
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 99 (C. 8)

CRIMINAL LAW

The Criminal Justice (Scotland) Act 2016 (Commencement No. 4, Transitional, Transitory and Saving Provisions) Order 2017

<i>Made</i>	- - - -	<i>29th March 2017</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>31st March 2017</i>
<i>Coming into force</i>	- -	<i>11th May 2017</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 117(2) and (3) of the Criminal Justice (Scotland) Act 2016⁽¹⁾.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Criminal Justice (Scotland) Act 2016 (Commencement No. 4, Transitional, Transitory and Saving Provisions) Order 2017 and comes into force on 11th May 2017.

(2) In this Order—

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995⁽²⁾;

“the 2016 Act” means the Criminal Justice (Scotland) Act 2016; and

“the court” means the sheriff court.

(3) References in this Order to a “relevant notice” are to a notice under any of the following provisions of the 1995 Act—

(a) section 66(4)(b)⁽³⁾ (service and lodging of indictment, etc.);

(b) section 66(6); and

(c) section 72C(4)(b)⁽⁴⁾ (procedure where preliminary hearing does not proceed).

(1) 2016 asp 1.

(2) 1995 c.46.

(3) Section 66 has been amended by the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9) (“the 2002 Act”), schedule 1, paragraph 4; the Criminal Justice (Scotland) Act 2003 (asp 7), section 61(1); the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5) (“the 2004 Act”), sections 1, 7 and 10 and schedule 1, paragraph 15; the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) (“the 2007 Act”), section 35(1); and the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”), schedule 7, paragraph 44.

(4) Section 72C was inserted by the 2004 Act, section 1(3).

Appointed day – search by police

2. 11th May 2017 is the day appointed for the coming into force of the following provisions of the 2016 Act—

- (a) section 65 (limitation on what enables search);
- (b) section 66 (cases involving removal of person);
- (c) section 67 (public safety at premises or events);
- (d) section 68 (duty to consider child’s wellbeing);
- (e) section 69 (publication of information by police); and
- (f) section 72 (meaning of constable etc.).

Appointed day and transitional provision – pre-trial time limits, duty of parties to communicate and indictments

3.—(1) 29th May 2017 is the day appointed for the coming into force of the following provisions of the 2016 Act, but only for the purposes of any indictment served on an accused on or after that day—

- (a) section 79 (pre-trial time limits);
- (b) section 80 (duty of parties to communicate); and
- (c) subsections (1), (2) and (5) of section 81 (first diets).

(2) For the purposes of paragraph (1), if an accused is cited in accordance with paragraph (b) of section 66(4) of the 1995 Act, the indictment is to be treated as having been served on the accused on the date specified under sub-paragraph (i) of that paragraph.

(3) Paragraph (4) applies in relation to a relevant notice served on an accused between 29th May 2017 and 30th July 2017.

(4) Despite the coming into force of section 79(3) and (4) of the 2016 Act by virtue of paragraph (1), such a notice may, as well as calling upon the accused to appear and answer to the indictment at a first diet in accordance with section 66(6)(a) or, as the case may be, section 72C(4)(b) of the 1995 Act (as amended by section 79(3) and (4) of the 2016 Act), call on the accused to appear and answer to the indictment at a trial diet.

(5) Where a notice under section 66(4)(b) or (6) of the 1995 Act calls on the accused to appear and answer to the indictment at a first diet and a trial diet, section 66(6AB) of the 1995 Act (as inserted by section 81 of the 2016 Act) does not apply in relation to that notice.

Appointed day and saving provision – first diet procedure

4.—(1) 31st July 2017 is the day appointed for the coming into force of subsections (3) and (4) of section 81 of the 2016 Act (first diets).

(2) Despite paragraph (1), until 27th August 2017 the amendments to the 1995 Act made by those subsections do not apply for the purposes of—

- (a) any first diet at which the accused is called on to appear by a relevant notice if that notice also calls on the accused to appear at a trial diet; and
- (b) subject to article 6, the adjournment, postponement or any other alteration of such a first diet (including the adjournment, postponement or alteration of any previously adjourned, postponed or altered diet).

Appointed day – trial procedure

5. 28th August 2017 is the day appointed for the coming into force of subsections (6) and (7) of section 81 of the 2016 Act (first diets).

Transitory provision – adjournment and alteration of diets calling before 28th August 2017

6.—(1) This article applies until 27th August 2017 where—

- (a) the accused is called on by a relevant notice to appear at a first diet calling before 28th August 2017; and
- (b) that notice also calls on the accused to appear at a trial diet.

(2) In a case to which this article applies, section 71(7)(a)(5) of the 1995 Act is to be read as if, after “postpone”, there were inserted “or discharge”.

(3) If the court adjourns the first diet under section 75A(2)(6) of the 1995 Act to a date between 31st July 2017 and 27th August 2017, it may also discharge the trial diet.

(4) If the court discharges both the first diet and the trial diet under section 75A(5)(a) of the 1995 Act, or discharges the trial diet only under that section, it—

- (a) is not required to fix a new trial diet under section 75A(5)(b) of that Act; and
- (b) may instead fix a new first diet only, calling between 31st July 2017 and 27th August 2017.

(5) Article 4(2) does not apply for the purposes of a first diet—

- (a) fixed under section 71(7)(b) of the 1995 Act for a date between 31st July 2017 and 27th August 2017 if the court also discharges the trial diet under section 71(7)(a) of that Act (as modified by paragraph (2));
- (b) adjourned under section 75A(2) of the 1995 Act if the court also discharges the trial diet under paragraph (3);
- (c) fixed under paragraph (4)(b); or
- (d) fixed by an order under section 102A(6)(7) of that Act for a date between 31st July 2017 and 27th August 2017 if, in that order, the court also discharges the trial diet.

(6) Where the court adjourns or postpones to a date on or after 28th August 2017 a first diet at which the accused is called on to appear by a relevant notice (including the adjournment or postponement of any such diet which was previously adjourned, postponed or otherwise altered), any trial diet at which the accused is called on to appear by that notice is to be treated as having been discharged.

St Andrew’s House,
Edinburgh
29th March 2017

MICHAEL MATHESON
A member of the Scottish Government

(5) Section 71 has been amended by the 2002 Act, section 8(2) and schedule 1, paragraph 5; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), sections 2(1) and 7(1); the 2004 Act, sections 14 and 19 and schedule 1, paragraph 20; the 2007 Act, schedule 1, paragraph 12; the 2010 Act, schedule 7, paragraph 45; the Victims and Witnesses (Scotland) Act 2014 (asp 1), section 11(1) and [S.S.I. 2005/40](#).

(6) Section 75A was inserted by the 2004 Act, section 15.

(7) Section 102A was inserted by the 2007 Act, section 32 and has been amended by the 2010 Act, schedule 7, paragraph 50 and by [S.S.I. 2008/109](#).

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force various provisions of the Criminal Justice (Scotland) Act 2016 (“the 2016 Act”).

Article 2 brings into force on 11th May 2017 sections 65 to 69 and 72 of the 2016 Act which make provision about the circumstances in which a constable may search a person who is not in police custody and requires the Police Service of Scotland to publish information about the number of searches of that type which have taken place each year.

Article 3 brings into force on 29th May 2017 sections 79, 80 and 81(1), (2) and (5) of the 2016 Act. Section 79 amends section 65 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”), extending the periods for which an accused may be kept in custody following service of an indictment in solemn proceedings in the sheriff court to 110 days unless a first diet is commenced in respect of the accused’s case and 140 days unless a trial diet is commenced. Section 79 of the 2016 Act also amends section 65 of the 1995 Act to require a first diet to be commenced within a period of 11 months from the date of indictment. These new time limits will apply in relation to all indictments served on or after 29th May 2017.

Section 79 of the 2016 Act also amends, along with section 81(1), (2) and (5) of that Act, the 1995 Act to change the procedure for indicting cases in solemn proceedings in the sheriff court, requiring those cases to be indicted to a first diet only at least 29 days from the date of indictment (rather than to a first diet and trial diet, as is current practice). Despite these changes, article 3(3) to (5) of this Order makes transitional provision permitting prosecutors to continue to indict cases under the existing procedure of citing an accused to appear at both a first diet and a trial diet by service of a “relevant notice” to that effect between 29th May 2017 and 30th July 2017. The relevant notices for these purposes are set out in article 1(3) and include notices under sections 66(4)(b) or (6) or 72C(4)(b) of the 1995 Act.

Section 80 of the 2016 Act amends the 1995 Act to introduce new requirements on prosecutors and defence agents to communicate and produce a written record of their state of preparation. This applies in relation to indictments served on and after 29th May 2017.

Article 4 brings into force on 31st July 2017 section 81(3) and (4) of the 2016 Act. This provision amends the 1995 Act to make changes to the procedure to be followed at first diets in solemn proceedings in the sheriff court, in particular by requiring the court at a first diet to appoint a trial diet (if it considers the parties to be sufficiently prepared). Article 4(2) is a saving provision specifying that, until 27th August 2017, these amendments do not apply to cases indicted by the prosecutor to both a first diet and a trial diet (whether before 29th May 2017 or between that date and 30th July 2017 in accordance with article 3(3) to (5)).

Article 5 brings into force on 28th August 2017 section 81(6) and (7) of the 2016 Act which makes changes to trial procedure in solemn cases in the sheriff court, in particular allowing for a trial diet to be continued from sitting day to sitting day by a minute signed by the sheriff clerk.

Article 6 makes transitory provision about the adjournment and alteration of diets where an accused has been cited by a relevant notice to appear at both a first diet and a trial diet. Until 27th August 2017, under section 71(7)(a) of the 1995 Act a court may, instead of postponing a previously appointed trial diet to a later date, discharge that diet and fix a new first diet. Similarly, until that date, a court adjourning a first diet under section 75A(2) of the 1995 Act may discharge a previously appointed trial diet and a court discharging a trial diet under section 75A(5) of that Act may decline to appoint

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a further trial diet and instead fix a new first diet. Article 6(5) provides that where a court discharges a trial diet in any of those circumstances, any adjourned or new first diet is not affected by article 4(2), meaning that the amendments made by sections 81(3) and (4) of the 2016 Act in relation to first diet procedure would apply in relation to that first diet. Courts may by this mechanism bring cases previously indicted to both first diet and trial diet within the new first diet procedure before 28th August 2017 (when article 4(2) will cease to apply for all purposes). This applies also in a case where a court makes an order under section 102A(6) of the 1995 Act fixing a new trial diet between 31st July 2017 and 27th August 2017 and discharging any previously appointed trial diet.

Article 6(6) deals with any case where a first diet is adjourned or postponed to a date on or after 28th August 2017 if the accused was cited to appear at both a first diet and trial diet by a relevant notice. In such a case, any previously appointed trial diet is to be treated as having been discharged, ensuring that all first diets on or after 28th August will operate under the new first diet procedure introduced by the 2016 Act.

The Bill for the 2016 Act received Royal Assent on 13th January 2016. Sections 71, 73 to 77 and 115 to 118 came into force on the following day.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

Provision	Date of Commencement	Instrument No.
Section 60	17th January 2017	S.S.I. 2016/426
Section 61	17th January 2017	S.S.I. 2016/426
Section 62	17th January 2017	S.S.I. 2016/426
Section 63	17th January 2017	S.S.I. 2016/426
Section 64	17th January 2017	S.S.I. 2016/426
Section 78	17th January 2017	S.S.I. 2016/426
Section 82	17th January 2017	S.S.I. 2016/426
Section 83	17th January 2017	S.S.I. 2016/426
Section 84	10th March 2016	S.S.I. 2016/95
Section 87	17th January 2017	S.S.I. 2016/426
Section 88	17th January 2017	S.S.I. 2016/426
Section 89	17th January 2017	S.S.I. 2016/426
Section 90	17th January 2017	S.S.I. 2016/426
Section 91	17th January 2017	S.S.I. 2016/426
Section 92	17th January 2017	S.S.I. 2016/426
Section 93	17th January 2017	S.S.I. 2016/426
Section 94	17th January 2017	S.S.I. 2016/426
Section 95	17th January 2017	S.S.I. 2016/426
Section 96	17th January 2017	S.S.I. 2016/426
Section 98	17th January 2017	S.S.I. 2016/426
Section 99	17th January 2017	S.S.I. 2016/426

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Provision	Date of Commencement	Instrument No.
Section 100	17th January 2017	S.S.I. 2016/426
Section 101	17th January 2017	S.S.I. 2016/426
Section 104	17th January 2017	S.S.I. 2016/426
Section 105	17th January 2017	S.S.I. 2016/426
Section 106	17th January 2017	S.S.I. 2016/426
Section 110(2)(a)	17th January 2017	S.S.I. 2016/426
Section 111(1)	17th January 2017	S.S.I. 2016/426
Section 112	1st July 2016	S.S.I. 2016/199