

SUMMARY JUSTICE REFORM SUMMARY JUSTICE SYSTEM MODEL

Ministerial foreword

We are delighted to introduce this document which explains how the Scottish Government and Scotland's criminal justice organisations plan to implement reforms to the summary justice system. The vast majority of criminal cases in Scotland are dealt with in the summary courts and it is vital that these courts work well. Our plans draw on the findings of the Summary Justice Review Committee in 2004, led by Sheriff Principal McInnes, and the Criminal Proceedings etc (Reform) (Scotland) Act 2007, which had cross-party support in the Scottish Parliament. They have been developed by working in close collaboration with Scotland's criminal justice organisations under the auspices of the National Criminal Justice Board over the past two years.

This paper describes how we will build on these firm foundations and make the reforms work across the country.

There is a need to ensure that justice is done and is done as swiftly as possible. The reforms will have an impact on all victims, witnesses and practitioners who come into contact with the summary justice system. We aim to ensure that fewer cases go to court needlessly, and that those cases which do go to a court get there more quickly, are better prepared and progress more speedily. We aim to save time and expense; to avoid wasted effort; and to reduce the demands made on victims and witnesses.

There is still a lot to do. This is a complex area and it is vital that justice is done in every case. This detailed plan shows how far we are going to ensure a speedier, more efficient system. The reforms to summary case management come at an important time, building upon the successful reforms to the High Court, and it is important that we seize the opportunity to ensure that we have a modern summary justice system, fit for a safer, stronger Scotland in the 21st century.

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Cabinet Secretary for Justice

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SUMMARY JUSTICE REFORM

Summary Justice System Model

Introduction

1. The criminal justice system in Scotland is undergoing the largest and most far reaching reforms in at least a generation. Reforms to the High Court, introduced in 2005, have been independently evaluated as a considerable success, bringing major benefits for victims and witnesses and enlarging the opportunity for active judicial management of cases.

2. Following this, a programme of Summary Justice Reform is well underway and has drawn widespread support from across the political spectrum in Scotland. These reforms have involved detailed consideration of all aspects of the system and are intended to be:

- **Fair** to the accused, victims and witnesses
- **Effective** in deterring, punishing and helping to rehabilitate offenders
- **Efficient** in the use of time and resources
- **Quick and simple** in delivery

3. The vast majority of criminal cases in Scotland are dealt with in the summary courts and it is vital that these courts work well. However, the system is not seen as being truly summary in its operation. The courts are dealing with some cases that do not truly require action at the level of court proceedings. Some cases which are set down for trial never actually go ahead, and because there is a perception that cases will not go ahead the culture in many courts is such that improvements have been difficult to achieve. There is too much delay at different points in the system; and there is congestion in the sheriff courts. This is not helpful to the interests of justice – it makes it difficult for there to be any immediacy in the link between offence and consequence. Nor is it welcome to busy practitioners, including those representing the accused.

4. The Summary Justice Reform programme consists of a suite of measures aimed at addressing these problems. Many aspects of reform will be implemented through new legislative provisions contained within the Criminal Proceedings etc. (Reform)_(Scotland) Act 2007, although many elements of the programme are non-legislative in nature. A key non-legislative element of the programme is the summary justice system model, which has been developed and agreed by the main criminal justice organisations to provide a new national framework for the handling of summary cases.

5. This document explains more about the reforms as expressed in the system model. It also sets out how the Scottish Government and other criminal justice organisations intend to make these reforms work. The legislation and the framework will have an impact on all victims, witnesses and practitioners who come into contact with the summary justice system. The changes will be introduced progressively, with the bulk of them taking effect in the early new year. They will take time to bed in; and their impact will be monitored.

Background

6. In 2001 the Scottish Ministers asked an independent committee chaired by Sheriff Principal John McInnes to look at the operation of the summary justice system in Scotland. The Summary Justice Review Committee, which was independent of the Government and

represented a wide range of interests and experience in summary justice, published its report in March 2004. Following consideration of the Committee's report and an extensive public consultation, the Scottish Ministers published the 'Smarter Justice, Safer Communities' paper in March 2005, outlining its proposals for Summary Justice Reform. These reforms received cross-party support. The reforms that required legislation formed the basis of the Criminal Proceedings etc (Reform) (Scotland) Act 2007, and the summary justice system model is a framework designed to ensure efficient handling of summary business from the point where an accused is charged through to sentence.

The Criminal Proceedings etc (Reform) (Scotland) Act 2007

7. Where the Summary Justice Reform programme required legislative change, provisions were included in the Criminal Proceedings etc (Reform) Scotland Act 2007 (CPR Act) which was passed unanimously by the Scottish Parliament and given Royal Assent in February 2007. The Act makes changes in 8 main areas:

- **Reforms to the system of bail and remand based on the commitments made in the Executive's bail and remand action plan;**
- **Changes in the law relating to criminal proceedings which will facilitate the quick, effective progress of cases through court – these changes mainly relate to procedure in summary cases although some minor changes are also made to solemn procedure;**
- **Increases in the criminal sentencing powers of the summary courts, ensuring that those courts can deal with an appropriate range of cases in terms of both severity and caseload, and do so more quickly than is currently the case;**
- **Extending the range of alternatives to prosecution that can be offered to an alleged offender and the manner in which those alternatives can be enforced and disclosed – ensuring that alternatives are robust and can be used in circumstances where a court appearance may not be the most effective way of dealing with the case;**
- **Reform of the way in which fines and other financial penalties imposed in respect of a criminal offence can be collected and enforced – in particular the creation of the new role of fines enforcement officer – ensuring that penalties are collected as efficiently and effectively as possible in future, minimising unnecessary court involvement;**
- **The establishment of justice of the peace courts (JP courts) linked to sheriffdoms, in place of district courts – delivering the commitment to create a unified courts administration under the control of the Scottish Court Service;**
- **Reform of the procedures by which justices of the peace (JPs) are appointed and trained – including the introduction of periodic appraisal for JPs – fulfilling the commitment to retain JPs and invest in them to ensure that they provide consistently high standards of justice in courts throughout Scotland; and**
- **Placing the existing Inspectorate of Prosecution in Scotland on a statutory footing.**

8. The Act will be brought into operation in stages, with the changes to bail, lay justice, sentencing powers, and certain procedural reforms coming into effect in December 2007; and the remaining changes relating to alternatives to prosecution and fines enforcement coming into effect in March 2008, along with the first phase of court unification (in Lothian and Borders).

How will this work in practice?

9. What will the summary justice system look like after the Summary Justice Reforms have been made?

10. After the reforms the primary changes to the system will be:

- Greater use of direct measures (non-court options), including adult warnings and police fixed penalty notices, removing a significant number of cases from the courts;
- More extensive use of better trained, more professional lay justices ensuring that the volume of business in the JP courts will be similar, at the very least, to the current level in the district courts;
- Cases will come to court more quickly;
- Cases will be dealt with at the earliest possible stage in proceedings;
- Early, effective preparation
- More effective court hearings.

11. This will result in fewer trials being scheduled which do not go ahead, fewer victims and witnesses cited to court to give evidence, and a summary justice system that lives up to its name and is truly summary in nature.

Greater use of direct measures (non-court options), including police fixed penalty notices, removing a significant number of cases from the courts

12. It has long been recognised that not all offences need to go before the court. The judicially led Stewart Committee in 1983 found that prosecution in court was an “inappropriate and exaggerated” first response for many cases involving what we would now call anti-social behaviour. Those sentiments remain valid today. The Stewart Committee’s report was the precursor to the introduction of procurator fiscal fines, but there are now further options to deal with these types of offences. The Antisocial Behaviour etc. (Scotland) Act 2004 gives the police powers to issue a penalty notice in relation to simple, straightforward cases. These notices were piloted in Tayside between 1 April 2005 and 31 March 2006 and are now being rolled out throughout the country.

13. The CPR Act extends the range of direct measures that can be offered to an offender by the procurator fiscal and changes the manner in which offers are accepted, enforced and disclosed, ensuring that they are robust and can be used in circumstances where a court appearance may not be the most effective way of dealing with the case. The procurator fiscal will now have the power to offer fiscal fines of up to £300, and will be given a power to offer compensation orders up to £5,000. The alleged offender will only be prosecuted and their case call in court if they reject the offer of the fiscal fine or compensation order. Furthermore we will be piloting community work orders, so that the prosecutor can, for the first time, offer a community based alternative to prosecution.

14. Serious or persistent offenders will not be offered a direct measure. Further, all alleged offenders offered a direct measure will be entitled to take their cases to court instead if they wish. But fewer minor cases will go to court unnecessarily, allowing more serious cases to be processed more quickly and freeing up the courts to deal with cases that need their attention.

More extensive use of better trained, more professional lay justices ensuring that the volume of business in the JP courts will be similar, at the very least, to the current level in the district courts

15. The more extensive use of non-court options will create significant capacity in the district (pre-unification) and justice of the peace courts. The new, more highly trained lay justices will be able to deal with different types of cases from those which are currently before them, as much of their current caseload may be dealt with by direct measure. Regardless of this different case profile, Scotland's criminal justice organisations are committed to making the best possible use of lay justice and as a minimum, maintaining current levels of business. With the increases in the sentencing powers of the sheriff summary court, making better use of district and justice of the peace courts will in turn allow the sheriff court to deal with a more appropriate range of cases in terms of both severity and caseload, and do so more quickly than is currently the case.

16. The shape of current and future business is shown at annex A.

Cases will come to court more quickly

17. The overwhelming majority of cases presently begin with the accused being cited to appear at court. The Summary Justice Review Committee identified the time taken between the date of the offence and the date when the case first calls in court following citation as one of the primary causes of delay in the criminal justice system. It considered one of the key components of the effective despatch of summary business to be a reduction in the time taken to get an accused into court. It explored the potential for a significant expansion of the bail undertaking scheme, in which the accused signs an undertaking to appear at a particular court on a particular date and at a particular time.

18. We have examined this issue afresh in light of the current package of Summary Justice Reform and the impact of the cases of *Holland* and *Sinclair* on disclosure. As a result, there will be an incremental increase in the number of accused who appear at court on undertakings. The number of cases in which undertakings will be used will increase considerably so that in due course perhaps even up to one quarter of all cases that go to court will be initiated in this way. This incremental increase has already begun.

19. And in cases that are initiated by undertaking, the accused should appear at court within 28 days of being cautioned and charged by the police, meaning that cases will come to court much more quickly than at present.

20. Of course, many cases will still be initiated by citation. But these cases too will also progress to court more quickly, with a first appearance ordinarily taking place within 3 months from the date of caution and charge. These reforms will entail changes to court programming, with a greater accent on undertakings and, over time, less emphasis on cited courts. The sheriff court jurisdiction will see a change, with more time and resource spent on fresher cases and more serious cases. Annexes B and C show the model's intended impact upon cases initiated by undertaking and cases initiated by citation in diagrammatic form, including target timescales. (We have not produced flowcharts for custody cases, which must be tried within 40 days. To add additional formality to these cases would remove a degree of flexibility around the timing of stages which is needed to ensure that they can be dealt with as quickly as possible within the overall statutory timescale.)

Cases will be dealt with at the earliest possible stage in proceedings

21. Evidence is led in only a very small proportion of cases that are set down for summary trial. In most cases a change in plea from one of not guilty to one of guilty occurs after some form of investigation on the part of the defence and contact with the Crown. Many of these cases could potentially be taken out of the system at an earlier stage if the appropriate degree of investigation and contact could be brought forward in time.

22. In order to assist with this, it is intended that a summary of evidence, which in effect will be the factual narrative from the police report, will be given to the accused with the summary complaint. Disclosure of a summary of evidence with the complaint will provide the defence with a basis for early investigation of the case and discussions with the procurator fiscal. It will inform the decision making process with the client regarding the plea which ought to be entered. So, for example, where the summary indicates that the offence can be seen on CCTV, or that admissions have been made by the accused, the court can be asked to continue the case without plea in order that such issues, and any potential resolution of the case, can be considered at that stage rather than later in the proceedings.

23. If the accused pleads not guilty, parties in a criminal case have a duty, in terms of section 257 of the Criminal Procedure (Scotland) Act 1995, to seek the agreement of evidence that is unlikely to be disputed. At the first calling of a case both the prosecutor and the defence will have available the summary of evidence, and the defence will be in a position to know the outline of the case which their client faces. We anticipate therefore that parties should be able to explore what evidence is capable of agreement at an early stage. This might be at the first calling of the case. Or it might be after a continuation of the case without plea for the purpose of investigation. This could serve to focus the areas of dispute and lead, in turn, to a reduction in the number of witnesses who require to be cited in proof of the remaining contentious matters.

Early, effective preparation

24. It is important that preparation, by all practitioners, is both early and effective. This will help to ensure that cases can be dealt with at the earliest possible stage in proceedings. That means that the police will produce informative reports timeously. The procurator fiscal will identify the areas of the case that are likely to be in dispute or capable of agreement, and will be ready to discuss the case with the defence. The defence should be fully instructed and will also consider which matters might be capable of agreement, and will be ready to discuss the case with the procurator fiscal in a meaningful way. And the justice or sheriff can reasonably expect that all parties appearing before them will be properly prepared on a consistent basis. This will ensure that those cases that are likely to go to trial are identified at an early stage in proceedings.

25. Where a case is not resolved at an early stage and it is necessary to hold a trial, the police will move towards providing the procurator fiscal with any necessary witness statements within 28 days of the accused pleading not guilty. The procurator fiscal in turn will consider the statements and send them to the defence within 14 days of receipt from the police. This should give the defence sufficient time, up to a possible 28 days before the intermediate diet, to take instructions from his or her client and to initiate (and conclude), prior to the intermediate diet, any necessary enquiries.

26. This will ensure that the intermediate diet, like the first calling of the case, can be used more effectively as all parties will be fully prepared.

More effective court hearings

27. Proper preparation at all stages in the case and before any court hearing is important. Where the case is one which has been identified as one which is likely to go to trial, the trial will be fixed so as to allow in-depth preparation to be carried out consistently in all cases calling in any given court. In some courts, pre-intermediate diet surgeries where the procurator fiscal is available before the court to discuss the case with the defence will be useful. This may not be necessary in smaller courts where the volume of business is smaller, and there are fewer difficulties with the availability of the procurator fiscal and the defence. Local solutions appropriate to local needs will be developed. The key principle is good communication between the prosecutor and the defence.

28. The timing of the intermediate diet itself is also crucial. Customarily, the intermediate diet is held approximately two weeks before the trial. Often when a problem which affects the ability of the trial to proceed is discovered, there is insufficient time between the intermediate diet and the trial to resolve the issue. The trial is often adjourned with victims and witnesses being inconvenienced. The optimum period for the intermediate diet is approximately four weeks prior to the trial diet. This will allow the majority of issues which could jeopardise the trial going ahead to be dealt with. This in turn will, help to minimise the “churn” of cases at trial and improve the effectiveness of the criminal justice system by increasing certainty in the management of business.

Role of the Judiciary

29. It is our view that high quality summary justice should be delivered without undue delay. In discussing the role of the bench, the Summary Justice Review Committee said:-

“While acknowledging the need to maintain fairness and also the fact that adjournments could in some circumstances assist the efficient management of business, the Committee was in agreement....that if the bench was pro-active, fewer adjournments were likely to be requested and those that were requested were more likely to be necessary.”

30. A pro-active judicial approach to case management from lay justices and sheriffs, conducting intermediate diets robustly to check on the parties' state of preparation, querying any delays, and vigorously questioning the reasons for any continuations requested is likely to be critical to the success of these reforms. The independent evaluation of High Court reform highlighted that the long-term success of the new High Court procedures was in the hands of the judges as they are in the best position by far to manage cases effectively and are largely responsible for setting the "culture" of the court. Justices of the peace and sheriffs can play a similar role in the summary courts.

Implementation & Monitoring

31. The model outlined above is intended to provide a firm and consistent national framework for case handling. The criminal justice agencies aim to perform in line with the

time targets sets out in this paper. In terms of the finer details of implementation, there must of course be room for local discretion: no two courts are the same in terms of the type and volume of their business and the resources at their disposal. So, for example, there might be different approaches to the programming of court business in different areas. But the issues that the model seeks to address in terms of tackling delay are the same across the country. Local Criminal Justice Boards will have a key role in overseeing the implementation of the model in their respective areas. These Boards are chaired by the Sheriff Principal (who has responsibility for the timing of courts) and have a core membership of the Chief Constable, the Area Procurator Fiscal and the Courts Sheriffdom Business Manager.

Legal Aid

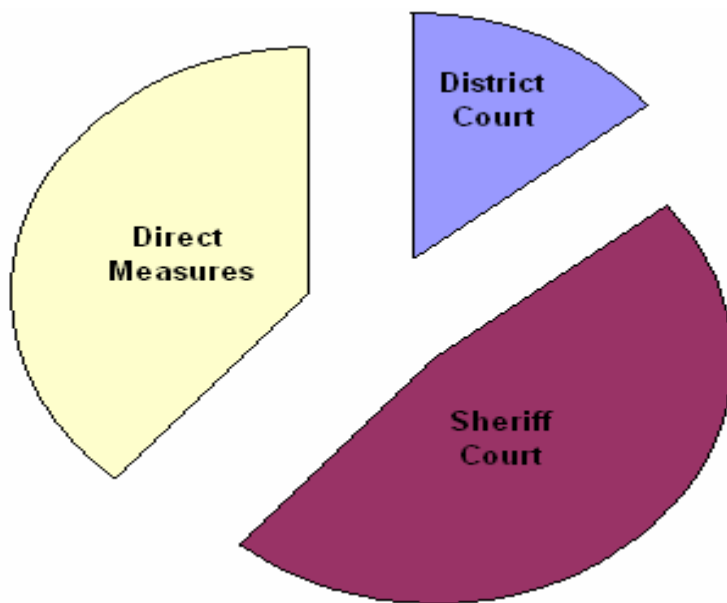
32. Summary justice reform is the largest single part of the biggest reform programme in criminal justice in at least a generation. The reform programme will have a significant impact on victims, witnesses and practitioners alike. Recognising this, the Scottish Government and the Scottish Legal Aid Board intend to hold a consultation with the legal profession as to potential changes to summary criminal legal assistance. These changes will have the purpose of underpinning the changes that are being made elsewhere in the system and are intended to recognise the fact that the way the profession works will change when the reforms are implemented.

Conclusion

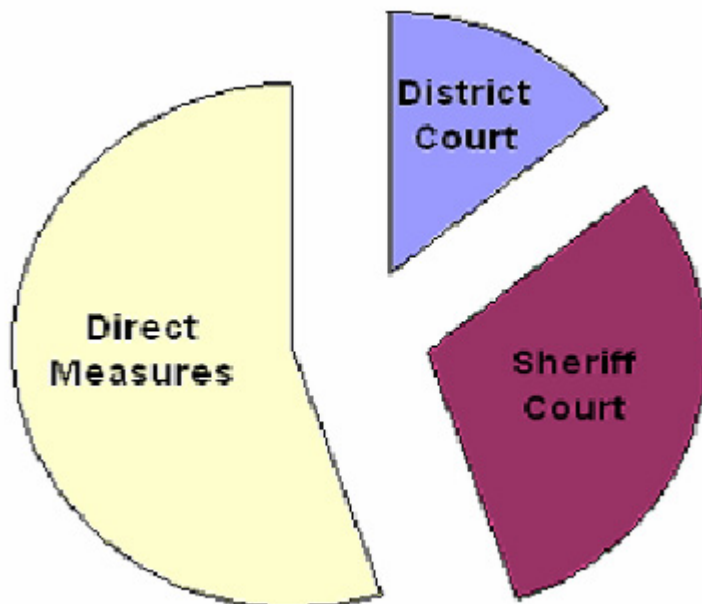
33. The challenge for this reform programme is to achieve a situation in which the members of the public involved or interested in a case, and those working in the public services and professions who are required as witnesses and who have so many other important duties, are only brought to court at the stage when the case is likely to be heard. That involves identifying well in advance of the trial diet those cases in which a trial is likely to be necessary and those in which it clearly is not, and trying to introduce into the whole system a greater degree of certainty about when cases will be heard. That should result in the more efficient use of the time of everyone involved in the criminal justice process without in any way prejudicing the interests of justice. These changes will not be achieved overnight; and they will take time to bed in. It is important however that everyone involved in the system has access to information about the goals now set for system improvement and how we will, collectively, realise them. Over the coming weeks and months the Scottish Government will seek to engage at many levels with those interested in these reforms, including through a series of road-shows, and will explain in more detail how the changes will work.

ANNEX A - SUMMARY CASES

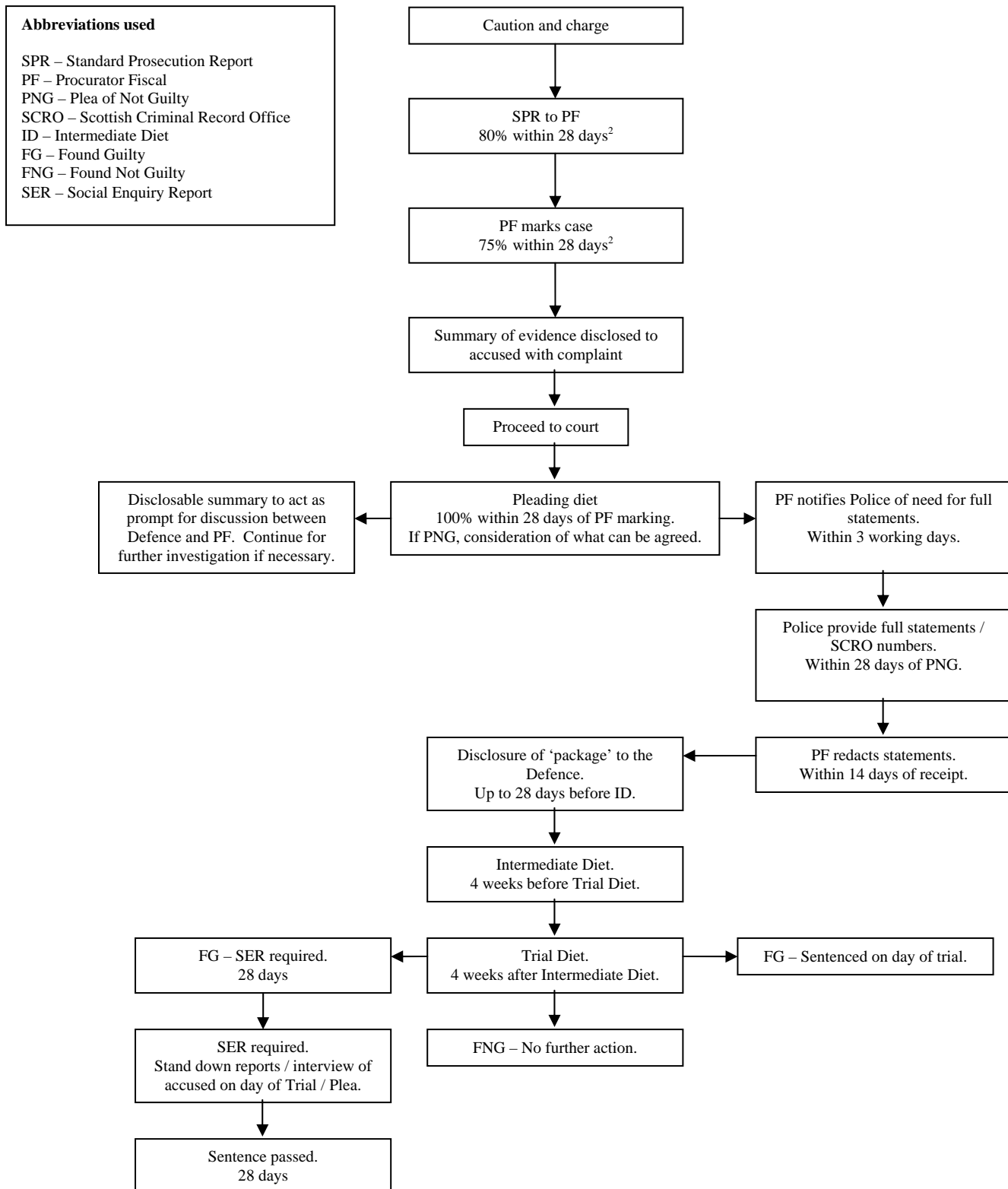
Current Business



Post SJR Business



ANNEX B – SUMMARY JUSTICE MODEL – FIGURE REPRESENTING CASE WHERE ACCUSED LIBERATED FOR REPORT AND TARGET TIMESCALES¹



¹ Time frames will be adjusted for priority trials.

² The timescales shown in relation to number of cases to PF within 28 days and number of cases dealt with by the PF within 28 days represent agreed key performance indicators.

ANNEX C – SUMMARY JUSTICE MODEL – FIGURE REPRESENTING CASE WHERE ACCUSED LIBERATED ON UNDERTAKING AND TARGET TIMESCALES

