



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART XII

#### EVIDENCE

##### *Evidence on commission and from abroad*

#### **272 Evidence by letter of request or on commission.**

- (1) In any criminal proceedings in the High Court or the sheriff court the prosecutor or the defence may, at an appropriate time, apply to a judge of the court in which the trial is to take place (or, if that is not yet known, to a judge of the High Court) for—
  - (a) the issue of a letter of request to a court, or tribunal, exercising jurisdiction in a country or territory outside the United Kingdom, Channel Islands and Isle of Man for the examination of a witness resident in that country or territory; or
  - (b) the appointment of a commissioner to examine, at any place in the United Kingdom, Channel Islands, or Isle of Man, a witness who—
    - (i) by reason of being ill or infirm is unable to attend the trial diet; or
    - (ii) is not ordinarily resident in, and is, at the time of the trial diet, unlikely to be present in, the United Kingdom, Channel Islands or the Isle of Man.
- (2) A hearing, as regards any application under subsection (1) above by a party, shall be conducted in chambers but may be dispensed with if the application is not opposed.
- (3) An application under subsection (1) above may be granted only if the judge is satisfied that—
  - (a) the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial; and
  - (b) there would be no unfairness to the other party were such evidence to be received in the form of the record of an examination conducted by virtue of that subsection.

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*Status: Point in time view as at 16/08/2013.*

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- (4) Any such record as is mentioned in paragraph (b) of subsection (3) above shall, without being sworn to by witnesses, be received in evidence in so far as it either accords with the averment mentioned in paragraph (a) of that subsection or can be so received without unfairness to either party.
- (5) Where any such record as is mentioned in paragraph (b) of subsection (3) above, or any part of such record, is not a document in writing, that record or part shall not be received in evidence under subsection (4) above unless it is accompanied by a transcript of its contents.
- (6) The procedure as regards the foregoing provisions of this section shall be prescribed by Act of Adjournal; and without prejudice to the generality of the power to make it, such an Act of Adjournal may provide for the appointment of a person before whom evidence may be taken for the purposes of this section.
- (7) In subsection (1) above, “appropriate time” means as regards—
- (a) solemn proceedings, any time before the oath is administered to the jury;
  - (b) summary proceedings, any time before the first witness is sworn,
- or (but only in relation to an application under paragraph (b) of that subsection) any time during the course of the trial if the circumstances on which the application is based had not arisen, or would not have merited such application, within the period mentioned in paragraph (a) or, as the case may be, (b) of this subsection.
- (8) In subsection (3) and (4) above, “record” includes, in addition to a document in writing—
- (a) any disc, tape, soundtrack or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
  - (b) any film (including microfilm), negative, tape, disc or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom.
- (9) This section is without prejudice to any existing power at common law to adjourn a trial diet to the place where a witness is.
- [<sup>F1</sup>(10) Sections—
- (a) 274;
  - (b) 275;
  - (c) 275B except subsection (2)(b);
  - (d) 275C; and
  - (e) 288C,
- of this Act apply in relation to proceedings in which a commissioner examines a witness under subsection (1)(b) above as they apply in relation to a trial.
- (11) In the application of those sections in relation to such proceedings—
- (a) the commissioner acting in the proceedings is to perform the functions of the court as provided for in those sections;
  - (b) references—
    - (i) in those sections, except section 275(3)(c) and (7)(c), to a trial or a trial diet;
    - (ii) in those sections, except section 275(3)(e), to the court,
 shall be read accordingly;

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- (c) the reference in section 275B(1) to 14 days shall be read as a reference to 7 days.
- (12) In a case where it falls to the court to appoint a commissioner for the purposes of subsection (1)(b) above, the commissioner shall be a person described in subsection (13) below.
- (13) The persons are—
  - (a) where the proceedings before the commissioner are for the purposes of a trial in the High Court, a judge of the High Court; or
  - (b) in any other case, a sheriff.]

#### Textual Amendments

- F1** S. 272(10)-(13) added (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), ss. 35(4), 84; S.S.I. 2007/250, art. 3(a)

### 273 Television link evidence from abroad.

- (1) In any [<sup>F2</sup>criminal] proceedings in the High Court or the sheriff court a person other than the accused may give evidence through a live television link if—
  - (a) the witness is outside the United Kingdom;
  - (b) an application under subsection (2) below for the issue of a letter of request has been granted; and
  - (c) the court is satisfied as to the arrangements for the giving of evidence in that manner by that witness.
- (2) The prosecutor or the defence in any proceedings referred to in subsection (1) above may apply to a judge of the court in which the trial is to take place (or, if that court is not yet known, to a judge of the High Court) for the issue of a letter of request to—
  - (a) a court or tribunal exercising jurisdiction in a country or territory outside the United Kingdom where a witness is ordinarily resident; or
  - (b) any authority which the judge is satisfied is recognised by the government of that country or territory as the appropriate authority for receiving requests for assistance in facilitating the giving of evidence through a live television link, requesting assistance in facilitating the giving of evidence by that witness through a live television link.
- (3) An application under subsection (2) above shall be granted only if the judge is satisfied that—
  - (a) the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial; and
  - (b) the granting of the application —
    - (i) is in the interests of justice; and
    - (ii) in the case of an application by the prosecutor, is not unfair to the accused.

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#### **Textual Amendments**

- F2** Word in s. 273(1) substituted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 91(2)**, 206(1); S.S.I. 2011/178, art. 2, sch.

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