

2016 No. 300

SHERIFF COURT

**Act of Adjournal (Criminal Procedure Rules 1996 Amendment)
(No. 3) (Supervision Default Orders) 2016**

Made - - - - - *28th September 2016*

Laid before the Scottish Parliament *30th September 2016*

Coming into force - - - *31st October 2016*

The High Court of Justiciary makes this Act of Adjournal under the powers conferred by section 305 of the Criminal Procedure (Scotland) Act 1995(a) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 3) (Supervision Default Orders) 2016.

(2) It comes into force on 31st October 2016.

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

Amendment of the Criminal Procedure Rules 1996

2.—(1) The Criminal Procedure Rules 1996(b) are amended in accordance with this paragraph.

(2) In rule 2.3 (general provisions for service)(c), after paragraph (1) insert—

“(1A) The citation of a person to appear before the sheriff under an enactment mentioned in paragraph (1B) is to be effected in the same manner, with the necessary modifications, as the citation of an accused in summary proceedings under section 141 of the Act of 1995 (manner of citation), but—

- (a) the citation is to be signed by the sheriff clerk instead of the prosecutor;
- (b) the forms relating to the citation of an accused do not apply to such a citation.

(1B) The enactments are—

- (a) section 256AC(1)(a) of;
- (b) section 256C(1)(a) of; and
- (c) paragraph 8(1)(a) of schedule 19A of,

(a) 1995 c. 46. Section 305 was amended by S.S.I. 2015/338, article 2.

(b) The Criminal Procedure Rules 1996 are in schedule 2 of the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513, last amended by S.S.I. 2016/201).

(c) Rule 2.3 was last amended by S.S.I. 2004/434.

the Criminal Justice Act 2003(a), as applied by paragraph 8(2) or (4) of schedule 1 of the Crime (Sentences) Act 1997(b).”.

(3) In rule 2.6(5) (forms of execution of service)(c), after subparagraph (j) insert—

“(k) rule 20.23(4) (supervision default orders: failure to comply) shall be in Form 2.6–EK;

(l) rule 20.23(5) (supervision default orders: hearing of application to amend or vary) shall be in Form 2.6–EL.”.

(4) After rule 20.22 (community payback orders)(d), insert—

“Supervision default orders

20.23.—(1) This rule applies where paragraph 8(2) or (4) of schedule 1 to the Crime (Sentences) Act 1997 (restricted transfers from England and Wales to Scotland) applies to a transfer to Scotland.

(2) A supervision default order made under section 256AC(1)(a) of the 2003 Act (breach of supervision requirements) is to be in Form 20.23–A.

(3) An application under paragraph 10(1) of schedule 19A of the 2003 Act (amendment or revocation of supervision default order) is to be in Form 20.23–B.

(4) The citation of an offender to appear before the sheriff under the following enactments is to be in Form 20.23–C—

(a) section 256AC(1)(a) of the 2003 Act;

(b) section 256C(1)(a) of the 2003 Act;

(c) paragraph 8(1)(a) of schedule 19A of the 2003 Act.

(5) The citation of an offender to appear before the sheriff under paragraph 10(5) of schedule 19A of the 2003 Act (amendment or revocation of supervision default order: hearing) is to be in Form 20.23–D.

(6) In this rule, “the 2003 Act” means the Criminal Justice Act 2003(e).”.

(5) In the Appendix—

(a) after Form 2.6–EJ (form of execution of citation of offender under section 227Z(13) of the Criminal Procedure (Scotland) Act 1995)(f), insert Forms 2.6–EK and 2.6–EL set out in Part 1 of the schedule of this Act of Adjournal;

(a) 2003 c. 44. Section 256AC was added, and section 256C amended, by the Offender Rehabilitation Act 2014 (2014 c. 11).

(b) 1997 c.43. Paragraph 8(2) and (4) of schedule 1 of the Crime Sentences Act 1997 was amended by the Crime and Disorder Act 1998 (1998 c.37), schedule 8, paragraph 135(3); the Powers of Criminal Courts (Sentencing) Act 2000 (2000 c.6), schedule 9, paragraph 186(3); the Criminal Justice Act 2003 (2003 c.44), schedule 32, paragraph 85(3); the Domestic Violence, Crime and Victims Act 2004 (2004 c.28), schedule 10, paragraph 46(2); the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (2012 c.10), schedule 10, paragraph 9(3) and schedule 16, paragraph 7; the Offender Rehabilitation Act 2014 (2014 c.11), section 13(2) and schedule 3, paragraph 3 and the Criminal Justice and Courts Act 2015 (2015 c.2), schedule 1, paragraph 12(2).

(c) Rule 2.6 was last amended by S.S.I. 2010/418.

(d) Rule 20.22 was inserted by S.S.I. 2010/418 (amended by S.S.I. 2011/21).

(e) 2003 c. 44.

(f) Form 2.6–EJ was inserted by S.S.I. 2010/418 (as amended by S.S.I. 2011/21).

- (b) after Form 20.22–E (form of citation of offender under section 227Z(13) of the Criminal Procedure (Scotland) Act 1995)(a) insert Forms 20.23–A, 20.23–B, 20.23–C and 20.23–D set out in Part 2 of the schedule of this Act of Adjournal.

CJM SUTHERLAND
Lord Justice General
I.P.D.

Edinburgh
28th September 2016

(a) Form 20.22–E was inserted by S.S.I. 2010/418 (as amended by S.S.I. 2011/21).

SCHEDULE
FORMS

Paragraph 2(5)

PART 1

Form 2.6–EK

Rule 2.6(5)(k)

**Form of execution of citation of offender under section 256AC(1)(a)
or 256C(1)(a) or paragraph 8(1)(a) of schedule 19A of the Criminal
Justice Act 2003**

EXECUTION OF CITATION

I, (*name and designation*), on (*date*) lawfully cited (*name and address of offender*) to appear before the Sheriff Court at (*address*) on (*date*) at (*time*) for the purpose of answering an allegation that he [*or she*] has failed to comply with a supervision requirement imposed under section 256AA of the Criminal Justice Act 2003 [*or requirements under section 256B(6) of the Criminal Justice Act 2003*] [*or a requirement imposed by a supervision default order under section 256AC(4)(c) of the Criminal Justice Act 2003*] as set out in the attached written information.

This I did by posting on (*date*) a citation in Form 20.23–C 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–EL

Rule 2.6(5)(1)

**Form of execution of citation of offender under paragraph 10(5) of
schedule 19A of the Criminal Justice Act 2003**

EXECUTION OF CITATION

I, *(name and designation)*, on *(date)* lawfully cited *(name and address of offender)* to appear before the Sheriff Court at *(address)* on *(date)* at *(time)* for the purpose of determining an application under paragraph 10(1) of schedule 19A of the Criminal Justice Act 2003 (application to amend or revoke supervision default order).

This I did by posting on *(date)* a citation in Form 20.23–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*]

PART 2
Form 20.23–A

Rule 20.23(2)

Form of supervision default order

SUPERVISION DEFAULT ORDER

under section 256AC(4)(c) of the Criminal Justice Act 2003

Court:

Date:

Offender:

Address:

Date of birth:

Original sentence:

Length of supervision period:

(where supervision default order is to be made following consideration of information given under section 256AC(1) of the Criminal Justice Act 2003)

THE COURT, being satisfied that the offender has failed without reasonable excuse to comply with a supervision requirement imposed under section 256AA of the Criminal Justice Act 2003 and specified in a notice given to the offender by the Secretary of State on *(date)*,

[or (where supervision default order is to be made following consideration of information given under paragraph 8 of schedule 19A to the Criminal Justice Act 2003)

THE COURT, being satisfied that the offender has failed without reasonable excuse to comply with a requirement imposed by a supervision default order made under section 256AC(4)(c) of the Criminal Justice Act 2003 by *(court)* on *(date)*,]

MAKES a supervision default order imposing the following requirements on the offender, namely—

(set out details of the requirements imposed.)

[THE COURT revokes the supervision default order made by *(court)* on *(date)*.]

(Signed)

Clerk of Court

Copy: Offender

Local Authority

Note: (*Name of supervisor*) of (*name of local authority*) has been nominated as supervisor in this case.

Form 20.23–B

Rule 20.23(3)

Form of application to amend or revoke supervision default order

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

AT *(place)*

APPLICATION

by

[A.B.], *(address of offender)*

[or [C.D.], *(address of relevant officer)*

APPLICANT

for

AMENDMENT [*or* REVOCATION] OF SUPERVISION DEFAULT ORDER

under paragraph 10(1) of schedule 19A of the Criminal Justice Act 2003

HUMBLY SHEWETH:

1. That a supervision default order was made by *(court)* on *(date)* against *(name of offender)*.
2. That the applicant seeks to revoke [*or* amend] the supervision default order for the following reasons:
(specify reasons)
- [3. *(where the application is for amendment)* That the terms of the amended supervision default order sought are set out in the attached schedule.]
- [4. *(where applicant invites the sheriff to proceed under paragraph 10(1)(c))* That the applicant invites the sheriff to deal with the offender under section 256AC(4) in accordance with paragraph 10(1)(c) of schedule 19A of the Criminal Justice Act 2003.]

MAY IT THEREFORE PLEASE YOUR LORDSHIP:

- (1) *(where applicant is relevant officer)* to cite *(name of offender)* to appear before your Lordship;
- [(2) *(where applicant is offender)* to appoint intimation of this application to be made to *(name of relevant officer)*];
- (3) thereafter to revoke [*or* amend] the supervision default order [and deal with the offender under section 256AC(4) in accordance with paragraph 10(1)(c) of schedule 19A of the Criminal Justice Act 2003]; or
- (4) to do otherwise as to your Lordship seems appropriate.

ACCORDING TO JUSTICE, etc.

(signed)

[A.B.] [or C.D.], Applicant

[or [X.Y.], Legal representative of Applicant

*(name, address, email address and telephone
number of legal representative)*

SCHEDULE

(set out terms of amended order sought)

Form 20.23–C

Rule 20.23(4)

**Form of citation of offender under section 256AC(1)(a) or 256C(1)(a)
or paragraph 8(1)(a) of schedule 19A of the Criminal Justice Act
2003**

IN THE SHERIFF COURT

AT *(place)*

CITATION

To: *(name and address of offender)*

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

YOU ARE HEREBY CITED to appear on *(date)* at *(time)* in the Sheriff Court at *(address)* because it has been reported to the court that you have failed to comply with a supervision requirement imposed under section 256AA of the Criminal Justice Act 2003 [*or a requirement under section 256B(6) of the Criminal Justice Act 2003*] [*or a requirement imposed by a supervision default order made under section 256AC(4)(c) of the Criminal Justice Act 2003*], as alleged in the attached written information.

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 20.23–D

Rule 20.23(5)

**Form of citation of offender under paragraph 10(5) of schedule 19A
of the Criminal Justice Act 2003**

IN THE SHERIFF COURT

AT (*place*)

CITATION

To: (*name and address of offender*)

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

YOU ARE HEREBY CITED to appear on (*date*) at (*time*) in the Sheriff Court at (*address*) for the purpose of determining an application under paragraph 10(1) of schedule 19A of the Criminal Justice Act 2003 (amendment or revocation of supervision default order).

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

(Signed)

Clerk of Court

EXPLANATORY NOTE

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

The Offender Rehabilitation Act 2014 (“2014 Act”) amends the Criminal Justice Act 2003 (“2003 Act”) to provide for post-release supervision of certain categories of offender in England and Wales. On release, the offender may be made subject to supervision requirements specified in a notice given to the prisoner by the Secretary of State. Failure to comply may result in the imposition of a supervision default order (“SDO”).

The 2014 Act also amends the Crime (Sentences) Act 1997 (“1997 Act”) to the effect that the SDO provisions of the 2003 Act will apply to an offender who is transferred to Scotland to serve a sentence or period of supervision. Paragraph 8 of schedule 1 to the 1997 Act provides that various provisions of the 2003 Act (sections 256AA to 256E and schedule 19A) apply (with modifications) to such offenders.

This Act of Sederunt amends the Criminal Procedure Rules 1996 (“1996 Rules”) to make provision for such offenders. Paragraph 2(2) makes an exception to the general rule on service in rule 2.3 of the 1996 Rules to provide that the citation provisions in section 141 of the Criminal Procedure (Scotland) Act 1995, which provide for citation by the clerk of court, apply to SDOs.

Paragraphs 2(3) and (4) prescribe forms to be used in relation to SDOs, and 2(5) inserts these forms into the Appendix to the 1996 Rules.

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