
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 418

**Act of Adjournal (Criminal Procedure Rules
Amendment No. 4) (Miscellaneous) 2010**

Citation, commencement etc.

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment No. 4) (Miscellaneous) 2010.

(2) Subject to subparagraph (3), this Act of Adjournal comes into force on 13th December 2010.

(3) Paragraph 2 comes into force on 1st February 2011.

(4) A certified copy of this Act of Adjournal is to be inserted in the Books of Adjournal.

(5) Unless the context requires otherwise, in this Act of Adjournal a reference to a numbered provision or form is to the provision or form of that number in the Criminal Procedure Rules 1996⁽¹⁾.

Community payback orders

2.—(1) In rule 2.6 (forms of execution of service)⁽²⁾ in paragraph (5)—

(a) omit subparagraphs (b), (c) and (d);

(b) for subparagraph (g) substitute—

“(h) rule 20.22(2) (community payback orders: failure to attend progress review) shall be in Form 2.6-EH;

(i) rule 20.22(4) (community payback orders: breach of community payback order) shall be in Form 2.6-EI.”.

(2) In the appendix, after Form 2.6-EF insert Form 2.6-EH and Form 2.6-EI set out in Part 1 of the Schedule to this Act of Adjournal and omit Form 2.6-EB, Form 2.6-EC and Form 2.6-ED.

(3) Omit rule 6.5 (failure to comply with probation order).

(4) In rule 19A.1 (power of Clerk of Justiciary to alter place where case to be heard)⁽³⁾, in paragraph (1)(c)—

(a) omit paragraphs (i) and (ii);

(b) for paragraph (iv) substitute—

“(v) a community payback order.”.

(5) In Chapter 20 (sentencing)⁽⁴⁾ omit—

(a) rule 20.10 (probation orders)⁽⁵⁾;

(b) rule 20.11 (supervised attendance orders)⁽⁶⁾;

⁽¹⁾ 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. 2010/386).

⁽²⁾ Rule 2.6, last amended by S.S.I. 2005/160.

⁽³⁾ Rule 19A.1 was inserted by S.S.I. 2003/468, last amended by S.S.I. 2010/184.

⁽⁴⁾ Chapter 20, last amended by S.S.I. 2008/61.

⁽⁵⁾ Rule 20.10, last amended by S.S.I. 2003/468.

⁽⁶⁾ Rule 20.11 was substituted by S.S.I. 2003/468.

- (c) rule 20.12 (community service orders);
- (d) rule 20.12C (community reparation orders)(7).
- (6) After rule 20.21 (orders for lifelong restriction)(8) insert—

“Community payback orders

20.22.—(1) A community payback order made under section 227A of the Act of 1995 shall be in Form 20.22-A.

(2) The citation of an offender to appear before a court under section 227X(7)(a) (failure to attend progress review) of the Act of 1995 shall be in Form 20.22-B.

(3) An application under section 227Y(1) (applications to vary, revoke and discharge community payback orders) of the Act of 1995 shall be in Form 20.22-C.

(4) The citation of an offender to appear before a court under section 227ZC(2)(b) (breach of community payback order) of the Act of 1995 shall be in Form 20.22-D.”.

(7) In the appendix, after Form 20.21(9) insert Form 20.22-A, Form 20.22-B, Form 20.22-C and Form 20.22-D set out in Part 1 of the Schedule to this Act of Adjournal.

(8) Rules 2.6, 6.5 and 19A.1, and Chapter 20 as they applied immediately before 13 December 2011 continue to have effect where necessary in consequence of article 3 of the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No.6, Transitional and Savings Provisions) Order 2010(10).

Crown bail appeals

- 3. After rule 4.1 (application to alter address in bail order)(11), insert—

“Attendance of accused at Crown bail appeals

4.2.—(1) Where an appeal is made under section 32(2) of the Act of 1995 the accused may attend the hearing of the appeal.

(2) Where the accused wishes to attend the hearing of the appeal, he shall inform the Clerk of Justiciary not later than 24 hours before the hearing is due to take place.”.

Interruption of proceedings

- 4. After rule 14.8 (interruption of trial for other proceedings), insert—

“Interruption of proceedings for the tendering of pleas

14.8A.—(1) Where a case has called the presiding judge may, on a motion made jointly, without adjourning those proceedings interrupt them by calling other proceedings.

(2) Such a motion is competent only where in making the motion parties inform the court that—

- (a) one or more of the accused in the proceedings is also an accused in other proceedings;
- (b) none of the proceedings are going to trial, because (either or both)—

(7) Rule 20.12C was inserted by [S.S.I. 2005/160](#).
(8) Rule 20.21 was inserted by [S.S.I. 2006/302](#).
(9) Form 20.21 was inserted by [S.S.I. 2006/302](#).
(10) [S.S.I. 2010/413](#).
(11) Rule 4.1, last amended by [S.S.I. 2005/44](#).

- (i) the accused persons are intending to plead guilty as libelled;
 - (ii) the accused persons are intending to tender pleas which the Crown intends to accept; and
 - (c) in the interests of justice it is appropriate that the other proceedings be called in order that they be dealt with simultaneously.
- (3) Where the judge has interrupted any proceedings under paragraph (1), the proceedings are to be regarded as being before the court simultaneously and pleas shall be recorded in this way.
- (4) Where pleas have been recorded in accordance with paragraph (3) the clerk of court may on any subsequent occasion call the proceedings together and they shall be regarded as being before the court simultaneously.”.

Form of application for extension of time

5. In the appendix, in Form 15.2-C, before the space for signature insert—

“Note: in an application for extension of the period mentioned in section 109(1) of the Act of 1995, this form must also include the proposed grounds of appeal (see section 111(2A))(12).”.

Scottish Criminal Cases Review Commission

6.—(1) For Chapter 19B(13) substitute—

“CHAPTER 19B

SCOTTISH CRIMINAL CASES REVIEW COMMISSION

References

19B.1.—(1) This rule applies to a reference by the Scottish Criminal Cases Review Commission to the High Court under section 194B of the Act of 1995.

(2) The Clerk of Justiciary shall—

- (a) assign the reference to a procedural hearing fixed for a date not earlier than 21 days after receipt of the reference; and
- (b) as soon as possible thereafter, intimate the diet to every party and to the governor of any institution in which any accused is detained.

(3) At the procedural hearing the High Court shall consider and make orders in respect of—

- (a) the Court’s power to reject the reference under section 194DA of the Act of 1995(14);
- (b) any application under section 194D(4B) of the Act of 1995(15);
- (c) any application under section 194D(4D) of the Act of 1995(16);
- (d) the procedure to be followed in the determination of the reference;

(12) Section 111(2A) was inserted by section 5(2) of the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15).

(13) Chapter 19B was inserted by S.S.I. 2003/468 and amended by S.S.I. 2010/386.

(14) Section 194DA was inserted by section 7(4) of the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15).

(15) Section 194D(4C) was inserted by section 83 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).

(16) Section 194D(4D) was inserted by section 83 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).

- (e) any other matter which the Court considers appropriate in respect of the reference.

Applications for requests for assistance

19B.2.—(1) An application under section 194IA of the Act of 1995 shall be in Form 19B.2 and shall be lodged with the Clerk of Justiciary.

(2) The High Court shall—

- (a) without requiring intimation to any other party, proceed to consider the application;
- (b) after considering it shall grant it, with or without any modifications which it deems appropriate, or shall refuse it.

(3) The application shall be registered by the Clerk of Justiciary as if it were an application made under section 7(1) of the Crime (International Co-operation) Act 2003 and rule 36.6(17) applied.”.

(2) In the appendix, after Form 19.18(18) insert Form 19B.2 set out in Part 2 of the Schedule to this Act of Adjournal.

(3) The amendments made by subparagraphs (2) and (3) do not affect a reference under section 194B of the Criminal Procedure (Scotland) Act 1995(19) made before 13th December 2010.

Short periods of detention

7.—(1) Omit rule 18.6 (detention in precincts of court) and Form 18.6.

(2) Omit rule 20.2 (detention in police custody instead of imprisonment) and Form 20.2.

(3) Despite paragraphs (1) and (2), rules 18.6 and 20.2 and Form 18.6 and Form 20.2 continue to have effect where, despite their repeal by section 16 of the Criminal Justice and Licensing (Scotland) Act 2010(20), sections 169 and 206(2) of the Criminal Procedure (Scotland) Act 1995 continue to have effect for any purpose (21).

Legal aid

8.—(1) In rule 33.1 (interpretation of Chapter) for the definition of “the Regulations” substitute—
““the Regulations” means the Criminal Legal Aid (Scotland) Regulations 1996(22).”.

(2) Omit rule 33.2 (legal aid in High Court).

Financial reporting orders

9.—(1) In rule 49.1 (interpretation)(23), at the end insert—

““the prosecutor” means the prosecutor at whose instance the order was made.”.

(2) In rule 49.3 (variation or revocation of financial reporting orders) in paragraph (2)(a), at the end, after “be” insert “and to the prosecutor”.

(17) Chapter 36 was substituted by [S.S.I. 2004/195](#).

(18) Form 19.18 was inserted by [S.S.I. 2003/387](#).

(19) [1995 c. 46](#).

(20) [2010 asp 13](#).

(21) Section 16 of the 2010 Act is brought into force for the purpose of offences committed on or after 13 December 2010 by article 2 of the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No.6, Transition and Savings Provisions) Order 2010 ([S.S.I. 2010/413](#)).

(22) The Criminal Legal Aid (Scotland) Regulations 1996 ([S.I. 1996/2555](#)) revoked the Criminal Legal Aid (Scotland) Regulations 1987 ([S.I. 1987/307](#)).

(23) Chapter 49 was inserted by [S.S.I. 2006/205](#).

Edinburgh
24th November 2010

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