POLICY NOTE

THE CRIMINAL JUSTICE (SCOTLAND) ACT 2016
(CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) REGULATIONS 2017

SSI 2017/

1. The above instrument is made in exercise of the powers conferred by section 115(1) of the Criminal Justice (Scotland) Act 2016 ("the 2016 Act"). It is subject to the affirmative procedure.

Purpose of this instrument

2. The 2016 Act introduces a number of reforms to the Scottish criminal justice system, including, in Part 3, and specifically in sections 79, 80, and 81, many of the recommendations of the Independent Review of Sheriff and Jury procedure by Sheriff Principal Edward F. Bowen.

3. This instrument makes certain consequential amendments to sections 81 and 82 of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act"), as well as transitional provisions in respect of those amendments. These provisions are considered necessary or expedient for the purposes of or in connection with sections 79 and 81 of the 2016 Act.

Amendments to the 1995 Act

4. In relation to sheriff and jury procedure, the provisions in Part 3 of the 2016 Act will change the way that cases are indicted in sheriff court solemn proceedings, and will modify first diet procedure accordingly. Once the provisions of the 2016 Act have been fully commenced, the Crown will no longer notify the accused of a trial diet, as is presently the case. Instead, a trial diet will be fixed by the court, and it will only do so when it is satisfied that the case has been adequately prepared by all parties and is likely to proceed to trial on the appointed date.

5. Regulation 2 of this instrument therefore amends section 81 of the 1995 Act, which deals with the procedure where a trial diet does not proceed. This change reflects the change in procedure effected by the 2016 Act, by removing references to the Crown citing, or otherwise giving notice to, the accused in respect of a trial diet, ensuring that a person re-indicted in accordance with that section is required to appear at a first diet only. If the trial diet was originally due to take place in the High Court, the amendment to section 81(5) ensures that if the case is re-indicted to a first diet in the sheriff court, the new first diet must take place at least 21 days after the giving of notice under section 81 (reflecting the fact that sheriff and jury procedure and High Court procedure are now to be similar).

6. Regulation 2 also amends section 82 of the 1995 Act, which ensures that a warrant of committal does not fall simply because the location of a trial changes. Section 82

deals with both sheriff court and High Court proceedings, and this amendment again reflects the fact that in both High Court and sheriff court proceedings the court will fix the trial diet.

Transitional provisions

7. The provisions in sections 79, 80 and 81 of the 2016 Act are to be commenced in stages, allowing for the transition from the current system (in which the Crown indicts the accused to a first diet and a trial diet) to the new system (in which the Crown will indict to a first diet only). There will be a transitional period during which the Crown can indict under either system.

8. Regulation 3 of this instrument therefore makes transitional provision in relation to cases which come within the terms of section 81(4) of the 1995 Act, where these cases have been indicted under the current system, in which the Crown indicts the accused to both a first diet and a trial diet. The effect of the transitional provision is to ensure that the provision in section 81(4) will apply to such cases on and after 31 July 2017, notwithstanding the fact that the amendments in this instrument come into force on 31 July 2017.

9. And regulation 4 makes transitional provision in relation to cases indicted by the Crown to a first diet and a trial diet under the current system, by providing that at a first diet in such a case, although the court need not appoint a trial diet under section 71B of the 1995 Act (as inserted by section 81 of the 2016 Act), where it does so that will have the effect of discharging the trial diet of which the accused was previously given notice. This ensures that cases can move from the existing process to the new process established by Part 3 of the 2016 Act.

Consultation

10. The Act further develops the majority of the recommendations of two independent reviews of key aspects of the criminal justice system. It includes provisions which have been developed from the recommendations of Lord Carloway's Review of Scottish Criminal Law and Practice, and provisions which have been developed from the recommendations of Sheriff Principal Bowen's Independent Review of Sheriff and Jury Procedure. Formal consultations were carried out by the Scottish Government with regard to the recommendations of Lord Carloway and Sheriff Principal Bowen's reviews.

11. Extensive consultation with criminal justice partners and stakeholders was undertaken during the Bill process, and continues in relation to implementation of the 2016 Act. In particular, Scottish Courts and Tribunals Service and the Crown Office and Procurator Fiscal Service provided significant input in relation to the policy intention underpinning the provisions in this instrument.

Impact Assessment

12. An Equality Impact Assessment (EQIA) was carried out for the purposes of the Criminal Justice (Scotland) Bill, which did not identify any areas in which there would be a negative impact on any of the protected categories as a result of the policies contained in the Bill.

Scottish Government
Justice Directorate

4 May 2017