

1973 No. 450 (S.32)
CRIMINAL PROCEDURE, SCOTLAND
Act of Adjournal (References to the European Court) 1973

<i>Made</i>	- - -	<i>1st March 1973</i>
<i>Laid before Parliament</i>		<i>22nd March 1973</i>
<i>Coming into Operation</i>		<i>1st May 1973</i>

The Lord Justice-General, the Lord Justice-Clerk and the Lords Commissioners of Justiciary, in exercise of the powers conferred upon them by the Courts Act 1672(a), section 76 of the Criminal Procedure (Scotland) Act 1887(b), section 15 of the Criminal Appeal (Scotland) Act 1926(c), section 76 of the Summary Jurisdiction (Scotland) Act 1954(d), and of all other powers enabling them in that behalf, hereby enact as follows:—

Preliminary

1. This Act of Adjournal (hereinafter referred to as “this Act”) may be cited as the Act of Adjournal (References to the European Court) 1973, and shall come into operation on 1st May 1973.

2.—(1) In this Act, unless the context otherwise requires—

“the European Court” means the Court of Justice of the European Communities;

“the High Court” means the High Court of Justiciary;

“question” means a question within the meaning of Article 177 of the Treaty establishing the European Economic Community, Article 150 of the Treaty establishing the European Atomic Energy Community or Article 41 of the Treaty establishing the European Coal and Steel Community;

“record of proceedings” includes minute of proceedings;

“reference” means a request to the European Court for a preliminary ruling on a question.

(2) Any reference in this Act to the Clerk of Justiciary or any other clerk of court includes a reference to any deputy or assistant of the clerk in question.

(3) Any reference in this Act to an Act of Parliament is a reference to that Act of Parliament as amended or extended by any other Act of Parliament.

(4) The Interpretation Act 1889(e) shall apply for the purpose of the interpretation of this Act as it applies for the purpose of the interpretation of an Act of Parliament.

(a) Act 1672, c. 40 (Record edn.), C.16 (12 mo. edn.)

(b) 1887 c. 35.

(d) 1954 c. 48.

(e) 1926 c. 15.

(e) 1889 c. 63.

3.—(1) If a question is to be raised in any proceedings on indictment (other than proceedings on appeal) notice of intention to do so shall be given at the first diet before the accused is called on to plead to the indictment.

(2) Where notice is given as aforesaid it shall be recorded on the record copy of the indictment or in the record of proceedings as the case may be and the court shall not at the first diet call on the accused to plead to the indictment but shall reserve consideration of the question to the second diet.

(3) In proceedings in which the accused is indicted for trial in the sheriff court and the second diet is to be called in the same court as the first diet, the court of the first diet may order that witnesses and jurors be not cited to attend at the calling of the second diet.

(4) At the calling of the second diet the court of that diet, after hearing parties, may determine the question or may decide that a preliminary ruling should be sought in which case further procedure shall be regulated by sections 6, 7 and 8 of this Act accordingly.

(5) If at the second diet the court determines the question the accused shall then (where appropriate) be called upon to plead to the indictment, and the proceedings shall thereafter conform to the existing law and practice; and, without prejudice to any other power available to it the court—

(a) may prorogate the time for lodging any special defence;

(b) may continue the diet to a specified time and place;

(c) in a case where witnesses and jurors have not been cited to attend at the calling of the second diet, shall continue the diet as aforesaid and order the citation of witnesses and jurors to attend at the calling of the continued diet.

Summary proceedings

4.—(1) If a question is to be raised in any proceedings under the Summary Jurisdiction (Scotland) Act 1954 (other than proceedings on appeal) notice of intention to do so shall be given before the accused is called on to plead to the complaint.

(2) Where notice is given as aforesaid, it shall be entered in the record of proceedings and the court shall not then call on the accused to plead to the complaint.

(3) The court may hear parties on the question forthwith or may adjourn the case to a specified date for such hearing.

(4) After hearing parties the court may determine the question or may decide that a preliminary ruling should be sought, in which case further procedure shall be regulated by sections 6, 7 and 8 of this Act accordingly.

(5) If the court determines the question the accused shall then (where appropriate) be called on to plead to the complaint, and the proceedings shall thereafter conform to the existing law and practice.

Proceedings on appeal and on petitions for exercise of nobile officium

5.—(1) If a question is raised in the High Court in any proceedings on appeal or on a petition for the exercise of the Court's *nobile officium* the court shall

proceed to make a reference and the procedure and further procedure shall be regulated by Sections 6(2) and 7 of this Act.

(2) In the foregoing subsection references to proceedings on appeal are references to proceedings on appeal under section 34 of the Heritable Jurisdictions (Scotland) Act 1746(a), section 1 of the Criminal Appeal (Scotland) Act 1926, section 62 of the Summary Jurisdiction (Scotland) Act 1954 and on appeal by bill of suspension, bill of advocation or otherwise.

General provisions

6.—(1) When in any proceedings a court has decided that a preliminary ruling should be sought the court—

(a) shall give its reasons and cause those reasons to be recorded in the record of proceedings;

(b) notwithstanding any rule of law or practice to the contrary, shall continue the proceedings from time to time until the reference has been drafted, adjusted and approved, and thereafter *sine die*.

(2) The reference—

(a) shall be drafted, as nearly as may be in the form set out as Form A in the Schedule to this Act, and the court may give directions to the parties as to the manner in which and by whom the case is to be drafted and adjusted;

(b) shall thereafter be adjusted at the sight of the court in such manner as may be so directed;

(c) after approval and the making of an appropriate order by the court, shall (subject, in a case to which section 8 of this Act applies to sub-section (7) of that section) be transmitted by the Clerk of the court to the Registrar of the European Court, along with a certified copy of the relative record of proceedings and, where applicable, a certified copy of the relative indictment or (as the case may be) complaint.

7. When a preliminary ruling has been given by the European Court on a question referred to it and the ruling has been received by the clerk of the court which made the reference, it shall be laid by the clerk before the court, and the court shall then give directions as to further procedure, which directions shall be intimated by the clerk along with a copy of the ruling to each of the parties to the proceedings.

8.—(1) Where in any proceedings to which this section applies an order under paragraph 6(2)(c) is made, any party to the proceedings who is aggrieved by the order may within ten days thereafter appeal against the order to the High Court sitting as a court of appeal.

(2) This section applies to all criminal proceedings except proceedings in the High Court sitting as a court of appeal and proceedings on petitions to that Court for the exercise of its *nobile officium*.

(3) Any appeal under this section shall be taken by lodging with the appropriate clerk a note of appeal as nearly as may be in the form set out as Form B in the Schedule to this Act, signed by the appellant or his solicitor; and a copy of the note shall be served by the appellant on each other party to the proceedings.

(4) In the last foregoing sub-section and in sub-section (5) below “the appropriate clerk” means the clerk of the court which has made the order.

(5) Where, in the case of any note of appeal under this section, the appropriate clerk is not the Clerk of Justiciary, the appropriate clerk shall record the lodging of the note in the record of proceedings and shall forthwith transmit the note to the Clerk of Justiciary, together with the said record and a certified copy of the relative indictment, or as the case may be, complaint.

(6) In disposing of an appeal under this section the High Court (sitting as a court of appeal) may—

(a) if the appeal is against an order made in proceedings on indictment in which the accused has been indicted for trial in the High Court, either sustain or dismiss the appeal and in the latter case itself cause the reference to be transmitted to the Registrar of the European Court in accordance with section 6(2)(c) of this Act;

(b) if the appeal is against an order made in any other proceedings, either sustain or dismiss the appeal and in either case remit the proceedings to the court of first instance with instructions to proceed as accords;

(c) in any case, give such directions for other procedure as seem to it to be expedient.

(7) Unless the court making the order otherwise directs a reference shall not be transmitted to the Registrar of the European Court before the time allowed by this section for appealing against the order has expired or, where an appeal is timeously taken, before the appeal has been disposed of or withdrawn

And the Lords appoint this Act of Adjournal to be recorded in the Books of Adjournal, and to be published in the Edinburgh Gazette.

G. C. Emslie,
I.P.D.

Edinburgh,
1st March 1973.

FORM A

SCHEDULE

REFERENCE TO EUROPEAN COURT

[Here set out a statement of the case for the European Court, giving brief particulars of the case, the issues involved, any relevant facts found by the Court, any relevant rules and provisions of Scots Law, and the relevant Treaty provisions, acts, instruments or rules of Community law giving rise to the reference.] The preliminary ruling of the Court of Justice of the European Communities is accordingly sought on the following questions—1, 2, etc. [insert the questions on which the ruling is sought].

Dated the day of 19 .

FORM B

APPEAL TO HIGH COURT

NOTE OF APPEAL

by

[Here design parties to Appeal]

The Appellant appeals to the High Court of Justiciary [here set out details of order appealed against, and grounds for appeal.]

Dated.....

.....
Signature of Appellant
or his solicitor (design)

EXPLANATORY NOTE

(This Note is not part of the Act of Adjournal.)

This Act of Adjournal prescribes the rules for, and the procedure in, references to the European Court in criminal proceedings.

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