

CRIMINAL PROCEDURE (AMENDMENT) (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 - Proceedings in the High Court

Section 5 - Continuation of trial diet

45. **Section 5** introduces a new section 83A into the 1995 Act which makes provision in relation to the continuation of the trial diet in High Court cases.
46. Subsection (1) makes the general provision that where the trial diet does not commence on the day appointed for the holding of the diet the indictment shall fall. That means that the Crown cannot take further proceedings on that indictment. Subject to any overriding time limit constraints, however, the Crown may re-indict the case.
47. Subsection (2) sets out a further approach that that where the court, in appointing the date for the trial diet, has indicated that it is to be a floating diet, it will be possible to continue such a diet, including any adjourned diet, from day to day without formally commencing it by calling it. Continuation will be by a minute signed by the Clerk of Justiciary, the form of which will be set out in Act of Adjournal. The Act of Adjournal will also set out the maximum number of sitting days for which the case can be so continued without being called. Thereafter it must be commenced by being called. Otherwise, the indictment falls.
48. Subsection (4) makes it clear that for the purposes of this section a trial diet will be taken to commence when it is called, and subsection (5) as read with subsection (2) provides that only regular sitting days will count towards the total number of days set out in the Act of Adjournal for which continuation by minute under subsection (2) will be permissible.