

## **Disclosure of Evidential Material in Criminal Prosecutions**

Service Wide Agreement between the Scottish Police and the Crown Office and Procurator Fiscal Service of Business Rules for the disclosure to the defence of statements, previous convictions and outstanding charges

**Joint Protocol between  
Association Of Chief Police  
Officers In Scotland  
(ACPOS) And Crown Office  
And Procurator Fiscal  
Service (COPFS)**

**22 February 2007**

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## **JOINT PROTOCOL BETWEEN ACPOS & COPFS ON DISCLOSURE PRACTICE AND POLICY**

### **1. Introduction**

- 1.1 This Protocol outlines the procedures and practices that will be followed by the Scottish Police Service and the Crown Office and Procurator Fiscal Service, in relation to cases submitted by the police.
- 1.2 The Protocol has been agreed in order to identify best practice and obtain consistency of approach in the disclosure of relevant material and information by the Crown in all criminal prosecutions where the accused has tendered a plea of not guilty or has appeared on Petition.
- 1.3 This protocol applies to cases where the Crown requests full statements from the police and where the defence solicitor has intimated to the Crown that they act on behalf of the accused.

### **2. Definitions**

- 2.1 This Protocol relates to statements, previous convictions and outstanding charges for witnesses in all summary cases where a plea of not guilty has been tendered and all solemn cases proceeding on petition.
- 2.2 Any reference to a number of days should be treated as the number of calendar days, unless otherwise specified.
- 2.3 “Full statements” is defined as all statements for all witnesses, whether or not listed in the Standard Prosecution Report (SPR) and any witnesses who subsequently come to the attention of the police, unless specifically directed otherwise by the PF.
- 2.4 Where reference is made to civilian witness’s SCRO numbers, this refers only to those civilian witnesses who have been cited to attend trial. If the witness has not been cited, there is no requirement to submit SCRO numbers for them.
- 2.5 Any reference to a petition warrant is to a petition case which has been reported with the accused at liberty, where a petition warrant is granted and sent to the police for execution.
- 2.6 Any reference to a petition custody is to a petition case which has been reported and the accused is held in police custody pending submission of the SPR to the Fiscal. The petition warrant is then craved at the first calling of the case in the petition or custody courts.

### **3. Reporting of Cases**

- 3.1 When reporting cases to the Procurator Fiscal, the police will ensure that the reports are submitted in compliance with the COPFS/ACPOS Guidance on Police Reports.
- 3.2 When drafting the SPR and in particular the “Description of Events” section (section 4 of the SPR), the police will have regard for the possibility that this section of the SPR may be disclosed to the defence for disclosure purposes. Accordingly, any information of a confidential nature should be included in either the “Remarks” or “Further Enquiry” sections.

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3.3 When listing witnesses in the SPR, the police will ensure that witnesses are identified as being in one of three categories:

- Civilian
- Police
- Professional/Expert/Official

The police shall apply the definitions set out in “COPFS/ACPOS Definitions of the Categories of Witnesses”, which can be found at [Annex A](#).

#### **4. Decision Making**

4.1 Where the decision is taken to prosecute a case, the Procurator Fiscal must, in accordance with departmental policy, give careful consideration to which witnesses are required, citing only those witnesses who are essential to prove the charge(s) libelled or are otherwise necessary for the proper presentation of the case.

4.2 Where the decision is taken to prosecute a case, the Procurator Fiscal shall confirm the category of witness identified by the Reporting Officer and, where appropriate, amend it

#### **5. Prosecution**

5.1 Plea of Not Guilty - Summary Custody cases

- (i) Where the accused pleads not guilty and is remanded in custody, the Procurator Fiscal will immediately after court, subject to the court ending within PF office hours, request from the police full statements and SCRO Numbers for all civilian witnesses. Where the PNG is tendered on a Friday, the Procurator Fiscal will ensure that the request is made that day. Local liaison arrangements should be made for processing requests where the accused is remanded in custody on a Friday.
- (ii) Within 7 days of the plea of not guilty being tendered, the police will submit statements for all witnesses listed in the police report and SCRO Numbers for those witnesses categorised as civilian.
- (iii) Not later than 7 days before the intermediate diet, the Procurator Fiscal will, where the defence solicitor has intimated in writing that (s)he is acting for the accused, provide the defence solicitor with statements for all witnesses (including those not cited) and PCOCs for cited civilian witnesses, having regard to departmental guidance on redaction of disclosable material.

5.2 Plea of Not Guilty – Summary Bail/Ordained to Appear cases

- (i) Where the accused pleads not guilty, the Procurator Fiscal will as soon as possible and not later than 3 working days after the pleading diet, request from the police full statements and SCRO numbers for civilian witnesses.
- (ii) Within 28 days of the pleading diet, the police will submit full statements and SCRO Numbers for those witnesses categorised as civilian.
- (iii) Not later than 28 days before the intermediate diet, the Procurator Fiscal will, where the defence solicitor has intimated in writing that (s)he is acting for the accused, provide the defence solicitor with statements for all witnesses (including those not cited) and PCOCs for cited civilian witnesses, having regard to departmental guidance on redaction of disclosable material.

5.3 Solemn Cases; Requesting Statements & SCRO Numbers

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- (i) Different procedures should be followed, depending on whether (a) the case is reported with the accused in custody or (b) the case is reported as a warrant request, because the accused is at liberty.
  - (ii) Where the case is reported with the accused in custody, the Procurator Fiscal will request full statements and SCRO numbers for civilian witnesses **prior** to the case calling in court for Committal for Further Examination (CFE)
  - (iii) Where the case is reported with the accused at liberty, and a petition warrant is obtained and sent to the police for execution, the Procurator Fiscal will request full statements and SCRO numbers for civilian witnesses at the stage the petition warrant is raised.
  - (iv) An overview of the procedures after a solemn case has been submitted to the Procurator Fiscal can be found at [Annex F](#)

#### 5.4 Solemn Cases: Where Bail is opposed/ Accused is remanded in custody

- (i) Where the case is a petition custody (i.e. the case has been reported with the accused in custody) **and** the Crown is opposing bail, the Procurator Fiscal should request that essential statements and SCRO numbers be submitted within **5 days** of the first appearance in court (CFE) and, thereafter, all other statements and SCRO numbers should be submitted within 21 days of CFE.
- (ii) Where the case is a petition warrant (i.e. the case was reported with the accused at liberty, a petition warrant was obtained and sent to the police for execution or, exceptionally the accused has been invited to answer the petition warrant) and the accused is answering the warrant, the Procurator Fiscal should check whether the statements and SCRO Numbers have been submitted. Where they have not been received, and the Crown is opposing bail, the Procurator Fiscal should re-request the submission of essential statements within **5 days** of the first appearance in court (CFE) and all other statements within 21 days of CFE.
- (iii) Where, **for exceptional reasons**, statements and SCRO numbers are **not** requested **before** court, the Procurator Fiscal must make the request immediately after court. Where the court is held on a Friday, the Procurator Fiscal will ensure that the request is made that day.
- (iv) Where the Procurator Fiscal is unsuccessful in opposing bail and no Crown Bail Appeal is marked, he or she should advise the Reporting Officer immediately after court that all statements should be submitted within 21 days of CFE, and that there is no longer a requirement to submit essential statements within 5 days of CFE.

#### 5.5 Solemn Cases: Where Bail is not opposed

- (i) Where the case is a petition custody (i.e. the case has been reported with the accused in custody) **and** the Crown is **not** opposing bail, the Procurator Fiscal should request that statements and SCRO numbers be submitted within **21 days** of the first appearance in court (CFE)
- (ii) Where the case is a petition warrant (i.e. the case was reported with the accused at liberty, a petition warrant was obtained and sent to the police for execution or, exceptionally the accused has been invited to answer the petition warrant) and the accused is answering the warrant, the Procurator Fiscal should check whether the statements and SCRO Numbers have been submitted. Where they have not been received, and the Crown is **not** opposing bail the Procurator Fiscal should re-request them for submission within **21 days** of the first appearance in court (CFE).

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- (iii) Where, **for exceptional reasons**, statements and SCRO numbers are **not** requested **before** court, the Procurator Fiscal must make the request within **3 working days** of first appearance in court (CFE). Where the court is held on a Friday, the Procurator Fiscal will ensure that the request is made that day.

#### 5.6 Priority Bail/Ordnained to Appear Cases

- (i) Certain cases where the accused is on bail or ordained to appear, will be treated by the Procurator Fiscal as if the accused were remanded in custody. This can apply to both Summary and Solemn cases.
- (ii) Examples of such cases include murder cases, domestic assaults, and cases involving children or other vulnerable witnesses. Please note that this list is not exhaustive.
- (iii) Where a case has been identified as a priority case, the timescales set out in paragraphs 5.1 or 5.4 will apply, depending on whether it is a summary or solemn case.
- (iv) When requesting statements and SCRO Numbers for civilian witnesses in priority cases, the Procurator Fiscal will highlight the case as being a priority.

#### 5.7 Timelines

- (i) The Business Rules containing the timelines for disclosure in both summary and solemn cases can be found at [Annex B](#).
- (ii) An overview of the timelines in summary cases can be found at [Annex C](#).
- (iii) An overview of the timelines in solemn cases can be found at [Annex D](#).

### 6. Early Disposal of Cases

6.1 Where statements and SCRO numbers have been requested in a case and the case then results in an early disposal, the Procurator Fiscal should, as soon as practicable, advise the Reporting Officer that statements and SCRO numbers are no longer required.

6.2 An early disposal may result where the accused pleads guilty at an accelerated diet, by section 76 indictment or at the first calling of a case that has been reduced to summary complaint following a previous appearance on petition.

### 7. Additional Witnesses

7.1 Where the police intimate additional witnesses to the Procurator Fiscal after the first calling of the case in Court, the Procurator Fiscal will, where necessary, make a separate request for statements and SCRO Numbers for these additional witnesses.

7.2 The police will submit any additional statements and SCRO Numbers without delay, having regard to the date of the intermediate and trial date or the date of CFE.

### 8. Witness Statements

8.1 The police will submit all statements in the format of the National Standard Statement (NSS).

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8.2 When preparing and taking witness statements, the police will have regard to the “COPFS/ACPOS Guidance on Police Reports, Statements and the Presentation of Evidence in Court” and any applicable local protocols to the extent that they are consistent with the COPFS/ACPOS Guidance”.

8.3 When preparing and taking witness statements, the police will ensure that confidential information is included in the non-disclosable section of the NSS and not the disclosable section of the NSS.

## **9. Previous Convictions for and Outstanding Charges**

9.1 Section 4 of the National Standard Statement will include a field for inserting information regarding a witness’s SCRO Number. This will be a mandatory field and must be completed.

9.2 Before submitting a statement for a witness categorised as “civilian”, the police will carry out a SCRO check on the witness. Where the witness has previous convictions and/or outstanding charges preferred against them, the police will insert the SCRO Number in this field.

9.3 Where a civilian witness has no previous convictions or pending cases preferred against them, the police will select the option of “No Note of Convictions”.

9.4 Where the witness is a police witness or a “professional/expert/official” witness, the police will select the option of “Not Requested”.

9.5 Where the police have concerns regarding the accuracy of a witness’ SCRO Number this should be stated in Section 6 of the NSS along with the reasons for these concerns.

9.6 On receipt of the statements from the police, the Procurator Fiscal will, where a witness has been identified as having a SCRO number, request these, through the electronic link in FOS, from the SCRO database.

9.7 Before considering the details returned from SCRO, the Crown will read section 6 of the witness’s statement to confirm that the police have no concerns regarding the accuracy of the SCRO number.

9.8 Where the Police have highlighted concerns regarding the accuracy of the SCRO number, the Procurator Fiscal will contact the witness and confirm that the details obtained from SCRO do relate to them. Disclosure will not be considered until after this has been done.

9.9 Where the Procurator Fiscal does not have direct electronic access to the SCRO Database, copies of the previous convictions and/or outstanding charges of any witnesses will be requested from the Reporting Officer

9.10 The Business Rules for dealing with Previous Convictions and Outstanding Charges can be found at [Annex E](#).

## **10. Review of Protocol**

10.1. In light of the anticipated reform of summary criminal justice system, this protocol, and in particular the timescales contained herein, will be jointly reviewed by ACPOS and COPFS in 2008.

## **CATEGORIES OF WITNESSES**

### **INTRODUCTION**

For the purposes of reporting cases, witnesses will be divided into three categories:

- Civilian
- Police
- Professional/Expert/Official

### **DEFINITION OF CIVILIAN WITNESS**

All non-police witnesses should be identified as a civilian witness, unless they fall into one of the categories listed under "Professional/Expert/Official".

Where a police officer, or other member of police staff, is a witness/victim of a crime, not in their capacity as police officers or police staff, they should be categorised as a civilian witness.

### **DEFINITION OF POLICE WITNESS**

All police officers, including police officers from different police forces and agencies, should be classified as police witnesses. This will include officers who provide evidence of opinion, such as those located within the STOP Unit, Collision Investigation Units, Drugs Squads etc.

All other police staff who are witnesses in the capacity of their employment should be classified as police witnesses. This will include, for example, custody care officers, turnkeys, special constables, cadets, police authority traffic wardens, forensic scientists and Scenes of Crime Officers.

A police officer, or other member of police staff, who is a victim/witness to a crime, not in their capacity as police officers or police staff, should be categorised as a civilian witness, not a police witness.

### **DEFINITION OF PROFESSIONAL/EXPERT/OFFICIAL WITNESS**

#### **Professional**

- A person practising as a member of the legal or medical profession or as an accountant, dentist or veterinary surgeon and is included in the list of witnesses in that capacity.
- The most common example would be doctors, dentists and consultants who examine a complainant following an assault. It will also include pathologists.
- Other examples include accountants who are on the list of witnesses to give evidence as to the meaning of transactions etc in complex fraud cases.

#### **Expert**

- A person, other than a police employee, with particular expertise or relevant experience who gives an opinion based on facts or other matter which he/she has investigated and who has been called into the case for that express purpose.
- Examples would include witnesses from the Fire Services to give opinion evidence on how the fire started

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## **Official**

- A person who is employed by a public body and is either
  - a) an eye witness whose employment is principally concerned with the enforcement of bye laws, regulations or other legislation and the evidence he/she is to give relates to an offence under that legislation;  
OR
  - b) not an eye-witness and the evidence that he/she is to give involves information that he/she has acquired in the normal course of his/her employment with the public body;
- Examples of a “*public body*” include a Government Department, a Local Authority or an Executive Agency.
- Examples of a “*person whose employment is principally concerned with the enforcement of byelaws etc*” include local authority parking attendants, trading standards officers and TV License enforcement officers.
- Examples of persons who fall into category (b) include Housing officials giving evidence about a tenancy agreement
- This category will also include witnesses from Non-Police Reporting Agencies (who are witnesses in the capacity of their employment) such as employees from HM Customs & Excise, Health and Safety Executive, Scottish Environmental Protection Agency and Trading Standards.

Note: Where a professional/expert/official witness is a victim or witness to a crime, not in their capacity as a professional, expert or official witness, they should be categorised as a civilian witness.

**BUSINESS RULES: DISCLOSURE TIMELINES**

**Solemn Cases**

**Statements**

- The Crown will, immediately before court in cases where the accused is reported in custody, request full statements and SCRO numbers for civilian witnesses.
- The Crown will, where proceedings are commenced by petition warrant, request full statements and SCRO numbers for witnesses at the stage proceedings are commenced.
- The Crown will as soon as possible but not later than 3 days after CFE in petition warrant cases where full statements and SCRO Numbers have not been obtained from the police at the stage the petition warrant is executed, re-request Full Statements for all witnesses and SCRO Numbers for all civilian witnesses from the Police for 21 days after the CFE date.
- The Police will submit Full Statements for all essential witnesses and SCRO Numbers for these witnesses to the Crown within 5 days of CFE in custody cases. The statements for the remaining witnesses will be submitted, along with SCRO numbers for the remaining civilian witnesses not later than 21 days after CFE
- The Police will submit Full Statements for all witnesses and SCRO Numbers for all civilian witnesses to the Crown within 21 days of CFE in bail/ordained to appear cases
- The Crown will disclose all Full Statements in accordance with internal guidance on disclosure within 28 days of CFE in all cases
- The Crown will disclose appropriate PCOCs in accordance with internal guidance on disclosure when serving the Indictment on the accused.

**Summary Cases**

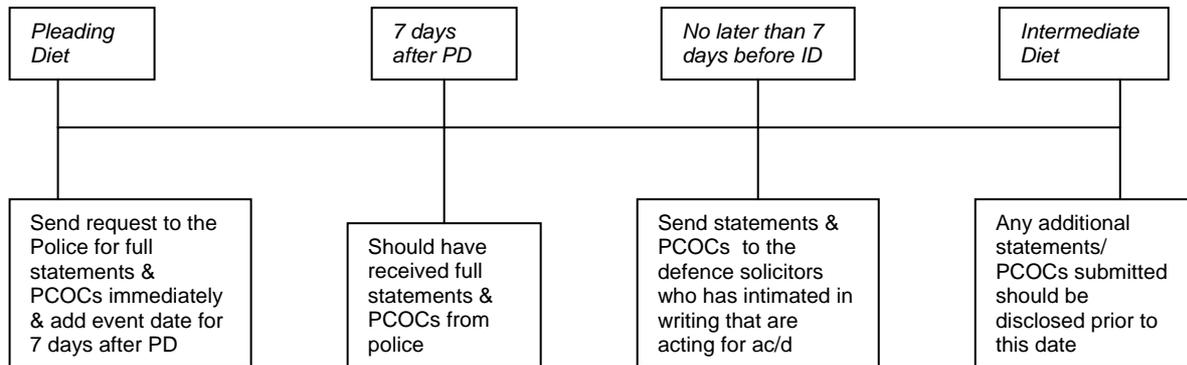
**Statements**

- The Crown will, immediately after the Pleading/Custody Diet in custody cases, request Full Statements for all witnesses and SCRO Numbers for all civilian witnesses from the Police for 7 days after the Pleading Diet
- The Crown will, as soon as possible but not later than 3 days after the Pleading Diet in Bail/ Ordained to appear cases, request Full Statements for all witnesses and SCRO Numbers for all civilian witnesses from the Police for 28 days after the PD date.
- The Police will submit Full Statements for all witnesses and SCRO Numbers for all civilian witnesses to the Crown within 7 days of PD in custody cases.
- The Police will submit Full Statements for all witnesses and SCRO Numbers for all civilian witnesses to the Crown within 28 days of PD in bail/ ordained to appear cases.
- The Crown will, in custody cases, disclose full statements for all witnesses and PCOCs, in accordance with internal guidance on disclosure, no later than 7 days before the Intermediate Diet.
- The Crown will, in bail and ordained to appear cases, disclose full statements for all witnesses and PCOCs, in accordance with internal guidance in disclosure, no later than 28 days before the Intermediate Diet.

**SUMMARY DISCLOSURE TIMELINES: OVERVIEW**

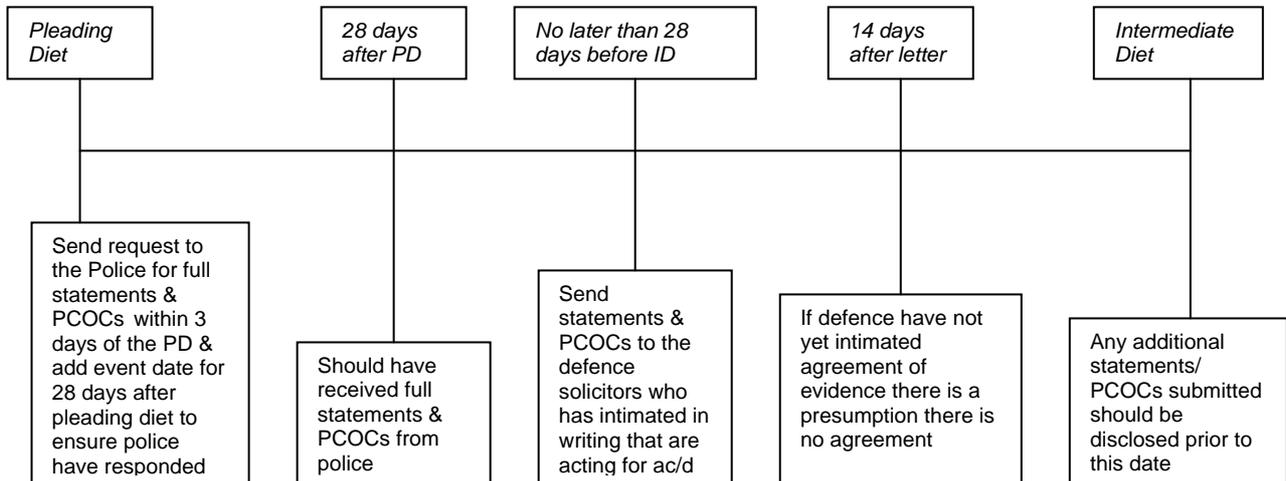
**Custody Cases:**

It is assumed that the time between PD and ID is normally 2-3 weeks



**Bail Cases/Ordained to Appear:**

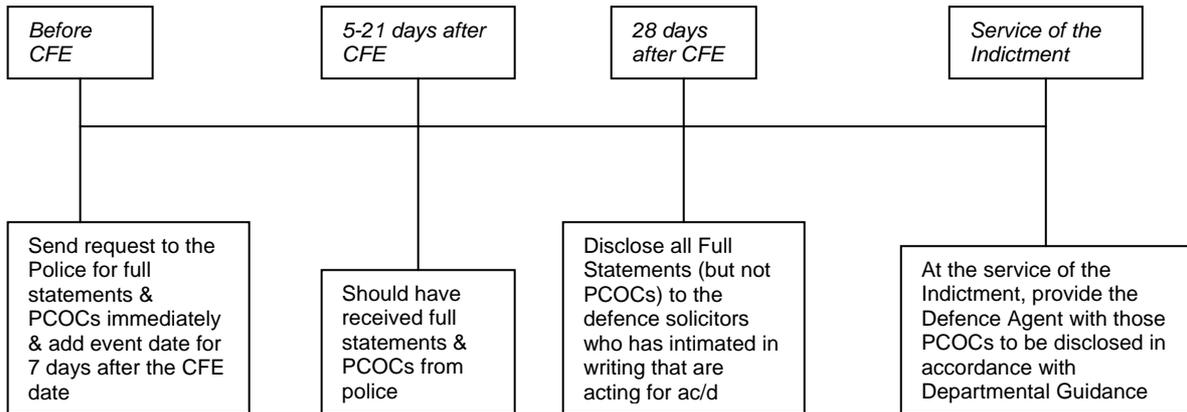
It is assumed that the time between PD and ID is normally 10-12 weeks



**SOLEMN DISCLOSURE TIMELINES: OVERVIEW**

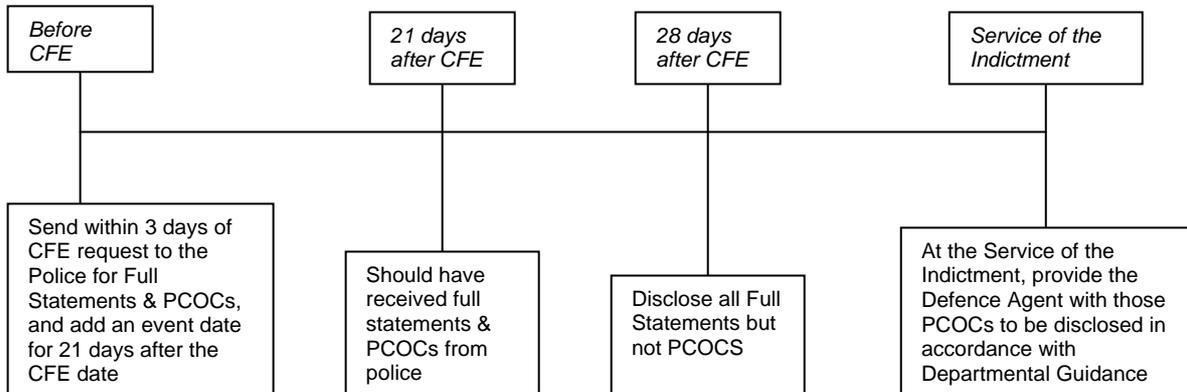
**Custody Cases:**

It is assumed that the time between CFE and reporting to Crown Office is 60 days



**Bail Cases/Ordained to Appear:**

It is assumed that the time between CFE and reporting to the Crown Office is 8 months



**BUSINESS RULES: PREVIOUS CONVICTIONS AND  
OUTSTANDING CHARGES FOR WITNESSES**

**On submission of the Standard Prosecution Report:**

1. The police **shall**:
  - Identify a witness as “Civilian”, “police witness” or “Professional/Expert/Official” having regard to the definitions of categories of witnesses.
2. The Procurator Fiscal Depute marking the case **shall**:
  - Confirm the category of witnesses and amend where appropriate
  - Mark, for citing, the minimal witnesses required to prove the case

**After a plea of not guilty has been tendered:**

1. The Crown **shall**:
  - Request Previous Convictions and Outstanding Charges (PCOCs) for all **civilian** witnesses marked for citing in summary cases and all **civilian** witnesses listed in the police report in solemn cases
  - These requests will be made in accordance with the timescales set out in the attached protocol
2. The police **shall**:
  - Carry out a SCRO check for the witness and complete the relevant section of the NSS, selecting one of 3 options:
    - i) Insert SCRO Number (where the witness has convictions and/or outstanding charges)
    - ii) “No note of Convictions (where the witness has no convictions or outstanding charges)
    - iii) “Not Requested” (this option should only be used where the witness is not a civilian witness and the Crown has not requested a SCRO check)
  - Where there are concerns about the accuracy of the SCRO number, highlight this, and set out the basis for the concerns, in Section 6 of the NSS
  - Submit statements containing the information referred to above in accordance with the timescales set out in the attached protocol.
3. Where a witness has been identified as having PCOCs, the Crown **shall**:
  - Electronically request the PCOCs for that witness from SCRO
  - Check Section 6 of the National Standard Statement to ascertain if there are any concerns regarding the accuracy of the SCRO Number
  - Where there is a concern regarding the accuracy, contact the witness to confirm that the witness accepts the PCOCs
  - Consider the PCOCs and, where appropriate, redact them
  - Disclose the PCOCs to the defence agent acting for the accused
  - Not disclose where there is a concern about the accuracy of the SCRO number until, and unless, the relevant witness confirms they accept the PCOCs as being accurate

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NOTE: The Crown electronic link to SCRO is interfaced with FOS. Once a case is removed from FOS and transferred to SOSVI, the Crown cannot request PCOCs directly from SCRO and will need to obtain the PCOCs from the police.

It is anticipated that cases will not be transferred to SOSVI until after statements and PCOCs have been requested. Where, however, more than one case against the same accused have been associated with one another, these cases will be transferred to SOSVI prior to the case being marked by the Procurator Fiscal. Accordingly, in such cases, the PCOCs will need to be obtained from the police rather than just the SCRO number.

PCOCs, rather than SCRO number, may be requested for individual witnesses if, after initial statement and PCOC requests have been made and the case transferred to SOSVI, the defence request PCOCs for an individual witness whose SCRO number was never requested in the initial request, e.g. where the witness is a "professional/ expert/ official witness". It is anticipated that such requests will be rare.

It should be noted, that once Phase 2 of FOS is implemented, all summary cases will remain in FOS for the duration of the case, including those cases for the one accused which have been associated with one other.

**SOLEMN CASES: OVERVIEW OF PROCEDURES AFTER CASES ARE REPORTED**

