicated in the PIDM report, or as stated at any intermediate diet and as a consequence the trial cannot proceed, the parties will be expected to give a full account of why that has occurred and why it had not been intimated before the trial diet.

[19] The court will take the matters set out at paragraph [18] into account when deciding whether to grant any motion to postpone a trial. An adjournment will only be allowed if it is in the interests of justice, including the need to secure the efficient progress of trial business in order to maintain public confidence in summary justice. Failure by either side to prepare adequately for summary criminal proceedings will

not normally be condoned by the court by the postponement of a trial.

[20] In the event of a plea of guilty being tendered at trial, this Practice Note constitutes part of the circumstances, for the purposes of section 196(1)(b) of the Criminal Procedure (Scotland) Act 1995, which the court may take into account when determining sentence.

Unrepresented accused persons

[21] Where an unrepresented accused is present in person at the first calling of the case, the sheriff will inform the accused: (i) of the dates for the PIDM, intermediate diet, and trial diet; (ii) that, if they remain unrepresented at the date fixed for the PIDM, they will not be required to engage with the Crown; and (iii) whether they should physically attend the intermediate diet.

[22] Where an unrepresented accused pleads 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 has informed the accused that: (i) if they remain unrepresented at the date fixed for the PIDM, they will not be required to engage with the Crown; and(ii) whether they should physically attend the intermediate diet.

CJM SUTHERLAND
Lord Justice General, Edinburgh
14 October 2022