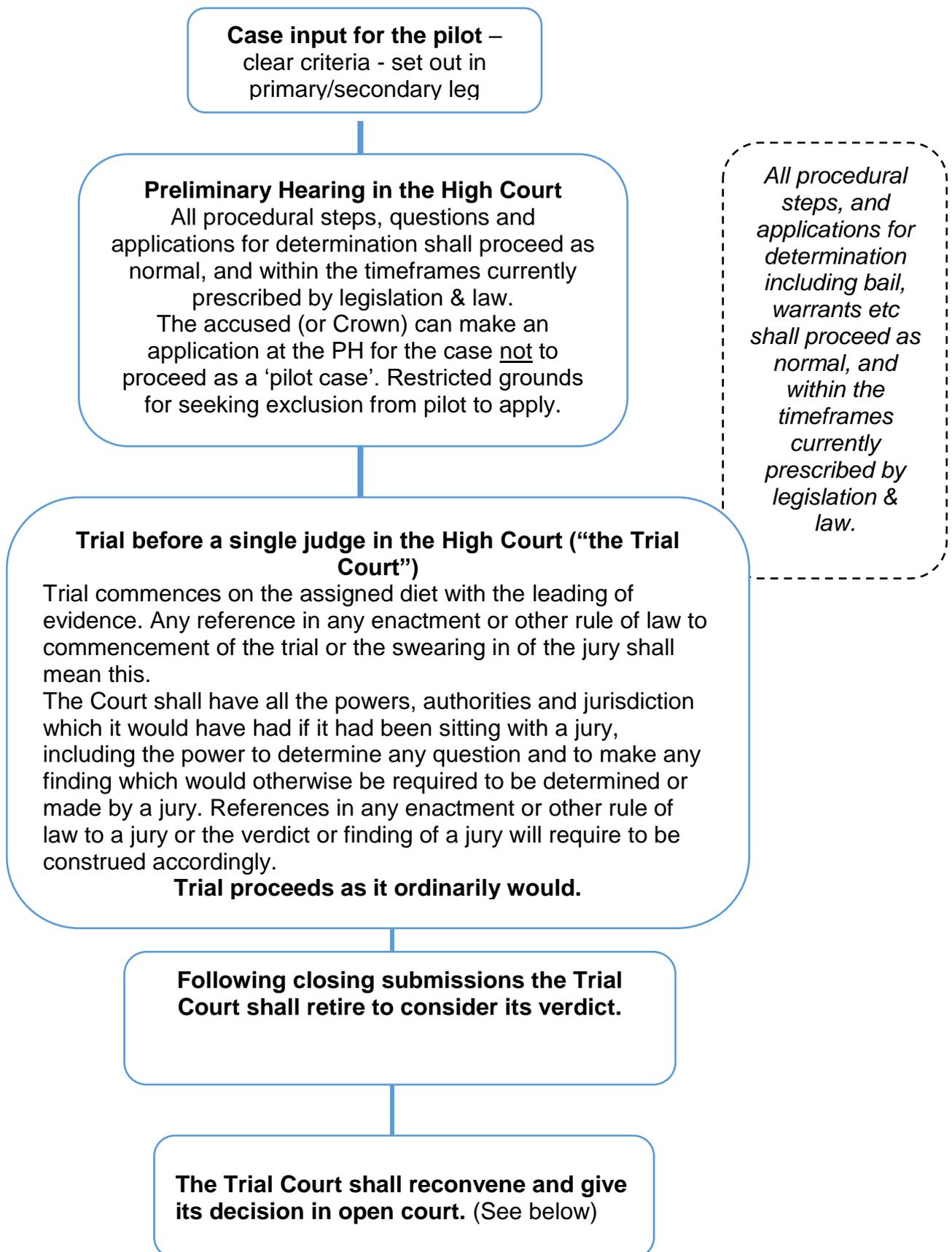


Annex B: proposed model for a single judge pilot for rape cases



The Trial Court reconvenes and give its decision in open court.

Guilty verdict.

The Trial Court shall, at the time of conviction or as soon as practicable thereafter, give a judgment in writing stating the reasons for the conviction. The extent of detail of the reasons given is something that will have to be considered along with the judiciary.

Acquittal verdict.

The Trial Court shall, in open court, give a short oral judgment stating its reasons. The principles applying to written reasons for guilty verdicts should apply. The extent of detail of the reasons given is something that will have to be considered along with the judiciary.

The Trial Court shall pass sentence on the day, or as more commonly occurs, the court may continue the cause for sentence in open court to an assigned date to allow the collation of reports.

Appeals- see below

Appeal against the verdict of Court

Appeals against conviction and/or sentence shall be available with leave of the court by the accused, under the present law as contained in s106, 107 and s108 (Lord Advocate's right against disposal) of the Criminal Procedure (Scotland) Act 1995 (1995 Act) subject to amendments. The appeal in respect of conviction/conviction and sentence shall be before 3 judges. Sentence appeals will have a minimum quorum of 2 judges.

Grounds of appeal: Section 106(3) of the 1995 Act, which makes provision for a right of appeal against conviction by a jury on grounds of a miscarriage of justice shall apply to a verdict of the Trial Court subject to the substitution of references to the 'trial court' in place of/in addition to references to the jury. Namely:

3) ... a person may bring under review of the High Court any alleged miscarriage of justice, which may include such a miscarriage based on—

(a) subject to subsections (3A) to (3D) below, the existence and significance of evidence which was not heard at the original proceedings; and

(b) the jury's/**the trial court** having returned a verdict which no reasonable jury, properly directed, / **trial court** could have returned.

In an appeal under s106(3) alleging a miscarriage of justice, the initial question for the appeal court, applying the dicta of court in *Megrahi v HM Advocate* 2002 JC 99 at [26], will be "*whether in arriving at its verdict the trial court misdirected itself in law or as to a matter of fact so that it took a course which it was not entitled to do or failed to do what it should have done. If and to the extent that this has been shown, the further question would be whether a miscarriage of justice has resulted*".

Disposal

The appeal shall be disposed of in accordance with the terms of section 118, in so far as is applicable.

The procedural requirements and timescales for appeals from the decision of a jury trial shall remain and apply. In so far as applicable, steps will include intimation of intention to appeal in accordance with s109, lodging of a note of appeal in terms of s110(1)(a); decision on leave to be considered and made in terms of s107, in so far as applicable. Production of a report in terms of s113. S111 & 112 (admission to bail); s114; s115 (applications-oral/writing); s116 (abandonment) & 117(presence of appellant) to apply.

