

2013 No. 72

HIGH COURT OF JUSTICIARY

SHERIFF COURT

JUSTICE OF THE PEACE COURT

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

Made - - - - - *26th February 2013*

Laid before the Scottish Parliament *28th February 2013*

Coming into force - - - *22nd April 2013*

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) (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(b) are amended in accordance with the following paragraphs.

Written record of state of preparation

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

(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. 2012/300.

(c) Form 9A.4 was inserted by S.S.I. 2005/44.

Television link evidence

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

(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)(c) substitute—

“CHAPTER 40

COMPATIBILITY ISSUES AND DEVOLUTION ISSUES

Interpretation

40.1. In this Chapter—

“Advocate General” means the Advocate General for Scotland;

“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

(a) Rule 23A was inserted by S.S.I. 2004/195.

(b) Section 273A was inserted by Section 91(3) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).

(c) Chapter 40 was inserted by S.S.I. 1999/1346, last amended by S.S.I. 2009/322.

(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 advocation 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^(a) or this Act of Adjournal it may, subject to the provisions of the Scotland Act 2012 (Transitional and Consequential Provisions) Order 2013^(b), make such orders as it thinks just and equitable in the circumstances in order to determine the compatibility issue or devolution issue.

BRIAN GILL
Lord Justice General
I.P.D.

Edinburgh
26th February 2013

^(a) c.11, Part 4 was commenced by S.I. 2013/6 (c.1).
^(b) S.I. 2013/7 (s.1).

SCHEDULE

PART 1

Paragraph 2

Form 9A.4

Rule 9A.4(1)

Form of written record of state of preparation

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)

<p style="text-align: center;">SCHEDULE 1 (Prosecutor)</p> <p style="text-align: center;"><i>In this Schedule, unless otherwise stated, references to sections are to sections of the Criminal Procedure (Scotland) Act 1995</i></p> <p>Plea</p> <p>1. Has a plea of guilty been accepted on behalf of Her Majesty's Advocate?</p> <p>If the answer to the question is yes, the following questions are not applicable.</p>	<p><i>*delete as appropriate</i></p> <p>Yes/No*</p>
<p>Communication with the defence</p> <p>2. Did the advocate depute and defence counsel or solicitor advocate communicate prior to the preliminary hearing? If so, when and by what means did communication take place?</p>	
<p>Preliminary issues</p> <p>3. Has notice been given on behalf of Her Majesty's Advocate of a preliminary issue within the meaning of section 79(2)(b)?</p> <p>If the answer to the question is yes, attach a copy of each notice.</p>	<p>Yes/No*</p>
<p>Objections to admissibility of evidence</p> <p>4. Is there any objection to the admissibility of any evidence you wish to raise on behalf of Her Majesty's Advocate despite not having given notice of a preliminary issue within the meaning of section 79(2)(b)?</p> <p>If the answer to the question is yes, specify each objection to the admissibility of evidence and summarise the reasons for not having given notice under section 79(2)(b):—</p>	<p>Yes/No*</p>

<p>Other applications/notices</p> <p>5. Has any of the following been lodged with the court on behalf of Her Majesty's Advocate?</p> <ul style="list-style-type: none"> – A child witness notice under section 271A(2) – A vulnerable witness application under section 271C(2) – An application under section 275(1) (application to admit evidence relating to the character and conduct of complainer) – An application under section 288F(2) (application for an order prohibiting the accused from conducting defence in person at trial) – An application under section 271P(1) (application for a witness anonymity order) <p>If the answer to the question is yes, attach a copy of each application or notice.</p>	<p>Yes/No*</p>
<p>Other matters</p> <p>6. Are there any other matters which might be disposed of with advantage before the trial? For instance, are there any outstanding compatibility or devolution minutes, section 67 notices or applications for recovery of documents?</p> <p>If the answer to the question is yes, specify each matter which might be disposed of with advantage before the trial:—</p>	<p>Yes/No*</p>

<p>Agreements and admissions of evidence</p> <p>7. Have any facts and documents been the subject of a minute under section 256(2) (minute of admission or agreement)?</p> <p>If the answer to the question is yes, attach a copy of each minute.</p>	<p>Yes/No*</p>
<p>Duty to seek agreement of evidence</p> <p>8. Specify any steps which have been taken under section 257 (duty to seek agreement of evidence):—</p>	
<p>Uncontroversial evidence</p> <p>9. Has either party served a statement under section 258(2) (statement of uncontroversial evidence) on the other party?</p> <p>If the answer to the preceding question is yes,</p> <ul style="list-style-type: none"> (i) attach a copy of each statement (ii) specify any matters which are deemed to have been conclusively proved:— (iii) attach a copy of any notice of challenge under section 258(3) and (iv) attach a copy of any application under section 258(4A) (application for direction that a challenge in a notice under section 258(3) is to be disregarded) 	<p>Yes/No*</p>

<p><i>In addition, if your answer to the question is no, or the answer by the defence to question 15 of schedule 2 is no, provide the following information:—</i></p> <ol style="list-style-type: none"> 1. The date on which the accused appeared on petition 2. Disclosure: under reference to the explanation provided in question 15 of schedule 2 of the need for further enquiry to be carried out, details of the dates on which any productions or statements mentioned there were disclosed and an explanation of why disclosure was made at that stage. 3. In a legally aided case the date on which the Scottish Legal Aid Board were informed that the case was likely to be prosecuted in the High Court. 	
<p>Estimated length of trial</p> <p>13. Specify how long you estimate that the trial, if any, will last.</p>	
<p>Name of advocate depute</p> <p>14. Specify the name of the advocate depute and specify any dates on which it is known that he or she will not be available:—</p>	

<p>Equipment</p> <p>15. Will any of the following be required at the trial diet?</p> <ul style="list-style-type: none"> - screens - display of video-tape evidence - playback of police interview audio-tape - document camera - CD/DVD evidence in computer format (parties must supply laptop PC or other means of display) - equipment for giving evidence by closed circuit television camera - other equipment <p>If yes, specify:</p>	<p>Yes/No*</p>
<p>Interpreters</p> <p>16. Will an interpreter be required for the trial diet?</p> <p>If the answer is yes, please provide details:—</p>	<p>Yes/No*</p>

<p style="text-align: center;">SCHEDULE 2 (Legal Representative of [A.B.]</p> <p style="text-align: center;"><i>In this Schedule, unless otherwise stated, references to sections are to sections of the Criminal Procedure (Scotland) Act 1995</i></p> <p>Plea</p> <p>1. Has the prosecutor accepted a plea of guilty?</p> <p>If the answer to the question is yes, the following questions are not applicable.</p>	<p><i>*delete as appropriate</i></p> <p>Yes/No*</p>
<p>Section 196</p> <p>2. Is the accused aware of the terms of section 196?</p>	<p>Yes/No*</p>
<p>Preliminary pleas</p> <p>3. Has notice been given on behalf of the accused of a preliminary plea within the meaning of section 79(2)(a)?</p> <p>If the answer to the question is yes, attach a copy of each notice.</p>	<p>Yes/No*</p>
<p>Communication with the Crown</p> <p>4. Did defence counsel or solicitor advocate and the advocate depute communicate prior to the preliminary hearing? If so, when and by what means did the communication take place?</p>	
<p>Preliminary issues</p> <p>5. Has notice been given on behalf of the accused of a preliminary issue within the meaning of section 79(2)(b)?</p> <p>If the answer to the question is yes, attach a copy of each notice.</p>	<p>Yes/No*</p>

<p>Objections to admissibility of evidence</p> <p>6. Is there any objection to the admissibility of any evidence which you wish to raise on behalf of the accused despite not having given notice of a preliminary issue within the meaning of section 79(2)(b)?</p> <p>If the answer to the question is yes, specify each objection to the admissibility of evidence and summarise the reasons for not having given notice under section 79(2)(b):—</p>	<p>Yes/No*</p>
<p>Other applications/notices</p> <p>7. Has any of the following been lodged with the court on behalf of the accused?</p> <ul style="list-style-type: none"> – A child witness notice under section 271A(2) – A vulnerable witness application under section 271C(2) – An application under section 275(1) (application to admit evidence relating to the character and conduct of complainer) – An application under section 288F(2) (application for an order prohibiting the accused from conducting defence in person at trial) – An application under section 271P(1) (application for a witness anonymity order) <p>If the answer to the question is yes, attach a copy of each application or notice.</p>	<p>Yes/No*</p>

<p>Defence</p> <p>8. Has any of the following been lodged with the court on behalf of the accused?</p> <ul style="list-style-type: none"> – a plea of special defence or notice of intention to lead evidence calculated to exculpate the accused by incriminating a co-accused under section 78(1) – notice of witnesses or productions under section 78(4) – a defence statement under section 70A within the timescales set down in that section <p>If the answer to the question is yes, attach a copy of each application or notice.</p>	<p>Yes/No*</p>
<p>Other matters</p> <p>9. Are there any other matters which might be disposed of with advantage before the trial? For instance, are there any outstanding compatibility or devolution minutes, section 67 notices or applications for recovery of documents?</p> <p>If the answer to the question is yes, specify each matter which might be disposed of with advantage before the trial:—</p>	<p>Yes/No*</p>
<p>Agreements and admissions of evidence</p> <p>10. Have any facts and documents been the subject of a minute under section 256(2) (minute of admission or agreement)?</p> <p>If the answer to the question is yes, attach a copy of each minute.</p>	<p>Yes/No*</p>

<p>Duty to seek agreement of evidence</p> <p>11. Specify any steps which have been taken under section 257 (duty to seek agreement of evidence):—</p>	
<p>Uncontroversial evidence</p> <p>12. Has either party served a statement under section 258(2) (statement of uncontroversial evidence) on the other party?</p> <p>If the answer to the preceding question is yes,</p> <ul style="list-style-type: none"> (i) attach a copy of each statement (ii) specify any matters which are deemed to have been conclusively proved:— (iii) attach a copy of any notice of challenge under section 258(3) and (iv) attach a copy of any application under section 258(4A) (application for direction that a challenge in a notice under section 258(3) is to be disregarded) 	<p>Yes/No*</p>

<p>Witnesses</p> <p>13. Specify which of the witnesses included within the list of witnesses are required:—</p> <p>[indicate which, if any, of these witnesses is a child witness: (“CW” or vulnerable witness: (“VW”)]</p>	
<p>Availability of witnesses</p> <p>14. Specify any dates on which any of the witnesses specified in paragraph 9 above would not be available to give evidence and indicate the reason (if known):—</p>	
<p>Preparation for trial</p> <p>15. Are you ready, if necessary, to proceed to trial?</p> <p>If the answer to the question is no, specify the reason(s) you are not ready to proceed to trial and the date by which you will be ready to proceed to trial.</p>	<p>Yes/No*</p>

In addition, provide the following information:—

1. The date on which agents were instructed to act on behalf of the accused.
2. If the case is legally aided, the date on which legal aid was granted.
3. Under reference to the witnesses and productions on the lists attached to the indictment the dates on which disclosed material was downloaded.
4. If the case is legally aided, the date on which the agent was advised that sanction was granted for the instruction of counsel.
5. The date on which counsel was instructed.
6. The date on which consultation with counsel took place.
7. A brief description of the steps taken by way of preparation, including, where relevant, the taking of precognitions, the investigation of the defence and the instruction of expert opinion or reports. Give details of the dates on which these steps were taken.

Estimated length of trial

- 16.** Specify how long you estimate that the trial, if any, will last.

Name of counsel or solicitor advocate

- 17.** Specify the name of counsel or solicitor advocate and specify any dates on which it is known that he or she will not be available:—

<p>Equipment</p> <p>18. Will any of the following be required at the trial diet?</p> <ul style="list-style-type: none"> - screens - display of video-tape evidence - playback of police interview audio-tape - document camera - CD/DVD evidence in computer format (parties must supply laptop PC or other means of display) - equipment for giving evidence by closed circuit television camera - other equipment <p>If yes, specify:</p>	<p>Yes/No*</p>
<p>Interpreters</p> <p>19. Will an interpreter be required for the trial diet?</p> <p>If the answer is yes, please provide details:—</p>	<p>Yes/No*</p>

PART 2

Paragraph 3(2)

Form 23A.1-A

Rule 23A.1

**Form of petition for issue of letter of request under section 273(2) or 273A(2) 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*)]

PETITION

of

HER MAJESTY'S ADVOCATE

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

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

PETITIONER

HUMBLY SHEWETH

1. That the petitioner [or [C.D.]], along with (*name(s) of co-accused*), has appeared on petition [or been indicated] [or charged] in your Lordships' [or Lordship's] court at the instance of Her Majesty's Advocate [or the prosecutor fiscal at (*place*)] [or the petitioner] with the crime of (*specify*).
2. That no indictment has been served on the petitioner [or [C.D.]] in respect of the said crime and that accordingly the court in which any trial of the petitioner [or [C.D.]] in respect of the said crime for which he stands committed is not yet known. [or that the trial of the petitioner [or [C.D.]] is to take place in your Lordships' [or Lordship's] court [sitting at [(*place*)] on [(*date*)].
3. That (*name of witness*) residing at (*address*) in the country or territory of (*specify*) is a witness whose evidence the petitioner intends to adduce in the course of the trial. He seeks to adduce that evidence through a live television link in that country or territory under section 273 of the Criminal Procedure (Scotland) Act 1995 [or in another part of the United Kingdom under section 273A of the Criminal Procedure (Scotland) Act 1995.]
4. That the evidence to the effect specified in the schedule attached to this petition, which it is averred that the said witness is able to give, is necessary for the proper adjudication of the trial.

5. That (*name of court*) is a court or tribunal exercising jurisdiction in the said country or territory of (*specify*) being a country or territory outside the United Kingdom. [*or that (name of court) is a court or tribunal in (specify country) exercising its jurisdiction outside of Scotland but within the United Kingdom.*]
6. That English is [not] the official language or one of the official languages of the said country or territory.
7. That the law of the said country or territory provides for evidence to be taken by live television link [in accordance with the following procedure:- (*specify, if known*)].
- [8. That there would be no unfairness to the accused if such evidence were to be given through a live television link.]

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

- (1) to appoint intimation of this petition and schedule to be made to (*specify*);
- (2) to appoint parties to be heard thereupon on the earliest practicable date hereafter; and
- (3) thereafter, on being duly satisfied in terms of section 273(3) [*or 273A(4)*] of the Criminal Procedure (Scotland) Act 1995, to issue a letter of request to (*state judge or tribunal within whose jurisdiction the witness is a resident*) for assistance in facilitating the giving of evidence by the said witness through a live television link; and to do otherwise as to your Lordship[s] shall seem proper.

ACCORDING TO JUSTICE, etc.

(signed)

[Solicitor for petitioner]

(Address and telephone number of solicitor)

PART 3

Paragraph 4(2)

Form 40.2

Rule 40.2(2)

Form of minute of notice of intention to raise a compatibility
issue or devolution issue

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE
CLERK AND LORDS COMMISSIONERS OF JUSTICIARY [UNTO THE HONOURABLE
THE SHERIFF OF (*name of sheriffdom*)]

AT (*place*)

MINUTE

by

[P.C.] (*address*)

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

HUMBLY SHEWETH, that:

1. [Name of 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*).
2. [P.C.] intends to raise a compatibility issue within the meaning of section 288ZA(2) of the Act of 1995 [*or a devolution issue within the meaning of Schedule 6 to the Scotland Act 1998*] on the following grounds (here specify the facts and circumstances and contentions of law which are alleged to give rise to the compatibility issue [*or devolution issue*]).
3. A copy of this minute has been duly intimated to Her Majesty's Advocate [and to (*name(s) of co-accused*)] [and, in relation to a devolution issue, to the Advocate General for Scotland] conform to execution[s] attached to this minute.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:

to determine the compatibility issue [*or devolution issue*] at the preliminary hearing;

IN RESPECT WHEREOF

[Solicitor for minuter]

(Address and telephone number of solicitor)

(Place and date)

Form 40.3

Rule 40.3(2)

Form of minute of notice of intention to raise a compatibility
issue or devolution issue

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

AT (*place*)

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

AT (*place*)

MINUTE

by

[C.S.] (*address*)

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

HUMBLY SHEWETH, that:

1. [*Name of accused*] has been charged at the instance of [P.F.] procurator fiscal at (*place*) with the crime [*or offence*] of (*specify*) and an intermediate diet [*or trial diet*] is fixed for (*specify date*).
2. [C.S.] intends to raise a compatibility issue within the meaning of section 288ZA(2) of the Act of 1995 [*or a devolution issue within the meaning of Schedule 6 to the Scotland Act 1998*] on the following grounds (here specify the facts and circumstances and contentions of law which are alleged to give rise to the compatibility issue [*or devolution issue*]).
3. A copy of this minute has been duly intimated to said [P.F.], procurator fiscal [and to (*name(s) of co-accused*)] [and, in relation to a devolution issue, to the Advocate General for Scotland] conform to execution[s] attached to this minute.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:

to determine the compatibility issue [*or devolution issue*] at the intermediate diet [*or before the trial diet has commenced*].

IN RESPECT WHEREOF

[Solicitor for minuter]

(Address and telephone number of solicitor)

(Place and date)

Form 40.9

Rule 40.9(1)

Form of application under section 288AA(5) of the Criminal Procedure (Scotland) Act 1995 or paragraph 13 of Schedule 6 to the Scotland Act 1998

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

APPLICATION FOR PERMISSION TO APPEAL TO THE SUPREME COURT

under section 288AA(5) of the Criminal Procedure (Scotland) Act 1995 [*or* paragraph 13 of Schedule 6 to the Scotland Act 1998]

by

(*specify*)

(*address*)

APPLICANT

HUMBLY SHEWETH, that:

1. On (*date*) the High Court (that is a court that consisted of two or more judges of that court) determined a compatibility issue [*or* devolution issue].
2. The applicant seeks the permission of the court to appeal the determination to the Supreme Court on the following grounds:-

(*here, specify —*

- (i) *the grounds of appeal;*
- (ii) *a summary of the reasons why permission to appeal should be granted; including whether any of the grounds of appeal raise an issue of general public importance;*
- (iii) *where the application is late, the reasons for allowing the application late.)*

ACCORDING TO JUSTICE, etc.

(*Signed*)

Applicant (*or agent for the applicant*)

EXPLANATORY NOTE

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

This Act of Adjournal amends the Criminal Procedure Rules 1996.

Paragraph 2 amends Form 9A.4 (Form of written record of state of preparation) by way of substitution.

Paragraph 3 amends Chapter 23A and related 23A.1-A to extend the application of that Chapter to evidence given by television link from within the United Kingdom.

Paragraph 4 amends, by way of substitution, Chapter 40 in consequence of the coming into force of Part 4 of the Scotland Act 2012.

Paragraph 5 makes transitional provision in respect of paragraphs 2 and 4.

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