

# **CRIMINAL PROCEDURE (AMENDMENT) (SCOTLAND) ACT 2004**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1 - Proceedings in the High Court**

##### ***Section 3 - Appeals***

36. **Section 3** amends the appeal provisions contained in section 74 of the 1995 Act to make decisions at preliminary hearings appealable to the High Court.
37. Subsections (2) and (3)(a) amend section 74(1) and (2) so as to substitute for references to the existing optional preliminary diet in section 72 of the 1995 Act references to the new mandatory preliminary hearing. Subsection (3)(c) amends a reference in section 74(2) to preclude appeals against a decision at a preliminary hearing when appointing a trial diet to fix, or not to fix, the diet as a floating diet for the purposes of section 83A(2). Section 83A(1) is inserted by section 8 of the Act, and provides for the court to appoint a day on which the trial diet must commence, failing which the indictment will fall. However, where the court has indicated that the diet is to be a floating diet, section 83A(2) provides that, without the diet having been commenced, it may be continued from sitting day to sitting day.
38. Subsection (5) inserts a new subsection (3A) in section 74 providing that where an appeal is taken against a decision at a preliminary hearing the High Court may adjourn, or further adjourn, the preliminary hearing for such period as appears to it to be appropriate and may if it thinks fit direct that such period, or some part of it shall not count towards any time limit applying in the case. Equivalent provision is set out in section 74(3) in relation to trial diets.
39. Subsection (6) amends section 74(4) so that where an indictment or any part of it was dismissed at the preliminary hearing and on appeal that decision is reversed the court may direct that a further preliminary hearing be held.