CHAPTER 4 – PRECOGNITION AND MANAGEMENT OF SOLEMN BUSINESS

4.01 THE PURPOSE OF PRECOGNITION

The purpose of precognition is the prompt, thorough and effective investigation of a reported case, where a crime and suspect have been identified, to permit an informed decision as to further proceedings and to prepare a precognition in a form which allows a full, fair and effective consideration of evidence and proper presentation of the case in court by the prosecutor.

It is the responsibility of the Procurator Fiscal to ensure that precognition of criminal cases is carried out in such a way as to meet the stated purpose. In particular the following aims must be achieved: -

Identification of appropriate cases for precognition

The Procurator Fiscal must identify and precognosce appropriate cases. The correct forum must be identified and the appropriate report prepared.

Prompt Investigation

Precognition must be carried out so as to comply with all statutory time limits.

Consideration must be given at all times to compliance with the accused's entitlement to a trial within a "reasonable time" in terms of article 6 of the European Convention on Human Rights and to the rights of victims, witnesses and next of kin. In particular, cases should be dealt with expeditiously to avoid challenges to future proceedings on the basis that there has been unreasonable delay. This entails not only ensuring that the overall time taken to investigate is not unreasonable per se, but also that there are

no substantial periods of inactivity during the course of the investigation which cannot be properly accounted for and justified. Most importantly, care must be given in the management of precognitions to ensure the appropriate prioritisation of cases involving vulnerable accused or victims.

Thoroughness

Investigation of a case must involve consideration of all aspects of the case and of the evidence. All relevant evidence must be preserved and considered and made available to an accused person in accordance with the Crown's duties of disclosure in terms of McLeod v HMA 1998 SCCR 77 which are set out fully at paragraph 17.07 below. In essence, the Crown has a duty at all times to disclose to the defence information in their possession which would tend to exculpate the accused. Accordingly, the Crown should not simply put forward witnesses who support the Crown case but include in the list other witnesses whose testimony may not be in line with the Crown case but which may have a bearing on the innocence of the accused and so help the Court to form a balanced view of the evidence relating to the incident in question.

Effectiveness

Precognition and investigation must be focused on the main issues of the case and the evidence against each accused should be accurately represented and properly evaluated. All relevant legal issues, including those relating to Convention rights, must be properly addressed and considered, and recommendations made to allow an informed decision as to further proceedings.

Form of precognition

All precognitions must be prepared in accordance with these Regulations and the guidance contained in the Precognoscer's Handbook. The form that precognitions are expected to take will depend on the anticipated forum of each case. Precognitions prepared in the appropriate form will allow a full, fair and effective consideration of the evidence and proper presentation of the case in either the Sheriff or the High Court by the appropriate prosecutor.

4.02 CASES TO BE REPORTED BY PRECOGNITION

4.2.1 Generally

In all cases where solemn proceedings are mandatory, **or** appear to be appropriate

and:-

- there appears to be sufficient evidence to justify proceedings; or
- the accused was fully committed; or
- in any other case where the Procurator Fiscal considers it necessary or is so instructed by Crown Counsel;

witnesses will be precognosced as necessary and a report submitted to Crown Office in the form of an extended precognition.

Procurators Fiscal must decide in which forum it is anticipated such a case will be tried and the form of the extended precognition will reflect that forum. In any case where there is a doubt as to the forum, the extended precognition will be in the form appropriate for the High Court.

4.2.2 Section **76** cases

Where a section 76 Letter is submitted, the case will be reported for Crown Counsel's instructions. Further guidance on "section 76 reports" can be found in the Precognoscers Handbook.

4.2.3 Reduction to summary

In any case where an accused is placed on petition where solemn proceedings are not mandatory <u>and</u> do not appear to be justified by subsequent investigation, the Procurator Fiscal may, without reference to Crown Counsel, decide to reduce the case to summary procedure or take no further proceedings

except that

a summary report without precognition of witnesses:-

- <u>must</u> be submitted for Crown Counsel's instructions where the accused was fully committed, and
- <u>may</u> exceptionally be submitted by the Procurator Fiscal where the Procurator Fiscal considers it appropriate to do so.

4.2.4 Cases that have been fully committed

All cases in which an accused has been fully committed must be reported for Crown Counsel's instruction by way of extended precognition or by summary report in terms of the preceding paragraph.

4.2.5 Timing of precognition

The precognition process normally commences after the accused's appearance in court on petition. Where, however, the

case involves a vulnerable accused or victim, and proceedings are commenced by petition warrant, there will be a presumption in favour of precognition immediately following the marking to proceed by way of petition warrant, irrespective of whether the accused has been arrested.

4.2.6 Delay and ECHR

Procurators Fiscal must be aware that, for the purposes of Article 6 of the European Convention on Human Rights, the accused is entitled to trial within a "reasonable time". Refraining from placing the accused on petition will only prevent statutory time bars from running. Separate consideration must be given to complying with Convention rights. The point in time when that reasonable time starts to run depends on the circumstances of the case but, it general, will be when official notification is given to the accused by a competent authority that it is alleged that he has committed an offence or the date from which his situation is substantially affected as a result of the suspicion against him. That may be when the police or other agency arrest or charge or even earlier. Refraining from placing the accused on Petition will not, therefore, prevent time limits from running.

4.03 FORUM AND SUBMISSION OF FORM F32

4.3.1 Mandatory report in High Court format

Cases to be reported by precognition which include any of the following charges <u>must</u> be reported in High Court extended precognition format: -

Murder;
Attempted murder;

Culpable homicide;

Rape;

Attempted rape;

Section 1 or section 3A of the Road Traffic Act 1988 (although fatal road accident cases prosecuted under section 3 of the Road Traffic Act 1988 should be reported in Sheriff and Jury format.)

4.3.2 Other Cases to be Reported in High Court Format

The Procurator Fiscal will, in any case to be reported by precognition which includes charges other than those set out in 4.3.1, assess which Court is the most likely forum for subsequent Court proceedings. Reference should be made to Regulations, Crown Office Circulars and Case Marking Guidance for guidance in choosing the likely forum. This decision should be taken as early as possible but must, in any event, be taken within 7 days of full committal or within 14 days of liberation on bail.

4.3.3 Form F32

In cases identified as likely to be indicted in the High Court, the Procurator Fiscal must send advance notice by way of form F32 to the Head of the High Court unit at Crown Office. Form F32 must be submitted electronically by e-mail to the High Court Unit Administrative Manager and the High Court Unit mailbox (Mary Penman and _High Court Unit at Crown Office respectively). The High Court Unit will then generate an entry within the High Court allocation system.

Form F32 should be submitted as soon as a case is identified as being likely to proceed in the High Court, even in cases where the precognition is to proceed irrespective of the accused's appearance to answer a petition warrant, or where exceptionally pre-petition

precognition has been authorised. Although some information may not be available at the time of marking, it is vital that form F32 be completed as fully and carefully as possible. Later developments and updates should be emailed to the High Court Unit for incorporation into the F32. See Annex 12 for guidance on the preparation of the F32 form.

4.3.4 Monitoring of sensitive cases

Where a case is highlighted as a potential delay case the High Court Unit at Crown Office will proactively monitor the case. Cases involving a vulnerable accused or victim will be brought to the immediate attention of the Head of the High Court Unit or his or her Deputy as will any priority cases which fail to be reported within the required time limits specified at paragraph 4.4.2.1 below.

4.3.5 Change of circumstances

It is accepted that in the course of investigation, it may become apparent that the likely forum is not the one originally decided upon and in such cases, appropriate steps should be taken immediately either to (1) submit form F32 or (2) intimate reasons to the High Court Unit why the case is no longer likely to be heard in the High Court.

4.4 PROMPT INVESTIGATION

4.4.1 Pre-petition precognition

Procurators Fiscal should be alert to the fact that such cases may be affected by a plea of oppression as a result of Mora (delay); and/or an alleged breach of Article 6 of ECHR.

Procurators Fiscal are responsible for ensuring that all investigations and

precognition are carried out promptly to ensure that an accused person does not suffer oppression or have his Convention Rights breached. In relation to Convention rights generally, regard should be had to the ECHR guidance available on the intranet. Paragraph 4.2.5 above provides specific instructions in relation to 'pre-petition precognition'

Where the accused has not appeared on petition but the case has been marked to proceed by petition warrant, there will be a presumption in favour of immediate precognition of witnesses and such other investigation of the case as is necessary.

In cases involving a vulnerable witness and/or accused, or where the potential for an ECHR delay issue has otherwise been identified and a petition warrant has been issued, the case must be reported to Crown Office by way of precognition not later than 6 months following receipt of the police report. In such cases, where the accused has appeared on petition from police custody, the precognition should be managed and reported to Crown Office within custody time limits.

4.4.2 Cases where the accused has appeared on petition

Custody Cases

The Indictment must be served on the accused within 80 days of Full Committal and the trial commenced within 110 days. Procurators Fiscal are responsible for managing and carrying out precognition to meet each of these statutory requirements.

Bail Cases And Cases Where The Accused Has Been Liberated Following Remand on Petition

The trial must be commenced within 12 months of the date of first appearance by an accused on petition. The Indictment must be served at least 29 clear days before calling for trial. Procurators Fiscal are responsible for managing and carrying out precognition to meet each of these requirements.

4.4.3 Sheriff and Jury targets

The Area Procurator Fiscal is responsible for meeting Departmental targets in relation to service of Indictments in Sheriff and Jury cases. Procurators Fiscal will be responsible for contributing to the achievement of those targets in relation to their districts or as otherwise agreed with the appropriate Area Procurator Fiscal.

The targets are:

- Service of all custody Indictments within 80 days of Full Committal;
- Service of 60% of all Bail Indictments within 8 months and service of 80% within 9 months of first appearance by an accused.
- Service of 100% of all Bail Indictments within 10 months of first appearance by an accused.

4.4.4 Delay cases

Area Procurators Fiscal are responsible also for ensuring that cases which are vulnerable to Article 6 delay issues are reported timeously by way of precognition. Procurators Fiscal will be responsible for contributing to the achievement of this in relation to their districts or as otherwise agreed with the appropriate Area Procurator Fiscal. These will be cases which are at risk either by virtue of the period of time that has elapsed from the accused receiving 'official notification' of the allegation against him or

her or the involvement of a vulnerable victim or accused.

In particular, Area Procurators Fiscal are responsible for ensuring that all cases involving a vulnerable victim or accused are reported to Crown Office

- Where a petition warrant is issued for the accused's apprehension, within 6 months of receipt of the police report even if enquiries remain outstanding and even if the petition warrant has not been executed.
- Where the accused appears on petition from police custody, within the time limits which apply to custody cases even if the accused is allowed bail.

If there is a <u>prima facie</u> sufficiency of evidence, the accused should normally be placed on petition before the case is precognosced.

4.4.5 High Court targets

The Deputy Crown Agent, the Head of the High Court Unit and the relevant Area Procurator Fiscal are together responsible for meeting Departmental targets in relation to service of Indictments in High Court cases. Procurators Fiscal will be responsible for contributing to the achievement of those targets in relation to their districts or as otherwise agreed with the appropriate Area Procurator Fiscal.

The targets are:

- Service of all custody Indictments within 80 days of Full Committal;
- Service of 60% of all Bail Indictments within 8 months and

- service of 80% within 9 months of first appearance by an accused;
- Service of 100% of all Bail Indictments within 10 months of first appearance by an accused.

4.4.6 Proposed amendment of statutory time limits

Procurators Fiscal should note that the Criminal Procedure (Scotland) (Amendment) Bill, currently being considered by the Scottish Parliament, will introduce changes to the time limits to be followed in custody and bail cases. One of the fundamental aspects of this Bill is that there will be a mandatory hearing - the preliminary hearing – the function of which will be for the court to address a range of preliminary issues and determine whether parties are prepared for trial; if so, a specified trial date will be fixed. Procurators Fiscal will no longer indict accused to a trial sitting, but to a preliminary hearing. Thereafter, it will be a matter for the court to set the trial date.

If the provisions contained in the Bill are enacted:

- where an accused is in custody the indictment must still be served within 80 days of full committal. However, the preliminary hearing must take place within 110 days, and the trial must start within 140 days. If any of these time limits are breached, the accused is entitled to be released on bail.
- where the accused is on bail, the preliminary hearing must take place within 11 months, which means that the indictment must be served within 10 months. The 12 month limit will continue to apply, with the same

penalty as applies at present in the event Breach.

Further guidance will be issued to Procurators Fiscal as and when the provisions are enacted.

4.4.7 Victims, witnesses and next of kin

Consideration must also be given to the effect of delay on victims, witnesses and next of kin. Procurators Fiscal are responsible for managing and carrying out precognition to ensure that their rights and legitimate interests are not prejudiced and, through VIA, that they are kept informed at all stages of progress made and likely completion dates.

Victims, witnesses and next-of-kin have no legal rights in relation to delays unless the delay can be construed as a breach of their rights under articles 3 or 8 of the European Convention on Human Rights, that is the prohibition on torture or inhuman and degrading treatment and the right to respect for family life. There is a high threshold for this at present. Notwithstanding that, there is a compelling public interest in the expeditious handling of cases at all stages.

4.05 THOROUGH INVESTIGATION

4.5.1 General duty

The Area Procurator Fiscal, together with District Procurators Fiscal, is responsible for ensuring that all cases are investigated thoroughly and impartially.

The preparation of solemn work should, principally, be carried out by dedicated precognition teams under the overall management of the Area Procurators Fiscal.

Precognition teams should comprise a mix of deputes and precognition officers supported by administrative and typing staff and be managed by a member of the Service of at least Principal Procurator Fiscal Depute grade (The Solemn Legal Manager).

4.5.2 Review of petition cases by senior legal staff

The Procurator Fiscal, or an appropriate senior member of legal staff, must in all cases:

- where it is intended to fully commit an accused person, confirm that that decision is appropriate.
- after release on bail, confirm that the decision to proceed on petition is appropriate.

4.5.3 Further enquiry

It is the duty of the Procurator Fiscal in all cases to consider whether other lines of enquiry should be explored and whether expert witnesses should be instructed. While Crown Counsel may in some cases have a role to play in the identification of further lines of enquiry, the initial and major responsibility falls upon the Procurator Fiscal who must actively consider how this responsibility is to be discharged before seeking any guidance or instruction from Crown Counsel.

4.5.4 Duties of legal manager

Area Procurators Fiscal must ensure that solemn legal managers (who may include District Procurators Fiscal) are established in the area in order to manage solemn business. It shall be the duty of such solemn legal managers to: -

- Read the material submitted by the reporting agency prior to allocation.
- Direct that the reporting agency addresses any deficiencies identified.
- Assess the forum of the case.
- Ensure the case is prioritised in accordance with departmental guidelines.
- Ensure compliance with departmental targets.
- Instruct any necessary preprecognition work at an early stage.
- Provide detailed instructions and guidance for every precognition on allocation.
- Control the direction and focus of the investigation.
- Identify, and where appropriate, consult with, expert witnesses.
- Determine and instruct the extent of any necessary scientific examination of evidence.
- Ensure that any special measures for children or other vulnerable witnesses, including interpretation and translation, are effected.
- Manage and assume responsibility for the quality of the precognition.
- Certify the contents of the precognition including the analysis and recommendations.
- Ensure compliance with the Crown's duty of disclosure to the defence.
- Ensure effective liaison with the reporting agency until the conclusion of the case.
- Ensure the application of departmental guidance in respect of communication with victims, witnesses and next-of-kin.

(Further guidance on the role of precognition team managers is given in the Precognoscer's Handbook.)

4.5.5 Homicide

The Area Procurator Fiscal, together with District Procurators Fiscal, must ensure that all cases of murder and culpable homicide are fully investigated and kept under review until satisfactorily completed. They must also ensure that the next-of-kin are given the same degree of consideration as in all sudden death enquiries (see paragraph 12.20) and, in particular, that they are kept informed of the progress of the enquiry, - through liaison with VIA and an appropriate level of personal contact relevant to each stage of the case, provided the information given is not inconsistent with the requirements of the investigation. Particular care should be taken to keep them informed of diets where they are not to be cited as witnesses.

4.5.6 Serious or difficult cases

An experienced member of legal staff must be involved throughout the precognition process in serious and difficult cases.

Area Procurators Fiscal must ensure that senior legally qualified staff are involved directly, or in a close supervisory capacity, in the precognition of serious and difficult especially cases, where the accused represents a danger to the public or to any member, members or section of the public. Proper attention must be given to the identification and prioritisation of such difficult serious and cases and approach taken discriminating the allocation of such cases for precognition.

4.06 EFFECTIVENESS

4.6.1 Generally

Precognition and investigation must be focused on the main issues of the case and the evidence against each accused accurately represented and properly evaluated. All relevant legal issues, including those relating to Convention rights, must be properly addressed, considered and recommendations made to allow informed decision as to further proceedings.

4.6.2 Responsibility of Procurator Fiscal

Area Procurators Fiscal, together with District Procurators Fiscal, are responsible for ensuring that the precognition process is managed to ensure that all cases falling within their jurisdictions are investigated effectively in accordance with the Precognoscer's Handbook, including ensuring that all relevant staff are trained in precognition and are familiar with the Handbook.

4.6.3 Precognoscers Handbook

The Precognoscer's Handbook contains best practice guidance in the following areas of work which are relevant to effective investigation:-

- management of precognition
- initial steps
- productions
- taking of precognitions (including dealing with sensitive, vulnerable and problem witnesses)
- hostile witnesses
- tape recording of precognition
- witnesses who reside outwith jurisdiction of precognoscer
- precognition in prisons
- police witnesses
- identification of accused
- statements made by accused and police interview evidence
- sufficiency of evidence

- format of precognitions, both High Court and Sheriff and Jury
- reporting to Crown Office
- drafting charges on indictments
- section 76 indictments
- specification of date
- specification of locus
- special capacity
- expert witnesses
- precognition of expert witnesses
- precognition on oath
- fingerprint and other 'identification' evidence
- psychiatric evidence
- scientific evidence
- photographic and video evidence
- misuse of drugs offences including drugs analysis reports - random sampling
- confiscation
- breach of bail conditions offences
- proof of previous convictions
- crimes of dishonesty
- crimes of violence and non accidental injury
- sexual offences, including distress as corroboration in sexual assaults
- road traffic offences
- racially aggravated offences
- miscellaneous offences including perjury, threats, extortion and prison breaking
- the instruction and use of interpreters
- Victim Information and Advice
- Search and other warrants.

The Precognoscer's Handbook also has a number of Annexes which provide pro forma documents designed to assist solemn legal mangers and precognoscers in the management of precognition work. These include a precognition checklist, a precognition guidance note, an interim report on precognition progress and a completed precognition form.

Departure from the guidance set out in the Precognoscer's Handbook must be fully justified in each case, either to the Area Procurator Fiscal or, if reported to Crown Office, to Crown Counsel.

4.07 FORM OF PRECOGNITION

4.7.1 Generally

All precognitions must be prepared in accordance with these regulations and the Precognoscer's Handbook Manual. The form that precognitions will take will depend on the anticipated forum of each case. Precognitions prepared in the appropriate form will allow a full, fair and effective consideration of the evidence and proper presentation of the case in either Sheriff or High Court by the appropriate prosecutor.

4.7.2 Precognoscer's Handbook

The Precognoscer's Handbook sets out the form in which precognitions shall be prepared for High Court and Sheriff and Jury cases respectively. Departure from the guidance set out in the Precognoscer's Handbook must be fully justified in each case, either to the Area Procurator Fiscal or, if reported to Crown Office, to Crown Counsel.

4.7.3 Role of Solemn Legal Manager

Solemn legal managers must include the information required in the Precognoscer's Handbook as a minimum requirement and must certify the precognition accordingly. In addition, solemn legal managers will be responsible for ensuring that <u>all</u> relevant information and evidential material is

included in the precognition and for ensuring that the precognition is laid out in such a way as to allow full and proper presentation of the case in Court, whether by narration or at trial. The precognition must also be laid out to allow plea negotiation in terms of Chapter 23.

4.7.4 Legal recommendations

Solemn legal managers will be responsible for making recommendation as to whether proceedings should be instituted, against whom, the charges which ought to be libelled in respect of each accused and the proposed forum for proceedings. The recommendation shall also deal with the following matters, where appropriate: -

- If the precognoscer considers that any child or other vulnerable witness requires to give evidence by closed circuit television or should be screened from the accused during his or her evidence a recommendation should be included to that effect detailing the reasons for such a recommendation (see paragraphs 16.79 16.87 of chapter 16).
- Any Convention rights issues arising in the case.
- Desirability or otherwise of the attendance of the precognoscer at court.

4.7.5 Templates

All cases will be reported to Crown Counsel in the manner set out in the High Court and Sheriff and Jury templates which can be found on SOS VI.

4.08 RECEIPT OF CASE AT CROWN OFFICE

4.8.1 Section 76 Reports or Summary Reports

In the case of S.76 reports or summary reports, the report will be submitted to Crown Counsel with a recommendation by the member of the High Court Unit staff within 2 days of receipt in Crown Office.

4.8.2 Sheriff and Jury cases

Sheriff & Jury cases will be considered in the first instance by the High Court Unit at Crown Office who will consult with Crown Counsel in cases of difficulty.

4.8.3 High Court cases

High Court cases will be considered first by the High Court Unit at Crown Office who will draft an indictment and a minute to be sent to the precognoscer raising the issues requiring to be addressed/clarified [the "Indictment Issues Note"]. At this stage, the High Court Unit at Crown Office will also seek Crown Counsel's instructions on indictment and on any outstanding matters.

In submitting a precognition to Crown Office in a High Court case it must be remembered that the reading and indicting of large or complex cases can be very time-consuming. Accordingly, it is vital that a case is submitted timeously in accordance with Departmental targets and any timescale specified by the High Court Unit. Crown Counsel will issue instructions specifying whether proceedings are to be instituted, if so against which accused, and the forum in which proceedings are to be instituted. Indictment of any High Court case will normally entail the need for certain matters to be clarified or confirmed or further work to be carried out. These will be raised in an Indictment Issues Note. The High Court Unit will intimate such matters immediately to the

Procurator Fiscal's office which submitted the report. Should there be matters arising from the Indictment Issues Note which require further consideration by the indicter this will be identified in the note together with a target date for the completion and submission of such work.

4.8.4 Data integrity

It is crucial for the integrity of the data held within ISCJIS that the draft indictment accurately reflects the precognition and that <u>all</u> case data, but in particular the charge data, matches the terms of the draft indictment (the **drindict** file in SOSvi) which is submitted with any precognition to Crown Office. The draft indictment will form the basis for the preparation of the High Court draft indictment and must therefore be accurate when it is submitted to Crown Office to avoid any unnecessary work when the principal indictment is prepared.

4.8.5 Reporting of Sheriff and Jury cases

Where a case is reported with a recommendation to proceed by way of Sheriff and Jury indictment but Crown Counsel instruct High Court Proceedings it will not be necessary to reformat the precognition or to resubmit the precognition to Crown Office unless specifically requested.

4.8.6 Issue of documents to Procurator Fiscal

Where the member of the High Court Unit staff considers that the case should be indicted in the High Court, the precognition will be retained at Crown Office and a draft indictment will be prepared in accordance with Crown Counsel's instructions by a legally qualified member of staff in the High

Court Unit. The draft indictment will then be sent to the Procurator Fiscal for revisal with the precognition and the Indictment Issues Note which will be in minute form and will detail Crown Counsel's instructions *and* will specify any further work to be carried out by the precognoscer. The Note will indicate whether the indicter requires to reconsider the matters which arise as a result of the further work which is instructed.

The precognition should not be returned to Crown Office at that stage unless specifically requested by the High Court Unit at Crown Office. This will be mainly where further evidential enquiry is essential, either prior to revisal or post-indictment, and the follow up work requires to be assessed by the indicter and/or Crown Counsel.

4.8.7 Basis of Crown Counsel's decision

Where Crown Counsel's instructions are to proceed on a lesser charge than that recommended or where Crown Counsel instruct no proceedings where proceedings have been recommended, Crown Counsel should always give fuller reasons than usual in order to allow Procurator Fiscal and precognoscers to understand the basis for Crown Counsel's decision and to allow them correspondingly provide a fuller also provide explanation. These will guidance to Procurator Fiscal and precognoscers in the preparation of similar precognitions.

4.09 PREPARATION OF SHERIFF AND JURY INDICTMENTS

4.9.1

The Area Procurator Fiscal together with District Procurators Fiscal shall arrange that, on receipt of Crown Counsel's instructions to proceed with a case by way of Indictment before a Sheriff and a Jury, steps are taken to prepare an indictment in accordance with such instructions for service to an appropriate diet so as to comply with Departmental targets.

4.9.2

The solemn legal manager shall arrange that any further enquiries and work instructed by Crown Counsel are carried out promptly.

4.9.3

The Precognoscer's Handbook sets out guidance as to preparation of an Indictment. The Case Marking Guidance should be referred to for best practice in drafting charges. Any departure from these guidance documents shall only be with the express approval of the District Procurator Fiscal.

4.10 PREPARATION OF HIGH COURT INDICTMENTS

4.10.1 Issue of documents to Fiscal

If High Court proceedings are instructed the precognition will be retained at Crown Office and a draft indictment will be prepared in accordance with Crown instructions by a legally qualified member of staff in the High Court Unit. The Indictment Issues Note will be sent by email communication in the first instance to the Procurator Fiscal detailing Crown Counsel's instructions. the matters upon confirmation/clarification is sought and specifying any further enquiries and work to be carried out by the precognoscer. email will also contain confirmation that the draft indictment is available for examination on SOS VI. Thereafter, the precognition will be returned to the Procurator Fiscal together with a copy of the draft indictment and minute.

4.10.2 Revisal

When the draft indictment and precognition is received by the Procurator Fiscal s/he will ensure that the draft indictment is revised by the appropriate solemn legal manager, in accordance with the Precognoscer's Handbook.

The reviser shall check:-

- that the instance and the domiciles of citation of the accused are correctly specified;
- ii. that all dates and loci are correctly specified;
- iii. that all productions and witnesses are listed unless specifically deleted by Crown Office;
- iv. for spelling and grammatical errors;
- v. for changes of addresses of witnesses;
- vi. that all matters which might appropriately be included in a Statement of Uncontroversial Evidence have been identified and included; and
- vii. that all other matters considered relevant and worthy of comment by the reviser are brought or have been brought to the attention of the High Court Unit at Crown office.

4.10.3 Return of paperwork to Crown Office

The draft indictment and precognition shall then be returned without delay to the High Court Unit at Crown Office with a note of any suggested revisals to the draft indictment. The solemn legal manager shall retain a copy of the precognition. Where there is insufficient time to return the paperwork, revisal can be carried out by telephone but

any such revisal must be supported and confirmed in writing as soon as possible.

4.10.4 Issue of Indictment

The final indictment will be printed and signed by an Advocate Depute and the service copy will be sent to the Procurator Fiscal with any notice of previous convictions and Statement of Uncontroversial Evidence, together with a notice to the accused to appear for the sitting in which the case has been included and executions of service for the various documents which require to be served on the accused, with a note of the last day of service of the sitting to which the case is indicted, for the Procurator Fiscal to arrange service on the accused. The Procurator Fiscal will continue to be responsible for the service of any deportation notices upon the accused.

4.10.5 Further enquiries

The solemn legal manager shall arrange that all further enquiries and work instructed by Crown Counsel are carried out promptly and reported to Crown Office, and the precognition shall be updated and amended accordingly.

4.10.6 Section 67 Notices

If the Procurator Fiscal is instructed to add any additional productions or witnesses to the indictment s/he will prepare and serve on the accused a notice in terms of Section 67 of the Criminal Procedure (Scotland) Act 1995 detailing the additional witnesses and productions. The notice must be served on the accused not less than 2 clear days before the day on which the Jury is sworn to try the case. Unlike service of indictments the period is not extended where the last day falls on a weekend or Court holiday (see Section 75 of the 1995 Act). Procurators Fiscal

should not delay the service of a section 67 notice simply because further evidence is awaited and may require an additional notice. The execution of service of a section 67 notice, once received, should be sent to the Clerk of Justiciary at The High Court of Justiciary, First Instance Desk, Lawnmarket, Edinburgh, EH1 2NF who will associate these with the record copy indictment. A copy of the section 67 notice and a copy of the relative execution of service for each accused on every such notice should be attached to the sitting note prepared for the calling of the case.

The section on **High Court Procedure** in **the Precognoscer's Handbook** provides detailed guidance to be followed in such matters as citation and dealing with witnesses, service of section 67 notices and preparation of Sitting notes.

4.11 SERVICE OF INDICTMENTS

4.11.1 Duty of Procurator Fiscal

The Area Procurator Fiscal, together with District Procurators Fiscal, is responsible for ensuring that all Indictments are served timeously and in accordance with Law and must ensure that the following rules regarding Service of an indictment are observed.

4.11.2 Rules in relation to service

1. The service copy indictment, notice of previous convictions and notice to the accused to appear must be served on the accused not less than 29 clear days before the trial diet (see Sections 66(4) and 66(6) of the Criminal Procedure (Scotland) Act 1995).

- 2. Where the last day of the period falls on a Saturday, Sunday or Court holiday the period is extended to include the next day which is not a Saturday, Sunday or Court holiday (see Section 75 of the Criminal Procedure (Scotland) Act 1995 and Renton and Brown 6th Edition, paragraph 14-08). In practical terms the last date for service for a sitting commencing on a Monday and where the Friday preceding the start of the sitting is not a Court holiday is the Thursday of the 5th week preceding the start of the sitting.
- 3. Where the accused is in custody the indictment shall be served on him or her personally, but where the accused has been released on bail and is subsequently detained in custody on a different charge, it is competent to serve the indictment for the original charge at his or her domicile of citation specified in the bail order although personal service should be arranged where possible.
- 4. Where the accused is on bail, the indictment shall be served on him or her at the domicile of citation specified in the bail order.
- 5. Form 8.2-B, the notice to the accused to appear for the purposes of section 66(6) of the Criminal Procedure (Scotland) Act 1995, no longer requires to be signed by a police officer and a witness as a result of the Act of Adjournal (Criminal Procedure Rules Amendment No. 3) (Sexual Offences (Procedure and Evidence) (Scotland) Act 2002) 2002 which came into force on 1 November 2002. The new version of Form 8.2-B is now added as **f373sol**

- (sheriff and jury cases) and f373hcsol (High Court cases) to SOS IV and SOS VI (see copy Form 8.2B at Annex 13). A Procurator Fiscal or Procurator Fiscal Depute or an Advocate Depute must now sign this notice on behalf of the Lord Advocate. The notices should then be sent out for service in the usual way with an execution of service for completion by the police.
- The Act of Adjournal (Criminal 6. Procedure Rules Amendment No.2) (Miscellaneous) 2003, which came into force on 27 October 2003, makes similar provision in respect of indictments in terms of section 76 of the Criminal Procedure (Scotland) Act 1995. Form 10.1-A, the notice of a special diet where the accused intends to plead guilty (where an indictment has not already been served) and Form 10.1-B, the form of notice of a special diet where the accused intends to plead guilty (where an indictment has already been served) for the purposes of section 76 of the Criminal Procedure (Scotland) Act 1995, have been amended so that they no longer require to be signed by a police officer and a witness. The new versions of Form 10.1-A and Form 10.1-B have now been added as **f371sol** (where indictment already served) and f372sol (where indictment already served) to SOS VI (see copy Form 10.1-A and Form 10.1-B at Annex 14 and 15). **Procurator Fiscal or Procurator** Fiscal Depute or an Advocate Depute must now sign these notices on behalf of the Lord **Advocate.** The notices should then be sent out for service in the usual

- way with an execution of service for completion by the police.
- 7. Service of indictments, notices of previous convictions and notices to accused to appear is governed by (1) the Act of Adjournal (Criminal Procedure Rules) 1996, rule 2.2(2) as amended (see para 4.11.4), and (2) by Section 66 (4)(b) of the Criminal Procedure (Scotland) Act 1995 Act (see para 4.11.5).
- 8. Rule 2.2 (2) of the Act of Adjournal (Criminal Procedure Rules) 1996 provides:
 - "Service shall be effected by an officer of law
 - (a) delivering the document to the accused personally;
 - (b) leaving the document in the hands of a member of the family of the accused or other occupier or employee at the proper domicile of citation of the accused;
 - (c) affixing the document to the door of, or depositing it in, the proper domicile of citation of the accused; or
 - (d) where the officer of law serving the document has reasonable grounds for believing that an accused, for whom no proper domicile of citation has been specified, is residing at a particular place but is unavailable
 - (i) leaving the document in the hands of a member of the family of the accused or other occupier or employee at that place; or

- (ii) affixing the document to the door of, or depositing it in, that place".
- 9. Section 66 (4)(b) of the Criminal Procedure (Scotland) Act 1995 was inserted by the Criminal Justice (Scotland) Act 2003. It provides that the accused may be cited,
 - (b) by a constable affixing to the door of the accused's dwelling-house or place of business a notice in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form
 - (i) specifying the date on which it was so affixed;
 - (ii) informing the accused that he may collect a copy of the indictment from a police station specified in the notice; and
 - (iii) calling on him to appear and answer the indictment at such diet as shall be so specified.

It is considered that the terms of this provision, as currently drafted, give rise to difficulties in proving that effective service has taken place. A legislative solution is currently being considered and full guidance will be issued when the position is resolved.

In the interim, Procurators Fiscal are instructed not to rely on the method of service described in Section 66 (4)(b). In the event of an exceptional situation arising, where the Procurator Fiscal considers the most appropriate method of service to be in terms of Section 66 (4)(b), the advice of Crown Office Policy

Group should be obtained prior to service being attempted.

10. Where the accused has no proper domicile of citation or has a domicile of citation where service cannot be effected on him in terms of rule 2.2(2)(d) (e.g. an address which does not exist or a seasonal showground), the Procurator Fiscal should consider whether to obtain a warrant to arrest the accused and keep him in custody for the limited purpose of serving an indictment on him (see Lockhart -v-Stokes 1981 SLT (Sh. Ct.) 71).

In order to avoid such a difficulty it is essential that before an accused is granted bail the Procurator Fiscal is satisfied that the proposed domicile of citation exists, is in Great Britain and is a proper address for service of the indictment.

4.11.3 ECHR considerations

The rules in relation to service of indictments are contained in the Criminal Procedure (Scotland) Act 1995. The Human Rights Act 1998 Section 6 and the Scotland Act 1998 Section 57 do not permit the courts to set aside primary legislation. It follows that if such legislation cannot be interpreted compatibly with the Convention rights it must nevertheless be applied. Accordingly, although the provisions of the Criminal Procedure (Scotland) Act 1995 may be challenged and the court may declare them incompatible with the accused's Convention rights, that does not invalidate the lawfulness of the provisions.

One requirement of Article 6(3)(a) of the European Convention on Human Rights is that the accused actually receives the charges against him; a legal presumption of

receipt is not enough. It has, however, been held in Kremzov v Austria (1994) 17 EHRR 322 that, in these circumstances, disclosure of the material in the charges to the defence lawyer satisfied Article 6(3)(a). It is therefore important in all cases, but especially in bail cases, that the accused's lawyer receives, promptly, a courtesy copy of the indictment.

4.11.4 Executions of service

Procurators Fiscal shall ensure that all executions of service are returned by the police and checked for any errors. The High Court Unit must be informed immediately, by telephone <u>and</u> e-mail, of any failure to serve a copy indictment timeously.

All High Court executions shall be returned to Crown Office as soon as possible, and in any event not later than 7 days following the issue of the indictment, to the Procurator Fiscal for service on the accused. In exceptional circumstances where that timescale cannot be complied with, the execution of service should be retained by the Procurator Fiscal who must ensure that it is made available to the Advocate Depute at the first calling of the case.

4.12 POST INDICTMENT ISSUES AND SITTING MANAGEMENT

This chapter addresses the respective responsibilities for dealing with issues arising from the indictment or adjournment of a High Court case. It also seeks to address the issues surrounding management of sittings of the High Court. From the outset it is recognised that in terms of sitting management there will inevitably be divergences in practice between the full time High Court Units (Glasgow & Edinburgh) and other offices dealing with sittings of the High Court within their jurisdiction. There

are, nevertheless, principles of management and organisation which are common to all.

4.12.1 Post Indictment Issues

When a High Court case is indicted a copy of the draft indictment accompanied by the "Indictment Issues Note" (formerly known as "shopping list letter") will be returned with the precognition. Revisal of the indictment and consideration of the items raised in the note would typically be undertaken by means of a telephone call between the indicter and the precognoscer.

The essential requirements in the postindictment stage in the life of the case are that:

- Additional work instructed by the indicter is completed;
- The precognition is updated with the results;
- The results and their impact on the case are evaluated.

The Crown Office High Court Unit have responsibility for post-indictment case management, including (a) monitoring completion of follow-up work; (b) ensuring its incorporation into the precognition; (c) evaluation of fresh developments and (d) conveying information on these developments to the Advocate Depute.

It follows from this that following service of the indictment, there will continue to be a role for, and involvement in the case of, the indicter, the Sitting Manager, precognoscer and his/her Solemn Manager. The annexed process maps are designed to set out the responsibilities of the different roles played by these individuals at varying stages in the progress of a case. The process is designed to ensure that the indicter is involved post-indictment case management, and that all participants are clear as to who has responsibility for followup work at different stages in the process.

Annex 1 (Non Glasgow cases)

This sets out the arrangements which apply in a non-Glasgow case prior to the first calling of the case in the High Court.

- 1. The precognition is prepared in the Procurator Fiscal's Office and is sent to Crown Office.
- 2. The papers will be considered by an indicter before obtaining Crown Counsel's instructions, in relation to forum, charges and any other outstanding matters on which instructions are required.
- 3. The case will be returned to the Procurator Fiscal's Office with instructions in relation to follow-up work. Those instructions will be sent both to the precognoscer and to his/her Legal Manager. If the follow up work requires evaluation by the indicter this fact will be made known to the precognoscer & solemn manager within the Indictment issues note.
- 4. The precognoscer will carry out the further work under the supervision of the Legal Manager.
- 5. Once the follow-up work has been completed, the precognition will be updated and a Sitting Note prepared (more detailed comments on sitting notes follow hereafter).
- 6. In cases where the indicter has indicated that follow-up work requires to be evaluated, the results

will be referred to the indicter. If necessary, the indicter will seek further instructions from Crown Counsel and/or instruct further follow-up work. Where necessary the indicter will also add any appropriate comment or note to the Sitting Note.

One set of papers will then be sent by the Procurator Fiscal's Office to the Sitting Manager and two sets of papers for the AD and Assistant should be sent to Crown Office administration.

Annex 2 (Glasgow cases)

The process in Glasgow cases is essentially the same except that the initial stages in the preparation of the sitting note will be undertaken by the precognoscer at the Procurator Fiscal's office in Glasgow with the final detail being incorporated by the sitting manager within High Court West.

Annex 3 (Non-Glasgow cases)

If a Section 67 Notice has to be served after the papers have been updated and sent to the Sitting Manager and Crown Office administration, the procedure to be adopted is as follows:

- 1. Precognoscer identifies need for Section 67 Notice. This may be outstanding work instructed by the indicter or may result from defence activity (e.g. intimation of defence witnesses). The precognoscer will prepare the necessary materials and arrange for the Section 67 Notice to be prepared and sent for service.
- 2. When the execution of service of the Section 67 Notice is returned, (reference is later made as to how the

execution of service should be dealt with) the precognoscer will update the Sitting Note, which will then be sent to the Sitting Manager together with a copy of the materials, for insertion in the papers held by the Sitting Manager. In addition, two further sets of materials will be sent to Crown Office admin to update the AD and Assistant's papers.

Annex 4 (Glasgow cases)

The procedure in relation to Glasgow cases is essentially the same except that the initial preparation of the Section 67 notice will be the responsibility of the precognoscer who should e-mail this to the sitting manager at High Court West who will arrange for service of the notice and thereafter update the sitting note accordingly.

By this stage in the life of the case the case will have been listed for trial within a sitting.

4.12.2 Sitting Management

The Red Book

Once an F32 is received the case is assigned, by the High Court Unit, to a provisional High Court sitting location and date which is recorded within the red book. Ordinarily this takes account of the anticipated reporting date and the preferred location specified the with by F32 precognoscer/solemn manager. In some instances it may be that the case will have to be allocated to a sitting other than the most local sitting [for example, because of local, potentially prejudicial media reporting, arising intimidation issues from witnesses, the availability of courtroom facilities (CCTV, Live link, simultaneous interpretation)]. In any event the case will

be allocated to a sitting with a last reporting date and this will be recorded with the High Court red book. This is now available on line at "High Court sittings" on a read only basis. This will give some indication of the pressures likely to arise on the sitting not least due to cases adjourned into the sitting from earlier sittings. It should not under any circumstances be used as a means of attempting to second guess the reallocation of a case in order to allow for later reporting - there will often be considerations which are not immediately obvious from the entries within the red book which would militate against the reallocation of a case to a later apparently less busy sitting.

4.12.3 Sitting Lists

The sitting list will be produced within 5 days of the last service date of the indictment for that sitting. Sitting lists are produced from the High Court Unit at Crown Office (with the exception of the sitting lists for Glasgow which are produced by the High Court Unit there). Sitting lists do nothing other than provide a provisional order for the calling of the cases together with the assignment of cases to individual courts in Glasgow & Edinburgh. They are compiled in time bar order and thereafter when time bars are not pressing in terms of any sensitivities attaching to cases, the number of times a case might have been adjourned, or any features of the case which require that the case go to a particular court (e.g. as a rule terrorist cases will be assigned to Court 3 in Glasgow which has enhanced security and technical facilities for such trials, East coast cases requiring a Live TV link to a foreign jurisdiction will go to Court 3 in Edinburgh which is equipped to deal with such cases). The sitting list is not the definitive of the order in which cases will call at court. The Advocate Depute undertaking the cases within the court will direct the order in which cases are to be dealt with as explained further below. It is common for sitting lists to be changed after they have been issued. It is not uncommon for a case to be adjourned from one sitting into the following one which inevitably will mean an alteration to the sitting list which will have already been issued for that sitting. The most up to date sitting list for any sitting is *always* available from the Glasgow Central files available for reference on the common folders. (Instructions on how to access the Glasgow Central folders can be found at Annex 5.)

4.12.4 The Annotated Sitting lists

Sitting managers will annotate the sitting list contained therein with information which is likely to be of use or of interest to precognoscers, solemn managers Advocate Deputes. The annotated sitting list and backing sheet should be used by the sitting manager to identify this type of information and more generally what is happening within the sitting and in particular the disposal of the cases within the sitting. Access to the annotated sitting lists is available to all. In this manner it should be possible for precognoscers/solemn managers to follow what is happening in their cases at court and what has happened to their cases and may be of assistance to Advocate Deputes in their preparation week in identifying who is instructed in cases within the sitting. (See Annex 5 for instructions on accessing the annotated sitting lists)

4.12.5 Submission of Papers to Crown Office

Advocate Depute's papers for a forthcoming sitting *MUST* be submitted to the High Court Unit at Crown Office no later than 10 days prior to the commencement of the sitting. This will ordinarily equate to the

Friday preceding the Advocate Depute's preparation week. The Friday is required to allow the papers to be assembled in to court bundles and associated with the Crown Advocate Depute's now, Office file. generally, have the week preceding the commencement of the sitting to engage in detailed preparation of the way in which the sitting will run and the preparation of the cases themselves. A copy of the Indictment issues note and the precognoscers response thereto should also be sent along with the Advocate Depute's papers to give a "snapshot" where things stand on the matters upon which follow up work was required.

4.12.6 Sitting Notes

A sitting note should be prepared by the office reporting the case for any given calling of the case. This should, in the first instance, be e-mailed to the Advocate Depute as early as possible in the course of the Advocate Depute's preparation week and thereafter sent by hard copy together with the relevant attachments to Crown Office for his or her attention in order that reference might be made to these materials in the course of that week. A copy of the sitting note should also be e-mailed to the Sitting Manager. The style of sitting note is shown at Annex 6. Any developments in the case after submission of the sitting note should be drawn to the attention of the Sitting Manager in order that he or she might draw these matters to the attention of the Trial Advocate Depute. (In relation to Glasgow cases calling within a sitting of the High Court at Glasgow the compilation of these should be initiated by the precognoscer and thereafter e-mailed to the precognition officers at High Court West at the time of submission of the papers. The precognition officers there will complete any detail outstanding within the sitting note.)

4.12.7 Section 67 Notices

All Section 67 notices should be submitted as part of the sitting note. All section 67 notices should be numbered chronologically and those notices, together with a *copy* of the relevant execution of service (similarly numbered) should be retained with the sitting note for reference by the Advocate Depute.

However, where a Glasgow case is allocated to a Glasgow High Court Sitting, the Fiscal Officer responsible for that sitting will retain the section 67 notice and ensure it is brought to the attention of the Advocate Depute. Section 67 notices for non - Glasgow cases calling within a Glasgow sitting are retained with the Procurator Fiscal's papers by the Fiscal Officer responsible for that sitting.

The witnesses and/or productions listed within the Section 67 notices will not be considered for inclusion by the Court until the introduction of them is moved before the court by the Advocate Depute. It is therefore essential that the Advocate Depute should be aware of the existence and terms of all section 67 notices in order that he might take a view on whether to move them before the court or not, notwithstanding the fact the principal execution of service might be with the court papers.

4.12.8 Executions of service of section 67(5) notices

When a section 67(5) notice has been served upon an Accused the execution of service of such notice should be lodged with the Clerks of Justiciary at the Lawnmarket in Edinburgh. This should be done as soon as service has been effected and the execution of service returned. These should be addressed to the Clerks of Justiciary, First

Instance Desk, the Lawnmarket, Edinburgh, EH1 2NF. Such executions will be placed with the record copy indictment and the other papers for the calling of the case.

4.12.9 Witness Citations

Executions of service of witness citations must in all instances be made available to the Sitting Manager for the sitting. Any problems encountered in the citation of witnesses must be highlighted in the sitting note. For example, a witness known to be avoiding citation or a witness who is understood to have indicated that he would not attend court for the purpose of giving evidence. If these matters are known in advance of the sitting consideration can be given to how best to deal with the problem and how best to proceed with the case. Additionally, any issues concerning the availability of witnesses should highlighted in the sitting note in order that the Advocate Depute might be fully aware of the factors which might determine the order in which cases should be called.

4.12.10 The Advocate Depute's Preparation Week

It is anticipated that Advocate Depute's will in the early part of the preparation week seek to establish who are acting in their cases with a view to formulating a running order for the cases within their sitting. Once that has been established the Advocate Depute will then proceed to prepare those cases which are known to be proceeding to trial. Sitting Manager's will make contact with the Advocate Depute during the course of his/her preparation week. The purpose of this will be to identify to the sitting manager the *preliminary* thinking of the running

order of the cases (this will inevitably be subject to change as preparation and the sitting itself progresses) but in particular arrangements for the cases to be brought in on day one of the sitting and the witnesses which should be brought in for those cases.

If the sitting manager is aware of information which will have a bearing on the running of the cases then it is imperative that this is shared with the trial Advocate Depute. In particular, information relating to the availability of witnesses must be communicated to the Advocate Depute. Witness non-availability is the most common reason for a case not being able to proceed as planned.

The order and timing of the calling of cases is a matter for the Advocate Depute.

The objective is to start a trial on the first day of the sitting.

4.12.11 Conduct of the Sitting

The role of the Sitting Manager is to provide support to the Advocate Deputes both by provision of legal advice and assistance in relation to particular cases, but also to provide practical support and to ensure that the necessary "house-keeping" arrangements are in place. The Sitting Manager will thus, to a large extent, take on the role previously undertaken by precognoscers who attended to assist in the management of their individual cases.

The Sitting Manager will deal with such matters as the ordering of the accused from custody for subsequent days in a case, liaison with witnesses who are on standby and keeping Procurators Fiscal informed in relation to cases which will call later in the sitting.

There will always remain a number of cases in which it will be desirable, if not essential, for the precognoscer to attend to assist. Such instances are, however, much more likely to relate to the character of the witnesses and the assistance which the precognoscer will give with a particular witness rather than the character of the case. In exceptionally large cases, where, for example, a special court or sitting of the Court may have been arranged, it is likely that the precognoscer will require to attend to assist Crown Counsel.

In multiple court sittings the aim will always be for the Advocate Depute to undertake the cases which appear within the list for their own court. There will be occasions in any sitting when the court might finish it's own business earlier than anticipated or where the imminent time bar of a case or some other contingency requires a case to be called forthwith. In such situations the issue of transfer of cases either from elsewhere within that sitting or from sittings in other jurisdictions is a matter which requires to be discussed between the Advocate Depute whose court has finished, the Advocate Depute from whose court a transfer is proposed and, in all likelihood the Principal Advocate Depute and the Head or Deputy Head of the High Court Unit. Transfers ought not to be the unilateral decision of any one party.

The Advocate Depute will provide the details of the cases and the witnesses within those cases which should be brought in for the following day, no later than 1.45 pm This includes those cases to be brought in on an accused and counsel basis. The sitting manager must ensure that such details are communicated to the relevant Procurator Fiscal's office in order that the appropriate witness arrangements might be made, so that intimation of the calling of the case might be made to the defence agents representing the

accused and arrangements put in place for any accused being brought from custody. Communication of this to the Procurator Fiscal's office might be by telephone in the first instance but must be followed up with a fax or e-mail requiring confirmation of when the instructions have been carried out.

Good communication between all parties is essential for the efficient conduct of a sitting. This is explicitly identified in the memorandum by the Lord Justice-General on the business of the High Court. (A copy of that is included at Annex 7.)

4.12.12 Liaison with Victims/Next of Kin and VIA

Cases within the High Court are the most serious crimes within the country and are most likely to generate the strongest demands to be kept informed. Where a VIA officer is involved he or she should be kept advised of all matters pertaining to disposal of the case within the sitting whether that be by way of trial, plea, adjournment or otherwise. The cases from the offices covered by VIA are dealt with by VIA irrespective of the court to which the case is actually indicted.

Where there is no VIA involvement intimation of what is happening to victims and next of kin should be communicated by the Sitting Manager to the precognoscer in order that he or she might pass the information on to those who want to be kept advised of what is happening. It should be assumed that the victims/next of kin in all homicides, rapes, attempted rapes, Road Traffic Act Section 1 cases, sexual offences involving children will want to be kept apprised of developments in the case.

This should be done in advance of what actually happens. This can on occasion cause difficulty where securing agreement to

a plea of guilty has only been achieved after delicate deliberation. In such cases it is for the Advocate Depute to balance the competing interests between the public interest being served in the plea being recorded as against waiting to allow the situation to be explained to the victims/next of kin. Such views as they might have will, of course, be taken into account but can never be regarded as determinative as to the acceptance or otherwise of any plea. If the timing is such that the victims/next of kin cannot be available in time for the matter to be dealt with (this especially in relation to pleas of guilty) it might be suggested that the plea be recorded with a view to the narrative and mitigation being given once the relatives/next of kin are available later that same day.

If the relatives/next of kin can be contacted in advance then what is to happen can be explained to them by the VIA officer where there is one, which failing by the Advocate Depute, sitting manager or by the precognoscer should he or she be available.

4.12.13 Post Adjournment where Further Evidential Enquiry Unnecessary

Annex 8 sets out three typical situations where an adjournment has been prompted by something which has happened and which requires to be addressed before the case calls again, namely, where a witness has failed to appear and a warrant has been granted (note, a witness, not the accused), where a witness is either missing or untraced and where a witness is to be added or substituted.

Immediately following the adjournment of the case, the Advocate Depute will prepare a note setting out the reasons for the adjournment. Two sets of the papers will be sent to Crown office admin, and one set to the precognoscer (or may be retained by sitting manager in anticipation of imminent arrest).

Where a witness has failed to attend and a warrant has been granted, the Sitting Manager will send an e-mail to the precognoscer and CO High Court admin, advising position. This will allow the Crown Office papers to be updated. The Sitting Manager will then send the warrant to the police for execution and will monitor the outcome. If the witness is apprehended, the police will notify the Sitting Manager who will then notify the PF Office and Crown Office admin.

If a witness is missing or untraced, the Sitting Manager will send an e-mail to the precognoscer and Crown Office High Court admin, advising on the position. The Sitting Manager will send a trace letter to the police. The results of police enquiries will be reported to the Sitting Manager, who will then update the PF Office and Crown Office admin.

If a witness is to be added or substituted, the Sitting Manager will be responsible for preparing the Section 67 Notice and for arranging for service of the Notice on the accused. The Sitting Manager will then update the PF Office and Crown Office admin.

4.12.14 Post Adjournment where Further Evidential Enquiry Necessary

There will be situations where the reason for the adjournment has given rise to follow up work which has a bearing on the evidence in the case and on the proceedings themselves. For example, it might be the contention of the defence that as a result of the psychological condition of the accused at interview any replies made by him should be regarded as inadmissible. The defence might have obtained a report from a clinical psychologist in support of that contention or the case might have been adjourned for the purpose of obtaining such a report. As in the post indictment situation the person best placed to have an overview of the impact this might have upon the case is likely to be the indicter. Annex 9 sets out the procedure which should be adopted in such situations.

The Advocate Depute will prepare a note setting out the reason for the adjournment and the further work which will require to be carried out. The Sitting Manager will be responsible for ensuring that he/she obtains such a note from the Advocate Depute.

The Sitting Manager will then advise the precognoscer and the indicter of the reasons for the adjournment and the further work instructed by the AD. If the case has been adjourned to another sitting, the Sitting Manager for that court will also be advised of the position.

One set of papers will be returned to the indicter who will review the Advocate Depute's note. Where work cannot commence immediately, for example where the defence have to do further work before the Crown can identify whether it needs to do any additional work, the indicter will make contact with the defence and set a target date for submission of information and material. This will be copied to the precognoscer.

Once the defence material is available, the indicter will assess whether further evidential enquiry is necessary. If no further work has to be done, the indicter will update the papers and notify the precognoscer and Sitting Manager.

Where the information submitted by the defence requires further enquiry, or where even without the submission of material from the defence, it is clear that further work is required, the indicter will send written instructions to the precognoscer and his/her Legal Manager, setting targets for completion of the additional work.

The precognoscer/Legal Manager will on receipt of the instructions from the indicter and will carry out the necessary follow-up work. This will then be reported to the indicter for evaluation. If necessary, a Section 67 Notice will be instructed and will be prepared by the precognoscer.

Subject to any instructions from the indicter, the precognoscer will prepare further copies of the additional material. Two sets will be sent to CO admin to update the AD and assistant's papers and one set will be sent to the Sitting Manager.

A PowerPoint animation of the progress of the case has been prepared and included at Annex 11 to assist in the understanding of the work flows.

4.12.15 Failure of Accused to Appear

Where an accused fails to appear for trial the Advocate Depute will seek a warrant in court. The Procurator Fiscal's office within whose jurisdiction the High Court is sitting must obtain a Section 27(7) petition warrant relating the accused's failure to appear.

The Sitting manager will in the request for such a warrant to be obtained provide a form (shown at Annex 10) to be attached to the Section 27(7) petition warrant in order that there is no doubt as to who ought to be contacted upon the successful execution of the Section 27(7) warrant. The Sitting Manager will in addition e-mail in the first instance and thereafter write to the indicter

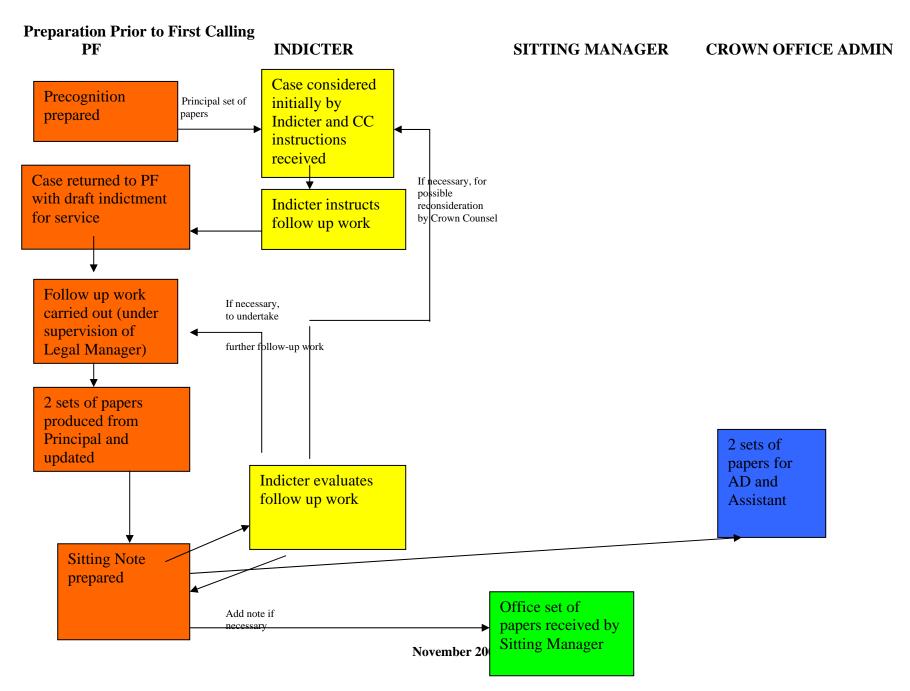
and the Solemn manager of the case to advise them of the position. As soon as confirmation is obtained that the warrant has been passed to the police the Sitting Manager will advise the indicter and the Solemn Manager and return the case papers to the originating office. It will then be the responsibility of the local office to review the warrant and advise the indicter when the accused has been arrested.

Staff at the sitting office will have access to PROMIS details for any case, regardless of its origin, and will be able to raise a s.27(7) warrant. Staff should however notify the originating office that they are generating a warrant in this fashion.

4.12.16 Post - Conviction

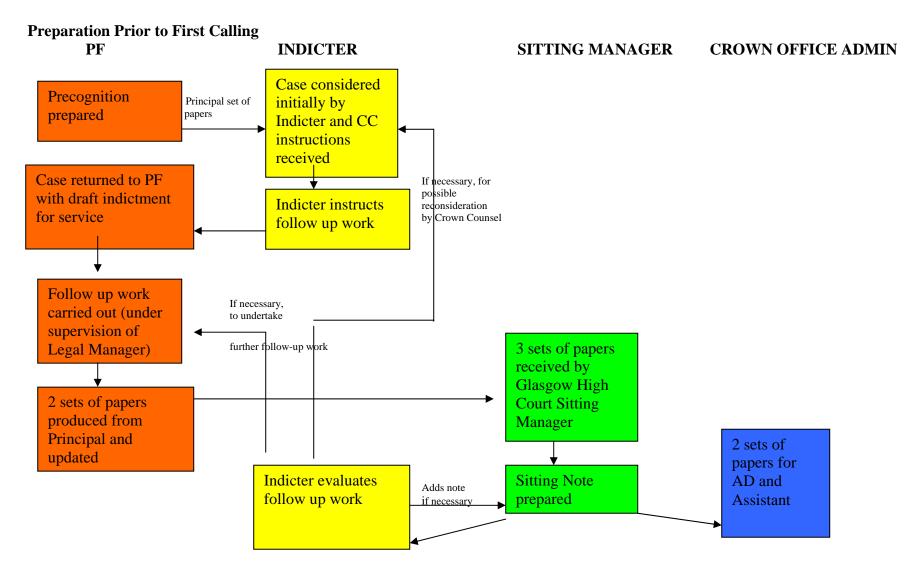
In addition to the foregoing there might be other matters upon which further action is required by the Crown after a conviction has been recorded. In such circumstances a note of what is required should be made available to the Sitting Manager by the Advocate Depute. The action required should be communicated by the Sitting Manager to the precognoscer and copied to the Legal Manager and indicter. It will be the responsibility of the precognoscer to ensure that the work instructed is undertaken. Typically, this might involve the instruction of reports which the court might have requested the Crown to obtain.

NON-GLASGOW CASES



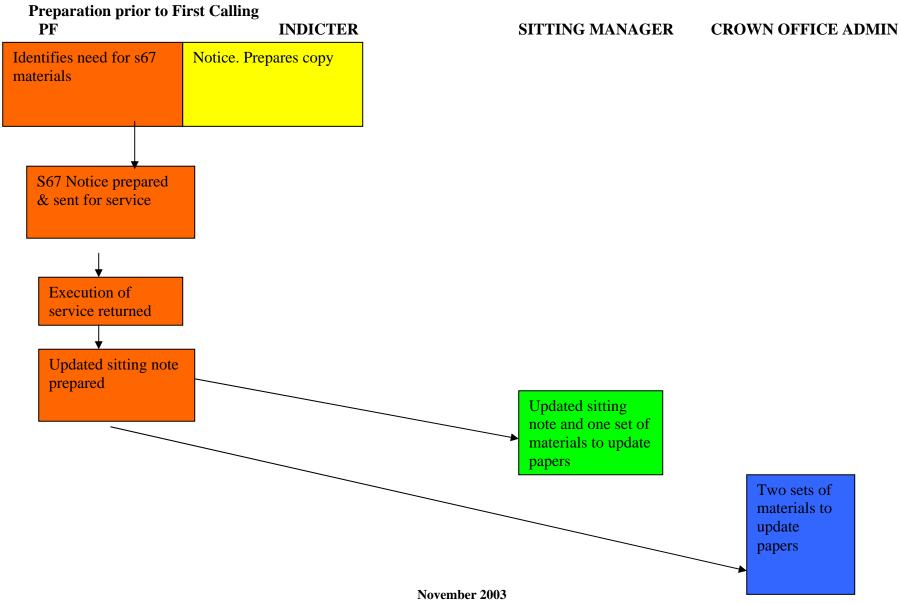
ANNEX 2

GLASGOW CASES



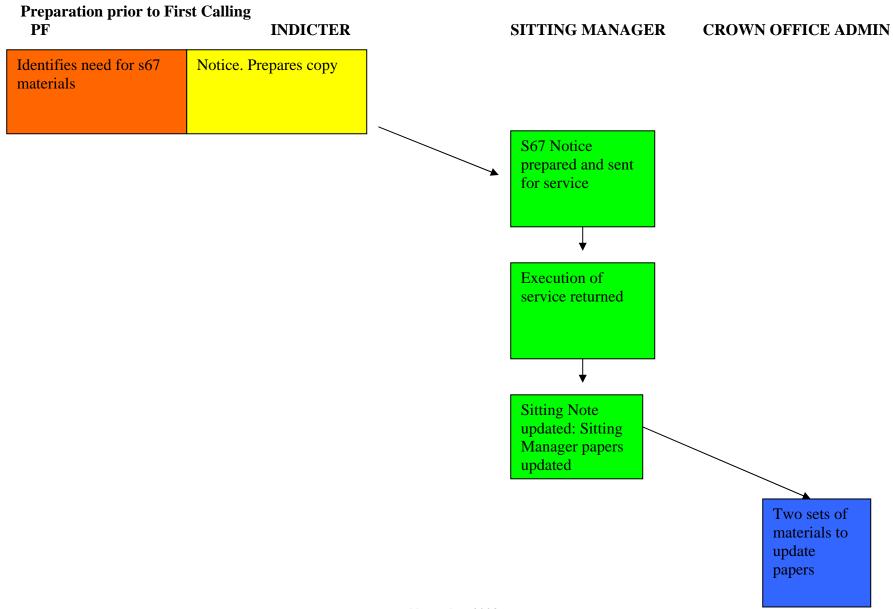
ANNEX 3

NON-GLASGOW CASES



ANNEX 4

GLASGOW CASES



ANNEX 6 ANNEX 7

Renton & Brown Criminal Procedure Legislation

C1-19

January 9, 2002

Memorandum by the Lord Justice-General on Business of the High Court

The following memorandum of guidance is designed to supplement the existing statutory procedures for dealing with preliminary matters before High Court trial diets and will apply to all High Court diets on and after February 25, 2002, regardless of the location in which the Court is sitting.

A number of statutory and other procedures exist to enable cases indicted into the High Court to call before the trial diet in order that the Court may consider procedural issues, such as postponement (see section 80 of the Criminal Procedure (Scotland) Act 1995) or recovery of documents, and to enable the court to resolve preliminary issues (see section 72). There is, however, no formal procedure requiring communication prior to the trial diet between the defence and the Crown regarding basic information such as the identity of defence solicitor and counsel, or any matter which may prevent the case proceeding to trial at some point during the sitting.

It would greatly assist the planning and disposal of business at sittings of the High Court if the undernoted guidance about communication before and during the sitting were to be followed as a matter of good practice by those conducting business before the Court. While compliance with the responsibilities enumerated will not result in any guarantee about the timing and conduct of any case, it is likely that regular adherence to the guidance will greatly improve the efficient conduct of the business of the Court, provide greater opportunity for practitioners to plan their business and greatly reduce the unproductive time spent by witnesses, jurors, practitioners and judges in attendance at High Court sittings.

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1. Before the sitting

1.1

Responsibility of Defence Solicitor

A solicitor instructed to represent an accused person at a sitting of the High Court should contact the procurator fiscal manager, whose identity and contact details will appear on the relevant sitting list, no later than the Monday of the week before the commencement of the sitting and advise of the following:

(a)

Solicitor's name, business address, telephone number, fax number and e-mail address;

(b)

The legal aid certificate reference;

(c)

The name of counsel instructed in the case; and

(d)

Any matter which may prevent the case proceeding at that sitting.

1.2

Responsibility of Defence Counsel

Counsel instructed to act in a case within the sitting should, by the Thursday before the commencement of the sitting, cause the procurator fiscal manager and the instructing solicitor to be advised of the cases in which counsel has accepted instructions in that sitting and any matter which may affect counsel's ability to retain those instructions throughout the sitting.

1.3

Responsibility of the Crown

1.3.1

The procurator fiscal manager should, by the Thursday before the commencement of the sitting, advise the defence solicitor of any matter which may foreseeably prevent a case proceeding on any date within the sitting.

1.3.2

The procurator fiscal manager should, before the commencement of the sitting, where either side has given notification of any matter which may prevent a case proceeding to trial at the sitting, discuss with the defence solicitor the possibility of scheduling the case in such a way as to enable it to proceed within the sitting.

1.3.3

The procurator fiscal manager should, on the Friday before the sitting, in respect of any case where a matter has arisen that may prevent it from proceeding within that sitting and which it has not been possible to resolve by any formal pre-trial procedure such as a Minute of Postponement or in accordance with the arrangements referred to in para.1.3.2 hereof, notify the defence solicitor that the case will be brought before a judge on the first day of the sitting.

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2 Commencement of the sitting--First day

2.1

Responsibility of Judge

On the first day of the sitting, a judge will hear parties and endeavour to determine further procedure in respect of cases that are brought before the judge in accordance with the arrangements in para.1.3.3 hereof, with a view to avoiding adjournment outwith the sitting.

2.2

Responsibility of Parties

Both crown and defence should have available for consideration by the judge appropriate documentation and other information to vouch any problem which may cause the case to be adjourned.

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3 During the sitting

3.1

Responsibility of Defence Solicitor

If after the commencement of the sitting, any matter arises which the defence solicitor considers may affect the ability of the case to proceed at the sitting, the solicitor should immediately notify the procurator fiscal manger thereof.

3.2

Responsibility of Defence Counsel

If after the commencement of the sitting, any matter arises which might prevent counsel attending on any date when the case may proceed within the sitting, counsel should immediately cause the procurator fiscal manager and the instructing solicitor to be notified thereof.

3.3

Responsibility of the Crown

If after the commencement of the sitting, any matter arises which the procurator fiscal manager considers may affect the ability of the case to proceed on any date within the sitting, he should immediately notify the defence solicitor thereof.

W. Douglas Cullen Lord Justice-General January 9, 2001

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General Note

As a result of this Memorandum the Scottish Legal Aid Board has intimated that in matters proceeding to trial before the High Court, because of the good practice recommendations as to times for advising the Crown of difficulties, solicitors should ideally aim to have all necessary sanctions (for the employment of counsel or an expert witness, or to carry out work which is unusual or likely to incur unusually high expenditure) in place for such work "at the latest by the Monday of the week before the commencement of the sitting". Where the Board's decision is to refuse the request the Board will provide written reasons so that these can be produced to the High Court and if the decision cannot be taken within the timescale, the timescale required will be advised so that the court can be aware when the sanction may be granted and the case may

become able to proceed (See The Recorder, Issue 34 (March 2002), pp.6-7).

Post Adjournment Where Further Evidential Enquiry Unnecessary

