

CRIMINAL PROCEDURE (AMENDMENT) (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 - Solemn Proceedings Generally

Section 8 - Engagement, dismissal and withdrawal of solicitor representing the accused

69. **Section 8** inserts new section 72F in the 1995 Act. Subsection (1) of new section 72F requires any solicitor engaged by the accused in all proceedings on indictment to notify the court and the prosecutor accordingly in writing of that fact. Subsection (2) provides that if the solicitor has informed the procurator fiscal in writing prior to service of the indictment that he is acting and has not notified the procurator fiscal that he has been dismissed or has withdrawn from acting that is sufficient. Subsection (3) requires the solicitor if he or she is dismissed or withdraws to give immediate notification of that fact to the court and the prosecutor.
70. Subsection (4) provides that notification for the purposes of subsections (1) and (3) can be given to the prosecutor by being given, in the High Court cases, to the Crown Agent or, in sheriff court cases, to the procurator fiscal for the district where the trial is to be held.
71. Subsection (5) read with subsections (6) and (7) requires the court to fix a further pre-trial diet when a trial date has been fixed where:
- intimation is received after the preliminary hearing (or after the hearing has been dispensed with), or in sheriff court cases after the first diet, that a solicitor then acting for the accused is no longer so acting; and
 - the case is one in which the accused is prohibited from conducting his own defence.
72. Subsection (8) requires the court, at the pre-trial diet, to ascertain from the accused whether he has appointed another solicitor to act on his behalf. Under subsection (9) a further diet under this section must be not less than 10 clear days before the trial diet.
73. Subsection (10) gives the court the power to postpone the trial diet for such period as appears appropriate and if it thinks fit direct that such period, or some part of it, shall not count towards any time limit applying in the case.
74. Subsection (11) gives the court power to dispense with a diet fixed under this section, but only if a solicitor engaged by the accused intimates that he has been engaged for the trial, and so requests.