



Criminal Procedure (Amendment) (Scotland) Act 2004

2004 asp 5

PART 2

SOLEMN PROCEEDINGS GENERALLY

8 Engagement, dismissal and withdrawal of solicitor representing accused

After section 72E of the 1995 Act (as inserted by section 2 of this Act), insert—

“72F Engagement, dismissal and withdrawal of solicitor representing accused

- (1) In any proceedings on indictment, it is the duty of a solicitor who is engaged by the accused for the purposes of his defence at any part of the proceedings to notify the court and the prosecutor of that fact forthwith in writing.
- (2) A solicitor is to be taken to have complied with the duty under subsection (1) to notify the prosecutor of his engagement if, before service of the indictment, he—
 - (a) notified in writing the procurator fiscal for the district in which the charge against the accused was then being investigated that he was then engaged by the accused for the purposes of his defence; and
 - (b) had not notified that procurator fiscal in writing that he had been dismissed by the accused or had withdrawn from acting.
- (3) Where any such solicitor as is referred to in subsection (1) above—
 - (a) is dismissed by the accused; or
 - (b) withdraws,it is the duty of the solicitor to inform the court and the prosecutor of those facts forthwith in writing.
- (4) The prosecutor shall, for the purposes of subsections (1) and (3), be taken to be notified or informed of any fact in accordance with those subsections if—
 - (a) in proceedings in the High Court, the Crown Agent; or

Status: This is the original version (as it was originally enacted).

- (b) in proceedings on indictment in the sheriff court, the procurator fiscal for the district in which the trial diet is to be held, is so notified or, as the case may be, informed of the fact.
- (5) On being informed in accordance with subsection (3) above of the dismissal or withdrawal of the accused's solicitor in any case to which subsections (6) and (7) below apply, the court shall order that, before the trial diet, there shall be a further pre-trial diet under this section.
- (6) This subsection applies to any case—
- (a) where the accused is charged with an offence to which section 288C of this Act applies;
 - (b) in respect of which section 288E of this Act applies; or
 - (c) in which an order has been made under section 288F(2) of this Act.
- (7) This subsection applies to any case in which—
- (a) the solicitor was engaged for the purposes of the defence of the accused—
 - (i) in the case of proceedings in the High Court, at the time of a preliminary hearing or, if a preliminary hearing was dispensed with under section 72B(1) of this Act, at the time it was so dispensed with;
 - (ii) in the case of solemn proceedings in the sheriff court, at the time of a first diet;
 - (iii) at the time of a diet under this section; or
 - (iv) in the case of a diet which, under subsection (11) below, is dispensed with, at the time when it was so dispensed with; and
 - (b) the court is informed as mentioned in subsection (3) above after that time but before the trial diet.
- (8) At a diet under this section, the court shall ascertain whether or not the accused has engaged another solicitor for the purposes of his defence at the trial.
- (9) A diet under this section shall be not less than 10 clear days before the trial diet.
- (10) A court may, at a diet under this section, postpone the trial diet 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 respect of the case.
- (11) The court may dispense with a diet under this section previously ordered, but only if a solicitor engaged by the accused for the purposes of the defence of the accused at the trial has, in writing—
- (a) confirmed his engagement for that purpose; and
 - (b) requested that the diet be dispensed with.”.