

# **SEXUAL OFFENCES (PROCEDURE AND EVIDENCE) (SCOTLAND) ACT 2002**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON THE SCHEDULE**

#### ***Paragraph 6***

47. Paragraph 6 inserts a new section 71A into the 1995 Act. This provides for a further pre-trial diet to follow a first diet where it is established at the first diet that the accused is legally represented, but his or her solicitor is subsequently dismissed or withdraws. Such a solicitor will be under a duty to notify the court of what has happened. The court will then fix a further pre-trial diet which the accused will be required to attend.
48. Where it does not appear that the accused has legal representation for the trial, the court has a discretion (dependent on the circumstances of the case) to adjourn the diet for up to 48 hours to enable him or her to appoint a solicitor. Where the accused still makes no appointment, the court will proceed to appoint itself under section 2 of the Act (new section 288D).
49. A further pre-trial diet may be dispensed with by the court, but only where the accused has a solicitor who confirms his or her appointment to defend the accused in writing and requests that the diet be dispensed with. Such a solicitor will require to notify the court if he or she is dismissed or withdraws after the diet is dispensed with, or after an application to dispense with it has been made. Equally, where a further pre-trial diet takes place and a solicitor acting for the accused at that time is later dismissed or withdraws, there will be a duty on the solicitor to inform the court. These notification obligations will allow another pre-trial diet to be fixed (section 71A(2)), or an application to dispense with a forthcoming diet to be refused.
50. Section 71A(5) provides that any pre-trial diet occurring after a first diet must take place no less than 10 clear days before commencement of the trial. This may necessitate an application for postponement of the trial in some cases.