

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE

GUIDANCE ON THE IMPLEMENTATION OF PRACTICE NOTE NO 4 OF 2020 on Summary Criminal Business in the sheriff courts: further provision regarding Intermediate Diets etc.

Introduction and scope

1. This Guidance is about the implementation in Tayside, Central and Fife (“TCF”) of the Lord Justice General’s *Practice Note Number 4 of 2020 on Summary Criminal Business in the sheriff courts: further provision regarding Intermediate Diets etc.* It is intended to complement this Practice Note in its application to summary business in TCF. It does not seek to repeat the terms of the Practice Note and accordingly must be read alongside it. This Guidance will come into effect from 1 December 2020 and will apply to the cases set out in paragraph 1 of the Practice Note, but not to custody or Justice of the Peace cases.
2. Practice Note 4 replaces *Practice Note Number 2 of 2020 on Reintroduction of Summary Business* (1 June 2020), and likewise this Guidance replaces TCF Guidance issued in relation to Practice Note Number 2 on 17 July 2020. Further general TCF guidance issued from time to time on management of criminal business (most recently, *Covid 19: Management of Criminal Business*, Number 4 of 2020, 23 October 2020), must also be read in the light of this Guidance.

Pre Intermediate Diet Meetings

3. Where in TCF the court fixes a PIDM in accordance with paragraph 4 of the Practice Note it should normally be fixed 14 days prior to the date fixed for the intermediate diet, and the intermediate diet should normally be fixed 14 days prior to the trial diet. Local variations will apply to avoid overloading of the intermediate diet courts and trial courts.

4. The Crown's target times for making disclosure will not change. Disclosure should be made prior to the date fixed for the PIDM, enabling full and meaningful engagement between the Crown and defence at this meeting. In the event that difficulties arise with making disclosure prior to the PIDM due to fixing the date for it in accordance with the above mentioned national standards, the dates for the fixing of trial and intermediate diets in TCF, and hence the PIDM, will be reviewed.
5. The PIDM should take place on the date assigned by the court unless, exceptionally, an earlier date is agreed by the Crown and defence. In relation to those cases falling within paragraph 1(c) of the Practice Note (existing cases where intermediate and trial diets have been fixed for after 15 December 2020), the PIDM should take place on the date 14 days prior to the intermediate diet even though no date has been assigned by the court, again, unless exceptionally an earlier date is agreed.
6. The meeting can take whatever form is agreed to be most appropriate for the Crown and defence in relation to the particular case and the particular court in which the prosecution is taking place. However it is expected that in order to minimise physical contact the PIDM will normally take place by telephone or video call, rather than face to face.
7. 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. The procurator fiscal will contact the defence agent by phone or video call at the time booked. The Crown should advise the defence in advance, if requested to do so, of the identity of the procurator fiscal depute who is allocated to conduct the PIDMs in a given court on a given date.
8. Within 2 days of the PIDM the Crown will provide a report to the court and to the defence advising of the outcome of the meeting, per the terms of paragraph 6 of the Practice Note, and containing all the information set out in paragraph 7. Neither the Crown nor the defence will now require to produce a written record in relation to each case. The Crown's report will take the form of an Excel spreadsheet covering all

PIDMs conducted on a given day. An example is attached to this Guidance. In the light of the report the court will decide which, if any, of the cases to which it relates will require to call at the intermediate diet, and will advise parties accordingly. The clerk should group cases together where the accused are represented by the same agent, and seek to allocate time slots, so as to minimise the time which each agent has to spend in the court building, and the consequent risk of physical contact with others.

9. Paragraph 6 of the Practice Note envisages that the outcome of the PIDM might be to request an adjournment. In the event that adjournment is granted in relation to both the intermediate and trial diets, the court will assign a fresh date for a PIDM as well as new intermediate and trial diets. In this case the court will normally fix a new trial diet for the first available date, then fix an intermediate diet 14 days before the trial, and then fix a new PIDM 14 days before the intermediate diet.
10. Paragraph 9 emphasises that it is anticipated that only in exceptional circumstances that an intermediate diet be continued. By “continued” is taken to mean that the intermediate diet is adjourned to a further date while retaining the existing trial diet. Should the court order this, a new PIDM should still be fixed, although in this case it may be fixed for a date less than 14 days prior to the continued intermediate diet. If parties are jointly seeking a continued intermediate diet, the Crown’s report to the court should also specify an agreed date for a new PIDM, if this is sought less than 14 days prior to the continued intermediate diet.
11. In the event that the result of the PIDM is a request for adjournment (or continuation of an intermediate diet) because the Crown has yet to disclose a key piece or pieces of evidence (for example, CCTV footage, a mobile phone report, a STOP drugs report, etc.), then the Crown should in its report provide a realistic and considered estimate of the timeframe within which disclosure will be made. If the adjournment or continuation is granted, the court will then be in a position to set new dates for a further PIDM and intermediate diet, and if need be, trial diet, having regard to this estimate.

Trial Allocation

12. As paragraph 2 of the Practice Note states, given the backlog of cases which has built up as a result of COVID-19 restrictions it is vital to the efficient operation of the sheriff courts that valuable trial diets are not lost by last minute adjournments or late guilty pleas. And as paragraph 7 states, parties should indicate that they are ready for trial after a PIDM only where there are no known difficulties with disclosure, witness availability, or any other issues that are likely to affect the trial proceeding. Changes of position between the PIDM and the trial must be notified in advance: see paragraph 8. Against this background, while it will remain a matter for individual sheriffs in the cases before them, the accused should not assume that a plea on the day of a trial will, in the circumstances, have utilitarian value sufficient to justify any discount in sentence. And neither side should assume that a motion for adjournment, made at a trial diet, will be granted if such a motion could and should have been made earlier.

13. In any event, it is apparent that court time is not currently being utilised efficiently in relation to the hearing of summary trials in TCF, and that many adjournments and late pleas are occurring. From 1 December 2020, therefore, there will normally be five trials assigned to each summary trials court, rather than three, as at present. Trials will normally be assigned to call at 10am, 12pm and 2pm. This change is to seek to ensure that more trials will proceed to a verdict at the trial diet, even allowing for some trials not proceeding, while staggering the attendance of accused, agents and witnesses though the day so as to minimise physical contact.

14. Accordingly, following the intermediate diet the clerk of court will notify the Crown in writing of the number of cases which are ready to proceed to trial at the trial diet 14 days hence. The Crown, after consultation with the defence, must then advise the court which cases it wishes to call at the trial diet or diets in question. It should also advise which of the above mentioned trial slots during the diet that it wishes allocated to each case, reflecting those which it regards as having priority. This should be done no later than seven days prior to the trial diet. The court will then allocate trial slots

accordingly, no later than five days prior to the trial diet, in accordance with paragraph 10 of the Practice Note.

15. If more cases are ready for trial than there are slots available on a given day, those cases which the Crown has decided do not have priority will not proceed to trial. These cases will instead call in chambers on the date of the trial diet, without the need for the attendance of agents or accused. The court will then adjourn the trial administratively and fix new PIDM, intermediate and trial diets.

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