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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 243**

**HIGH COURT OF JUSTICIARY  
SHERIFF COURT  
JUSTICE OF THE PEACE COURT**

Act of Adjournal (Criminal Procedure Rules  
Amendment No. 2) (Contempt of Court) 2009

*Made* - - - - *10th June 2009*  
*Coming into force* - - *5th August 2009*

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<sup>(1)</sup>, 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 No. 2) (Contempt of Court) 2009 and comes into force on 5th August 2009.

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

**Contempt of Court**

2. After Chapter 29A of the Criminal Procedure Rules 1996<sup>(2)</sup> (service of bills of advocation and suspension and petitions to the nobile officium) insert—

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<sup>(1)</sup> 1995 c.46.

<sup>(2)</sup> The Criminal Procedure Rules 1996 are contained in Schedule 2 to the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513, last amended by S.S.I. 2009/144). Chapter 29A was inserted by S.S.I 2009/144.

## “CHAPTER 29B CONTEMPT OF COURT

### **Application of this Chapter**

**29B.1.**—(1) This Chapter applies where a court considers that a person (“the relevant person”) may have committed a contempt of court to which paragraph (2) applies (the “alleged contempt”) in, or in connection with, proceedings before that court.

(2) This paragraph applies to an alleged contempt that has been directed at a member of the court personally or any other contempt that it would be inappropriate for that court to deal with.

### **Withdrawal of jury**

**29B.2.** Where the alleged contempt occurs in proceedings on indictment, the court shall ensure that any step it takes in relation to dealing with the alleged contempt is taken outwith the presence of the jury or any persons cited for jury service.

### **Criminal prosecution**

**29B.3.**—(1) The court shall ascertain from the prosecutor whether he intends to bring criminal proceedings in relation to the alleged contempt.

(2) Where the prosecutor states that he intends to bring criminal proceedings, the court shall take no further action in relation to the alleged contempt.

### **Procedure where the prosecutor does not intend to bring criminal proceedings**

**29B.4.**—(1) Where the prosecutor has indicated that he does not intend to bring criminal proceedings, the court (“the first court”) shall fix a diet for a hearing of the matter (“the contempt hearing”) by a differently constituted court (“the other court”).

(2) The diet shall be fixed to take place no later than the third court day following the date on which the alleged contempt occurred.

- (3) At the same time as fixing the diet for the contempt hearing, the first court shall—
- (a) advise the relevant person that legal aid is available for legal advice and assistance;
  - (b) ascertain the relevant person’s current address; and
  - (c) either—
    - (i) ordain the relevant person to appear at the contempt hearing; or
    - (ii) exercise its power to remand that person in custody until that hearing.

### **Statement of facts**

**29B.5.**—(1) The first court shall prepare a statement of the relevant facts (“the statement of facts”).

(2) The clerk of court shall make arrangements for the relevant person and the other court to receive a copy of the statement of facts no later than 24 hours before the contempt hearing.

### **The contempt hearing**

**29B.6.**—(1) At the contempt hearing the other court shall ascertain from the relevant person whether he admits or denies the facts contained in the statement of facts.

(2) Where the relevant person admits the material facts contained in the statement of facts, the other court shall take that statement to be accurate and shall—

- (a) hear the relevant person and consider any relevant documents; and
- (b) determine whether a contempt of court has been committed by the relevant person.

(3) Where the relevant person denies any of the material facts contained in the statement of facts—

- (a) he may give evidence on oath concerning that fact or those facts;
- (b) the other court may hear evidence from any persons that it considers relevant (“relevant witnesses”) and consider any relevant documents.

(4) Persons identified by the other court as relevant witnesses under paragraph (3) shall be cited to attend that court by the clerk of court.

(5) To the extent that the statement of facts is not denied by the relevant person, the other court shall take it to be accurate.

(6) After having determined under paragraph (3) the accuracy of each of the material facts which is disputed, the other court shall—

- (a) hear the relevant person and consider any relevant documents; and
- (b) determine whether a contempt of court has been committed by the relevant person.

(7) Where the other court makes a finding of contempt of court, it shall—

- (a) give the relevant person the opportunity to apologise; and
- (b) after hearing the relevant person, determine the disposal.

### **Adjournment of the hearing**

**29B.7.**—(1) The other court may adjourn the contempt hearing on its own motion or on the motion of the relevant person.

(2) A request by the relevant person for an adjournment of the contempt hearing shall be made orally at the contempt hearing.

(3) A request for an adjournment will be granted on cause shown.

(4) Where the other court adjourns a contempt hearing it shall—

- (a) ordain the relevant person to appear at that adjourned hearing; or
- (b) exercise its power to remand that person in custody until that hearing.

### **Remand appeal**

**29B.8.**—(1) The relevant person may appeal to the High Court a decision of the court to exercise its powers to remand him in custody as mentioned in rule 29B.4(3)(c) or rule 29B.7(4) by lodging a written notice of appeal with the Clerk of Justiciary.

(2) The appeal shall be treated, so far as possible, as though it were a bail appeal.

### **Minute of proceedings**

**29B.9.** The clerk of court shall record all proceedings relating to the alleged contempt of court in the court minutes.”

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

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Edinburgh  
10th June 2009

*A.C. HAMILTON*  
Lord Justice General  
I.P.D.

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## EXPLANATORY NOTE

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

This Act of Adjournal amends the Criminal Procedure Rules 1996 to provide procedure for certain contempt of court proceedings.

Paragraph 2 inserts a new Chapter 29B. Rules 29B.1 and 29B.2 provide that this Chapter applies only to contempts that are directed at a member of the court personally or to any other contempt that it would not be appropriate for that court to deal with and that all steps in relation to such a contempt should be dealt with outwith the presence of the jury and those cited for jury service.

Rule 29B.3 provides that the court must ascertain from the prosecutor whether he or she intends to bring a criminal prosecution and, if so, the court is to take no further action in relation to the contempt.

Rule 29B.4 provides that where the prosecutor does not intend to bring criminal proceedings in relation to the alleged contempt, the court shall fix a diet for the matter to be heard by a differently constituted court. At the same time, the court must advise the relevant person that legal aid is available for legal advice and representation and may exercise its power to remand that person in custody.

Rule 29B.5 provides that the first court shall prepare a statement of the relevant facts and this must be provided to the relevant person and the other court by the clerk of court no later than 24 hours before the contempt hearing.

Rule 29B.6 makes provision for the contempt hearing. It provides that the other court must hear the relevant person and may hear any witnesses and consider any documents that it considers to be relevant in making its determination and any disposal.

Rule 29B.7 makes provision for adjournment. Rule 29B.8 makes provision for the relevant person to appeal to the High Court against a decision to remand him or her in custody.