

CRIMINAL COURTS: PRACTICE NOTE NO 3 OF 2020

Remote Conduct of Summary Trials Pilots

Sheriff Courts

This Practice Note replaces Practice Note No 1 of 2020 and takes effect from 24 July 2020

All applications made under this Practice Note must be made by electronic means

- *for Aberdeen sheriff court or Inverness sheriff court to either virtualtrialsaberdeen@scotcourts.gov.uk or virtualtrialsinverness@scotcourts.gov.uk*
- *for all other sheriff courts to the relevant generic email address for criminal business*

Introduction

1. The purpose of this Practice Note is to regulate the fixing and conduct of summary trials by way of remote attendance of parties, their representatives and witnesses during various pilots to be conducted in the sheriff courts.
2. **Before** any application under this Practice Note is made to the court for a trial to be fixed, the prosecutor and agent for the accused
 - (i) **must** have reached agreement that the case is suitable for trial,
 - (ii) **must** liaise with the Sheriff Clerk to identify available dates; and
 - (iii) **must** verify that the accused and all witnesses are available on those dates.

Acceleration of proceedings

3. Once the parties have agreed that the case is suitable for trial by electronic means, they must provide the sheriff clerk with an accurate estimate of the length of the trial.
4. The trial will be given a fixed time slot, both for its commencement and length, based on the estimates provided by parties. Parties must be realistic in estimating time for the length of a trial. If the trial does not conclude within the allocated slot then it may require to be continued, part heard, to another slot on another day, so that the next trial can proceed.

5. In response to the information provided by parties, the sheriff clerk will inform parties of the date(s) and time available for the trial. That date and time must be checked with the accused and all witnesses (both Crown and defence).
6. Only after it has been established that the accused and all witnesses are available to attend the trial by electronic means at the fixed time on the available date (s) can an application for acceleration be made under this Practice Note. The prosecutor and agent for the accused will make, in terms of section 137 of the 1995 Act, a joint application to the court by electronic means to discharge the diet(s) fixed and to fix an earlier trial diet.
7. Parties will require in the application to address all matters normally considered at an intermediate diet, in terms of section 148 of the 1995 Act. In particular, the prosecutor and agent for the accused will, prior to submission of the section 137 application, agree in a joint minute any evidence which is not disputed (including any question of identification of the accused) and will submit electronically to the court in advance lists of witnesses and productions, including copies of the latter, a signed copy of any joint minute and will provide an estimate of the likely length of the trial. The application must be accompanied by a completed checklist in the form set out in the Appendix to this Practice Note.
8. Arrangements must be in place for confidential, communication between the accused and his agent both before and during the trial. The application must include information about those arrangements sufficient to satisfy the court of their adequacy.
9. The parties will require to make clear to the court how any productions will be shown to witnesses.

Fixing diets

10. The usual practice of listing of multiple trial diets for any given court day is not suitable for trials proceeding under this Practice Note. The number of diets listed each day will depend on the anticipated length of each trial and the nature of the electronic measures to be used.

Application to appear remotely

11. In the acceleration application the parties must make representations (or state that they do not wish to make such representations) about the court making an order in terms of the Coronavirus (Scotland) Act 2020 (“the 2020 Act”), Schedule 4, Part 1, Paragraphs 2(3) and 3(1).
12. On considering the application for acceleration under section 137, if the court is satisfied that to do so will not prejudice the fairness of proceedings, or otherwise be contrary to the interests of justice, it may direct that
 - the prosecutor, agent for the accused , the accused and the witnesses are not required physically to attend the court for the trial **and**
 - that the prosecutor, the agent for the accused, the accused and the witnesses are required to appear before the court for the trial by electronic means.
13. The direction must set out how the prosecutor, the agent for the accused, the accused and witnesses are to appear by electronic means before the court, and may include any other provision the court considers appropriate.

Orders in terms of the 2020 Act, Schedule 4, Part 1, Paragraph 3(1)

14. The prosecutor and agent for the accused will be directed to appear by live video and audio link from two different venues to be determined.
15. The accused will be directed to appear by live video and audio link from a venue to be determined.
16. Witnesses will be directed to appear by live video and audio link from a venue to be determined.

Practical arrangements for the trial

17. The trial diet will be allocated a fixed start time. It is essential that all parties are ready to commence the trial at the time fixed. All preparations, discussions or negotiations must have taken place and concluded before the start time provided
18. In advance of the trial diet the Sheriff Clerk will have provided all necessary instructions for remote attendance including dial in details setting out the system to be used and the access code. Parties must have verified that they have the necessary equipment in working order for the conduct of the trial in advance of the start of the trial.
19. The sheriff and clerk of court respectively may be in a court building or may be in attendance from another place or places.
20. All other parties will be appearing by live video and audio link from other venues as specified in the directions made by the court.
21. During the trial a court officer will be present with the accused while respecting social distancing restrictions.
22. During the trial a court officer/witness support official will be present with each witness (other than those witnesses identified at Paragraph 24) as they give evidence while respecting social distancing restrictions.
23. The arrival of witnesses at the place for the giving of evidence and the arrangements for them while they wait to give evidence will also be managed to respect social distancing restrictions.
24. Police officers and witnesses such as doctors, nurses, ambulance workers or experts will give evidence from the most suitable venue for them to do so with minimal disruption to their normal duties, In respect of police officers the venue may be a police office.

CJM SUTHERLAND

Lord Justice General

24 July 2020

APPENDIX

WRITTEN RECORD OF STATE OF PREPARATION

SHERIFF COURT SUMMARY TRIALS

CROWN AND DEFENCE	
What is the proposed date and scheduled time for the trial?	
How long do you estimate that the trial will last?	
<p>Have any facts or documents been the subject of a minute of admission or agreement?</p> <p>If yes, attached a copy of each minute.</p> <p>If no, specify the reason.</p>	
<p>Has either party served a statement of uncontroversial evidence?</p> <p>If yes,</p> <ul style="list-style-type: none"> (i) attach a copy of each statement (ii) specify any matters which are deemed to have been conclusively proved:- (iii) attach a copy of any notice of challenge and (iv) attach a copy of any application for direction to disregard <p>If no, specify the reason.</p>	
<p>Are there any other matters which might be disposed of with advantage before the trial (eg compatibility minutes, or applications for recovery of documents).</p> <p>If yes, specify each matter:-</p>	

CROWN	
Is the Crown prepared for trial?	
Has full disclosure been made in accordance with the provisions of the Code of Practice: Disclosure of Evidence in Criminal Proceedings?	
How many necessary Crown witnesses are there in total? Attach a copy of the Crown list of witnesses	Civilian Child or vulnerable witnesses Police Others
Are the necessary Crown witnesses all available to attend on the date and time of the trial?	
From what location is it proposed that the witnesses give evidence?	Civilian Child or vulnerable witnesses Police Others
The court will require to consider making orders in terms of the Coronavirus (Scotland) Act 2020 ("the 2020 ACT"), Schedule 4, Part 1, Paragraphs 2(3) and 3(1) [excusing physical attendance at the trial and requiring attendance by electronic means]. Do you wish to make any representations about whether making such orders would (a) prejudice the fairness of proceedings, or (b) otherwise be contrary to the interests of justice? If so, set out your representations either in the box opposite or, if lengthy, in a document apart and clearly marked as such.	
Are there any Crown productions? If yes attach a list and provide copies of	

any which can be copied.	
How is it intended that any productions will be shown to witnesses, if that is required?	
Is it anticipated that it may be necessary to put a previous statement to a witness? If yes provide a copy of the statement(s)	
Do you wish to raise any objection to the admissibility of any evidence? If yes, specify each objection and attach a note of your submissions clearly marked as such.	
Has any of the following been lodged? <ul style="list-style-type: none"> • A child witness notice • A vulnerable witness application • An application to admit evidence relating to the character and conduct of complainer • An application for an order prohibiting the accused from conducting his defence in person • An application for a witness anonymity order If yes, attach a copy of each application or notice.	
Are any of the following required at the trial? <ul style="list-style-type: none"> • display of video-tape evidence • playback of police interview audio-tape • document camera • CD/DVD evidence in computer format (parties must supply laptop PC or other means of display) other equipment (specify)	
Will an interpreter be required for the trial? If yes, please provide details:-	
DEFENCE	

Is the accused available to attend on the date and time of the trial?	
Does the accused require any adjustments to be made or measures put in place to allow his effective participation in the trial proceedings if doing so by electronic means? If yes, specify	
Is the defence prepared for trial?	
As far as you know has full disclosure been made in accordance with the provisions of the Code of Practice: Disclosure of Evidence in Criminal Proceedings?	
Has any of the following been lodged. <ul style="list-style-type: none"> • a plea of special defence or notice of intention to incriminate a co-accused • notice of witnesses or productions If yes, attach a copy of each plea and notice.	
How many necessary defence witnesses are there in total, excluding the accused but including any witnesses listed by the Crown?	Civilian Child or vulnerable witnesses Police Others
Are the necessary defence witnesses all available to attend on the date and time of the trial?	
From what location is it proposed that the defence witnesses give evidence?	Civilian Child or vulnerable witnesses Police Others
The court will require to consider making orders in terms of the Coronavirus (Scotland) Act 2020 (“the 2020 ACT”), Schedule 4, Part 1, Paragraphs 2(3) and 3(1) [excusing physical attendance at the trial and requiring attendance by electronic means].	

<p>Do you wish to make any representations about whether making such orders would (a) prejudice the fairness of proceedings, or (b) otherwise be contrary to the interests of justice?</p> <p>If so, set out your representations either in the box opposite or, if lengthy, in a document apart and clearly marked as such.</p>	
<p>Are there any Crown productions? If yes attach a list and provide copies of any which can be copied.</p>	
<p>How is it intended that any productions will be shown to witnesses, if that is required?</p>	
<p>Is it anticipated that it may be necessary to put a previous statement to a witness? If yes provide a copy of the statement(s)</p>	
<p>Do you wish to raise any objection to the admissibility of any evidence? If yes, specify each objection and attach a note of your submissions clearly marked as such.</p>	

<p>Has any of the following been lodged?</p> <ul style="list-style-type: none"> • A child witness notice • A vulnerable witness application • An application to admit evidence relating to the character and conduct of complainer • An application for an order prohibiting the accused from conducting his defence in person • An application for a witness 	
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<p>anonymity order If yes, attach a copy of each application or notice.</p>	
<p>Are any of the following required at the trial?</p> <ul style="list-style-type: none"> • display of video-tape evidence • playback of police interview audio-tape • document camera • CD/DVD evidence in computer format (parties must supply laptop PC or other means of display) <p>other equipment (specify)</p>	
<p>Will an interpreter be required for the accused or any defence witness for the trial? If yes, please provide details:-</p>	