

2004 No. 195

HIGH COURT OF JUSTICIARY

SHERIFF COURT

DISTRICT COURT

**Act of Adjournal (Criminal Procedure Rules Amendment)
(Miscellaneous) 2004**

Made - - - - - *22nd April 2004*

Coming into force - - - - - *26th April 2004*

The Lord Justice General, the Lord Justice Clerk and the Lords Commissioners of Justiciary, under and by virtue of the powers conferred on them by section 305 of the Criminal Procedure (Scotland) Act 1995(a), and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment) (Miscellaneous) 2004 and shall come into force on 26th April 2004.

(2) This Act of Adjournal shall be inserted in the Books of Adjournal.

Amendment of the Act of Adjournal (Criminal Procedure Rules) 1996

2.—(1) The Act of Adjournal (Criminal Procedure Rules) 1996(b) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 23.1 (applications for letters of request) paragraph (3) (applications under section 273(2) of the Act of 1995) shall be omitted.

(3) After Chapter 23 there shall be inserted the following:—

(a) 1995 c.46.

(b) S.I. 1996/513, last amended by S.S.I. 2003/468.

“CHAPTER 23A

TELEVISION LINK EVIDENCE FROM ABROAD

Application for television link evidence from abroad

23A.1.—(1) An application to the court by the prosecutor or the defence under section 273(2) of the Act of 1995 shall be by petition in Form 23A.1–A and shall be accompanied by a letter of request in Form 23A.1–B.

(2) Such an application made to the High Court may be disposed of by a single judge of that court.

(3) The High Court or the sheriff, as the case may be, shall—

- (a) order intimation on the other party or parties to the proceedings;
- (b) subject to paragraph (4), allow such time for lodging answers as appears appropriate; and
- (c) fix a diet for hearing the petition and answers (if any).

(4) The High Court or the sheriff as the case may be, may dispense with answers to the petition on cause shown.

Powers of the court in applications

23A.2.—(1) The High Court or the sheriff, as the case may be, may, after considering the petition and any answers to it, grant the petition with or without modification or refuse it.

(2) On granting the petition, the High Court or the sheriff, as the case may be, shall—

- (a) pronounce an order approving the terms of the letter of request to be sent; and
- (b) if English is not an official language of the body to which the letter is addressed, specify a period within which a translation of the letter is to be lodged.

Expenses

23A.3.—(1) The solicitor for the petitioner or, if he is unrepresented, the petitioner shall be liable for the expenses of the petition for the issue of a letter of request.(2) The High Court or the sheriff, as the case may be, may order the solicitor for the petitioner, or the petitioner, to consign into court such sum in respect of those expenses as may be specified, and on or before such date as may be specified, in the order.(3) In the event of the sum so specified not being consigned into court on or before the date so specified, the petition shall be treated as having been abandoned.

Transmission of letters of request

23A.4.—(1) On—

- (a) the High Court or the sheriff, as the case may be, pronouncing an order under rule 23A.2(2), or
- (b) in a case where a translation requires to be lodged, on the lodging of the translation,

the Clerk of Justiciary or the sheriff clerk, as the case may be, shall send the letter of request to the Lord Advocate for transmission to the body to which the letter of request is addressed.

(2) The Clerk of Justiciary or sheriff clerk, as the case may be, shall note, on the petition, record copy of the indictment or in the minute of proceedings, the date on which the letter of request was sent to the Lord Advocate for transmission and shall intimate that date to all parties concerned.

Procedural diet

23A.5.—(1) On receipt of confirmation that the court, tribunal or other authority to which a letter of request was transmitted will provide assistance in facilitating the giving of evidence through a live television link, the Clerk of Justiciary or sheriff clerk, as the case may be, shall fix a procedural diet in accordance with paragraph (2) and shall intimate that diet to all parties concerned.

(2) The procedural diet shall be fixed for a date which is before the date on which the evidence is to be given by television link.

(3) The accused shall not require to be present at the procedural diet.

(4) At the procedural diet, the judge or sheriff, as the case may be, shall make inquiries as to whether or not arrangements are in place to facilitate the giving of evidence through a live television link.”.

(4) For Chapter 36 (Criminal Justice (International Co-operation) Act 1990(c)) there shall be substituted the following:—

“CHAPTER 36

CRIME (INTERNATIONAL CO-OPERATION ACT 2003

Interpretation of this Chapter

36.1. In this Chapter—

“Act of 2003” means the Crime (International Co-operation) Act 2003(a);

“external court” means the court mentioned in section 30(1) or, as the case may be, section 31(1) of the Act of 2003; and

“nominated court” means a court nominated under section 15(3), section 30(3) or section 31(4) of the Act of 2003.

Effecting citation or service of documents outside the United Kingdom

36.2.—(1) A notice under section 5(5)(b) of the Act of 2003 (notice to accompany citation being effected outside the United Kingdom) shall be in Form 36.2 and shall give the information specified in that form.

(2) Where citation is being effected outside the United Kingdom under section 5 or 6 of the Act of 2003, in the form of citation for—

“IF YOU DO NOT ATTEND COURT WITHOUT A LAWFUL EXCUSE THE COURT MAY ORDER THAT YOU BE APPREHENDED AND PUNISHED.”,
or

“IF YOU FAIL TO ATTEND WITHOUT A LAWFUL EXCUSE THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.”, or

“A warrant may be issued for your arrest”,

there shall be substituted the following:—

“As this citation is being effected outside the United Kingdom, no obligation under the law of Scotland to comply with the citation is imposed by virtue of its being so effected. Accordingly, failure to comply with the citation does not constitute contempt of court and is not a ground for issuing a warrant to secure your attendance or for imposing a penalty. But this citation may subsequently be effected against you in the United Kingdom, in which case, if you fail to attend without a lawful excuse, the court may issue a warrant for your arrest.”.

(c) 1990 c.5.
(a) 2003 c. 32.

(3) Where a document is to be served on a person outside the United Kingdom under section 6 of the Act of 2003 (effecting citation etc. otherwise than by post), it shall be sent by the Clerk of Justiciary, sheriff clerk or clerk of the district court, as the case may be, to the Lord Advocate.

Proof of citation or service outside the United Kingdom

36.3. The service on any person of a citation or document under section 6 of the Act of 2003 (effecting citation etc. otherwise than by post) may be proved in any legal proceedings by a certificate given by or on behalf of the Lord Advocate.

Applications for requests for assistance

36.4. An application under section 7(1) of the Act of 2003 (application for request for assistance) shall—

- (a) be in Form 36.4–A;
- (b) be lodged with the Clerk of Justiciary or sheriff clerk, as the case may be;
- (c) state the particulars of the offence which it is alleged has been committed or the grounds on which it is suspected that an offence has been committed;
- (d) state whether proceedings in respect of the offence have been instituted or the offence is being investigated; and
- (e) include particulars of the assistance requested and a draft request in Form 36.4–B.

Hearing of applications for requests for assistance

36.5.—(1) Where the prosecutor presents an application under section 7(1) of the Act of 2003 (application for request for assistance) before either the first appearance of the accused on petition or the service of a summary complaint, the High Court or the sheriff, as the case may be, shall, without requiring intimation to any other party, proceed to consider the application.

(2) Where any party presents such an application following the first appearance of the accused on petition or the service of a summary complaint, the High Court or sheriff, as the case may be, may—

- (a) before the lodging of an indictment, dispense on cause shown with intimation to any other party and proceed to consider the application; or
 - (b) fix a diet for hearing the application and order intimation of the diet and application to any other party.
- (3) The High Court or sheriff, as the case may be, after considering such application—
- (a) may allow summary adjustment of the statement of assistance required in the draft request;
 - (b) shall grant the application, with or without any modifications which it or he deems appropriate, or shall refuse it.
- (4) On granting such application the High Court or sheriff, as the case may be, shall—
- (a) approve and sign the draft request;
 - (b) if English is not an official language of the court or authority to which the request is addressed, specify a period within which a translation of the request and of any production is to be lodged.

Register of applications for requests for assistance

36.6.—(1) A register shall be kept by the Clerk of Justiciary and by the sheriff clerk of applications under section 7(1) of the Act of 2003 (application for request for assistance).

(2) Save as authorised by the court, the register mentioned in paragraph (1) shall not be open to inspection by any person.

Notification of requests for assistance

36.7. Where a court sends a request for assistance under section 8 of the Act of 2003 other than on an application by or on behalf of the Lord Advocate, the Clerk of Justiciary or sheriff clerk, as the case may be, shall forthwith notify the Lord Advocate of this and send with the notification a copy of the letter of request.

Citation for proceedings before a nominated court

36.8.—(1) The warrant to cite a person to proceedings before a nominated court shall be in Form 36.8–A.

(2) The form of postal citation of a person to proceedings before a nominated court shall be in Form 36.8–B; and the person shall complete and return Form 36.8–C to the procurator fiscal.

(3) The form of personal citation of a person to proceedings before a nominated court shall be in Form 36.8–D.

Proceedings before a nominated court

36.9.—(1) In proceedings before a nominated court—

- (a) the procurator fiscal or Crown counsel shall participate in any hearing;
- (b) the prosecutor of the requesting country mentioned in the request under section 13(1) of the Act of 2003 (request for assistance from overseas authorities) may participate in any hearing;
- (c) where the request under section 13(1) of the Act of 2003 originates from current criminal proceedings any party to or persons with an interest in those proceedings may attend and, with the leave of the court, participate in any hearing;
- (d) a judge or investigating magistrate in the current criminal proceedings may participate in any hearing;
- (e) a lawyer or person with a right of audience from the requesting country who represents any party to the current criminal proceedings may participate in any hearing;
- (f) a solicitor or counsel instructed by any party may participate in any hearing;
- (g) any other person may, with the leave of the court, participate in any hearing;
- (h) a shorthand writer may be present to record the proceedings; and
- (i) the proceedings shall be in private.

(2) Where any person applies for leave to participate in any hearing the court shall, in determining such application, consider any relevant representations made by the court or authority making the request under section 13(1).

Provision of interpreters

36.10.—(1) This rule applies where a court has been nominated under section 30(3) (nomination to facilitate the giving of evidence by live television link) or section 31(4) (nomination to facilitate the giving of evidence by telephone) of the Act of 2003.

(2) Where it appears to the Clerk of Justiciary or sheriff clerk, as the case may be, that the witness is likely to give evidence in a language other than English, he shall make arrangements for an interpreter to be present at the proceedings to translate what is said into English.

(3) Where it appears to the Clerk of Justiciary or sheriff clerk, as the case may be, that the witness is likely to give evidence in a language other than that in which the proceedings of the external court will be conducted, he shall make arrangements for an interpreter to translate what is said into the language in which the proceedings of the external court will be conducted.

(4) Where the evidence in proceedings before a nominated court is either given in a language other than English or is not translated into English by an interpreter, the High Court or, as the case may be, the sheriff, shall continue the proceedings until such time as a translator can be present to provide a translation into English.

Court record of proceedings before a nominated court

36.11.—(1) Where a court receives evidence in proceedings by virtue of a nomination under section 15(3) (nomination to receive evidence), section 30(3) (nomination to facilitate the giving of evidence by live television link), or section 31(4) (nomination to facilitate the giving of evidence by telephone) of the Act of 2003, the Clerk of Justiciary or sheriff clerk, as the case may be, shall record in the minute of proceedings—

- (a) particulars of the proceedings; and
- (b) without prejudice to the generality of (a) above—
 - (i) which persons were present;
 - (ii) which of those persons was represented and by whom; and
 - (iii) whether any of those persons was denied the opportunity of cross-examining a witness as to any part of his testimony.

(2) Save as authorised by the Lord Advocate or, with the leave of the court, the minute of proceedings mentioned in paragraph (1) above shall not be open to inspection by any person.

(3) The Clerk of Justiciary or sheriff clerk, as the case may be, shall send to the Lord Advocate and to the external authority a certified copy of the minute of proceedings.

(4) Where the court has been nominated under section 15(3) of the Act of 2003 the Clerk of Justiciary or sheriff clerk, as the case may be, shall comply with paragraph 6 of Schedule 1 to the Act of 2003 with regard to the forwarding of evidence received by the court.”

(5) In the appendix—

(a) in Form 16.1–C for—

“If you are pleading guilty to a motoring offence PLEASE SEND YOUR DRIVING LICENCE (BUT NOT YOUR HGV LICENCE) WITH THIS FORM”

there shall be substituted the following:—

“If you are pleading guilty to a motoring offence PLEASE SEND YOUR DRIVING LICENCE (PAPER LICENCE OR PHOTOCARD LICENCE BUT NOT HGV LICENCE) WITH THIS FORM.

WHEN SENDING A PHOTOCARD LICENCE PLEASE SEND BOTH PARTS – THE PHOTOCARD AND THE COUNTERPART”.

(b) for Forms 23.1–D and 23.1–E there shall be substituted the forms set out in Schedule 1.

- (c) after Form 34.6 (notice of consent to return to a foreign state under section 14A of the Extradition Act 1989) there shall be inserted the forms set out in Schedule 2.

Edinburgh
22nd April 2004

Cullen of Whitekirk
Lord Justice General
I.P.D.

SCHEDULE 1

Rule 23A.1

FORM 23A.1-A

Form of petition for issue of letter of request under section 273(2) of the Criminal Procedure (Scotland) Act 1995

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)

AT (*place*)]

PETITION

of

HER MAJESTY'S ADVOCATE

[*or* [A.B.] (*address*)

[*or* Prisoner in the Prison of (*place*)]]

PETITIONER

HUMBLY SHEWETH:

1. That the petitioner [*or* [C.D.]] [, along with (*name(s) of co-accused*),] has appeared on petition [*or* been indicted] [*or* charged] in your Lordships' [*or* Lordship's] court at the instance of Her Majesty's Advocate [*or* the procurator fiscal at (*place*)] [*or* the petitioner] with the crime of (*specify*).

2. That no indictment has been served on the petitioner [*or* [C.D.]] in respect of the said crime and that accordingly the court in which any trial of the petitioner [*or* C.D.] in respect of the said crime for which he stands committed is not yet known. [*or* That the trial of the petitioner [*or* [C.D.]] is to take place in your Lordships' [*or* Lordship's] court [sitting at (*place*)] on (*date*).]

3. That (*name of witness*) residing at (*address*) in the country or territory of (*specify*) is a witness whose evidence the petitioner intends to adduce in the course of the trial. He seeks to adduce that evidence through a live television link in that country or territory under section 273 of the Criminal Procedure (Scotland) Act 1995.

4. That the evidence to the effect specified in the schedule attached to this petition, which it is averred that the said witness is able to give, is necessary for the proper adjudication of the trial.

5. That (*name of court*) is a court or tribunal exercising jurisdiction in the said country or territory of (*specify*) being a country or territory outside the United Kingdom.

6. That English is [not] the official language or one of the official languages of the said country or territory.

7. That the law of the said country or territory provides for evidence to be taken by live television link [in accordance with the following procedure:— (*specify, if known*)].

[8. That there would be no unfairness to the accused if such evidence were to be given through a live television link.]

MAY IT THEREFORE please your Lordship[s]:

(1) to appoint intimation of this petition and schedule to be made to (*specify*);(2) to appoint parties to be heard thereupon on the earliest practicable date hereafter; and(3) thereafter, on being duly satisfied in terms of section 273(3) of the Criminal Procedure (Scotland) Act 1995, to issue a letter of request to (*state judge or tribunal within whose jurisdiction the witness is resident*) for assistance in facilitating the giving of evidence by the said witness through a live television link; and to do otherwise as to your Lordship[s] shall seem proper.

ACCORDING TO JUSTICE, etc.

(*Signed*)

[Solicitor for petitioner]

(*Address and telephone number of solicitor*)

FORM 23A.1-B

Form of letter of request for evidence to be obtained by television link

IN THE HIGH COURT OF JUSTICIARY

[or IN THE SHERIFF COURT OF (*name of sheriffdom*)

AT (*place*)]

LETTER OF REQUEST

in the Indictment [or

Petition or Complaint]

at the instance of

THE RIGHT HONOURABLE [A.B.],

HER MAJESTY'S ADVOCATE

[or PROCURATOR FISCAL]

for the Public Interest

against

[C.D.] (*address*)

[or Prisoner in the Prison of (*place*)]

The Honourable Lord (*name*), one of the Lords Commissioners of Justiciary, [or (*name*), Sheriff of (*name of sheriffdom*) at (*place*)] presents his compliments to (*here specify the court, tribunal or authority to which the request is addressed*) and has the honour of informing it of the following facts:

1. High Court of Justiciary, of which the Honourable Lord (*name*) is one of the judges, is the supreme criminal court in Scotland and exercises a jurisdiction as a trial court [or The Sheriff Court of which Sheriff (*name*) is one of the judges, is a criminal court in Scotland which exercises jurisdiction as a trial court and in pre-trial procedures in all prosecutions for crime].
2. (*Specify briefly the applicant's part in the proceedings including, where appropriate, his relationship to the investigating agency.*)
3. Criminal proceedings have been instituted before the High Court of Justiciary at the instance of the Right Honourable [A.B.], Her Majesty's Advocate, [or, before the Sheriff Court of (*name sheriffdom*) at (*place*), at the instance of [A.B.], Procurator Fiscal,] against [C.D.] (*specify the nationality of the accused*) who is presently charged that (*here narrate the charge on the indictment, petition or complaint*). [*In a case where the accused has appeared on petition but has not yet been indicted, insert the following if it is known in which court the case will be indicted:— It is expected that in due course the trial of [C.D.] will take place in the High Court of Justiciary [or the Sheriff Court of (*name of sheriffdom*)] at (*place*).*]

4. The crime of (*specify the nomen juris of the crime charged or under investigation*) is a criminal offence at common law in Scotland and is not contained in any statute. It consists of (*summarise the essential elements of the crime*) [*or It is a criminal offence under (narrate statutory provision and its terms and add any explanation beyond the bare words of the statute thought necessary in order to enable the foreign court, tribunal or authority to understand clearly the elements of the crime)*]. The penalties for conviction are (*specify*).
5. It has been shown to the Honourable Lord (*name*) on application by Her Majesty's Advocate [*or [C.D.]*] [*or It has been shown to the Sheriff of (name of sheriffdom) at (place) on application by the procurator fiscal [or [C.D.]]], a copy of which is annexed to this request, that it is necessary for the proper adjudication of the trial that the evidence of (name and address of witness) be given through a live television link.*
6. The Criminal Procedure (Scotland) Act 1995 empowers the High Court of Justiciary [*or the Sheriff Court*] to request your assistance in facilitating the giving of that evidence by (*name of witness*) who resides within your jurisdiction through a live television link.
7. [*Here specify arrangements to be made and name, address and telephone number of clerk of court with whom arrangements are to be made.*]
- [8.] In thanking (*specify the court, tribunal or authority to which the request is addressed*) in advance for its co-operation in this case, the Honourable Lord (*name*) [*or Sheriff (name)*] avails himself [*or herself*] of this opportunity to renew the assurance of his [*or her*] high consideration.

(Signed)

Lord Commissioner of Justiciary

[*or Sheriff of (name of sheriffdom) at (place)*]

Dated this (*date*).

SCHEDULE 2

Rule 36.2

FORM 36.2

Form of notice to accompany a citation being effected or document being served outside the United Kingdom

To: *(name)*

Date: *(date)*

TAKE NOTICE:

- (1) That the enclosed citation [*or specify*] is being served on you in respect of criminal proceedings against you [*or in which you have been cited as a witness or specify*] in Scotland, United Kingdom.
 - (2) The citation seeks your appearance on *(date)* at *(time)* in the High Court of Justiciary [*or Sheriff [or District] Court*] at *(address)*, Scotland, United Kingdom.
 - (3) If you are not going to be able to attend you should contact us immediately.
 - (4) You can obtain further information from us about your rights.
- [(5) The citation [*or document*] is accompanied by a translation as required under section 5(4) of the Crime (International Co-operation) Act 2003.]

(Signed)

Advocate Depute [*or Procurator Fiscal or Clerk of Court*]

(address including telephone and fax number)

FORM 36.4–A

Form of application for request for assistance under section 7(1) of the Crime (International Co-operation) Act 2003

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)

AT (*place*)]

PETITION

of

THE RIGHT HONOURABLE [A.B.],

HER MAJESTY’S ADVOCATE

[or THE PROCURATOR FISCAL]

for the Public Interest [or [C.D.]

Accused Person]

PETITIONER

HUMBLY SHEWETH:

1. That [C.D.] born on (*specify accused’s date of birth*), was on (*date*) in the sheriff court at (*place*) fully committed on a petition at the instance of the petitioner [*or as the case may be*] charging [C.D.] with (*specify the nomen juris of the charge*) as more particularly specified in the copy petition annexed to this petition. [*Insert the following if it is known in which court the case will be indicted: It is expected that in due course the trial of [C.D.] will take place in the High Court of Justiciary [or the sheriff court of (name of sheriffdom)] sitting at (place).*]

[or 1. That there are reasonable grounds for suspecting that an offence has been committed, namely, (*specify nomen juris of or otherwise describe the offence or specify the statute and section contravened*) in respect that on (*specify the date of the offence*) at (*specify locus of the offence*) it is alleged that (*specify the modus of the offence*). Police

officers (or Officers of Customs and Excise] acting on the instructions of the petitioner are investigating the alleged offence.]

2. That in order that justice may be done in the case against [C.D.] [*or in order that the investigation may be completed*], it is necessary that evidence be obtained from (*specify country to which the request is being sent*). The precise evidence required is (*specify*).
3. That section 7 of the Crime (International Co-operation) Act 2003 provides that where on an application made by the Lord Advocate or a procurator fiscal or, where proceedings have been instituted, by the person charged in those proceedings, it appears to a judge or a sheriff (a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed or (b) that proceedings in respect of the offence have been instituted or that the offence is being investigated, the judge or sheriff may issue a request for assistance in obtaining outside the United Kingdom such evidence as is specified in the request for use in the proceedings or investigation.

MAY IT THEREFORE please your Lordship[s] to issue a request to (*specify the court, tribunal or authority to whom it is desired to have the request addressed*) to obtain the evidence specified herein; and to do further or otherwise as to your Lordship[s] shall seem proper.

ACCORDING TO JUSTICE, etc.

(*Signed*)

[Solicitor for petitioner]

(Address and telephone number of solicitor)

FORM 36.4-B

Request for assistance under section 7 of the Crime (International Co-operation) Act 2003

IN THE HIGH COURT OF JUSTICIARY

[or IN THE SHERIFF COURT OF (name of sheriffdom) AT (place)]

REQUEST FOR ASSISTANCE

in the Indictment [*or*
Petition *or* Complaint]

at the instance of

THE RIGHT HONOURABLE [A.B.],

HER MAJESTY'S ADVOCATE

[*or* THE PROCURATOR FISCAL]

for the Public Interest

against

[C.D.] (*address*)

[or REQUEST FOR ASSISTANCE

in the investigation into

(here specify the crime under investigation e.g. Murder of [E.F.]

The Honourable Lord (*name*), one of the Lords Commissioners of Justiciary, [*or* (*name*), Sheriff of (*name of sheriffdom*) at (*place*)] presents his compliments to (*here specify the court, tribunal or authority to which the request is addressed*) and has the honour of informing it of the following facts:

1. The High Court of Justiciary, of which the Honourable Lord (*name*) is one of the judges, is the supreme criminal court in Scotland and exercises a jurisdiction as a trial court [*or*

The Sheriff Court of which Sheriff (*name*) is one of the judges, is a criminal court in Scotland which exercises jurisdiction as a trial court and in pre-trial procedures in all prosecutions for crime].

2. (Specify briefly the applicant's part in the proceedings including, where appropriate, his relationship to the investigating agency.)
3. Criminal proceedings have been instituted before the High Court of Justiciary at the instance of the Right Honourable [A.B.], Her Majesty's Advocate, [*or*, before the Sheriff Court of (*name of sheriffdom*) at (*place*), at the instance of [A.B.], Procurator Fiscal,] against [C.D.] (*specify the nationality of the accused*) who is presently charged that (*here narrate the charge on the indictment, petition or complaint*). [*In a case where the accused has appeared on petition but has not yet been indicted, insert the following if it is known in which court the case will be indicted:—* It is expected that in due course the trial of [C.D.] will take place in the High Court of Justiciary [*or*, the Sheriff Court of (*name of sheriffdom*)] at (*place*).]

[*or* 3. There are reasonable grounds for suspecting that an offence has been committed, namely (specify the nomen juris of or otherwise describe the offence or specify the statute and section contravened) in respect that on (specify the date of the offence). Police officers [*or* Officers of Customs and Excise] acting on the instructions of the procurator fiscal are investigating the alleged offence.]

4. The crime of (*specify the nomen juris of the crime charged or under investigation*) is a criminal offence at common law in Scotland and is not contained in any statute. It consists of (*summarise the essential elements of the crime*) [*or* It is a criminal offence under (*narrate statutory provision and its terms and add any explanation beyond the bare words of the statute thought necessary in order to enable the foreign court, tribunal or authority to understand clearly the elements of the crime*)]. The penalties for conviction are (*specify*).

[*Where relevant, insert:—* [5. A person may be convicted of an attempt at a crime where he has taken an overt step in pursuance of his criminal intention and has passed from the stage of preparation to the stage of perpetration but has not completed the crime. Paragraph 10 of Schedule 3 to the Criminal Procedure (Scotland) Act 1995 provides:—

“(1) Under an indictment or, as the case may be, a complaint which charges a completed offence, the accused may be lawfully convicted of an attempt to commit an offence.

(2) Under an indictment or complaint charging an attempt, the accused may be convicted of such attempt although the evidence is sufficient to prove the completion of the offence said to have been attempted.

(3) Under an indictment or complaint which charges an offence involving personal injury inflicted by the accused, resulting in death or serious injury to the person, the accused may be lawfully convicted of the assault or other injurious act, and may also be lawfully convicted of the aggravation that the assault or other injurious act was committed with intent to commit such offence.”]

[*Where relevant, insert:—* The Law of Scotland makes no distinction between commission and accession, and by the common law of Scotland anyone who gives assistance to or otherwise acts in previous concert with the principal or who is guilty of concert, assistance or participation in the crime is liable to be convicted of the crime.]

[6.] It has been shown to the Honourable Lord (*name*) on application by Her Majesty's Advocate [*or* [C.D.]] [*or*, it has been shown to the Sheriff of (*name of sheriffdom*) at (*place*) on application by the procurator fiscal [*or* [C.D.]]], a copy of which is annexed to this request, that in order that justice may be done in the proceedings [*or*, in order that the investigation may be completed] it is necessary that evidence be obtained from (*specify country to which the request is being sent*).

[7.] The circumstances giving rise to this request are as follows:— (narrate fully such evidence as is known which has relevance to the request so that the foreign court, tribunal or authority will have a clear understanding of the subject-matter of the case and the need for the evidence they are requested to obtain).

[8.] The Crime (International Co-operation) Act 2003 empowers the High Court of Justiciary [or the Sheriff Court] to seek from and to give to courts, tribunals and other authorities exercising criminal jurisdiction in countries or territories outside the United Kingdom reciprocal assistance in the obtaining of evidence and it is requested in the present case that (*specify the court, tribunal or authority to which the request is addressed*) give assistance in the obtaining of the evidence herein specified. In particular, it is requested that (*specify the assistance requested, whether that is by the interview of witnesses, recovery of documents or other articles, search of premises, issue of extracts or otherwise. If witnesses are to be interviewed, identify them clearly and state nationality if known. If relevant, state any privilege which the witness might be able to claim and provide for the witness to claim that privilege under interview but to be required to answer the question nevertheless, leaving the application of that privilege and the admissibility of the answers given for the determination of the trial court. Specify the subject-matter of the questions to be put or formulate questions as appropriate; also specify any special procedures desired to be followed (for example, “It is desired that, where competent, a witness be interviewed on oath”). Where it is sought to recover documents or other articles specify precisely what is sought and identify the holder of the documents and other articles. State any request for parties or their agents or counsel to be present at the execution of the request and state any other request made. Schedules may be used.*)

[9.] [*Here narrate any time limit to which the case is subject and, if appropriate, insert: In view of the foregoing it is respectfully requested that this request be treated as urgent.*]

[10.] Any evidence provided in response to this letter of request will not, without the consent of the appropriate authority in (*name the country*), be used for any purpose other than the said proceedings [or the said investigation and any criminal proceedings arising out of it].

[11.] In thanking (*specify the court, tribunal or authority to which the request is addressed*) in advance for its co-operation in this case, the Honourable Lord (*name*) [or Sheriff (*name*)] avails himself [or herself] of this opportunity to renew the assurance of his [or her] high consideration.

(Signed)

Lord Commissioner of Justiciary

[or Sheriff of (name of sheriffdom) at (place)]

Dated this (*date*).

FORM 36.8–A

Form of warrant to cite a person to proceedings before a nominated court

WARRANT FOR CITATION

Whereas the High Court of Justiciary [*or* Sheriffdom of (*sheriffdom*) at (*place*)] has been nominated by the Lord Advocate to receive evidence under section 15 of the Crime (International Co-operation) Act 2003 [*or* nominated under section 30(3) of the Crime (International Co-operation) Act 2003 to facilitate the giving of evidence by live television link] [*or* nominated under section 31(4) to facilitate the giving of evidence by telephone], the court grants warrant for the citation of witnesses to proceedings to take place at (*time*) on (*date*) at (*place*).

FORM 36.8–B

Form of postal citation to proceedings before a nominated court

IN THE HIGH COURT OF JUSTICIARY

[*or* IN THE SHERIFF COURT]

AT (*place*)

CITATION

To: (name and address)

Date of citation: (day after date of posting)

YOU ARE HEREBY CITED to appear on (*date*) at (*time*) in the High Court of Justiciary [*or* Sheriff Court] at (*address*) to give evidence in connection with proceedings against (*name of accused*) before (*name of external court*) [*or* in connection with an investigation by (*name of external authority*)].

[*You will be required to give your evidence through a live television link to (*name of external authority*)[*or* by telephone to (*name of external authority*)].

Please return the enclosed form to the Procurator Fiscal in the pre-paid envelope provided within 14 days after the date of citation stated at the top of this citation.

IF YOU FAIL TO ATTEND WITHOUT A LAWFUL EXCUSE THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.

*delete if inapplicable

FORM 36.8-C

Form of reply slip to be completed and returned by person cited to appear before a nominated court

To: Procurator Fiscal
(address to be inserted by person effecting citation)

From: (name to be inserted by person effecting citation)

Date: (*date*)

I, (name and address of person cited to be inserted by person effecting citation), acknowledge that I have received the citation to appear to give evidence on (date to be inserted by person effecting citation) at (time to be inserted by person effecting citation) in the High Court of Justiciary [or Sheriff Court] at (address to be inserted by person effecting citation).

I shall attend on that date.

(Signed)

FORM 36.8-D

Form of personal citation for proceedings before a nominated court

IN THE HIGH COURT OF JUSTICIARY

[*or* IN THE SHERIFF COURT]

AT (*place*)

CITATION

To: (name and address)

Date of citation: (*date of citation*)

YOU ARE HEREBY CITED to appear on (*date*) at (*time*) in the High Court of Justiciary [*or* Sheriff Court] at (*address*) to give evidence in connection with proceedings against (*name of accused*) before (*name of external court*) [*or* in connection with an investigation by (*name of external authority*)].

[*You will be required to give your evidence through a live television link to (*name of external court or authority*)[*or* by telephone to (*name of external court or authority*)].

IF YOU FAIL TO ATTEND WITHOUT A LAWFUL EXCUSE THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.

*delete if inapplicable

(Signed)

Officer of Law

EXPLANATORY NOTE

(This note is not part of the Act of Adjournal)

This Act of Adjournal makes various amendments to the Criminal Procedure Rules 1996 (S.I.1996/513) (“the 1996 Rules”).

Paragraph 2(3) inserts a new Chapter 23A dealing with the obtaining of evidence by live television link from abroad under section 273 of the Criminal Procedure (Scotland) Act 1995.

Paragraph 2(4) substitutes a new Chapter 36 which makes provision in connection with the Crime (International Co-operation) Act 2003.

Paragraph 2(5) makes minor and consequential amendments to the forms set out in the Appendix to the 1996 Rules.

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