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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 72**

**Act of Adjournal (Criminal Procedure  
Rules Amendment) (Miscellaneous) 2013**

**Citation, commencement etc.**

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment) (Miscellaneous) 2013.

(2) It comes into force on 22nd April 2013.

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

(4) The Criminal Procedure Rules 1996(1) are amended in accordance with the following paragraphs.

**Written record of state of preparation**

2. In the appendix, for Form 9A.4(2) substitute Form 9A.4 set out in Part 1 of the Schedule to this Act of Adjournal.

**Television link evidence**

3.—(1) In rule 23A.1(1) (application for television link evidence from abroad)(3), after “section 273(2)” insert “or section 273A(2)”(4).

(2) In the appendix, for Form 23A.1-A, substitute Form 23A.1-A set out in Part 2 of the Schedule to this Act of Adjournal.

(3) In the heading to Chapter 23A and rule 23A, omit “from abroad”.

**Compatibility issues and devolution issues**

4.—(1) For Chapter 40 (devolution issues)(5) substitute—

**“CHAPTER 40**

**COMPATIBILITY ISSUES AND DEVOLUTION ISSUES**

**Interpretation**

**40.1.** In this Chapter—

“Advocate General” means the Advocate General for Scotland;

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(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. 2012/300.  
(2) Form 9A.4 was inserted by S.S.I. 2005/44.  
(3) Rule 23A was inserted by S.S.I. 2004/195.  
(4) Section 273A was inserted by Section 91(3) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).  
(5) Chapter 40 was inserted by S.S.I. 1999/1346, last amended by S.S.I. 2009/322.

“compatibility issue” means a compatibility issue within the meaning of section 288ZA(2) of the Act of 1995;

“devolution issue” means a devolution issue within the meaning of paragraph 1 of Schedule 6 to the Scotland Act 1998;

“Schedule 6” means Schedule 6 to the Scotland Act 1998;

“the 2010 Act” means the Criminal Justice and Licensing (Scotland) Act 2010.

### **Raising compatibility issues and devolution issues: solemn proceedings**

**40.2.**—(1) This rule applies to solemn proceedings.

(2) In proceedings at first instance, where a party proposes to raise a compatibility issue or devolution issue he shall give written notice of his intention to do so by minute in Form 40.2.

(3) The minute must be lodged with the clerk of court and served on the other parties no later than 14 clear days before the preliminary hearing or, as the case may be, first diet.

(4) In proceedings on appeal (where the issue is being raised for the first time), where a party proposes to raise a compatibility issue or devolution issue he shall, subject to section 107 of the Act of 1995, do so in the note of appeal.

### **Raising compatibility issues and devolution issues: summary proceedings**

**40.3.**—(1) This rule applies to summary proceedings.

(2) In proceedings at first instance, where a party proposes to raise a compatibility issue or devolution issue he shall give written notice of his intention to do so by minute in Form 40.3.

(3) The minute must be lodged with the clerk of court and served on the other parties—

(a) where an intermediate diet is to be held, before the first such diet; or

(b) where such a diet is not to be held, no later than 14 clear days before the trial diet.

(4) In proceedings on appeal (where the issue is being raised for the first time), where a party proposes to raise a compatibility issue he shall, subject to section 176 of the Act of 1995, do so in the application for a stated case.

### **Raising compatibility issues and devolution issues: other proceedings**

**40.4.**—(1) This rule applies to criminal proceedings which are not proceedings on indictment or summary proceedings, including bills of advocacy and bills of suspension.

(2) Where a party to proceedings proposes to raise a compatibility issue or devolution issue he shall raise such an issue as a point of law in the pleadings.

### **Specification of compatibility issue or devolution issue**

**40.5.** Where a compatibility issue or devolution issue is raised in accordance with rule 40.2, rule 40.3 or rule 40.4 the facts and circumstances and contentions of law on the basis of which it is alleged that a compatibility issue or devolution issue arises in the proceedings shall be specified in sufficient detail to enable the court to determine whether such an issue arises.

### **Time for raising compatibility issue or devolution issue**

**40.6.**—(1) No party to criminal proceedings shall raise a compatibility issue or devolution issue in those proceedings except as in accordance with rule 40.2, 40.3 or 40.4, unless the court, on cause shown, otherwise directs.

(2) Where the court determines that a devolution issue may be raised as mentioned in paragraph (1), it shall order that intimation of the devolution issue is given in writing to the Advocate General.

#### **Intimation of compatibility issues and devolution issues to the Advocate General**

**40.7.**—(1) Where a party raises a devolution issue in accordance with rule 40.2, rule 40.3 or rule 40.4 a copy of the document in which it is raised shall be served on the Advocate General.

(2) A copy document served on the Advocate General under paragraph (1) shall be treated as intimation of the devolution issue arising in the proceedings as mentioned in paragraph 5 of Schedule 6.

#### **Participation of Advocate General in proceedings**

**40.8.** Where the Advocate General intends to take part in the proceedings as mentioned in paragraph 6 of Schedule 6 or, as the case may be, section 288ZA(1) of the Act of 1995, he shall give written notice of his intention to do so to the clerk of court and the other parties.

#### **Appeals to the Supreme Court**

**40.9.**—(1) An application to the High Court under section 288AA(5) of the Act of 1995 (appeals to the Supreme Court: compatibility issues) or paragraph 13 of Schedule 6 (appeals to the Supreme Court: devolution issues) shall be in Form 40.9.

(2) Where the Advocate General is not already a party to the proceeding, the applicant shall, at the same time as lodging the application, intimate a copy to the Advocate General.

#### **Reference of compatibility issues and devolution issues to the High Court**

**40.10.**—(1) This rule applies where a court, other than a court consisting of two or more judges of the High Court of Justiciary decides or, as the case may be, is required to refer—

- (a) a compatibility issue to the High Court of Justiciary under section 288ZB(1) or (2) of the Act of 1995;
- (b) a devolution issue to the High Court of Justiciary under paragraph 9 of Schedule 6.

(2) The court shall—

- (a) pronounce an order giving directions to the parties about the manner and time in which the reference is to be drafted;
- (b) give its reasons for making the reference and cause those reasons to be recorded in the record or minutes of proceedings, as the case may be;
- (c) give written notice of the reference to the Advocate General where the reference relates to a devolution issue and the Advocate General is not already a party to the proceedings;
- (d) continue the proceedings from time to time as necessary for the purposes of the reference.

(3) The reference shall—

- (a) be adjusted at the sight of the court in such manner as the court may direct;
- (b) after approval and the making of an appropriate order by the court (after the expiry of any period for appeal) be transmitted by the clerk of court to the Clerk of Justiciary with a certified copy of the record or minutes of proceedings, as the case may be, and, where applicable a certified copy of the relevant indictment or complaint.

### **Reference of compatibility issues and devolution issues to the Supreme Court**

**40.11.**—(1) This rule applies where a court consisting of two or more judges of the High Court of Justiciary decides or, as the case may be, is required to refer—

- (a) a compatibility issue to the Supreme Court under section 288ZB(3), (4) or (5) of the Act of 1995;
  - (b) a devolution issue to the Supreme Court under paragraph 11 or 33 of Schedule 6.
- (2) The court shall—
- (a) pronounce an order giving directions about the manner and time in which the reference is to be drafted (including such matters as may be required by Supreme Court Practice Direction 10);
  - (b) give its reasons for making the reference and cause those reasons to be recorded in the record or minutes of proceedings, as the case may be;
  - (c) give written notice of the reference to the Advocate General where the Advocate General is not already a party to the proceedings;
  - (d) continue the proceedings from time to time as necessary for the purposes of the reference.
- (3) The reference shall—
- (a) be adjusted at the sight of the court in such manner as the court may direct;
  - (b) after approval and the making of an appropriate order by the court, shall be transmitted by the clerk of court to the Registrar of the Supreme Court with a certified copy of the record or minutes of proceedings, as the case may be, and, where applicable, a certified copy of the relevant indictment or complaint.

### **Orders pending determination of compatibility issues or devolution issues**

**40.12.**—(1) Where a court makes a reference mentioned in rule 40.10 or rule 40.11 it may make such orders as it considers just and equitable in the circumstances pending the determination of the compatibility issue or devolution issue, including—

- (a) postponing any diet, including a trial diet, fixed in the case;
- (b) making such orders as it considers appropriate in relation to bail;
- (c) subject to paragraph (2), extending the period within which any step requires to be taken or event to have occurred.

(2) An order under paragraph (1)(c) extending a period which may be extended under section 65 or section 147 of the Act of 1995 may be made only by a court which has power to do so under that section, and for the purposes of that section, the fact that a devolution issue has been raised by the prosecutor shall not, without more, be treated as fault on the part of the prosecutor.

### **Procedure on receipt of determination of compatibility issue or devolution issue**

**40.13.**—(1) This rule applies where—

- (a) the High Court has determined a reference mentioned in rule 40.10;
  - (b) the Supreme Court has determined a reference mentioned in rule 40.11 and remitted the proceedings to the High Court in accordance with section 288ZB(7) of the Act of 1995.
- (2) The determination shall be laid before the court that made the reference.

(3) The court shall then give directions as to further procedure which shall be intimated by the clerk of court with a copy of the determination to each of the parties to the proceedings.

#### **Procedure following determination of an appeal by the Supreme Court**

**40.14.**—(1) This rule applies where the Supreme Court has—

- (a) determined a compatibility issue on appeal and remitted the proceedings to the High Court in accordance with section 288AA(3) of the Act of 1995;
- (b) determined a devolution issue on appeal under paragraph 13(a) of Schedule 6.

(2) The High Court of Justiciary shall then give direction as to further procedure which shall be intimated by the Clerk of Justiciary to each of the parties to the proceedings.

#### **Orders mitigating the effect of certain decisions**

**40.15.** Where the court is considering making an order under section 102 of the Scotland Act 1998 (power of court to vary or suspend the effect of certain decisions) the court shall order intimation of the fact to be made by the clerk of court, in writing, to every person to whom intimation is required to be given by that section.”

(2) In the appendix, for Forms 40.2A, 40.2A-A, 40.2B, 40.3A, 40.3A-A, 40.3B, 40.4A, 40.4A-A, 40.4B, 40.7 and 40.12 substitute Forms 40.2, 40.3 and 40.9 set out in Part 3 of the Schedule to this Act of Adjournal.

#### **Transitional provisions**

**5.**—(1) Paragraph 2 of this Act of Adjournal shall apply only to solemn proceedings in which a preliminary hearing, in terms of section 72 of the Criminal Procedure (Scotland) Act 1995, was fixed after the date on which this Act of Adjournal comes into force.

(2) For the purposes of paragraph 4 of this Act of Adjournal, where a court is considering any procedural matter in consequence of the coming into force of Part 4 of the Scotland Act 2012<sup>(6)</sup> or this Act of Adjournal it may, subject to the provisions of the Scotland Act 2012 (Transitional and Consequential Provisions) Order 2013<sup>(7)</sup>, make such orders as it thinks just and equitable in the circumstances in order to determine the compatibility issue or devolution issue.

Edinburgh  
26th February 2013

*BRIAN GILL*  
Lord Justice General  
I.P.D.

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<sup>(6)</sup> c.11, Part 4 was commenced by S.I. 2013/6 (c.1).

<sup>(7)</sup> S.I. 2013/7 (s.1).