

## **Options available to court in first diet and trial courts during the transitional period:**

Outlined below are the options available to courts when adjourning cases, to accommodate the transitional provisions.

### **First diet courts and trial sittings prior to 31<sup>st</sup> July 2017**

Where the court is adjourning a case it will have the following options available to it: (bearing in mind the time limits that apply to the case):

- Adjourning the case to a first diet and a trial sitting to be held on dates before the 28<sup>th</sup> August 2017;
- Adjourning to a trial sitting before the 28<sup>th</sup> August 2017;
- Adjourning the case to a first diet only (*the trial diet will need to be discharged<sup>1</sup>*), to be held on a date on or after the 31<sup>st</sup> July 2017. (*The new sheriff and jury provisions will then apply ie. the court will be appointing any trial diet at that first diet*);
- Adjourning to a trial diet only, to be held on a date on or after 28<sup>th</sup> August 2017 (*trial diet can be continued from sitting day to sitting day for a maximum of 4 days*); or
- Adjourning to a trial diet, to be held on a date on or after 28<sup>th</sup> August 2017 (*trial diet can be continued from sitting day to sitting day for a maximum of 4 days*); and appointing a diet under section 75A(9) of the 1995 Act to deal with any preliminary issues or other matters which require to be, or would be advantageous to dispose of or ascertain before the trial diet – essentially a first diet.

*It should be noted however that, for cases where a first diet and trial diet have been adjourned/postponed to a date on or after 28<sup>th</sup> August 2017, the trial diet assigned is automatically discharged, and the first diet, provided it is on or after 31<sup>st</sup> July 2017 would operate under the new provisions. Although the legislation discharges the trial diet, it has been agreed with COPFS that we would still retain the trial diet administratively, so that, if appropriate, the court could appoint that same trial diet when the case calls for a first diet<sup>2</sup>.*

### **First diet courts and trial sittings between 31<sup>st</sup> July 2017 and 28<sup>th</sup> August 2017**

**Old procedure cases (i.e. cases where the Crown have indicted to first diet and trial)**

---

<sup>1</sup> The trial can be discharged under section 71(7) of the 1995 Act as modified by [Article 6 of the Criminal Justice \(Scotland\) Act 2016 \(Commencement No. 4, Transitional, Transitory and Saving Provisions\) Order 2017](#).

<sup>2</sup> [Article 6\(6\) of the Criminal Justice \(Scotland\) Act 2016 \(Commencement No. 4, Transitional, Transitory and Saving Provisions\) Order 2017](#)

Where the court is adjourning a case, it will have the following options available to it (bearing in mind relevant time bars):

- Adjourning the case to a first diet and a trial sitting to be held on dates before the 28<sup>th</sup> August 2017;
- Adjourning to a trial sitting to be held before the 28<sup>th</sup> August 2017 ;
- Adjourning the case to a first diet only, to be held on a date on or after the 31<sup>st</sup> July 2017. (*The court will have to discharge the trial diet, and thenew sheriff and jury provisions will then apply i.e. the court will be appointing any trial diet at that first diet*);
- Adjourning to a trial diet only, to be held on a date on or after 28<sup>th</sup> August 2017 (*trial diet can be continued from sitting day to sitting day for a maximum of 4 days*).
- Adjourning to a trial diet, to be held on a date on or after 28<sup>th</sup> August 2017 (*trial diet can be continued from sitting day to sitting day for a maximum of 4 days*); and appointing a diet under section 75A(9) of the 1995 Act to deal with any preliminary issues or other matters which require to be, or would be advantageous to dispose of or ascertain before the trial diet – essentially a first diet.

### **New procedure cases (i.e. cases where the Crown have indicted to a first diet only)**

The court will have the following options available to it (bearing in mind relevant time bars):

- Adjourning the case to another first diet (*at which the court may appoint a trial diet*)
- Appointing a trial diet to be held on or after 28<sup>th</sup> August 2017 (*trial diet can be continued from sitting day to sitting day for a maximum of 4 days*);.
- Appointing a trial diet, to be held on a date on or after 28<sup>th</sup> August 2017 (*trial diet can be continued from sitting day to sitting day for a maximum of 4 days*); and appointing a diet under section 75A(9) of the 1995 Act to deal with any preliminary issues or other matters which require to be, or would be advantageous to dispose of or ascertain before the trial diet – essentially a first diet.

### **First diet courts on or after 28<sup>th</sup> August 2017**

The court will have the following options available to it (bearing in mind relevant time bars):

- Adjourning the case to a further First Diet (*at which the court may appoint a trial diet*)
- Appointing a trial diet (*trial diet can be continued from sitting day to sitting day for a maximum of 4 days*)

- Appointing a trial diet (*trial diet can be continued from sitting day to sitting day for a maximum of 4 days*); and appointing a diet under section 75A(9) of the 1995 Act to deal with any preliminary issues or other matters which require to be, or would be advantageous to dispose of or ascertain before the trial diet – essentially a first diet.

### **Options available for courts dealing with applications to discharge and fix new first diet/trial diet (section 75A (5) of the Criminal Procedure (Scotland) Act 1995**

Where the court receives an application under section 75A(5) of the CP(S)A/or a motion is made in court to discharge a diet, at any time before it has commenced<sup>3</sup>, and fix a new diet, the following options are available to the court (bearing in mind relevant time bars):

- **Application received prior to 28<sup>th</sup> August 2017:**

**Where the Crown has indicted to a first diet and trial sitting:**

- Discharge the first diet and trial diet and fix new first diet and trial sitting dates to be held prior to 28<sup>th</sup> August 2017;
- Discharge the trial diet and fix a new trial diet for a date on or before 28<sup>th</sup> August 2017.
- Discharge the first diet and trial diet and fix a first diet only to be held on or after 31<sup>st</sup> July 2017 (*the court at that first diet may appoint a trial*).

**Where Crown has indicted to a first diet only, and the court has not yet appointed a trial diet:**

- Discharge the diet and fix a first diet only on or after 31<sup>st</sup> July 2017

**Where Crown has indicted to a first diet only, and the court has appointed a trial diet under section 71B (1) of the 1995 Act, (which will be for a date on or after 28<sup>th</sup> August 2017) :**

- Discharge that diet, and appoint a new trial diet. In doing so, the court can also assign a diet prior to the trial, under section 75A(9)(b) to deal with any preliminary issues or other matters which need to be dealt with prior to the trial.

- **Application received on or after 28<sup>th</sup> August 2017:**

- Discharge the diet and fix a first diet only, if the court has not yet appointed a trial diet.

---

<sup>3</sup> For the purposes of section 75A(5) a trial diet is deemed to be commenced when the jury is sworn, and any other diet is deemed to be commenced when it is called (section 75A(12) 1995 Act).

- Where the court has appointed a trial diet, discharge the trial diet and assign a new trial diet; and, if appropriate, assign a diet (under section 75A(9)(b)) to deal with any preliminary pleas, preliminary issues or other matters which need to be dealt with prior to the trial.