
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 44

**HIGH COURT OF JUSTICIARY
SHERIFF COURT**

**Act of Adjournal (Criminal Procedure Rules Amendment)
(Criminal Procedure (Amendment) (Scotland) Act 2004) 2005**

Made - - - - *28th January 2005*

Coming into force - - *1st February 2005*

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⁽¹⁾, and of all other powers enabling them in that behalf, with the consent of the Scottish Ministers, 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) (Criminal Procedure (Amendment) (Scotland) Act 2004) 2005 and shall come into force on 1st February 2005.

(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) Subject to sub-paragraphs (2) to (4), the Act of Adjournal (Criminal Procedure Rules) 1996⁽²⁾ shall be amended in accordance with sub-paragraphs (5) to (18).

(2) Nothing in this Act of Adjournal shall affect proceedings in which—

- (a) the accused is cited on or before 1st March 2005 to a diet in the High Court or the sheriff court which commences before 1st April 2005; or
- (b) the period mentioned in subsections (1) or (4) of section 65 of the Act of 1995 as so continued (taking into account any extension under subsections (3), (5) or (7)) expires before 1st April 2005.

(3) In sub-paragraph (2), the reference to citation to a diet which commences before 1st April 2005 includes—

(1) 1995 c. 46.

(2) S.I. 1996/513, last amended by S.S.I. 2004/481.

- (a) any further, adjourned, postponed or altered diet which commences before that date;
 - (b) re-indictment to any diet which commences before that date; and
 - (c) a first diet in the sheriff court which commences before that date and any subsequent trial diet in the sheriff court, provided the trial diet also commences before that date.
- (4) For the purposes of sub-paragraphs (2) and (3)–
- (a) a diet other than a trial diet shall be taken to commence when it is called; and
 - (b) a trial diet shall be taken to commence when the jury is sworn.
- (5) After rule 2.2 (citation in solemn proceedings)(3), there shall be inserted the following:–

“Citation in solemn proceedings by service on solicitor

2.2A. Where the documents mentioned in section 66(6C) of the Act of 1995 (citation by service on solicitor)(4) are to be served on a solicitor under that section, they shall be–

- (a) delivered to the solicitor personally at the solicitor’s place of business;
- (b) left for the solicitor with an employee or partner of the solicitor at the solicitor’s place of business; or
- (c) posted to the solicitor’s place of business by the first class recorded delivery service,

with a notice in Form 2.2A.”.

- (6) At the end of rule 2.6 (forms of execution of service)(5) there shall be inserted the following:–

“(7) The execution of service of documents under rule 2.2A (citation in solemn proceedings by service on solicitor) or rule 2.3A (service etc. on accused through a solicitor)(6) shall be in Form 2.6–G.”.

- (7) At the end of rule 4.1 (application to alter address in bail order) there shall be inserted the following:–

“(6) Where–

- (a) the application is made by a witness who has been granted bail under section 90B(1)(b) of the Act of 1995(7); and
- (b) the warrant to apprehend the witness under section 90A(1) of the Act of 1995(8) was issued on the application of a party other than the prosecutor,

paragraphs (1) to (5) shall also apply to that party as they apply to the prosecutor.”.

- (8) In rule 8.1 (appeals in relation to extension of time for trial)–

- (a) in paragraph (1) for “(extension of 12 months period for commencement of trial on indictment)” there shall be substituted “(extension of periods for commencement of preliminary hearing or trial diet)”;
- (b) in paragraph (2) “or (7)” shall be omitted and for “(extension of 80 or 110 days period of committal)” there shall be substituted “(extension of 80, 110 or 140 days period of committal)”.

(3) Rule 2.2 was amended by S.S.I. 2003/468.

(4) Section 66(6C) was inserted by section 7 of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp5\)](#).

(5) Rule 2.6 was amended by S.S.I. 2003/468.

(6) Rule 2.3A was inserted by S.S.I. 2004/434.

(7) Section 90B was inserted by section 11 of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#).

(8) Section 90A was inserted by section 11 of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#).

(9) Rule 8.1A (further provision as respects extension of twelve months period for commencement of trial on indictment) and rule 8.1B (fresh indictment as alternative to serving notice fixing new trial diet)(9) shall be omitted.

(10) For rule 8.2 (citation of accused and witnesses) there shall be substituted the following:–

“Citation of accused and witnesses

8.2.—(1) Subject to paragraph (5), the notice to be affixed to the door of the relevant premises for the purposes of section 66(4)(b) of the Act of 1995(10) shall be in Form 8.2–A.

(2) Subject to paragraph (5), the notice for the purposes of section 66(6) of the Act of 1995 to be served on a person accused on indictment shall be in Form 8.2–B or, where the charge is of committing a sexual offence to which section 288C of that Act(11) applies, Form 8.2–C.

(3) The form of postal citation of a witness under section 66(1) of the Act of 1995(12) shall be in Form 8.2–D; and the witness shall return Form 8.2–E to the procurator fiscal, or the accused person or his solicitor, as the case may be, in the pre-paid envelope provided, within 14 days after the date of citation.

(4) The form of personal citation of a witness under section 66(1) of the Act of 1995 shall be in Form 8.2–F.

(5) Where the accused is a body corporate,

(a) the notice to be affixed to the door of the relevant premises for the purposes of section 66(4)(b) of the Act of 1995 shall be in Form 8.2–G;

(b) the notice for the purposes of section 66(6) of the Act of 1995 shall be in Form 8.2–H.”.

(11) For Chapter 9 (first diets and preliminary diets) there shall be substituted the following:–

“CHAPTER 9

FIRST DIETS (SHERIFF COURT)

Minute giving notice of preliminary pleas or preliminary issues

9.1.—(1) Any notice given under section 71(2) of the Act of 1995 (notice of preliminary pleas or preliminary issues before first diet)(13) shall be by minute in Form 9.1.

(2) That minute shall be lodged with the sheriff clerk and served on every other party by the minuter.

Procedure on lodging minute

9.2. On the lodging of a minute under rule 9.1 (minute giving notice of preliminary pleas or preliminary issues) with a certificate of execution of service, the sheriff clerk shall endorse on the minute the time and date on which it was received.

(9) Rules 8.1A and 8.1B were inserted by S.S.I. 1999/78.

(10) Section 66(4)(b) was inserted by section 61 of the [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#) and amended by section 7 of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#).

(11) Section 288C was inserted by section 1 of the [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), amended by section 15 of the [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#) and further amended by section 4(1) of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#).

(12) Section 66(1) was amended by section 7 of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#).

(13) Section 71 was amended by paragraph 20 of the schedule to the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#).

Orders for further diets under section 71 of the Act of 1995

9.3.—(1) An order for a further diet under section 71(2ZA) of the Act of 1995 (further diet to consider objection to the admissibility of evidence)(**14**) may be signed by the sheriff clerk.

(2) Intimation of the terms of an order—

(a) mentioned in paragraph (1); or

(b) for an adjourned diet under section 71(5A) of the Act of 1995 (adjournment of first diet)(**15**),

shall be given by the sheriff clerk to the governor of any institution in which the accused is detained.

Procedure at first diet

9.4.—(1) A first diet shall commence on the diet being called.

(2) A record of the proceedings at the first diet, including—

(a) a note of the decision made by the court in respect of any notice placed before it;

(b) any adjournment, and

(c) the plea stated under section 71(6) of the Act of 1995 (plea at first diet),

shall be kept in accordance with existing law and practice.

Applications for leave to appeal

9.5.—(1) An application for leave to appeal to the High Court under section 74(1) of the Act of 1995 (appeal against a decision of the sheriff at a first diet)(**16**) shall be made by motion to the sheriff at that diet immediately following the making of the decision in question, and shall be granted or refused at that time.

(2) A decision under this rule shall be recorded in the minute of proceedings.

Note of appeal

9.6.—(1) An appeal under section 74(1) of the Act of 1995 against a decision of the sheriff at a first diet shall be made by lodging a note of appeal in Form 9.6.

(2) The note of appeal shall be lodged with the sheriff clerk not later than two days after the making of the decision in question.

Procedure on lodging note of appeal

9.7.—(1) On the lodging of a note of appeal with the sheriff clerk, he shall endorse on it a certificate that leave to appeal has been granted and the date and time of lodging.

(2) As soon as possible after the lodging of a note of appeal with the sheriff clerk, he shall—

(a) send a copy of the note of appeal to the other parties or their solicitors;

(b) request a report on the circumstances relating to the decision from the sheriff; and

(c) transmit the note of appeal to the Clerk of Justiciary with a certified copy of—

(i) the indictment;

(14) Section 71(2ZA) was inserted by section 14 of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#).

(15) Section 71(5A) was inserted by paragraph 5 of schedule 1 to the [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#).

(16) Section 74(1) was amended by section 3(2) of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#).

- (ii) the record of proceedings; and
- (iii) any other relevant document.

Report of sheriff

9.8.—(1) The sheriff, on receiving a request for a report under rule 9.7(2)(b) (report on circumstances relating to decision) shall, as soon as possible, send his report to the Clerk of Justiciary.

- (2) The Clerk of Justiciary shall, on receiving the report of the sheriff—
 - (a) send a copy of the report to the parties or their solicitors;
 - (b) arrange for a hearing of the appeal as soon as possible; and
 - (c) cause to be copied any documents necessary for the appeal.

Intimation of order postponing trial diet

9.9.—(1) Where, in relation to an appeal under section 74(1) of the Act of 1995 (appeal in connection with first diet) in a case set down for trial in the sheriff court, the High Court makes an order under section 74(3) of that Act (postponement of trial diet)**(17)**, the Clerk of Justiciary shall send a copy of the order to—

- (a) the sheriff clerk;
- (b) all parties to the proceedings; and
- (c) the governor of any institution in which any accused is detained.

(2) If, in relation to any case a trial diet has been postponed by virtue of an order mentioned in paragraph (1), any requirement to call that diet shall have effect only in relation to the date to which the diet has been postponed.

Orders of appeal court

9.10. The Clerk of Justiciary shall intimate to the sheriff clerk the decision of the High Court disposing of an appeal under section 74(1) of the Act of 1995 in relation to a first diet.

Abandonment of appeal

9.11.—(1) An appellant who has taken an appeal under section 74(1) of the Act of 1995 (appeal in connections with first diet) may abandon the appeal at any time before the hearing of the appeal.

(2) An abandonment of such an appeal shall be made by lodging a minute of abandonment in Form 9.11 with the Clerk of Justiciary.

(3) The Clerk of Justiciary, on receiving such a minute of abandonment, shall inform the sheriff clerk and the other parties or their solicitors.

(4) The sheriff, on the sheriff clerk being so informed, may proceed as accords with the case.

(17) Section 74(3) was amended by section 3(4) of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5).

CHAPTER 9A

PRELIMINARY HEARINGS (HIGH COURT OF JUSTICIARY)

Notice of preliminary pleas and preliminary issues

9A.1.—(1) Any notice given under section 72(3) (notice of preliminary pleas) or section 72(6)(b)(i) (notice of preliminary issues) of the Act of 1995⁽¹⁸⁾ shall be by minute in Form 9A.1.

(2) A minute under paragraph (1) shall be lodged with the Clerk of Justiciary and served on every other party by the minuter.

Applications to dispense with preliminary hearings

9A.2.—(1) An application to dispense with a preliminary hearing shall be made in Form 9A.2.

(2) Prior to making an application under paragraph (1), the parties shall consult with the Clerk of Justiciary as to a suitable date for a trial diet.

(3) An application under paragraph (1) shall indicate whether or not a date for a trial diet has been agreed by the parties with the Clerk of Justiciary and shall give details of any applicable time limits under section 65 of the Act of 1995⁽¹⁹⁾.

(4) On the lodging of an application under paragraph (1), the Clerk of Justiciary shall attach it to the record copy of the indictment and place it before a judge in chambers.

(5) The order made by the judge in chambers in respect of the application shall be—

- (a) recorded by endorsement on the record copy of the indictment;
- (b) signed by the Clerk of Justiciary;
- (c) entered in the record of proceedings; and
- (d) intimated by the Clerk of Justiciary to the applicants or their solicitors.

(6) The Clerk of Justiciary shall send to the governor of any institution in which any accused is detained a copy of any order of the court dispensing with a preliminary hearing.

Notice to appear where preliminary hearing deserted

9A.3. A notice referred to in section 72C(4) of the Act of 1995 (notice to appear at further preliminary hearing)⁽²⁰⁾ shall be in Form 8.2–B or, where the charge is of committing a sexual offence to which section 288C of the Act of 1995 (prohibition of personal conduct of defence in cases of certain sexual offences)⁽²¹⁾ applies, Form 8.2–C.

Written record of state of preparation

9A.4.—(1) A written record referred to in section 72E of the Act of 1995 (written record of the state of preparation in certain cases)⁽²²⁾ shall be in Form 9A.4 and shall contain the information indicated in that form.

(18) Section 72 was amended by section 1(3) of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5).

(19) Section 65 was amended by section 6 of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5).

(20) Section 72C was inserted by section 1(3) of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5).

(21) Section 288C was inserted by section 1 of the [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002](#) (asp 9), amended by section 15 of the [Criminal Justice \(Scotland\) Act 2003](#) (asp 7) and further amended by section 4(1) of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5).

(22) Section 72E was inserted by section 2 of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5).

(2) A written record under paragraph (1) may be lodged by sending a copy by facsimile or other electronic means followed by the lodging of the principal and the time and date of lodging shall be the date and time on which the copy was received by the Clerk of Justiciary.

(3) A written record under paragraph (1) which is lodged after 2pm on the last date for lodging under section 72E of that Act shall be deemed to have been lodged on the next day after that date.

Proceedings at preliminary hearing

9A.5.—(1) Any order under section 72(9)(a) (appointment of further diet) of the Act of 1995⁽²³⁾ shall be intimated by the Clerk of Justiciary to the parties or their solicitors.

(2) On the making of an order mentioned in paragraph (1), the Clerk of Justiciary shall send a copy of the order to the governor of any institution in which the accused is detained.

(3) On the appointment of a trial diet, the Clerk of Justiciary shall intimate the date of that diet to the governor of any institution in which the accused is detained.

Applications for leave to appeal

9A.6.—(1) An application for leave to appeal to the High Court under section 74(1) of the Act of 1995⁽²⁴⁾ against a decision of the High Court at a preliminary hearing shall be made by motion to the court at that hearing immediately following the making of the decision in question, and shall be granted or refused at that time.

(2) A decision made under this rule shall be recorded in the record of proceedings.

Note of appeal

9A.7.—(1) An appeal under section 74(1) of the Act of 1995 against a decision of the High Court at a preliminary hearing shall be made by lodging a note of appeal in Form 9A.7 with the Clerk of Justiciary.

(2) The appellant shall send a copy of a note of appeal under paragraph (1) to the other parties.

Abandonment of appeal

9A.8.—(1) An appellant who has taken an appeal under section 74(1) of the Act of 1995 (appeals against decision at a preliminary hearing) may abandon the appeal at any time before the hearing of the appeal.

(2) An abandonment of such appeal shall be made by lodging a minute of abandonment in Form 9A.8.

(23) Section 72 was amended by section 1(3) of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5).

(24) Section 74(1) was amended by section 3 of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5).

CHAPTER 9B

OBJECTIONS TO THE ADMISSIBILITY OF EVIDENCE RAISED AFTER FIRST DIET OR PRELIMINARY HEARING

Notice etc. of objections raised after first diet or preliminary hearing

9B.1.—(1) Any notice given under section 79A(2) of the Act of 1995 (objections to the admissibility of evidence after first diet or preliminary hearing) **(25)** shall be by minute in Form 9B.1 and shall be served on the other parties by the minuter.

(2) On the lodging of a minute under paragraph (1), the Clerk of Justiciary or the sheriff clerk, as the case may be, shall place the minute before a judge in chambers.

(3) On considering the minute in the absence of the parties or of any person acting on their behalf, the judge shall appoint—

- (a) a further diet to be held before the trial diet for the purpose of hearing the parties on whether leave should be granted for the objection to be raised; or
- (b) the question of whether leave should be granted under section 79A(2) of the Act of 1995 for the objection to be disposed of at the trial diet.

(4) The Clerk of Justiciary or the sheriff clerk, as the case may be, shall intimate the order under paragraph (3) to the parties and to the governor of any institution in which the accused is detained.”.

(12) In rule 10.1 (procedure for plea of guilty)—

- (a) in paragraph (2)(a) “at any sitting” shall be omitted;
- (b) in paragraph (2)(b) for “(notice of first and trial diet)” there shall be substituted “(notice of first diet and trial diet or preliminary hearing)”; and
- (c) paragraph (4)(d) shall be omitted.

(13) For Chapter 12 (alteration and postponement of solemn trial diet) there shall be substituted the following:—

“CHAPTER 12

ADJOURNMENT AND ALTERATION OF DIETS IN SOLEMN PROCEEDINGS

Adjournment

12.1.—(1) Where circumstances arise in which the court may adjourn a diet under section 75A(2) of the Act of 1995 (adjournment and alteration of diets) **(26)**, and the prosecutor proposes such an adjournment, he may for that purpose require the diet to be called on the date for which it was originally fixed at such time as he thinks appropriate.

(2) The presence of the accused in court when the diet was so called and adjourned shall be sufficient intimation to him of the adjourned diet.

(3) If the diet was so called and adjourned in the absence of the accused, the prosecutor shall forthwith serve on the accused an intimation of adjournment in Form 12.1.

(4) The calling and the adjournment of the diet including a record as to the presence or absence of the accused, as the case may be, shall be endorsed by the clerk of court on the record copy indictment and entered in the record of proceedings in accordance with existing law and practice.

(25) Section 79A was inserted by section 14(2) of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5).

(26) Section 75A was inserted by section 15 of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5).

(5) A copy of the order of the court adjourning the diet under section 75A(2) of the Act of 1995 shall be sent by the clerk of court to the governor of any institution in which the accused is detained.

Applications for alteration of diet

12.2.—(1) Subject to paragraph (2), an application under section 75A(5) of the Act of 1995 (application for alteration of diet)(27) shall be made by minute in Form 12.2–A.

(2) Where all parties join in the application, the application shall be made by joint minute in Form 12.2–B.

(3) A minute under this rule shall be lodged—

- (a) in the case of proceedings in the High Court, with the Clerk of Justiciary,
- (b) in the case of proceedings in the sheriff court, with the sheriff clerk.

Orders fixing diet for hearing application to alter diet

12.3. Where a minute referred to in rule 12.2 (applications for alteration of diet) has been lodged, the court shall, or, in a case in which all parties join in the application, may, make an order endorsed on the minute—

- (a) fixing a diet for a hearing of the application; and
- (b) for service of the minute with the date of the diet on all parties.

Calling of diet for hearing application

12.4. A diet fixed under rule 12.3 (orders fixing diet for hearing application to alter diet) shall be held in open court in the presence of all parties unless the court permits the hearing to proceed in the absence of the accused under section 75A(8) of the Act of 1995, and shall be commenced by the calling of the diet.

Joint applications without hearing

12.5.—(1) Where, in the case of a joint application under subsection (5) of section 75A of the Act of 1995 (application for alteration of diet), the court proposes to proceed without hearing the parties by virtue of subsection (7) of that section (joint application for alteration of diet), the clerk of court shall on the lodging of the minute attach it to the record copy of the indictment and place it before a judge in chambers.

(2) The order made by the judge in chambers in respect of the joint application shall be—

- (a) recorded by endorsement on the record copy of the indictment;
- (b) signed by the clerk of court;
- (c) entered in the record of proceedings; and
- (d) intimated by the clerk of court to the applicants or their solicitors.

(3) The clerk of court shall send to the governor of any institution in which the accused is detained a copy of the following orders of the court—

- (a) an order under rule 12.3 (order fixing diet for hearing of application to alter diet);
 - (b) an order under section 65(3) or (5) of the Act of 1995 (extension of time limits)(28);
- and

(27) Section 75A was inserted by section 15 of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5).

(28) Section 65 was amended by section 6 of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004](#) (asp 5).

- (c) an order under section 75A(5) of the Act of 1995(discharging a diet and fixing a new diet).

Form of notice where trial diet does not take place

12.6. A notice referred to in section 81(5) of the Act of 1995 (notice to appear where trial diet has not taken place)(**29**) shall be in Form 8.2–B or, where the charge is of committing a sexual offence to which section 288C of that Act (prohibition of personal conduct of defence in cases of certain sexual offences)(**30**) applies, Form 8.2–C.

Floating diets in the High Court of Justiciary

12.7.—(1) A minute referred to in section 83A(2)(a) of the Act of 1995 (minute of continuation of floating trial diet)(**31**) shall be in Form 12.7.

(2) The maximum number of days for which a floating diet may be continued from sitting day to sitting day shall be four days after the day originally appointed for the trial diet.”.

- (14) For rule 13.1 (list of jurors) there shall be substituted the following:–

“List of jurors

13.1.—(1) A list of jurors shall–

- (a) contain not less than 30 names;
- (b) be prepared under the directions of the clerk of court before which the trial is to take place;
- (c) be kept at the office of the sheriff clerk of the district in which the court of the trial diet is situated; and
- (d) be headed “List of Assize for the sitting of the High Court of Justiciary (or the sheriff court of.at.) on the.of.”.

(2) The clerk of the court before which the trial is to take place, in preparing a list of jurors for the trial diet, shall have regard, in determining the number of jurors to be listed, to the powers of altering the date of or adjourning any trial diet exercisable under the following provisions of the Act of 1995:–

section 74(3) (postponement of trial diet in appeals in connection with first diets or preliminary hearings)(**32**),

section 75A (adjournment and alteration of diets)(**33**),

section 76(3) (postponement where not guilty plea accepted)(**34**).”.

- (15) After rule 13A.1 (citation of witnesses for precognition)(**35**), there shall be inserted the following:–

(**29**) Section 81 was amended by section 9 of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#).

(**30**) Section 288C was inserted by section 1 of the [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), amended by section 15 of the [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#) and further amended by section 4(1) of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#).

(**31**) Section 83A was inserted by section 5 of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#).

(**32**) Section 74 was amended by section 3(4) of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#).

(**33**) Section 75A was inserted by section 15 of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#).

(**34**) Section 76 was amended by paragraph 24 of the schedule to the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#).

(**35**) Rule 13A.1 was inserted by S.S.I. 2004/434 and amended by S.S.I. 2004/481.

“Warrants for apprehension

13A.2.—(1) An application made in writing for a warrant for the apprehension of a witness under section 90A or 90D of the Act of 1995⁽³⁶⁾ shall be in Form 13A.2–A.

(2) On receipt of an application under paragraph (1), the Clerk of Justiciary or sheriff clerk, as the case may be, shall fix a diet for the hearing of the application and intimate the date of that hearing to the parties.

(3) A warrant for the apprehension of a witness under section 90A of the Act of 1995 shall be in Form 13A.2–B.

Review of orders

13A.3. An application for review under section 90D of the Act of 1995 of an order under section 90A(1)(a) or (b) of that Act shall be in Form 13A.3.

Appeals

13A.4. An appeal under section 90E(1) of the Act of 1995 (appeal in respect of an order under section 90B(1) of the Act of 1995) shall be made by lodging a note of appeal in Form 13A.4 with the Clerk of Justiciary.”

(16) After rule 21.2 (notice of challenge of evidence as uncontroversial) there shall be inserted the following:–

“Application for direction that challenge be disregarded

22.2A. An application under section 258(4A) of the Act of 1995 (application for direction that challenge be disregarded)⁽³⁷⁾ shall be in Form 21.2A.”

(17) In rule 40.2(5) (raising devolution issues: proceedings on indictment)⁽³⁸⁾ for “or objection or to make any submission or application under section 72 of the Act of 1995” there shall be substituted “objection, preliminary plea or preliminary issue”.

(18) In the appendix–

- (a) at the beginning there shall be inserted the form set out in Part 1 of the Schedule to this Act of Adjournal;
- (b) in Forms 2.6–AA and 2.6–BA⁽³⁹⁾, for “accused’s dwelling-house [or place of business]”, there shall be substituted “relevant premises”;
- (c) after Form 2.6–F there shall be inserted the form set out in Part 2 of the Schedule to this Act of Adjournal;
- (d) for Forms 8.1–A, 8.1–B, 9.1⁽⁴⁰⁾, 9.9 and 9.17 there shall be substituted respectively the forms set out in Part 3 of the Schedule to this Act of Adjournal;
- (e) for Forms 8.2–A to 8.2–E⁽⁴¹⁾ there shall be substituted the forms set out in Part 4 of the Schedule to this Act of Adjournal;
- (f) for Form 9.12 there shall be substituted the forms set out in Part 5 of the Schedule to this Act of Adjournal;

⁽³⁶⁾ Sections 90A to 90D were inserted by section 11 of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#).

⁽³⁷⁾ Section 258(4A) was inserted by section 16 of the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#).

⁽³⁸⁾ Rule 40.2 was inserted by S.I. [1999/1346](#).

⁽³⁹⁾ Forms 2.6–AA and 2.6–BA were inserted by S.S.I. [2003/468](#).

⁽⁴⁰⁾ Form 9.1 was amended by S.S.I. [2003/468](#).

⁽⁴¹⁾ Form 8.2–AA was inserted by S.S.I. [2003/468](#). Form 8.2–B was amended by S.S.I. [2002/454](#). Form 8.2–BA was inserted by S.S.I. [2002/454](#).

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- (g) for Forms 12.1, 12.2–A, 12.2–B and 12.6 there shall be substituted respectively the forms set out in Part 6 of the Schedule to this Act of Adjournal; and
- (h) after Form 13.2–B there shall be inserted the forms set out in Part 7 of the Schedule to this Act of Adjournal;
- (i) after Form 21.2 there shall be inserted the form set out in Part 8 of the Schedule to this Act of Adjournal;
- (j) in Forms 40.2A and 40.2B, in paragraph 1, for “trial” there shall be substituted “preliminary hearing”.

Edinburgh
28th January 2005

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

SCHEDULE

Paragraph 2(18)

PART 1

FORM 2.2A Form of notice to accompany the indictment, lists of witnesses and productions and notice of compearance being served on a solicitor under section 66(6C) of the Criminal Procedure (Scotland) Act 1995

Rule 2.2A

Prosecutor's reference...*(specify)*

Your reference...*(specify, if known)*

TAKE NOTICE that the attached indictment; list of witnesses; list of productions and notice under section 66(6) of the Criminal Procedure (Scotland) Act 1995 are served on you *(name of solicitor)*, the solicitor for [A.B.] *(address)* [or Prisoner at the Prison of *(address)*]. By virtue of section 66(6C) of that Act, [A.B.] is taken to have been served with those documents.

Date: *(date)*

(Signed)

Prosecutor

(Name, address, e-mail address and telephone number)

PART 2

FORM 2.6-G Form of execution of service etc. of documents under section 66(6C) or section 72G of the Criminal Procedure (Scotland) Act 1995 EXECUTION OF SERVICE ON ACCUSED'S SOLICITOR IN SOLEMN PROCEEDINGS

Rule 2.6(7)

I, *(name and designation)*, on *(date)* duly served [or gave or notified or intimated or specify] the indictment, lists of witnesses and productions and notice of compearance [or specify the document[s] being served etc.] on [C.D.], the solicitor for the accused [A.B.].

This I did by *(state method of service)*.

[(Signed)

Witness]

(Signed)

Prosecutor

[or On behalf of Prosecutor or Clerk of Court
or specify]

PART 3

FORM 8.1-A Form of note of appeal against grant or refusal of extension of period of 11 or 12 months under section 65(8) of the Criminal Procedure (Scotland) Act 1995

Rule 8.1(1)

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

NOTE OF APPEAL

under section 65(8) of the

Criminal Procedure (Scotland) Act 1995

by

[A.B.]

[whose domicile of citation has been specified as *(specify)*]

Appellant

against

[HER MAJESTY'S ADVOCATE]

Respondent

HUMBLY SHEWETH:

1. That at the sheriff court of the *(name of sheriffdom and place of court)* on *(date)* the appellant [, along with *(name(s) of co-accused)*,] appeared on petition at the instance of the procurator fiscal of that court on [a] charge[s] of *(specify)*.
2. That the appellant was committed for trial on *(date)* and was released on bail on *(date)*.
3. That the appellant was indicted to a preliminary hearing within the High Court of Justiciary [*or* That the appellant was indicted to stand trial within the High Court of Justiciary] [*or* sheriff court] sitting at *(place)* on *(date)*].
4. That an application under section 65(3) of the Criminal Procedure (Scotland) Act 1995 was presented to the High Court of Justiciary [*or* sheriff court] on *(date)* by or on behalf of Her Majesty's Advocate and heard in the High Court of Justiciary [*or* sheriff court] at *(place)* on *(date)*.
5. That Lord [*or* Sheriff] *(name)* extended [*or* refused to extend] the period of 11 [*or* 12] months which would have expired on *(date)* by *(number)* days.
6. That the grant [*or* refusal] of the extension is unreasonable in respect that *(here state briefly reasons for appeal)*.

ACCORDING TO JUSTICE, etc.

(Signed)

Prosecutor

[*or* Legal representative of [A.B.]]

(Name, address, e-mail address and telephone number)

(Place and date)

FORM 8.1–B Form of note of appeal against grant or refusal of extension of 80, 110 or 140 days period of committal under section 65(8) of the Criminal Procedure (Scotland) Act 1995

Rule 8.1(2)

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

NOTE OF APPEAL

under section 65(8) of the

Criminal Procedure (Scotland) Act 1995

by

[A.B.]

[presently a prisoner in the Prison of *(place)*]

Appellant

Against

[HER MAJESTY'S ADVOCATE]

Respondent

HUMBLY SHEWETH:

1. That at the sheriff court of the *(name of sheriffdom and place of court)* on *(date)* the appellant [, along with *(name(s) of co-accused)*,] appeared on petition at the instance of the procurator fiscal of that court on [a] charge(s) of *(specify)*.
2. That the appellant was committed until liberated in due course of law on *(date)* and remains in custody.
3. That no indictment has been served on the appellant [*or* That the appellant was cited to a preliminary hearing within the High Court of Justiciary on *(date)* at *(place)*]. [A trial diet has been appointed by the court within the High Court of Justiciary sitting at *(place)* on *(date)*][*or* That the appellant was indicted to stand trial within the sheriff court] sitting at *(place)* on *(date)*.
4. That an application under section 65(5) of the Criminal Procedure (Scotland) Act 1995 was presented to the High Court of Justiciary [*or* sheriff court] sitting at *(place)* on *(date)* by or on behalf of Her Majesty's Advocate and was heard in that court on *(date)*.
5. That Lord [*or* Sheriff] *(name)* extended [*or* refused to extend] the period of 80 [*or* 110 *or* 140] days which would have expired on *(date)* by *(number)* days.
6. That the grant [*or* refusal] of the extension is unreasonable in respect that *(here state briefly reasons for appeal)*.

ACCORDING TO JUSTICE, etc.

(Signed)

Prosecutor

[*or* Legal representative of [A.B.]]

*(Name, address, e-mail address and
telephone number)*

(Place and date)

**FORM 9.1 Form of minute of notice under section 71(2) of the Criminal Procedure (Scotland)
Act 1995**

Rule 9.1(1)

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

AT *(place)*

MINUTE

by

HER MAJESTY'S ADVOCATE

[or [A.B.] (address)

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

HUMBLY SHEWETH:

1. That [A.B.] [, along with *(name(s) of co-accused)*,] has been indicted at the instance of Her Majesty's Advocate for trial in the sheriff court at *(place)* on *(date)* with a first diet on *(date)*.
2. That the minuter is raising the following preliminary plea[s] *[or preliminary issue[s]]*:-
(here specify the preliminary plea(s) and preliminary issue(s)).
3. That a copy of this minute has been duly intimated to Her Majesty's Advocate *[or A.B.]*
[and to the said (name(s) of co-accused)] conform to execution[s] attached to this minute.

MAY IT THEREFORE PLEASE YOUR LORDSHIP:

- [(a)]*to consider the above preliminary plea[s] *[and/or issue[s]]* at the first diet;
(b) to order that the following productions be made available at that diet].

IN RESPECT WHEREOF

(Signed)

Prosecutor

[or Legal representative of [A.B.]]

*(Name, address, e-mail address and telephone
number)*

(Place and date)

**FORM 9.6 Form of note of appeal under section 74(1) of the Criminal Procedure (Scotland)
Act 1995 against a decision of the sheriff at a first diet**

Rule 9.6(1)

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

NOTE OF APPEAL

by

HER MAJESTY'S ADVOCATE

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

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

HUMBLY SHEWETH:

1. That in the sheriff court sitting at (*place*) on (*date*) a first diet was held in the case of Her Majesty's Advocate against [A.B.] [*and (name(s) of co-accused)*].
2. That the diet appointed for trial on the indictment is (*diet*).
3. That the ground[s] of submission raised at the first diet was [*or were*] (*specify*).
4. That the decision of the court was (*specify*).
5. That the court granted leave to appeal to the High Court of Justiciary against that decision.
6. That Her Majesty's Advocate [*or A.B.*] appeals to the High Court of Justiciary against that decision on the following grounds (*specify*).

ACCORDING TO JUSTICE, etc.

(*Signed*)

Prosecutor

[*or Legal representative of [A.B.]*]

(*Name, address, e-mail address and telephone
number*)

(*Place and date*)

FORM 9.11 Form of minute of abandonment of appeal made under section 74(1) of the
Criminal Procedure (Scotland) Act 1995 against a decision of the sheriff at a first diet
NOTICE
OF ABANDONMENT OF APPEAL

Status: This is the original version (as it was originally made). Scottish
Statutory Instruments are not carried in their revised form on this site.

Rule 9.11(2)

Name of appellant:

Date of birth:

Prisoner in the Prison of *(place)* [or as the case may be]

Crime or offence to which appeal relates:

Court:

The above appellant, having lodged a note of appeal under section 74(1) of the Criminal Procedure (Scotland) Act 1995, abandons, as from this date, that appeal against the decision at the first diet.

(Signed)

Prosecutor

[or Legal representative of [A.B.]]

(Name, address, e-mail address and telephone number)

(Place and date)

PART 5

FORM 8.2—A Form of notice of citation to be affixed to the door of the relevant premises under section 66(4)(b) of the Criminal Procedure (Scotland) Act 1995

Rule 8.2(1)

**IMPORTANT NOTICE
(CITATION)**

Prosecution reference:

TO: *(name) (date of birth) (address)*

A CRIMINAL CASE IS BEING BROUGHT AGAINST YOU

A document has been prepared which sets out the criminal charges against you.

That document (the "indictment") may be collected by you with a list of the witnesses against you and a list of any productions to be put in evidence against you by the prosecutor from *(name and address of police station)*.

YOU MUST APPEAR at *(place)* **High Court of Justiciary** *(address)* on *(date)* at *(time)* for a preliminary hearing [*or* at *(place)* **Sheriff Court** *(address)* on *(date)* at *(time)* for a first diet **and** on *(date)* at *(time)* for a trial diet] at which you will be required to answer the criminal charges against you in the indictment.

IF YOU DO NOT ATTEND THE COURT, A WARRANT MAY BE ISSUED FOR YOUR ARREST

This notice was affixed by me *(name and designation)* on *(date)*.

(Signed)

Constable

(Name)

(Signed)

Witness

(Name)

FORM 8.2–BForm of notice to appear under section 66(6) of the Criminal Procedure (Scotland) Act 1995

*Status: This is the original version (as it was originally made). Scottish
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Rules 8.2(2), 9A.3 and 12.7

**IMPORTANT NOTICE
(CITATION)**

Prosecution reference:

TO: *(name) (date of birth) (address)*

A CRIMINAL CASE IS BEING BROUGHT AGAINST YOU

A document has been prepared which sets out the criminal charges against you.

That document (the “indictment”) is attached to this notice.

YOU MUST APPEAR at *(place)* **High Court of Justiciary** *(address)* on *(date)* at *(time)* for a preliminary hearing [*or at (place) Sheriff Court (address) on (date) at (time) for a first diet and on (date) at (time) for a trial diet*] at which you will be required to answer the criminal charges against you in the indictment.

IF YOU DO NOT ATTEND THE COURT, A WARRANT MAY BE ISSUED FOR YOUR ARREST

(Signed)

Prosecutor

(Name, address, e-mail address and telephone number)

(Place and date)

FORM 8.2–CForm of notice to accused to appear under section 66(6) of the Criminal Procedure (Scotland) Act 1995 where the charge in the indictment is of committing a sexual offence to which section 288C of the Criminal Procedure (Scotland) Act 1995 applies

IMPORTANT NOTICE

(CITATION)

Prosecution reference:

TO: *(name) (date of birth) (address)*

A CRIMINAL CASE IS BEING BROUGHT AGAINST YOU

A document has been prepared which sets out the criminal charges against you.

That document (the "indictment") is attached to this notice.

YOU MUST APPEAR at *(place)* **High Court of Justiciary** *(address)* on *(date)* at *(time)* for a preliminary hearing [*or at (place) Sheriff Court (address) on (date) at (time) for a first diet and on (date) at (time) for a trial diet*] at which you will be required to answer the criminal charges against you in the indictment.

Because you are being charged with at least one sexual offence—

- (1) if you are tried for the offence, your defence may be conducted only by a lawyer;
- (2) it is therefore in your interests, if you have not already done so, to get the professional assistance of a solicitor;
- (3) if you do not engage a solicitor for the purposes of your defence at the preliminary hearing or the trial, the court will do so.

IF YOU DO NOT ATTEND THE COURT, A WARRANT MAY BE ISSUED FOR YOUR ARREST

(Signed)

Prosecutor

(Name, address, e-mail address and telephone number)

(Place and date)

FORM 8.2–D Form of postal citation of witness to appear at a trial on indictment

Status: This is the original version (as it was originally made). Scottish Statutory Instruments are not carried in their revised form on this site.

Rule 8.2(3)

IMPORTANT NOTICE

(CITATION)

Prosecution reference (if known):

Defence reference (if known).....

TO: (name) (date of birth) (address)

DATE OF CITATION: (date)

YOU ARE WITNESS FOR THE PROSECUTION [OR DEFENCE] IN THE CRIMINAL CASE AGAINST (NAME)

YOU MUST APPEAR at (place) **High Court of Justiciary** (address) on (date) at (time) [or at (place) **Sheriff Court** (address) on (date) at (time)].

IF YOU DO NOT ATTEND, THE COURT MAY GRANT A WARRANT FOR YOUR ARREST

Please complete, sign and return the enclosed response form to the Procurator Fiscal [or the accused or the solicitor for the accused] in the pre-paid envelope provided by (date).

(Signed)

Prosecutor

[or Accused or Solicitor for the Accused]

(Name, address, e-mail address and telephone number)

FORM 8.2–E Form of response form to be completed and returned by witness cited to appear at trial on indictment WITNESS RESPONSE FORM

Rule 8.2(3)

Prosecution reference (if known):

Defence reference (if known).....

To: Procurator Fiscal [or (name) accused or solicitor for (name)] (address and references to be completed by person serving the citation)

From: (name to be printed by person serving the citation)

Date: (specify)

I, (name and address of witness to be completed by person serving the citation), have received the citation to appear as a witness for the prosecution [or defence] in the case of Her Majesty's Advocate against (name of accused to be completed by person serving the citation) on (date to be inserted by person serving the citation) at (place to be inserted by person serving the citation).

I shall attend on that date.

(Signed)

FORM 8.2–F Form of personal citation of witness to appear at a trial on indictment

Rule 8.2(4)

IMPORTANT NOTICE

(CITATION)

Prosecution reference:

Defence reference: *(if known)*.....

TO: *(name) (date of birth) (address)*

DATE: *(date)*

**YOU ARE WITNESS FOR THE PROSECUTION [OR DEFENCE] IN THE CRIMINAL
CASE AGAINST (NAME)**

YOU MUST APPEAR at *(place)* **High Court of Justiciary** *(address)* on *(date)* at *(time)* [*or* at
(place) **Sheriff Court** *(address)* on *(date)* at *(time)*].

**IF YOU DO NOT ATTEND, THE COURT MAY GRANT A WARRANT FOR YOUR
ARREST**

(Signed)

Officer of Law

(Name, address, e-mail address

and telephone number)

FORM 8.2–GForm of notice of citation of body corporate to be affixed to the door of the
relevant premises under section 66(4)(b) of the Criminal Procedure (Scotland) Act 1995

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Rule 8.2(1)

**IMPORTANT NOTICE
(CITATION)**

Prosecution reference:

TO: *(name of body corporate) (address)*

A CRIMINAL CASE IS BEING BROUGHT AGAINST (NAME OF BODY CORPORATE)

A document has been prepared which sets out the criminal charges against *(name of body corporate)*.

That document (the "indictment") may be collected with a list of the witnesses and productions against *(name of body corporate)* from *(name and address of police station)*.

(NAME OF BODY CORPORATE) MUST BE REPRESENTED* at *(place)* High Court of Justiciary *(address)* on *(date)* at *(time)* for a preliminary hearing [or at *(place)* Sheriff Court *(address)* on *(date)* at *(time)* for a first diet and on *(date)* at *(time)* for a trial diet] at which *(name of body corporate)* will be required to answer the criminal charges against it in the indictment.

[Where the indictment is in respect of the High Court: **IF (NAME OF BODY CORPORATE) IS NOT REPRESENTED AT THE PRELIMINARY HEARING–**

- (a) **THE HEARING MAY PROCEED; AND**
- (b) **A TRIAL DIET MAY BE APPOINTED IN ITS ABSENCE]**

IF (NAME OF BODY CORPORATE) IS NOT REPRESENTED AT THE TRIAL DIET, THE TRIAL MAY PROCEED IN ITS ABSENCE

This notice was affixed by me *(name and designation)* on *(date)*.

(Signed)

Constable

(Name)

(Signed)

Witness

(Name)

*By a representative under section 70(4) of the Criminal Procedure (Scotland) Act 1995, by counsel (an advocate or solicitor advocate) or by a solicitor.

FORM 8.2–H Form of notice for body corporate to appear under section 66(6) of the Criminal Procedure (Scotland) Act 1995

**IMPORTANT NOTICE
(CITATION)**

Prosecution reference:

TO: *(name of body corporate) (address)*

A CRIMINAL CASE IS BEING BROUGHT AGAINST *(NAME OF BODY CORPORATE)*

A document has been prepared which sets out the criminal charges against *(name of body corporate)*.

That document (the "indictment") is attached to this notice.

(NAME OF BODY CORPORATE)* MUST BE REPRESENTED at *(place)* **High Court of Justiciary** *(address)* on *(date)* at *(time)* for a preliminary hearing [or at *(place)* **Sheriff Court** *(address)* on *(date)* at *(time)* for a first diet and on *(date)* at *(time)* for a trial diet] at which *(name of body corporate)* will be required to answer the criminal charges against it in the indictment.

[Where the indictment is in respect of the High Court: **IF *(NAME OF BODY CORPORATE)* IS NOT REPRESENTED AT THE PRELIMINARY HEARING–**

- (a) THE HEARING MAY PROCEED; AND**
- (b) A TRIAL DIET MAY BE APPOINTED IN ITS ABSENCE]**

IF *(NAME OF BODY CORPORATE)* IS NOT REPRESENTED AT THE TRIAL DIET, THE TRIAL MAY PROCEED IN ITS ABSENCE.

(Signed)

Officer of Law

(Name, address, e-mail address and telephone number)

*By a representative under section 70(4) of the Criminal Procedure (Scotland) Act 1995, by counsel (an advocate or solicitor advocate) or by a solicitor.

PART 5

FORM 9A.1 Form of minute of notice under section 72(3) or (6)(b)(i) of the Criminal Procedure (Scotland) Act 1995

Rule 9A.1(1)

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

MINUTE

by

HER MAJESTY'S ADVOCATE

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

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

HUMBLY SHEWETH:

1. That [A.B.], along with (*name(s) of co-accused*), has been indicted at the instance of Her Majesty's Advocate to a preliminary hearing in the High Court of Justiciary at (*place*) at (*time*) on (*date*).
2. That the minuter is raising the following preliminary plea[s] [or preliminary issue[s]]:-
(*here specify the preliminary plea(s) or issue(s)*).
3. That a copy of this minute has been duly intimated to Her Majesty's Advocate [or the accused] [and to the said (*name(s) of co-accused*)] conform to execution[s] attached to this minute.

MAY IT THEREFORE PLEASE YOUR LORDSHIPS:

[(a)to consider the above preliminary plea[s] [*and/or* preliminary issue[s]] at the preliminary hearing[;

(b) to order that the following productions be made available at that diet].

IN RESPECT WHEREOF

(*Signed*)

Prosecutor

[or Legal representative of [A.B.]]

(*Name, address, e-mail address and telephone number*)

(*Place and date*)

FORM 9A.2 Form of application for dispensing with a preliminary hearing

Rule 9A.2(1)

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

JOINT APPLICATION

by

HER MAJESTY'S ADVOCATE

and

[A.B.] (*address*)

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

HUMBLY SHEWETH:

1. That a preliminary hearing has been fixed in the case of Her Majesty's Advocate against (*name of accused*) at (*place*) on (*date*).
2. That the prosecutor and the accused are ready to proceed to trial as set out in the attached Joint Written Record in Form 9A.4.
3. That there are no preliminary pleas, preliminary issues or other matters which require to be, or could with advantage be, disposed of before the trial.
4. There are no persons to whom section 72(7) of the Criminal Procedure (Scotland) Act 1995 applies.
5. That the following witnesses are required by the prosecutor to attend the trial:–
(*specify*)
6. That the following witnesses are required by the accused to attend the trial:–
(*specify*)
7. That parties are ready and able to proceed to trial on (*date*) and that the expected length of the trial is (*specify*).

MAY IT THEREFORE PLEASE YOUR LORDSHIPS:

- (1) to discharge the preliminary hearing fixed for (*date*);
- (2) to appoint a trial diet.

IN RESPECT WHEREOF:

(*Signed*)

Prosecutor

(*Name, address, e-mail address and telephone
number*)

(*Place and date*)

(*Signed*)

Legal representative of [A.B.]

(*Name, address, e-mail address and telephone
number*)

(*Place and date*)

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FORM 9A.4 Form of written record of state of preparation

Rule 9A.4(1)

IN THE HIGH COURT OF JUSTICIARY
AT *(place)*
WRITTEN RECORD OF STATE OF PREPARATION
in the case of
HER MAJESTY'S ADVOCATE
against
[A.B.] *(address)*
[or Prisoner in the Prison of *(place)*]

Preliminary hearing: *(date)*

	<i>Prosecutor</i>	<i>Accused's legal representative</i>
Name:	<i>(name)</i>	<i>(name)</i>
Address:	<i>(address)</i>	<i>(address)</i>
E-mail address:		
Telephone number:		
Reference number:		

The prosecutor and the accused's legal representative record their state of preparation as set out in the Schedules.

(Signed)

Prosecutor

(Date and place)

(Signed)

Accused's legal representative

(Date and place)

In this Schedule, unless otherwise stated,

Plea

1. Has a plea of guilty been entered?
If the answer to this question is "no", the plea is not applicable.

Preliminary issues

2. Has notice been given of any preliminary issue within the time specified?
If the answer to this question is "no", the issue is not applicable.

Objections to admissibility of evidence

3. Is there any objection to the admissibility of evidence on behalf of Her Majesty's Advocate or the accused's legal representative in relation to any preliminary issue?

If the answer to this question is "yes", the objection is not applicable under section 79(2)(b) of the Criminal Procedure (Scotland) Act 1995.

**FORM 9A.7 Form of note of appeal under section 74(1) of the Criminal Procedure (Scotland)
Act 1995 against a decision of the High Court at a preliminary hearing**

Rule 9A.7

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

NOTE OF APPEAL

by

HER MAJESTY'S ADVOCATE

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

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

HUMBLY SHEWETH:

1. That in the High Court sitting at (*place*) on (*date*) a preliminary hearing was held in the case of Her Majesty's Advocate against [A.B.] [and (*name(s) of co-accused*)].
2. That the trial has been appointed for (*date*).
3. That the ground[s] of submission raised at the preliminary hearing was [or were] (*specify*).
4. That the decision of the court was (*specify*).
5. That the court granted leave to appeal against that decision.
6. That [A.B.] appeals to the High Court of Justiciary against that decision on the following grounds:–
(*specify*).

ACCORDING TO JUSTICE, etc.

(*Signed*)

Prosecutor

[or Accused's Legal Representative]

(*Name, address, e-mail address and telephone
number*)

(*Place and date*)

**FORM 9A.8 Form of minute of abandonment of appeal made under section 74(1) of the
Criminal Procedure (Scotland) Act 1995 against a decision of the court at a preliminary
hearing**

Rule 9A.8

NOTICE OF ABANDONMENT OF APPEAL

Name of appellant:

[If accused Date of birth:

Prisoner in the Prison of *(place)* *[or as the case may be]*

Crime or offence to which appeal relates:

Court:

The above appellant, having lodged a note of appeal under section 74(1) of the Criminal Procedure (Scotland) Act 1995, abandons, as from this date, that appeal against the decision at the first diet.

(Signed)

Prosecutor

[or Legal representative of [A.B.]

*(Name, address, e-mail address and telephone
number)*

(Place and date)

FORM 9B.1 Form of minute of notice under section 79A(2) of the Criminal Procedure (Scotland) Act 1995

Rule 9B.1(1)

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

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

AT *(place)*]

MINUTE

by

HER MAJESTY'S ADVOCATE

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

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

HUMBLY SHEWETH:

1. That [A.B.], [, along with *(name(s) of co-accused)*,] has been indicted at the instance of Her Majesty's Advocate.
2. That a preliminary hearing [or first diet] took place at the High Court of Justiciary [or sheriff court] at *(place)* on *(date)*.
3. That a trial diet is to take place at *(time)* on *(date)*.
4. That the minuter intends to raise the following objections to the admissibility of evidence:–
(here specify objection(s)).
5. That the minuter could not reasonably have raised that [or those] objection(s) at the preliminary hearing (or first diet) for the following reason(s):–
(here specify reason(s))
6. That a copy of this minute has been duly intimated conform to the execution(s) attached to this minute.

MAY IT THEREFORE PLEASE YOUR LORDSHIP(S):

- (a) to grant leave under section 79A(2) to raise the foregoing objection(s);
- (b) to appoint a diet to be held before the commencement of the trial for the purposes of disposing of this minute [and the objection(s)];
- (a) to appoint the question of whether leave should be granted under section 79A(2) of the Act of 1995 to be disposed of at the trial diet; or
- (b) to do otherwise as your Lordship(s) think(s) fit.

IN RESPECT WHEREOF

(Signed)

Prosecutor

[or

Legal representative of [A.B.]]

(Name, address, e-mail address and telephone number)

(Place and date)

PART 6

FORM 12.1 Form of intimation by prosecutor of adjournment of diet under section 75A of the Criminal Procedure (Scotland) Act 1995

Rule 12.1(3)

HER MAJESTY'S ADVOCATE against *(here name all accused)*

To: (name and address of accused)

TAKE NOTICE:

- (1) That, the diet *(specify)* fixed for *(date)* was adjourned, in your absence, to *(date)*;
- (2) That YOU ARE THEREFORE REQUIRED TO APPEAR at the High Court of Justiciary [or Sheriff Court] sitting at *(place)* on *(date)* at *(time)* to answer to the indictment which has already been served on you.

Served on the day of *(date)* by me by *(here state method of service)*

(Signed)

Prosecutor

(Name, address, e-mail address and telephone number)

(Place and date)

FORM 12.2—A Form of minute for alteration of diet under section 75A of the Criminal Procedure (Scotland) Act 1995

Rule 12.2(1)

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*)]

MINUTE

By

Her Majesty's Advocate

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

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

HUMBLY SHEWETH:

1. That [A.B.] [, along with (*name(s) of co-accused*),] has been indicted at the instance of Her Majesty's Advocate in the High Court of Justiciary [or in the sheriff court] at (*place*) and a diet of (*specify*) has been fixed for (*date*).
- [2. (*Here narrate any hearings fixed previously and decisions of the court.*)]
2. That the minuter applies to the court for alteration of the diet for the following reasons:–
(*here state reasons*).
3. The following statutory time-limits apply in this case:–
(*specify relevant dates*).

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:

- (a) to fix a diet for hearing this application and to order intimation of this application and the diet to all the parties;
- (b) thereafter, after hearing all the parties, to discharge the diet of (*specify*) and fix a new diet;
- (c) or to do otherwise as to your Lordship[s] shall seem proper;
- (d) to require the clerk of court to intimate the new diet to (*specify*).

IN RESPECT WHEREOF

(*Signed*)

Prosecutor

[or Legal representative of [A.B.]]

(*Name, address, e-mail address and telephone
number*)

(*Place and date*)

FORM 12.2–BForm of joint minute for alteration of diet under section 75A of the Criminal
Procedure (Scotland) Act 1995

Rule 12.2(2)

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*)]

JOINT MINUTE

By

(1) Her Majesty's Advocate and

(2) [A.B.] (*address*) [or Prisoner in the Prison of (*place*)]

MINUTERS

HUMBLY SHEWETH:

1. That [A.B.] has been indicted at the instance of Her Majesty's Advocate for trial in the High Court of Justiciary sitting [or in the sheriff court] at (*place*) and a diet of (*specify*) has been fixed for (*date*);

2. That the minuters apply to the court to discharge the diet for the following reasons:–
(*here state reasons*).

3. That the following time limits under section 65 of the Criminal Procedure (Scotland) Act 1995 apply in this case:–
(*here state time limits and relevant dates*)

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:

- (a) to dispense with a hearing of this application;
- (b) to discharge the diet of (*specify*) and to fix a new diet;
- (c) or to do otherwise as to your Lordship[s] shall seem proper.

IN RESPECT WHEREOF

(*Signed*)

Prosecutor

(*Name, address, e-mail address and telephone number*)

(*Place and date*)

(*Signed*)

Legal representative of [A.B.]

(*Name, address, e-mail address and telephone number*)

(*Place and date*)

FORM 12.7Form of minute of continuation of a floating trial diet in the High Court of Justiciary

Rule 12.7

The court continued the trial diet appointed for [date] until [date of next sitting day].

(Signed)

Clerk

[The court further continued the trial diet appointed for [date] until [date of next sitting day].]

(Signed)

Clerk

[The court further continued the trial diet appointed for [date] until [date of next sitting day].]

(Signed)

Clerk

[The court further continued the trial diet appointed for [date] until [date of next sitting day].]

(Signed)

Clerk

PART 7

FORM 13A.2–A Form of application for warrant for the apprehension of a witness under section 90A or 90D of the Criminal Procedure (Scotland) Act 1995

Rule 13A.2(1)

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*)]

APPLICATION

for

WARRANT FOR THE APPREHENSION OF A WITNESS

by

Her Majesty's Advocate

[or [A.B.] (*address*)[or Prisoner in the Prison of (*place*)]]

HUMBLY SHEWETH:

1. That [A.B.] has been indicted at the instance of Her Majesty's Advocate in the High Court of Justiciary [or in the sheriff court] at (*place*).
2. (*Here state grounds for application*).

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:

- (a) to grant warrant for the apprehension of [C.D.] (*address*);or
- (b) to fix a diet for the hearing of this application; or
- (c) to do otherwise as to your Lordship[s] shall seem proper.

IN RESPECT WHEREOF

(*Signed*)

Prosecutor

[or Legal representative of [A.B.]]

(*Name, address, e-mail address and telephone
number*)

(*Place and date*)

**FORM 13A.2-B Form of warrant for the apprehension of a witness under section 90A of the
Criminal Procedure (Scotland) Act 1995**

*Status: This is the original version (as it was originally made). Scottish
Statutory Instruments are not carried in their revised form on this site.*

Rule 13A.2(3)

(Place and date). The High Court of Justiciary [*or Sheriff*] at *(place)* grants a warrant under section 90A(1) of the Criminal Procedure (Scotland) Act 1995 in the case of Her Majesty's Advocate against [A.B.] for the apprehension of [C.D.] *(address)* ("the witness").

By virtue of section 90A(6) of that Act, this warrant implies warrant to officers of law—

- (a) to search for and apprehend the witness;
- (b) to bring the witness before the court;
- (c) in the meantime, to detain the witness in a police station, police cell or other convenient place; and
- (d) so far as necessary for the execution of the warrant, to break open shut and lockfast places.

(Signed)

Sheriff [*or, in the High Court, Clerk of Court*]

(Name, address, e-mail address and telephone number)

Note to officers of law: contact the clerk of court on apprehension of the witness.

FORM 13A.3 Form of application for review under section 90D(1) of the Criminal Procedure (Scotland) Act 1995

Rule 13A.3

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)*]

APPLICATION

under section 90D of the Criminal Procedure (Scotland) Act 1995

for

REVIEW OF AN ORDER

By

[C.D.](*address*)

HUMBLY SHEWETH:

1. That [C.D.] is a witness in the case of Her Majesty's Advocate against [A.B.].
2. That an order under section 90A(1)(a) [or 90A(1)(b)] of the Criminal Procedure (Scotland) Act 1995 was made against [C.D.] on *(date)*.
3. *(Here state the grounds for the application)*.

MAY IT THEREFORE PLEASE YOUR LORDSHIP(S) TO:

(specify)

IN RESPECT WHEREOF

(Signed)

Legal representative of [C.D.]

*(Name, address, e-mail address and telephone
number)*

**FORM 13A.4 Form of note of appeal under section 90E(1) of the Criminal Procedure
(Scotland) Act 1995**

Rule 13A.4

NOTE OF APPEAL

by

HER MAJESTY'S ADVOCATE

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

[or Prisoner in the Prison of (place)]

[or [C.D.] (address)]

HUMBLY SHEWETH:

1. That on (date) the High Court of Justiciary [or Sheriff] at (place) made the following order under section 90B of the Criminal Procedure (Scotland) Act 1995:–

(specify)

2. That Her Majesty's Advocate [or A.B. or C.D.] appeals to the High Court of Justiciary against that decision on the following grounds:–

(specify).

ACCORDING TO JUSTICE, etc.

(Signed)

Prosecutor

[or Accused's Legal Representative or specify]

(Name, address, e-mail address and telephone number)

(Place and date)

PART 8

FORM 21.2A Form of application under section 258(4A) 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*)]

APPLICATION

under section 258(4A) of the Criminal Procedure (Scotland) Act 1995

by

HER MAJESTY'S ADVOCATE

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

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

APPLICANT

HUMBLY SHEWETH:

1. That [A.B.][along with (*name(s) of co-accused*),] has been indicted at the instance of Her Majesty's Advocate with a preliminary hearing in the High Court of Justiciary sitting at (*place*) on (*date*) [or with a first diet on (*date*) at the sheriff court of (*place*)].

2. That on (*date*) the Applicant served the attached statement of uncontroversial evidence under section 258(2) of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act").

3. That on (*date*) Her Majesty's Advocate [or A.B.] served the attached notice of challenge under section 258(3) of the 1995 Act in respect a fact [or fact[s]] specified or referred to in that statement.

4. That the following challenge[s] in the notice of challenge is [or are] unjustified for the following reason[s]:-

(*here specify challenges and reasons*)

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:

- (a) to direct that the challenge[s] be disregarded for the purposes of section 258(4) of the Criminal Procedure (Scotland) Act 1995; or
- (b) to do otherwise as your Lordships[s] think[s] fit.

IN RESPECT WHEREOF

(*Signed*)

Prosecutor

[or Legal representative of [A.B.]]

(*Name, address, e-mail address and telephone number*)

(*Place and date*)

EXPLANATORY NOTE

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

This Act of Adjournal amends the Criminal Procedure Rules 1996 (S.I.1996/513) (“the 1996 Rules”) to make provision consequential upon amendments to the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) by the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#) (“the 2004 Act”) and to make various other minor amendments. Paragraph 2(2) to (5) sets out transitional provisions which are linked to the commencement of the 2004 Act under S.S.I.2004/405.

Paragraph 2(5) inserts a new rule 2.2A into the 1996 Rules making provision regarding the citation of an accused person by service of documents on his or her solicitor under section 66(6C) of the 1995 Act which was inserted by section 7 of the 2004 Act (citation).

Paragraph 2(6) makes provision for a form of execution of service on a solicitor under new rule 2.2A (citation in solemn proceedings by service on solicitor) and also under existing rule 2.3A (service etc. on accused through solicitor) of the 1996 Rules.

Paragraph 2(7) makes provision in connection with the alteration of the bail address of a witness who has been admitted to bail under section 90B(1)(b) of the 1995 Act which was inserted by section 11 of the 2004 Act (obstructive witnesses).

Paragraph 2(8) amends rule 8.1 of the 1996 Rules (appeals in relation to extension of time for trial) in connection with the amendments by section 6 of the 2004 Act (time limits) to section 65 of the 1995 Act (prevention of delay in trials).

Paragraph 2(9) omits rule 8.1A (fresh indictment as alternative to serving notice fixing new trial diet) and rule 8.1B (fresh indictment as alternative to serving notice fixing new trial diet) of the 1996 Rules as a consequence of the repeal by the 2004 Act of section 80 of the 1995 Act (alteration and postponement of trial diet).

Paragraph 2(10) makes various changes to the manner and form of citation of the accused and witnesses in solemn proceedings.

Paragraph 2(11) substitutes for Chapter 9 of the 1996 Rules (first diets and preliminary diets), a new Chapter 9 dealing only with first diets in the sheriff court and a new Chapter 9A dealing only with preliminary hearings in the High Court of Justiciary. The paragraph also inserts a new Chapter 9B which deals with objections to the admissibility of evidence in solemn proceedings after the first diet or preliminary hearing.

Paragraph 2(12) makes minor amendments to rule 10 of the 1996 Rules (plea of guilty).

Paragraph 2(13) substitutes for Chapter 12 of the 1996 Rules (alteration and postponement of solemn trial diet) a new Chapter 12 (adjournment and alteration of diets in solemn proceedings).

Paragraph 2(14) makes minor and consequential amendments to rule 13.1 of the 1996 Rules (list of jurors).

Paragraph 2(15) makes provision in connection with the apprehension of witnesses under section 90A and 90D of the 1995 Act. Both of those sections were inserted by section 11 of the 2004 Act (obstructive witnesses).

Paragraph 2(16) provides for a form of application for a direction from the court under section 258(4A) of the 1995 Act that a challenge of evidence as uncontroversial be disregarded. Subsection (4A) of section 258 of the 1995 Act was inserted by section 16 of the 2004 Act.

Paragraph 2(17) makes minor and consequential amendments to rule 40.2(5) of the 1996 Rules (raising devolution issues: proceedings on indictment).

Paragraph 2(18) adds new forms to those set out in the annexe to the 1996 Rules.