



HIGH COURT OF NEW ZEALAND

SUBJECT: Procedure - Second Appearance of Category 4 Offences now to be held in the High Court and Appearances in the High Court of Protocol Offences

As at 1 July 2013

This memorandum is to provide a brief overview of:

- the procedures on when, how and by whom the second appearance of a Category 4 offence (High Court only) in the High Court will be dealt with; &
- the procedures for the management of 'protocol offences', particularly if a decision has been made that the trial will be held in the High Court.

Second Appearance of Category 4 Offences now to be held in the High Court

Auckland Circuit

Auckland Registry

Second appearances will be dealt with as part of the weekly Wednesday criminal call-over.

The second appearance will be on the closest Wednesday to 15 working days from when the defendant made their first appearance in the District Court.

Local District Courts: - Auckland, Manukau, North Shore, Waitakere, Papakura & Pukekohe.

Hamilton Registry

Hearing time is to be set aside in Hamilton every Tuesday at 9.00 am for the Liaison Judge to deal with any second appearance required.

The second appearance will be on the closest Tuesday to 15 working days from when the defendant made their first appearance in the District Court. In the usual course, it will be by way of AVL (with Auckland).

Local District Courts: - Hamilton, Huntly, Morrinsville, Te Awamutu, Te Kuiti, Thames, Waihi & Taumarunui.

Tauranga Registry

Hearing time is to be set aside in Tauranga every Wednesday at 9.00 am for the Liaison Judge to deal with any second appearance required.

The second appearance will be on the closest Wednesday to 15 working days from when the defendant made their first appearance in the District Court. In the usual course, it will be by way of AVL (with Auckland).

Local District Courts: - Tauranga, Opotiki, & Whakatane.

Rotorua Registry

Hearing time is to be set aside in Rotorua every Wednesday at 9.30 am for the Liaison Judge to deal with any second appearance required.

The second appearance will be on the closest Wednesday to 15 working days from when the defendant made their first appearance in the District Court. In the usual course, it will be by way of AVL (with Auckland).

Local District Courts: - Rotorua, Taupo & Tokoroa.

Whangarei Registry

Hearing time is to be set aside in Whangarei every Thursday at 9.00 am for the Liaison Judge to deal with any second appearance required.

The second appearance will be on the closest Thursday to 15 working days from when the defendant made their first appearance in the District Court. In the usual course, it will be by way of AVL (with Auckland).

Local District Courts: - Whangarei, Dargaville, Kaikohe & Kaitaia.

New Plymouth & Gisborne Registries

Hearing time is to be set aside in New Plymouth and Gisborne every Friday at 9.00 am for the Liaison Judge to deal with any second appearance required.

The second appearance will be on the closest Friday to 15 working days from when the defendant made their first appearance in the District Court. In the usual course, it will be by way of AVL (with Auckland).

If there are cases to be heard from both registries on a particular day, arrangements will need to be made beforehand for the exact start times for each registry.

Local District Courts (New Plymouth): - New Plymouth & Hawera.

Local District Courts (Gisborne): - Gisborne, Ruatoria & Wairoa.

Wellington Circuit

Wellington Registry

Second appearances will be dealt with as part of the weekly Monday criminal call-over.

The second appearance will be on the closest Monday to 15 working days from when the defendant made their first appearance in the District Court.

Local District Courts: - Wellington, Porirua, Hutt Valley, Masterton & Chatham Islands.

Wellington Circuit Registries (Napier, Palmerston North, Wanganui, Nelson & Blenheim)

Second appearances will be dealt with as part of the weekly Monday criminal call-over in Wellington (9.00 am).

The second appearance will be on the closest Monday to 15 working days from when the defendant made their first appearance in the District Court. In the usual course, it will be by way of AVL (with Wellington).

If there are cases to be heard from more than one circuit registry on a particular day, arrangements will need to be made beforehand for the exact start times for each registry.

Local District Courts (Napier): - Napier, Hastings & Waipukurau.

Local District Courts (Palmerston North): - Palmerston North, Levin & Dannevirke.

Local District Courts (Wanganui): - Wanganui, Marton & Taihape.

Local District Courts (Nelson): - Nelson.

Local District Courts (Blenheim): - Blenheim & Kaikoura.

Christchurch Circuit

Christchurch Registry

Hearing time is to be set aside in Christchurch every Friday at 9.00 am for the Criminal List Judge to deal with any second appearance required.

The second appearance will be on the closest Friday to 15 working days from when the defendant made their first appearance in the District Court.

Local District Courts: - Christchurch & Rangiora.

Christchurch Circuit Registries (Dunedin, Invercargill, Timaru & Greymouth)

Hearing time is to be set aside in Dunedin, Invercargill, Timaru and Greymouth every Tuesday at 9.00 am for the Criminal List Judge to deal with any second appearance required.

The second appearance will be on the closest Tuesday to 15 working days from when the defendant made their first appearance in the District Court. In the usual course, it will be by way of AVL (with Christchurch).

If there are cases to be heard from more than one circuit registry on a particular day, arrangements will need to be made beforehand for the exact start times for each registry.

Local District Courts (Dunedin): - Dunedin, Alexandra & Balclutha.

Local District Courts (Invercargill): - Invercargill, Gore & Queenstown.

Local District Courts (Timaru): - Timaru, Ashburton & Oamaru.

Local District Courts (Greymouth): - Greymouth & Westport.

Category 4 Offences - Expected Events & CPA Time Standards

From First Appearance (DC) to Second Appearance (HC) - 15 working days

From Second Appearance (HC) to Case Review Hearing (HC) - 45 working days

From Case Review Hearing (HC) to Trial Call-over (HC) - 40 working days

Allocation of Dates for Case Review Hearings & Trial Call-overs

For category 4 offences, the days & times set aside above to deal with the second appearance in each registry will also be used for the subsequent 'Case Review Hearings' and 'Trial Call-overs'.

Allocation of Trial Dates

As the second appearance of category 4 offences will now be in the High Court, it provides an opportunity for the High Court to start managing these cases promptly.

Consequently, it is intended there will be discussion on proposed trial dates at the second appearance, which can be confirmed at the 'Case Review Hearing'.

Appearance of Defendant

It is expected the defendant will appear in person at the second appearance in the High Court (even if the hearing is by way of AVL between a sole High Court registry and a circuit High Court registry).

Bail and other applications needing to be dealt with urgently

Because category 4 offences will now be transferred to the High Court after the first appearance in the District Court, the High Court will be required to deal with bail and other urgent applications. These will have to be dealt with in a timely manner.

Procedure Sheet

A procedure sheet has been prepared summarising the above steps and a copy is attached.

Appearances in the High Court of Protocol Offences

District Court Procedure

As part of the Case Management Memorandum to be prepared for the 'Case Review Hearing' for a category 2 or 3 offence, the Prosecutor must note whether they consider an offence to be a 'protocol offence' and, if so, they and defendant are to provide a view as to the appropriate court in which the proceeding should be tried.

If the Prosecutor considers the offence to be a 'protocol offence' the case will be referred to a District Court Judge to make a recommendation under s67 of the Criminal Procedure Act 2011 (CPA).

The District Court Judge is not required to make a recommendation if the recommended trial court is the District Court, but must do so if the recommended trial court is the High Court.

Once the District Court Judge has completed the s67 procedure, and whether or not the District Court Judge has made a recommendation as to the appropriate trial court, the 'protocol file' will be sent to the nearest High Court to enable a decision to be made under s68.

The District Court will need a period of time within which to send the relevant documents to the High Court for the s68 protocol decision. The suggested time-frame is a maximum of 5 working days.

At the 'Case Review Hearing', for jury trials only, the District Court will allocate a date for the trial call-over in the District Court as the default position. This approach will be taken because there has to be a future event allocated. Unless the case is directed to be heard in the High Court, the case will remain in the District Court.

Protocol Decision – High Court (Section 68 CPA)

The High Court judges responsible for s 68 protocol decisions will continue to be the List/Liaison Judges currently responsible for middle-banding decisions. Therefore, in the circuit registries, the 'protocol file' will need to be sent to the List/Liaison Judge in the sole High Court registries in the same way as middle-banding files currently are.

For consistency, it is proposed the High Court Judge should then have 5 working days within which to make the protocol decision.

Trial Call-over

For jury trials only, a 'Trial Call-over' is required and must not be later than 40 working days after the proceedings are adjourned for trial call-over (from 'Case Review Hearing') (**rule 4.3**).

If a High Court Judge directs, under s68, the hearing of the trial will be in the High Court, the Judge must also allocate a date for the 'Trial Call-over' in the High Court. Consequently, the formal statements must be filed 25 working days before the 'Trial Call-over'.

It is proposed the High Court registry, when sending the file to the List/Liaison Judge for the s68 decision, will advise the next available date for a High Court 'Trial Call-over' in the event the case was directed to be heard in the High Court. The registry should also note the expiration of 40 working days from the 'Case Review Hearing' so the Court is aware whether the time-frame will be complied with.

Trial Review Hearing

If the High Court directs, under s68, that the trial of a protocol case will be held in the High Court, a 'Trial Review Hearing' will be allocated between 5 – 10 working days after the s68 decision has been made.

The 'Trial Review Hearing' is not provided for in the CPA. However, we have decided to schedule this event because, without it, a High Court Judge will not have the opportunity to review the proceedings with counsel until the 'Trial Call-over' (which is to be held 40 days after the 'Case Review Hearing').

NB: If a defendant elects 'judge alone' for a category 3 offence and, subsequently, the Prosecutor considers the offence a 'protocol offence' for the 'Case Review Hearing', a recommendation by the District Court (s67) is still required as well as the s68 protocol decision by the High Court.

However, for a 'judge alone' case directed to be heard in the High Court, there is no provision in the CPA for a 'Trial Call-over' event. Again, the High Court will allocate a 'Trial Review Hearing' as noted above.

Protocol Offences - Expected Events & CPA Time Standards

From First Appearance (DC) to Second Appearance (DC) - 15 working days

From Second Appearance (DC) to Case Review Hearing (DC) - 45 working days

- **DC Judge to make s67 recommendation.**
- **HC Judge to make s68 determination.**

*****If trial of protocol case directed to be held in High Court, then Trial Call-over (HC) date to be allocated within 40 working days of Case Review Hearing (DC) date.**

From s68 decision (HC) to Trial Review Hearing (HC) - 5 - 10 working days

Allocation of Dates for Trial Review Hearings & Trial Call-overs

The days & times set aside above to deal with the appearances of category 4 offences in each registry will also be used for the 'Trial Review Hearing' and 'Trial Call-overs' for 'protocol' offences.

Auckland Circuit

Auckland Registry: -	weekly Wednesday criminal call-overs.
Hamilton Registry: -	every Tuesday at 9.00 am.
Tauranga Registry: -	every Wednesday at 9.00 am.
Rotorua Registry: -	every Wednesday at 9.30 am.
Whangarei Registry: -	every Thursday at 9.00 am.
New Plymouth & Gisborne Registries: -	every Friday at 9.00 am.

Wellington Circuit

Wellington Registry: -	weekly Monday criminal call-overs.
Wellington Circuit Registries: -	weekly Monday criminal call-overs in Wellington (9.00 am).

Christchurch Circuit

Christchurch Registry: -	every Friday at 9.00 am.
Christchurch Circuit Registries: -	every Tuesday at 9.00 am.