

2010 No. 418

HIGH COURT OF JUSTICIARY

SHERIFF COURT

JUSTICE OF THE PEACE COURTS

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

Made - - - - - *24th November 2010*

Coming into force in accordance with paragraph 1(2) and (3)

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, 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(b).

Community payback orders

2.—(1) In rule 2.6 (forms of execution of service)(c) 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;

(a) 1995 c.46.

(b) 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).

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

(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)(a), 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)(b) omit—

(a) rule 20.10 (probation orders)(c);

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

(c) rule 20.12 (community service orders);

(d) rule 20.12C (community reparation orders)(e).

(6) After rule 20.21 (orders for lifelong restriction)(f) 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(g) 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(h).

Crown bail appeals

3. After rule 4.1 (application to alter address in bail order)(i), 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.

(a) Rule 19A.1 was inserted by S.S.I. 2003/468, last amended by S.S.I. 2010/184.
(b) Chapter 20, last amended by S.S.I. 2008/61.
(c) Rule 20.10, last amended by S.S.I. 2003/468.
(d) Rule 20.11 was substituted by S.S.I. 2003/468.
(e) Rule 20.12C was inserted by S.S.I. 2005/160.
(f) Rule 20.21 was inserted by S.S.I. 2006/302.
(g) Form 20.21 was inserted by S.S.I. 2006/302.
(h) S.S.I. 2010/413.
(i) Rule 4.1, last amended by S.S.I. 2005/44.

(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)—
 - (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))(a).”.

Scottish Criminal Cases Review Commission

6.—(1) For Chapter 19B(b) 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) Section 111(2A) was inserted by section 5(2) of the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15).

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

- (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(a);
 - (b) any application under section 194D(4B) of the Act of 1995(b);
 - (c) any application under section 194D(4D) of the Act of 1995(c);
 - (d) the procedure to be followed in the determination of the reference;
 - (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(d) applied.”.

(2) In the appendix, after Form 19.18(e) 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(f) 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(g), sections 169 and 206(2) of the Criminal Procedure (Scotland) Act 1995 continue to have effect for any purpose (h).

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

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

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

(d) Chapter 36 was substituted by S.S.I. 2004/195.

(e) Form 19.18 was inserted by S.S.I. 2003/387.

(f) 1995 c .46.

(g) 2010 asp 13.

(h) 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).

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^(a).”.

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

Financial reporting orders

9.—(1) In rule 49.1 (interpretation)^(b), 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”.

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

Edinburgh
24th November 2010

^(a) The Criminal Legal Aid (Scotland) Regulations 1996 (S.I. 1996/2555) revoked the Criminal Legal Aid (Scotland) Regulations 1987 (S.I. 1987/307).

^(b) Chapter 49 was inserted by S.S.I. 2006/205.

SCHEDULE

Paragraph 2(2) and (7) and 6(2)

PART 1

Paragraph 2(2) and (7)

Form 2.6-EH

Rule 2.6(5)(h)

Form of execution of citation of offender under section 227X of the Criminal Procedure (Scotland) Act 1995

EXECUTION OF CITATION

I, (*name and designation*), on (*date*) lawfully cited (*name and address of offender*) to appear before the High Court of Justiciary [*or Sheriff or Justice of the Peace*] Court at (*address*) on (*date*) at (*time*) for the purpose of answering an allegation that he [*or she*] has failed to attend a progress review as set out in the attached written information.

This I did by posting on (*date*) a citation in Form 20.22-B to the offender at the address shown above, by the recorded delivery service [*or by (specify method by which citation effected)*].

(*Signed*)
Clerk of Court
[*or Officer of Law*]

Form 2.6-EI

Rule 2.6(5)(i)

Form of execution of citation of offender under section 227ZC of the Criminal
Procedure (Scotland) Act 1995

EXECUTION OF CITATION

I, (*name and designation*), on (*date*) lawfully cited (*name and address of offender*) to appear before the High Court of Justiciary [*or Sheriff or Justice of the Peace*] Court at (*address*) on (*date*) at (*time*) for the purpose of answering an allegation that he [*or she*] has failed to comply with a requirement of a community payback order as set out in the attached written information.

This I did by posting on (*date*) a citation in Form 20.22-D to the offender at the address shown above, by the recorded delivery service [*or by (specify method by which citation effected)*].

(*Signed*)
Clerk of Court
[*or Officer of Law*]

Form 20.22-A

Rule 20.22(1)

Form of community payback order under section 227A of the Criminal Procedure
(Scotland) Act 1995

COMMUNITY PAYBACK ORDER

under section 227A of the Criminal Procedure (Scotland) Act 1995

Court:
Date:
Offender:
Address:
Date of birth:

THE COURT, having convicted the offender of an offence in respect of which a community payback order may be imposed and considering it appropriate to impose such an order in respect of that offence;

AND the court having explained to the offender, in ordinary language, the purpose and effect of each of the requirements to be imposed by the order and the consequences which may follow if he or she fails to comply with any of those requirements [*and* where provision is made under section 227X for it to be reviewed, the arrangements for such a review];

AND the offender, having confirmed that he or she understands the requirements to be imposed by the order, being willing to comply with those requirements;

MAKES a community payback order imposing the following requirements on the offender, namely—

(*specify*);

AND requires the local authority in which the offender resides [*or* is to reside] for the duration of the order to nominate, within two days of it receiving a copy of this order, a responsible officer for the purposes of the order under section 227C;

AND requires the offender to comply with any instructions given by the responsible officer in that capacity.

Form 20.22-B

Rule 20.22(2)

Form of citation of offender under section 227X of the Criminal Procedure (Scotland)
Act 1995

IN THE HIGH COURT OF JUSTICIARY
[or IN THE SHERIFF [or JUSTICE OF THE PEACE] COURT]
AT (*place*)

CITATION

To: (*name and address of offender*)

Date of citation: (*date of citation or, if citation by post, the day after the date of posting*)

YOU ARE HEREBY CITED to appear on (*date*) at (*time*) in the High Court of Justiciary [or Sheriff [or Justice of the Peace] Court] at (*address*) because it has been reported to the court that you have failed to attend a progress review as alleged in the written information attached.

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

(*Signed*)
Clerk of Court

Form 20.22-C

Rule 20.22(3)

Form of application under section 227Y 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*)]

[*or* UNTO THE JUSTICES in the JUSTICES OF THE PEACE COURT
OF (*name of district*) AT (*place*)]

APPLICATION

by

(*specify offender*) [*or* (*specify responsible officer*)]
(*address*)

APPLICANT

HUMBLY SHEWETH:

1. That a community payback order was made against (*specify offender*) on (*date*) in the High Court of Justiciary sitting [*or* in the sheriff court] [*or* in the justice of the peace court] at (*place*) on (*date*) in terms of the order annexed hereto,
2. That the applicant applies to the court in terms of section 227Y of the Act of 1995 to vary [*or* revoke] [*or* discharge] the order for the following reasons:—

(*here state reasons*).

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [OR THE COURT]:

- (a) to [vary the order (*state terms of variation sought*)] [revoke the order] [discharge the order];
- (b) or to do otherwise as to your Lordship[s] [*or* to the court] shall seem proper.

IN RESPECT WHEREOF

(*Signed*)

Applicant (*or agent for the applicant*)

Note:

You must notify the clerk of court within 14 days of the receipt of this application whether or not you intend to oppose it. Failure so to notify will result in the court disposing of the matter in your absence.

Form 20.22-D

Rule 20.22(4)

Form of citation of offender under section 227ZC of the Criminal Procedure
(Scotland) Act 1995

IN THE HIGH COURT OF JUSTICIARY
[or IN THE SHERIFF [or JUSTICE OF THE PEACE] COURT]
AT (*place*)

CITATION

To: (*name and address of offender*)

Date of citation: (*date of citation or, if citation by post, the day after the date of posting*)

YOU ARE HEREBY CITED to appear on (*date*) at (*time*) in the High Court of Justiciary [or Sheriff [or Justice of the Peace] Court] at (*address*) because it has been reported to the court that you have failed to comply with a requirement of your community payback order as alleged in the written information attached.

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

(*Signed*)
Clerk of Court

PART 2

Paragraph 6(2)

Form 19B.2

Rule 19B.2

Form of application for request for assistance under section 194IA of the Criminal Procedure (Scotland) Act 1995

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

APPLICATION

by

THE SCOTTISH CRIMINAL CASES REVIEW COMMISSION

APPLICANT

HUMBLY SHEWETH, that:

1. The Scottish Criminal Cases Review Commission is considering the application of *(specify name, offence(s) convicted of, date of conviction(s), court, court reference and the grounds of review given by the applicant)*.
2. In order to carry out their functions and consider the application fully the Commission requires information which is outside the United Kingdom. *(Specify information, where it is held and why it is required)*
3. Under section 194IA of the Criminal Procedure (Scotland) Act 1995 the High Court may request assistance if satisfied that it is reasonable in the circumstances.

MAY IT THEREFORE please your Lordships 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 Lordships shall seem proper.

ACCORDING TO JUSTICE, etc.

(Signed)

Solicitor for the Scottish Criminal Cases Review Commission

(Specify name, address and telephone number of solicitor)

EXPLANATORY NOTE

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

This Act of Adjournal amends the Criminal Procedure Rules 1996.

Paragraph 2 makes provision in consequence of the introduction, by section 14 of the Criminal Justice and Licensing (Scotland) Act 2010, of community payback orders.

Paragraph 3 inserts new rule 4.2 providing that an accused can attend the hearing of a Crown bail appeal.

Paragraph 4 inserts new rule 14.8A making provision for the interruption of solemn proceedings for the tendering of pleas.

Paragraph 5 amends Form 15.2-C in consequence of section 5 of the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010.

Paragraph 6 substitutes Chapter 19B in relation to the Scottish Criminal Cases Review Commission in consequence of section 105 of the Criminal Justice and Licensing (Scotland) Act 2010 and section 7(4) of the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010.

Paragraph 7 omits rules 18.6 and 20.2 and related Forms in consequence of section 16 of the Criminal Justice and Licensing (Scotland) Act 2010.

Paragraph 8 amends Chapter 33 (Legal Aid) in consequence of section 64 of the Legal Aid and Legal Profession (Scotland) Act 2007.

Paragraph 9 amends Chapter 49 (financial reporting orders) so as to require intimation of an application for variation or revocation of a financial reporting order to be made to the prosecutor.

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