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STATUTORY INSTRUMENTS

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**1988 No. 110 (S.14)**

**HIGH COURT OF JUSTICIARY, SCOTLAND  
SUMMARY JURISDICTION, SCOTLAND**

**Act of Adjournal (Consolidation) 1988**

*Made* - - - - - *21st January 1988*

*Coming into force* - - - - - *21st March 1988*

The Lord Justice General, the Lord Justice Clerk and Lords Commissioners of Justiciary, under and by virtue of the powers conferred upon them by sections 282 and 457 of the Criminal Procedure (Scotland) Act 1975<sup>(1)</sup>, section 1 of the Public Records (Scotland) Act 1937<sup>(2)</sup>, section 38 of the Legal Aid (Scotland) Act 1986<sup>(3)</sup>, and of all other powers enabling them in that behalf, hereby enact the following rules:

INTRODUCTORY

**Citation and commencement**

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Consolidation) 1988 and shall come into force on 21st March 1988.

(2) This Act of Adjournal shall be inserted in the Books of Adjournal.

**Interpretation**

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

(a) “the 1975 Act” means the Criminal Procedure (Scotland) Act 1975;

(b) “the 1980 Act” means the Criminal Justice (Scotland) Act 1980<sup>(4)</sup>.

(2) Except where the context otherwise requires, expressions used in this Act of Adjournal and in the 1975 Act shall have the same meaning in this Act of Adjournal as in that Act and any reference to a section by number is a reference to the section of that number in the 1975 Act.

(3) A reference to a numbered form includes a form as nearly as may be in that form having regard to the particular circumstances.

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(1) 1975 c. 21; section 282 was amended by paragraph 47 of, and section 457 by paragraph 72 of, Schedule 7 to the 1980 Act.  
(2) 1937 c. 43; section 1 was amended by the Public Registers and Records (Scotland) Act 1948 (c. 57), section 1.  
(3) 1986 c. 47  
(4) 1980 c. 62

CHAPTER I  
SOLEMN PROCEDURE  
PART I  
PROCEDURE PRIOR TO TRIAL

*Service*

**Proof of service outside Scotland**

3. Where any citation of an accused person is served in England, Wales or Northern Ireland by an officer effecting such service in accordance with the provisions of section 39(3) of the Criminal Law Act 1977<sup>(5)</sup>, the evidence of either—

- (a) that officer on oath; or
- (b) written execution of service or citation signed by him,

shall be sufficient evidence of such service.

*Bail Order*

**Application to alter address in Bail Order**

4.—(1) An application in writing under section 2(2) of the Bail etc. (Scotland) Act 1980<sup>(6)</sup>, to alter the address specified in the order granting bail shall—

- (a) include the following information:—
  - (i) identification of the proceedings in which the order was made;
  - (ii) details of the new address;
  - (iii) reasons for the proposed change of address; and
- (b) be sent to the clerk of the court which made the order.

(2) On receipt of the application, the clerk of court shall forthwith send a copy to the prosecutor.

(3) The prosecutor shall, within 7 days of receipt of the copy of the application, notify the clerk of court in writing whether or not he intends to oppose the application.

(4) Where the prosecutor notifies the clerk of court that he does not intend to oppose the application, the court shall proceed to dispose of the application and may do so in the absence of the applicant.

(5) Where the prosecutor notifies the clerk of court that he intends to oppose the application, the clerk of court shall arrange a hearing before the court in chambers at which the applicant and the prosecutor may appear or be represented.

(6) The clerk of court shall give notice in writing to the applicant and the prosecutor of the decision of the court on an application made under paragraph (1).

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<sup>(5)</sup> 1977 c. 45; section 39(3) was amended by the 1980 Act, Schedule 7, paragraph 79.

<sup>(6)</sup> 1980 c. 4

### *Citation of Defence Witnesses for Precognition*

#### **Application**

5.—(1) An application to the sheriff made by an accused under section 9(1) of the 1980 Act for warrant to cite any person to appear before the sheriff in chambers for precognition on oath by the accused or his solicitor shall be made—

- (a) to the sheriff in whose sheriffdom the proceedings in respect of which the accused seeks that person's precognition have been commenced;
  - (b) by way of petition in the form set out in Form 1 or 2, whichever is appropriate, of Schedule 1.
- (2) On an application being made to the sheriff under paragraph (1), he shall—
- (a) order intimation of the application to be made to the procurator fiscal;
  - (b) fix a diet for a hearing of the application.

#### **Order for taking precognition**

6. If, after the hearing, the sheriff is satisfied that it is reasonable to require such precognition on oath in the circumstances, he shall—

- (a) order the precognition to be taken;
- (b) fix a diet for it to be taken;
- (c) grant warrant to cite the person from whom it is to be taken.

#### **Citation**

7.—(1) Citation of that person to attend the diet fixed for taking his precognition on oath shall be made by way of personal service on him by an officer of law acting on the instructions of the accused or his solicitor, and relative execution of service shall be produced at the diet fixed under rule 6.

(2) If that person fails to appear at that diet and the sheriff issues a warrant for his apprehension under section 9(2) of the 1980 Act, execution of that warrant—

- (a) shall be executed by an officer of law, instructed by the accused or his solicitor;
- (b) may proceed on a copy of the petition and warrant duly signed by the sheriff clerk.

(3) The sheriff clerk shall immediately give notice of that person's failure to appear at the diet to the procurator fiscal.

#### **Record of proceedings**

8.—(1) Where that person appears before the sheriff to have his precognition taken on oath, the proceedings shall be recorded in shorthand by an official shorthand writer instructed by the accused or his solicitor.

(2) The shorthand writer shall extend his shorthand notes recording the proceedings, sign the transcript, and lodge it with the sheriff clerk.

- (3) On the transcript being lodged, the sheriff clerk shall—
- (a) send a copy to the solicitor for the accused or, if he is not represented, to the accused;
  - (b) fix a diet for the person whose precognition has been taken on oath to attend before the sheriff clerk to sign the precognition.

### Fees of shorthand writers

9.—(1) The solicitor for the accused, or if he is unrepresented, the accused, shall be liable for payment of—

- (a) the fees of the shorthand writer;
- (b) the expenses of the person precognosced on oath,

and shall tender any such expenses in advance if required by that person to do so.

(2) If the accused is unrepresented, the sheriff may at the hearing of the application, or at any time before the precognition is taken, order the accused to consign in court such sum as he may be required to pay under paragraph (1) in respect of fees and expenses on or before such date as the sheriff may specify in the order.

(3) If the sheriff orders the accused to consign a sum in court under paragraph (2), and that sum is not consigned by the date specified in the order, the application shall be treated as abandoned.

### *Citation and List of Jurors*

### Warrants for citation

10.—(1) The forms specified in column 3 of the Table set out below and set out under those numbers in Schedule 1 are the forms prescribed for the purposes of the sections specified in column 1 of the Table relating respectively to the matters summarised in column 2 of the Table, and shall have effect for those purposes.

TABLE

(1) <i>No. of Section</i>	(2) <i>Content</i>	(3) <i>No. of Form</i>
69	Warrant to cite accused person, witnesses and jurors	3
69	Execution of service of indictment and of citation of accused	4
75(7)	Notice to accused to appear at diet	5.

(2) In section 69 (warrants for citation)—

- (a) for the words “conform to Schedule B to the Criminal Procedure (Scotland) Act 1887” and also for the words “conform to Schedule C of that Act” substitute the words “in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form”;
- (b) in the last paragraph, omit the words “The warrant and”, and for the words “B to E” substitute the words “D and E”.

### List of jurors

11. The clerk of the court before which the trial is to take place, in preparing a list of jurors for the trial diet under section 96(8), shall have regard in determining the number of jurors to be listed to the powers of postponing or adjourning any trial diet exercisable by the court under sections 76, 77, 77A(9) and 102(3)(10).

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(7) Section 75 was substituted by the 1980 Act, Schedule 4, paragraph 4.

(8) Section 96 was amended by the 1980 Act, Schedule 4, paragraph 13.

(9) Sections 76, 77 and 77A were inserted by the 1980 Act, Schedule 4, paragraphs 5, 6 and 7.

## *Plea of Guilty*

### **Procedure**

**12.**—(1) A notice to appear at a diet of the appropriate court served on an accused under section 102(1) shall—

- (a) if an indictment has not already been served, be in the form set out in Form 6 of Schedule 1;
- (b) if an indictment has already been served, be in the form set out in Form 7 of Schedule 1.

(2) In any case set down for trial in the High Court, any such diet under section 102(1) may be called before the High Court sitting in Edinburgh, whether or not the case has already been set down for trial at any sitting elsewhere and whether or not any notice has already been served on the accused under section 75.

(3) Notwithstanding the provisions of section 102(3), the court may postpone the trial diet under that section if, but only if—

- (a) all the accused have given intimation in accordance with the provisions of section 102(1); and
- (b) are present at the diet called under section 102(1); and
- (c) a motion in that behalf is made to the court at that diet.

(4) If the court grants that motion, the order granting it shall—

- (a) be endorsed on the record copy indictment;
- (b) be authenticated by the presiding judge subscribing his signature;
- (c) be entered in the record of proceedings;
- (d) have effect for the purposes of section 69 as a warrant of citation issued under that section by the Clerk of Justiciary or sheriff clerk, as the case may be, for the date to which the trial diet has, by virtue of that order, been postponed.

(5) A copy of the order shall be sent by the clerk of court to the governor of any institution in which any accused is detained.

(6) Any requirement to call the diet in any case where such an order has been made shall have effect only in relation to the postponed trial diet.

## *Identification Parades on Application of Accused*

### **Application**

**13.**—(1) An application to the sheriff made by an accused under section 10(1) of the 1980 Act for an order that the prosecutor shall hold an identification parade in which the accused shall be one of those constituting the parade shall be made—

- (a) to the sheriff in whose sheriffdom the proceedings in relation to which the order is sought have been commenced;
- (b) by way of petition in the form set out in Form 8 or 9, whichever is appropriate, of Schedule 1.

(2) On an application being made to the sheriff under paragraph (1), he shall—

- (a) order intimation of the application to be made to the prosecutor;
- (b) fix a diet for a hearing of the application on the earliest practicable date;

- (c) after giving the prosecutor an opportunity to be heard at the hearing and allowing such further procedure as he thinks fit, make an order granting or refusing the application.

(3) If—

- (a) the prosecutor is not present at the hearing of the application; and  
 (b) the sheriff makes an order granting the application,

the sheriff clerk shall issue a certified copy of the order to the applicant or his solicitor.

(4) The sheriff clerk shall record the order made by the sheriff under paragraph (2)(c) in the minute of proceedings, and shall keep the petition and relative documents in his custody.

### *Judicial Examination*

#### **Introductory**

**14.** Subject to the following provisions of this Part relating to judicial examination, the procedure to be followed in relation to examination of the accused under sections 20, 20A and 20B(11) (judicial examination) on any charge shall be in accordance with existing law and practice.

#### **Record of proceedings**

**15.—**(1) The record of all proceedings under those sections shall be kept by the sheriff clerk in the form set out in Form 10 of Schedule 1, and shall be kept by him together with the petition containing the charge or charges in respect of which the accused is brought before the sheriff for examination.

(2) The sheriff clerk shall transmit to the prosecutor a certified copy of the petition and the record of proceedings—

- (a) in relation to proceedings at which the accused is liberated in due course of law, on the conclusion of those proceedings;  
 (b) in relation to any further examination, on the conclusion of that examination.

#### **Verbatim record**

**16.—**(1) The prosecutor shall provide for a verbatim record to be made by a shorthand writer under section 20B(1) if he provides a shorthand writer who is either—

- (a) a person recognised by a court as a shorthand writer for the purposes of sections 274(12) and 276 of the 1975 Act or rule 73 of the First Schedule to the Sheriff Courts (Scotland) Act 1907(13); or  
 (b) a person other than a person mentioned in sub-paragraph (a) skilled in the writing of shorthand (whether or not in the service of the prosecutor),

and in proceedings where *verbatim* record is made by a person mentioned in sub-paragraph (b), a tape-recorded record of the proceedings is also made by the sheriff clerk in accordance with the provisions of rule 17(1) and (2).

(2) The declaration *de fidei administratione officii* shall be administered to the shorthand writer at the commencement of the proceedings.

(3) The name and designation of the shorthand writer and the making of a declaration by him shall be recorded in the record of proceedings.

(4) The shorthand writer shall record the whole proceedings relating to—

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(11) Section 20 was amended by, and sections 20A and 20B inserted by, the 1980 Act, section 6.

(12) Section 274 was amended by the 1980 Act, Schedule 8.

(13) 1907 c. 51; the First Schedule was substituted by S.I. 1983/747

- (a) the emitting by the accused of a declaration under section 20;
- (b) any questions the accused is asked and answers given including declining to answer, under section 20A,

and, subject to paragraph (5), make a transcript of those proceedings.

(5) The shorthand writer shall not include in the transcript he makes of the proceedings any questions disallowed by the sheriff and any answers to such questions.

(6) The shorthand writer shall, in addition to the transcript of proceedings he makes under paragraph (4), also make such further transcript of the record made by him as either the judge at a preliminary diet or the High Court of Justiciary on an appeal may direct for the purposes of considering an application under section 151(2)(14).

(7) The shorthand writer shall, as soon as possible after the conclusion of the proceedings, deliver to the prosecutor the transcript signed and certified by him in accordance with section 20B(2).

### **Use of tape recorders**

17.—(1) Any tape-recorded record of the proceedings made under rule 16(1), shall be made on two separate tapes simultaneously one of which shall be marked “tape A” and the other “tape B”.

(2) The sheriff clerk shall record on both tapes any proceedings mentioned in rule 16(5), and for the purposes of maintaining a continuous record of the proceedings on both tapes the proceedings may be interrupted at the instance of the sheriff clerk for such reasonable period as he may require.

(3) The sheriff clerk shall note in the record of proceedings the time of commencement and the time of termination of the tape-recording.

(4) On the conclusion of the proceedings in question the sheriff clerk shall—

- (a) deliver tape B to the prosecutor;
- (b) cause tape A to be sealed in an envelope or other similar container on which the following information shall be endorsed:—
  - (i) the name of the accused;
  - (ii) the date of examination;
  - (iii) the name of the presiding sheriff;
  - (iv) the name of the shorthand writer;
  - (v) the time of commencement and of termination of the tape;
  - (vi) the time and date of sealing.

(5) The sheriff clerk shall retain tape A until he is informed in writing by the prosecutor that the proceedings against the accused in respect of the charge or charges in relation to which he was examined have come to an end.

(6) The sheriff clerk shall not permit the seal on the container to be broken while he retains it except on being authorised to do so by a judge.

(7) On being so authorised the sheriff clerk shall only permit such access to tape A for such period as may be required for the purposes of the authorisation and on the expiry of that period shall again comply with the requirements of paragraphs (4)(b) and (5).

(8) The sheriff clerk shall, on being informed in writing by the prosecutor, that the proceedings mentioned in paragraph (5) have come to an end, return tape A to the prosecutor.

(9) For the purposes of paragraph (8), the circumstances in which the proceedings have come to an end include—

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(14) Section 151 was substituted by the 1980 Act, section 6(3).

- (a) a decision by the prosecutor to take no further action against the accused in respect of the charge or charges in question;
- (b) following conviction and sentence of the accused in respect of the charge or charges in question, the expiry of any statutory period of appeal without an appeal being taken;
- (c) the final disposal of any appeal which has been taken.

### **Questions by prosecutor**

**18.**—(1) The sheriff before whom the accused is brought for examination shall, if the prosecutor proposes to ask the accused questions regarding the alleged making by the accused of an extrajudicial confession to which section 20A(1)(b) (confession in the hearing of police officer) applies, be provided by the prosecutor before the commencement of the examination with a copy of the written record of the confession allegedly made.

(2) If the sheriff has not been so provided the prosecutor shall not ask the accused any such questions.

(3) The accused shall not be put on oath in the course of any proceedings on examination.

(4) The judge presiding at the trial of an accused who has declined to answer any question under section 20A(1) (prosecutor's questions as to matters in the charge or as to confession or declaration) may, in determining whether his having so declined may be commented upon by virtue of section 20A(5) (comments at trial), have regard to the terms of the charge to which the question related.

(5) The petition containing the terms of the charge to which the question referred to in paragraph (4) related, or a copy of the petition certified by the sheriff clerk as such, shall be sufficient evidence of the terms of that charge for the purposes of that paragraph; but the petition or certified copy petition in question shall—

- (a) not be included in any list of productions made available at the trial;
- (b) not be referred to in evidence by any witness at the trial.

(6) The prosecutor shall, if the presiding judge proposes to have regard to the terms of that charge for the purposes of paragraph (4), provide him with the petition or certified copy petition referred to in paragraph (5).

### **Rectification of errors in transcript**

**19.**—(1) A notice served under section 20B(4)(a) shall be in the form set out in Form 11 of Schedule 1.

(2) The prosecutor shall, on serving or on receiving such a notice, immediately lodge with the sheriff clerk the transcript, signed and certified by the shorthand writer under section 20B(2).

(3) An application to the sheriff for an error or incompleteness to be rectified under section 20B(4)(b) shall be in the form set out in Form 12 of Schedule 1.

(4) The application shall be lodged with the sheriff clerk together with—

- (a) a copy of the notice served under section 20B(4)(a), and
- (b) an execution of service of that notice.

(5) When the person upon whom notice is served under section 20B(4)(a) agrees with the opinion to which that notice relates, he may intimate his agreement to the person serving notice in the form set out in Form 13 of Schedule 1, and shall, at the same time as so intimating his agreement, send a copy to the sheriff clerk.

(6) On the lodging of an application under paragraph (3), the sheriff unless he dispenses with a hearing, shall by deliverance endorsed on the application—



- (a) fix a date for a hearing;
- (b) order intimation of the date of the hearing to be made by the sheriff clerk to the prosecutor and to the accused person to whose examination the transcript relates.

(7) If the sheriff authorises rectification of the transcript, he shall by deliverance endorsed on the application and signed by him specify the rectification authorised.

(8) The sheriff clerk shall give effect to any authorised rectification by amending the signed and certified transcript in accordance with the terms of the sheriff's deliverance and initialling any amendment.

- (9) On making any such amendment, the sheriff clerk shall—
  - (a) attach to the rectified transcript a copy of the deliverance certified by him;
  - (b) return it to the prosecutor;
  - (c) retain the application for rectification and the deliverance made in respect of the application;
  - (d) attach them to the record of proceedings mentioned in rule 15.

#### **Alteration of time limits by sheriff**

**20.** Any direction made by the sheriff under section 20B(5)(a) with modifications as to time limits shall be entered in the record of proceedings mentioned in rule 15 and authenticated by the sheriff subscribing his signature.

#### **Postponement of trial diet by sheriff**

**21.—**(1) The sheriff shall not make an order under section 20B(5)(b) postponing the trial diet in respect of a case set down for trial in the High Court.

(2) Any order by a sheriff postponing the trial diet in a case not set down for trial in the High Court shall be—

- (a) endorsed on the record copy indictment;
- (b) authenticated by the signature of the sheriff;
- (c) intimated—
  - (i) by the prosecutor to any co-accused by serving on them an intimation of postponement in the form set out in Form 14 of Schedule 1;
  - (ii) by the sheriff clerk to the governor of any institution in which any co-accused is detained.

#### **Postponement of trial diet by High Court**

**22.—**(1) If the sheriff considers that it may be appropriate to make an order under section 20B(5)(b) postponing a trial diet in respect of a case set down for trial in the High Court, he shall report the circumstances (including the making of any direction under section 20B(5)(a)) to the Clerk of Justiciary.

- (2) The Clerk of Justiciary on receiving the sheriff's report shall—
  - (a) fix a diet to which the trial diet shall be treated as being postponed for the determination by a single judge of the High Court of the diet to which the trial shall be postponed;
  - (b) intimate that diet to the prosecutor and the accused and to the governor of any institution in which any of the accused is detained.

(3) The judge, in determining the diet to which the trial shall be postponed, shall have regard to the terms of the sheriff's report.

### **Alteration of time limits by High Court**

**23.—**(1) All applications to the High Court for a direction to extend a time limit mentioned in section 20B(6) shall be made by way of petition.

(2) A petition under paragraph (1) shall be intimated to the other party and lodged together with a certificate of intimation with the sheriff clerk.

(3) The sheriff clerk, on the lodging of a petition, shall transmit it to the Clerk of Justiciary together with a certified copy of the relative petition and record of proceedings.

(4) A petition under paragraph (1) may be disposed of by a single judge of the High Court.

(5) The Clerk of Justiciary shall, as soon as possible after he receives the petition, fix a diet for the hearing and intimate the diet to the prosecutor and the accused.

(6) The Clerk of Justiciary, on the disposal of the petition by the High Court, shall transmit a certified copy of the deliverance of the High Court to the sheriff clerk.

(7) The sheriff clerk on receiving the certified copy of the deliverance shall attach it to the record of proceedings.

### *Preliminary Diet*

### **Minute giving written notice**

**24.—**(1) Any written notice given under section 76(1) (preliminary diet) shall be in the form of a minute as set out in Form 15 of Schedule 1.

(2) Any such minute that relates to a case set down for trial in the High Court at a sitting outside Edinburgh shall specify any productions required for the preliminary diet.

(3) The minute shall be lodged—

(a) if it relates to a case set down for trial in the High Court, with the Clerk of Justiciary,

(b) if it relates to a case set down for trial in the sheriff court, with the sheriff clerk,

in accordance with the provisions of rules 25 and 26.

### **Intimation of minute**

**25.—**(1) A formal execution of prior intimation of the minute to all other parties shall be lodged at the same time as the minute.

(2) If it is not so lodged, the Clerk of Justiciary or the sheriff clerk, as the case may be, shall refuse to accept the minute for lodging.

### **Procedure on lodging**

**26.—**(1) On the lodging of the minute, the Clerk of Justiciary or the sheriff clerk, as the case may be, shall—

(a) endorse on it the time and date on which it was received;

(b) as soon as possible, place the minute before a judge.

(2) On considering the minute in the absence of parties or of any person acting on their behalf, or otherwise as he thinks fit, the judge—

- (a) if the minute raises a matter mentioned in paragraph (a) of section 76(1) (competency and relevancy, etc.), shall make an order for a preliminary diet specifying the date and time of the diet and the period (if any) for which the trial diet is postponed in terms of section 76(4);
- (b) if the minute raises a matter mentioned in either paragraphs (b) or (c) of section 76(1), may make or refuse to make such an order.

#### **Order for preliminary diet**

**27.**—(1) An order made under rule 26(2) shall not be invalid by reason only of having been made in the absence of the parties or of any person acting on their behalf.

(2) Any such order shall be—

- (a) endorsed on the minute,
- (b) authenticated by the judge subscribing his signature,
- (c) attached together with the minute to the record copy indictment.

#### **Intimation of order**

**28.**—(1) The Clerk of Justiciary or the sheriff clerk, as the case may be, shall as soon as possible after the making of any such order, intimate its terms to all parties and to the governor of any institution in which any of the accused is detained.

(2) Where, in relation to a case set down for trial in the sheriff court, the High Court makes an order under section 76(5) extending the period for which the trial diet has been postponed, the Clerk of Justiciary shall send a copy of the order to the appropriate sheriff clerk who shall, as soon as possible after receiving the order, intimate its terms to all parties and the governor of any institution in which any of the accused is detained.

#### **Order to be warrant for citation**

**29.** Any order made under rule 26(2) specifying the period for which the trial diet is postponed, and any order made under section 76(5) extending that period shall, for the purposes of section 69 (warrants for citation), be treated as being a warrant issued by the Clerk of Justiciary or the sheriff clerk, as the case may be, to officers of law to cite accused persons, witnesses and jurors for the date to which the trial diet has by virtue of that order been postponed and shall have effect for those purposes.

#### **Calling postponed diet**

**30.** If in relation to any case a trial diet has been postponed by virtue of an order mentioned in rule 29, any requirement to call that diet at any sitting of the court shall have effect only in relation to a sitting on the date to which the diet has been postponed.

#### **Warrant for conveyance and transmission**

**31.** A copy of any order for a preliminary diet under rule 26(2) duly certified by the Clerk of Justiciary or the sheriff clerk, as the case may be, shall be warrant—

- (a) for the conveyance to the preliminary diet of any accused who is in custody,
- (b) in a case set down for trial by the High Court at a sitting outside Edinburgh in respect of which the preliminary diet has been ordered in Edinburgh, for the transmission to the Clerk of Justiciary of any productions specified in the minute.

### **Abandonment of matter to be raised at preliminary diet**

**32.**—(1) Where a diet has been fixed for a preliminary diet under section 76 and the party raising the matter decides not to proceed with it, he shall give written notice of abandonment of the minute giving written notice under that section previously lodged by him.

(2) The notice of abandonment shall be in the form set out in Form 16 of Schedule 1.

(3) The notice shall be intimated forthwith to the clerk of court and to all other parties and to the governor of any institution in which any of the accused is detained.

(4) Upon such intimation it shall not be necessary to convene the court for the preliminary diet unless another minute giving written notice under section 76(1) has been lodged between the lodging of the first notice and the notice of abandonment.

### **Procedure at preliminary diet**

**33.**—(1) A preliminary diet shall commence on the diet being called.

(2) For the purposes of the application of section 274 (shorthand notes of trial) to a preliminary diet the whole proceedings at the preliminary diet shall be proceedings at the trial for the purposes of that section.

(3) A record of those proceedings, including—

(a) a note of the decision made by the court in respect of any notice placed before it,

(b) any continuation or adjournment,

(c) the plea or pleas stated at the conclusion of the diet in terms of section 76(6),

shall be kept in accordance with existing law and practice.

(4) At any time after the commencement of the diet, the judge may make an order continuing or adjourning the diet to another time or place, but he shall not require to make an order continuing it to the trial diet.

(5) A copy of an order continuing or adjourning the diet under paragraph (4) duly certified by the Clerk of Justiciary or the sheriff clerk, as the case may be, shall be warrant—

(a) for the conveyance to the continued or adjourned diet of any accused who may be in custody,

(b) for the citation to that diet of any witnesses.

### **Application for leave to appeal**

**34.**—(1) An application for leave to appeal to the High Court against a decision at a preliminary diet under section 76A(1)(15) (appeal against decision at preliminary diet) shall be made by way of motion to the judge at that diet immediately following the making of the decision in question, and shall be either granted or refused there and then.

(2) If leave to appeal is granted, the judge shall consider whether or not to postpone the diet of trial and if he decides that it is necessary or desirable to do so, he may discharge the trial diet and fix a new diet under section 77A (postponement of the trial diet).

(3) Rule 38 shall apply to an order postponing a trial diet under this rule as it applies to an order postponing the trial diet under that rule.

(4) Any order made under this rule shall be recorded in the record of proceedings.

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(15) Section 76A was inserted by the 1980 Act, Schedule 4, paragraph 5.

### **Note of appeal**

**35.**—(1) An appeal taken under section 76A(1) (appeal against decision at preliminary diet) shall be made by way of note of appeal in the form set out in Form 17 of Schedule 1.

(2) The note of appeal shall be lodged—

(a) in a case set down for trial in the High Court, with the Clerk of Justiciary,

(b) in a case set down for trial in the sheriff court, with the sheriff clerk,

not later than two days after the making of the decision in question.

### **Procedure on lodging note of appeal**

**36.**—(1) On the lodging of a note of appeal with the sheriff clerk he shall endorse on it a certificate that leave to appeal has been granted and the date and time of lodging.

(2) On the lodging of a note of appeal against a decision of a sheriff, the sheriff clerk shall as soon as possible—

(a) send a copy of the note of appeal to the other parties or their solicitors,

(b) request a report on the circumstances relating to his decision from the sheriff,

(c) transmit the note of appeal to the Clerk of Justiciary together with a certified copy of—

(i) the indictment,

(ii) the record of proceedings,

(iii) any relevant document.

### **Sheriff's report**

**37.**—(1) The sheriff on receiving a request for a report under rule 36(2) shall, as soon as possible, send his report to the Clerk of Justiciary.

(2) The Clerk of Justiciary shall, on receiving the sheriff's report—

(a) send a copy of the report to the parties or their solicitors,

(b) arrange for a hearing of the appeal as soon as possible,

(c) cause to be copied any documents necessary for the appeal court.

### **Intimation of order postponing trial diet**

**38.**—(1) Where in relation to any appeal under section 76A(1) (appeal against decision at preliminary diet) in a case set down for hearing in the sheriff court, the High Court makes an order or order and direction under section 76A(2) postponing the trial diet, the Clerk of Justiciary shall send a copy of the order or order and direction, as the case may be, to the sheriff clerk and to all parties to the proceedings and to the governor of any institution in which any of the accused is detained.

(2) Rules 29 and 30 shall apply to an order or an order and direction mentioned in paragraph (1) as they apply to an order mentioned in rule 29.

### **Order of appeal court**

**39.**—(1) The Clerk of Justiciary shall intimate to the sheriff clerk the decision of the High Court disposing of an appeal under section 76A(1) (appeal against decision at preliminary diet).

(2) If the High Court in disposing of an appeal under section 76A(1) reverses a decision that dismisses the case against the accused, and makes a direction to the Court of first instance that it fix

a trial diet, that direction shall be authority to the Clerk of Justiciary or the sheriff clerk, as the case may be, to issue a fresh warrant for citation under section 69 (warrant of citation).

### **Abandonment of appeal**

**40.**—(1) An appellant who has taken an appeal under section 76A(1) may abandon the appeal at any time before the hearing of the appeal.

(2) An appeal shall be abandoned by way of lodging a minute of abandonment with the Clerk of Justiciary in the form set out in Form 18 of Schedule 1.

(3) The Clerk of Justiciary, on receiving a minute of abandonment of an appeal in a case set down for trial in the sheriff court, shall inform the sheriff clerk and the other parties or their solicitors.

(4) The sheriff, on the sheriff clerk being so informed, may proceed as accords with the case.

### *Alteration and Postponement of Trial Diet*

#### **Alteration of trial diet**

**41.**—(1) If circumstances arise in which the court may adjourn the trial diet to a subsequent sitting under section 77, and the prosecutor proposes such an adjournment, he may for that purpose require the trial diet to be called at the sitting for which it was originally fixed at such time as he thinks appropriate.

(2) If, on the trial being so called, the prosecutor—

(a) informs the court that a warrant for an appropriate subsequent sitting of the court has been issued, and

(b) moves the court to adjourn the trial diet to that subsequent sitting,

the court shall grant his motion.

(3) The presence of the accused in court when the trial diet was so called and adjourned, shall be sufficient intimation to him of the adjourned diet.

(4) If the trial diet was so called and adjourned in the absence of the accused, the prosecutor shall immediately serve on the accused an intimation of adjournment in the form set out in Form 19 of Schedule 1.

(5) The calling and the adjournment of the trial diet including a record as to the presence or absence of the accused, as the case may be, shall be endorsed by the clerk of court on the record copy indictment and entered in the record of proceedings in accordance with existing law and practice.

(6) A copy of an order of the court adjourning the trial diet to a subsequent sitting under section 77 shall be sent by the Clerk of Justiciary or the sheriff clerk, as the case may be, to the governor of any institution in which any of the accused is detained.

#### **Application for postponement of trial diet**

**42.**—(1) Subject to paragraph (2), an application for postponement of the trial diet under section 77A(1) shall be made by way of minute in the form set out in Form 20 of Schedule 1.

(2) Where all the parties join in the application it shall be made by way of joint minute in the form set out in Form 21 of Schedule 1.

(3) The minute shall be lodged—

(a) in a case set down for trial in the High Court, with the Clerk of Justiciary,

(b) in a case set down for trial in the sheriff court, with the appropriate sheriff clerk.

### **Order fixing diet**

**43.** The minute shall be placed before the court and the court (if section 77A(3) does not apply) shall make an order endorsed on the minute—

- (a) fixing a diet for a hearing of the application.
- (b) for intimation of the minute and of the diet to all parties.

### **Calling of diet**

**44.—**(1) The diet shall (if section 77A(3) and the proviso to section 77A(4) do not apply) be held in open court in the presence of all parties, and shall be commenced by the calling of the diet.

(2) On the calling of the diet the prosecutor shall inform the court—

- (a) whether any other cases have been set down for trial at the sitting in respect of which the application for postponement of the trial diet is made, and
- (b) whether a warrant has been issued under section 69 for a subsequent sitting of the court.

### **Orders**

**45.—**(1) If the court is informed by the prosecutor that no other cases have been set down for trial at the sitting in respect of which the application for postponement of the trial diet is made and has granted the application under section 77A(2), the court shall make an order authorising—

- (a) if citations have been issued to jurors for the original diet, the issue to those jurors of intimations that they are not required to attend at the original diet, but are required to attend at the new diet;
- (b) if such citations have not been issued, the issue to the jurors shown on the original list of jurors of citations requiring them to attend at the new diet.

(2) If the court is informed by the prosecutor that other cases have been set down for trial at that sitting and has granted the application under section 77A(2), the court shall, in fixing a new trial diet, have regard to the time required to issue citations to such jurors on the list of jurors as have not been summoned under section 97 for the sitting in which the new diet is being fixed and are required to be summoned by reason of the granting of the application.

(3) If at the diet—

- (a) the court is of opinion that the original diet should not proceed, and
- (b) the court has been informed that a warrant has been issued under section 69 for a subsequent sitting of the court within the period mentioned in relation to that court in section 77,

the court may, notwithstanding the provisions of section 77A(2), make an order adjourning the trial diet to that subsequent sitting, and that order shall have effect as if it had been made under section 77.

### **Notice fixing new diet**

**46.—**(1) If the court gives leave to the prosecutor to serve a notice fixing a new trial diet under section 77A(2), the prosecutor shall consult with the Clerk of Justiciary or the sheriff clerk, as the case may be, as to an appropriate date before fixing that diet.

(2) Such a notice shall be in the form set out in Form 22 of Schedule 1, and shall be served by the prosecutor on all parties and on the governor of any institution in which any of the accused is detained, and a copy of the notice together with the relative execution of service shall be lodged by him as soon as possible with the clerk of court.

(3) A notice served in accordance with paragraph (2) shall, for the purposes of section 69, be treated as being a warrant issued by the Clerk of Justiciary or the sheriff clerk, as the case may be, to officers of law to cite accused persons, witnesses and jurors for the date specified in the notice for the new trial diet, and shall have effect for those purposes.

(4) The clerk of court shall, on receiving a copy of the notice, attach it to the record copy indictment.

### **Record**

**47.** The clerk of court shall record by endorsement on the record copy indictment—

- (a) the calling of the diet of the hearing under section 77A(2),
- (b) the proceedings at the hearing,
- (c) the decision of the court,

and that record shall be authenticated by the judge subscribing his signature, and entered in the record of proceedings in accordance with existing law and practice.

### **Joint application without hearing**

**48.—**(1) If in the case of a joint application the court proposes to proceed under section 77A(2) without hearing the parties, the Clerk of Justiciary or the sheriff clerk, as the case may be, shall on the lodging of the minute attach it to the record copy indictment and place it before a judge in chambers.

(2) The order made by the judge in chambers in respect of the joint application shall be—

- (a) recorded by endorsement on the record copy indictment,
- (b) authenticated by the judge subscribing his signature,
- (c) entered in the record of proceedings in accordance with the existing law and practice,
- (d) intimated by the clerk of court to the applicants or their solicitors.

(3) The clerk of court shall send to the governor of any institution in which any of the accused is detained a copy of the following orders of the court—

- (a) an order under rule 43 fixing a diet for hearing of the application,
- (b) an order under section 77A(2) discharging a trial diet and fixing a new trial diet,
- (c) an order under rule 45(3) adjourning a trial diet to a subsequent sitting.

### **Calling of adjourned diet**

**49.** If in relation to any case, a trial diet has been discharged or adjourned under rules 42 to 48, any requirement to call that diet at any sitting of the court shall have effect only in relation to the sitting at which the new trial diet has been fixed.

## *Appeals Against Extension of Time Limits*

### **Note of appeal**

**50.—**(1) A note of appeal presented to the High Court under section 101(5)(16) shall be made in the appropriate form set out in Form 23, 24 or 25 of Schedule 1.

(2) A note of appeal under that section shall be served by the appellant on—

- (a) the respondent, and

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(16) Section 101 was substituted by the 1980 Act, section 14(1).



- (b) the clerk of the court against whose decision the appeal is taken.
- (3) The appellant in a note of appeal under that section shall lodge with the Clerk of Justiciary—
  - (a) the note of appeal, and
  - (b) the execution of service in respect of the persons mentioned in paragraph (2).
- (4) The clerk of the court against whose decision the appeal is taken shall, as soon as practicable after being served with the note of appeal, transmit to the Clerk of Justiciary the original application and all the relative documents; and the Clerk of Justiciary shall on receiving them assign the appeal to the roll and intimate the date of the diet to the appellant and the respondent.

### *Letters of Request*

#### **Application**

**51.**—(1) An application to the court by the prosecutor or the defence under section 32(1)(a) of the 1980 Act for the issue of a letter of request shall be made by way of petition in the appropriate form set out in Form 26 of Schedule 1.

- (2) An application so made shall be lodged—
  - (a) where it relates to proceedings in the High Court or to proceedings in respect of which the court where the trial is to take place is not yet known, with the Clerk of Justiciary;
  - (b) where it relates to proceedings in the sheriff court, with the sheriff clerk,

and shall be accompanied by a proposed letter of request including the matters set out in Form 27 of Schedule 1.

- (3) An application made to the High Court may be disposed of by a single judge.
- (4) The High Court or the sheriff shall on the application being placed before them—
  - (a) order intimation on the other party or parties to the proceedings; and
  - (b) subject to paragraph (5), allow such time for lodging answers as appears appropriate; and
  - (c) fix a diet for hearing the application and answers (if any).

(5) The High Court or the sheriff may dispense with answers to an application under this rule on cause shown.

#### **Powers of Court**

**52.**—(1) The High Court or the sheriff may, after considering the application and answers (if any), either grant the application with or without modification or refuse it.

(2) On granting an application under this rule the High Court or the sheriff, as the case may be, shall—

- (a) allow interrogatories to be adjusted summarily;
- (b) pronounce a deliverance approving the terms—
  - (i) of the letter of request to be sent;
  - (ii) of the interrogatories and cross-interrogatories (if any) to be sent;
- (c) if English is not an official language of the body to whom the letter of request is addressed, specify a period within which a translation of the letter and of the interrogatories and cross-interrogatories and of any productions is to be lodged.

### **Expenses**

**53.**—(1) The solicitor for the applicant, or if he is unrepresented, the applicant, shall be liable for the expenses of the application.

(2) The High Court or the sheriff, as the case may be, may order the solicitor for the applicant, or the applicant, to consign in court such sum in respect of those expenses as they may specify on or before such date as they may specify.

(3) In the event of the sum so specified not being consigned in court on or before the date so specified, the application shall be treated as having been abandoned.

### **Transmission**

**54.**—(1) On the High Court or the sheriff pronouncing a deliverance under rule 52(2), or in a case where a translation requires to be lodged, on the lodging of the translation, the Clerk of Justiciary or the sheriff clerk, as the case may be, shall send the letter of request and relative documents to the Secretary of State for Foreign and Commonwealth Affairs for onward transmission to the body to whom the letter of request is addressed.

(2) On sending the letter of request and relative documents to the Secretary of State, the Clerk of Justiciary or the sheriff clerk, as the case may be, shall note the documents sent, to whom they were sent, and the date on which they were sent, on the application or on the record copy indictment.

(3) On the relative documents being returned to him, the Clerk of Justiciary or the sheriff clerk, as the case may be, shall—

- (a) note the documents returned, by whom they were returned and the date on which they were returned, on the application or on the record copy indictment; and
- (b) intimate those facts to all parties concerned.

### **Custody of documents**

**55.**—(1) The Clerk of Justiciary or the sheriff clerk, as the case may be, shall, subject to paragraph (2), keep the documents mentioned in rule 54(3) in their custody.

(2) In any case where the application was made to the High Court on the ground that the court in which the trial was to take place was not then known the prosecutor shall, as soon as that court is known, inform the Clerk of Justiciary accordingly; and if that court is the sheriff court, the Clerk of Justiciary shall as soon as is practicable send to the sheriff clerk of the sheriff court in question the record of the evidence of the witness or witnesses in question.

(3) In any case where the record of the evidence of a witness is in the custody of the Clerk of Justiciary or a sheriff clerk under this rule and where intimation has been given to that effect to all the parties concerned in the proceedings under rule 54(3), the name and address of that witness and the record of his evidence shall be treated as being within the knowledge of those parties; and no party shall be required notwithstanding any enactment to the contrary—

- (a) to include the name of that witness in any list of witnesses;
- (b) to include the record of his evidence in any list of productions.

### **Prohibition of reference to evidence without leave**

**56.**—(1) No reference shall be made either directly or indirectly in any proceedings to the evidence, or any part of the evidence, of a witness whose evidence has been taken under rule 52 unless the party seeking to make such reference has made a motion to the court to that effect and that motion has been granted.

(2) The terms of any motion made under paragraph (1) and the grant or refusal of that motion by the court shall be noted by the clerk of court in the record of proceedings.

(3) On any such motion being granted—

- (a) the judge may direct copies of the evidence to which he has granted leave to make reference to be provided to the jury by the party making the motion;
- (b) the clerk of court shall read the record of that evidence to the jury and shall then record that fact in the record of proceedings.

### *Evidence on Commission*

#### **Application**

**57.**—(1) An application to the court by the prosecutor or the defence under section 32(1)(b) of the 1980 Act<sup>(17)</sup> for the appointment of a commissioner to examine a witness to whom that section applies, shall be made by way of petition in the appropriate form set out in Form 28 of Schedule 1.

(2) An application so made shall be lodged—

- (a) where it relates to proceedings in the High Court or to proceedings in respect of which the court where the trial is to take place is not yet known, with the Clerk of Justiciary;
- (b) where it relates to proceedings in the sheriff court, with the sheriff clerk.

#### **Appointment of Commissioner**

**58.**—(1) On making an order granting an application under rule 57 the High Court or the sheriff, as the case may be, shall appoint a commissioner to examine the witness or witnesses to whom the order applies, and a clerk to assist the commissioner in the carrying out of his duties, and shall dispense with interrogatories.

(2) On the court making an order under paragraph (1), the Clerk of Justiciary or the sheriff clerk, as the case may be, shall send the order to either the commissioner or his clerk together with the other relative documents.

(3) On the sending of the relative order and documents to the commissioner or his clerk under paragraph (2), the Clerk of Justiciary or the sheriff clerk, as the case may be, shall note the order and documents sent, to whom they were sent, and the date on which they were sent, on the application, or on the record copy indictment.

#### **Commission**

**59.**—(1) The commissioner shall, on receiving the order and documents mentioned in rule 58(2), determine the place and the date of the diet or diets for the examination of the witness or witnesses to whom the order of the court relates, and shall give reasonable notice of those matters to all the parties concerned.

(2) The commissioner may vary or revoke his determination or adjourn the examination of any witness to such other place, at such other date and time, as he may determine.

(3) If in the course of the examination of a witness under this rule any question arises as to the admissibility of any evidence, the commissioner shall not determine any such question but shall allow the evidence subject to all questions of competency and relevancy.

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<sup>(17)</sup> Section 32 was amended by the Criminal Justice (Scotland) Act 1987 (c. 41), section 61.

### Commissioner's report

60. On the carrying out of his commission in accordance with the terms of the order appointing him, or otherwise on concluding his commission, the commissioner shall complete a written report of his commission, and he or his clerk shall return the report and relative documents to the Clerk of Justiciary or the sheriff clerk, as the case may be.

### Application of other provisions

61. The following rules shall apply to an application under rule 57 as they apply to an application under rule 51:—

- rule 51(3) to (5);
- rule 52(1);
- rule 53;
- rule 54(3);
- rule 55;
- rule 56.

### *Interim Hospital Order*

### Application

62.—(1) Where the court has made or renewed an interim hospital order under section 174A(18) and the responsible medical officer has intimated to the prosecutor either—

- (a) that he seeks a continuation of the order, or
- (b) that he seeks termination of the order before the date on which it would otherwise cease to have effect,

the prosecutor shall make an application in the form set out in Form 29 of Schedule 1, to the court which made the order, to renew or terminate the order, as the case may be.

(2) Where an application is made under paragraph (1)—

- (a) the court shall by interlocutor in the form set out in Form 30 of Schedule 1, appoint a diet for hearing the application and where appropriate, grant warrant to authorised officers of the hospital, or officers of law, for conveyance of the offender from the hospital to the court for that diet; and

(b) the clerk of court shall intimate the application and the diet to the offender or his solicitor.

(3) Where, in an application under paragraph (1)(a), the court renews an interim hospital order before the date on which the order would otherwise cease to have effect, the period of renewal shall commence from the date on which the order would otherwise cease to have effect.

(4) Where the court makes an order to renew or terminate an interim hospital order, before the date on which it would otherwise cease to have effect, the adjourned diet fixed when the previous order of the court was made shall be treated as being discharged.

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(18) Section 174A was inserted by the Mental Health (Amendment) (Scotland) Act 1983 (c. 39), section 34(a), and was amended by the Mental Health (Scotland) Act 1984 (c. 36), Schedule 3, paragraph 25.

## *Reference to European Court*

### **Preliminary**

**63.** In this rule and in rules 64 to 67 unless the context otherwise requires—

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

“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;

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

### **Notice**

**64.**—(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 to the court before which the trial is to take place and to the other parties not later than 15 days after service of the indictment.

(2) The notice shall be recorded on the record copy of the indictment or in the record of proceedings, as the case may be, and the court, in chambers, shall reserve consideration of the question to the trial diet.

(3) The court may order that witnesses and jurors are not cited to attend at the trial diet.

(4) At the trial diet the court, after hearing parties, may determine the question or may decide that a preliminary ruling should be sought.

(5) If the court determines the question the accused shall then (if appropriate) be called upon to plead to the indictment, 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 trial diet, shall continue the diet and order the citation of witnesses and jurors to attend the continued diet.

(6) No period during which the diet is continued under paragraph (5) shall—

(a) subject to paragraph (7), be longer than 21 days;

(b) be taken into account for the purposes of determining whether any time limit has expired.

(7) The court may on the application of the prosecutor or the defence extend any period during which the diet is continued for such longer period than 21 days as it thinks fit, on special cause shown.

### **Reference**

**65.**—(1) If the court decides that a preliminary ruling should be sought the court shall—

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

(b) continue the proceedings from time to time as necessary for the purposes of the reference.

(2) The reference—

(a) shall be in the form set out in Form 31 of Schedule 1, 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 (after the expiry of the period of appeal) 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.

### **Preliminary ruling**

**66.** 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 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.

### **Appeal against reference**

**67.**—(1) Where an order making a reference is made under rule 65, any party to the proceedings who is aggrieved by the order may within 14 days thereafter appeal against the order to the High Court sitting as a court of appeal, but this rule does not apply to such an order made in 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.

(2) Any appeal under this rule shall be made by lodging with the clerk of the court that made the order a note of appeal in the form set out in Form 32 of Schedule 1 and 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.

(3) If the clerk of the court that made the order is not the Clerk of Justiciary, he 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 record and a certified copy of the relative indictment.

(4) 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;
- (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 it thinks fit.

(5) 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 rule for appealing against the order has expired or before the appeal has been disposed of or withdrawn.

### *Notice of Special Defence*

### **Written notice**

**68.** Written notice of a special defence or of an intention to lead evidence calculated to exculpate an accused by incriminating a co-accused, lodged under section 82(1) shall be lodged with the clerk of the court before which the trial is to take place, and at the same time a copy of the notice shall be sent to the Crown and to any co-accused or to the solicitor of the co-accused.

## PART II

### PROCEDURE AT TRIAL

#### **Form of oaths to jurors**

**69.**—(1) Where the clerk of court administers the oath to the jury in pursuance of the provisions of section 135, he shall do so in accordance with the form set out in Part I of Form 33 of Schedule 1.

(2) In the case of any juror who elects to affirm, the clerk shall administer the affirmation in accordance with the form set out in Part 2 of that Form.

(3) The oath or the affirmation so administered shall be treated as having been administered in common form for the purposes of section 135.

#### **Forms of oaths to witnesses**

**70.**—(1) Where the judge administers the oath to a witness, he shall do so in accordance with the form set out in Part 3 of Form 33 of Schedule 1.

(2) In the case of any witness who elects to affirm, the judge shall administer the affirmation in accordance with the form set out in Part 4 of that Form.

(3) The oath or the affirmation so administered shall be treated as having been administered in common form.

#### **Restrictions on report of proceedings involving a person under 16**

**71.**—(1) Any direction made by a court under sub-paragraph (i) of the proviso to section 169(19) shall specify the person in respect of whom the direction is made.

(2) Any direction made by a court under sub-paragraph (ii) of the proviso to the said section shall specify the person in respect of whom the direction is made and the extent to which the provisions of the section are dispensed with in relation to that person.

(3) Any such direction shall be pronounced in open court and its terms shall be recorded in the record of proceedings, and the direction as so recorded shall be authenticated by the signature of the presiding judge.

#### **Notice of use of autopsy and forensic science reports in evidence**

**72.** Any notice given by an accused under section 26(6) of the 1980 Act shall be in writing and shall be given to the prosecutor.

#### **Use of transcript of judicial examination**

**73.**—(1) The record made under section 20B of proceedings at the examination of an accused shall be received in evidence in accordance with section 151(1) by means of the clerk of court, subject to paragraph (2), reading the record of those proceedings to the jury.

(2) The clerk of court shall not read to the jury such part of the record as the court refuses to allow to be read to the jury on an application under section 151(2).

(3) The presiding judge may, if he thinks fit, direct that copies of such part of the record as has been read to the jury shall be made available to them together with copies of any written record of a confession allegedly made and received by the accused under section 20A(1)(b).

PART III  
CONVICTION OF SENTENCE

**Interruption of proceedings**

74.—(1) On conviction of an accused person in solemn proceedings the presiding judge may, without adjourning those proceedings, interrupt them by—

- (a) considering a conviction against that person in other proceedings pending before that court for which he has not been sentenced;
- (b) passing sentence on that person in respect of the conviction in those other proceedings.

(2) When the judge has interrupted any proceedings under the powers contained in paragraph (1), he may in passing sentence on an accused person in respect of a conviction in those proceedings at the same time pass sentence on that person in respect of any other conviction he has considered thereunder.

(3) No interruption of any proceedings under the powers contained in paragraphs (1) and (2) shall cause the instance to fall in respect of any person accused in those proceedings or shall otherwise affect the validity of those proceedings.

**Form of death sentence**

75.—(1) The form of pronouncing the sentence of death shall be in the form set out in Form 34 of Schedule 1.

(2) After the verdict of the Jury finding the accused guilty has been recorded, the presiding Judge shall sign the sentence on a paper separate from the record of proceedings and immediately thereafter shall pronounce sentence.

(3) The accused need not be present in Court after the presiding Judge has pronounced sentence.

(4) On sentence being pronounced the Clerk shall engross the sentence in the record of proceedings and the presiding Judge shall sign it.

**Form of probation order**

76. A probation order shall be in the form set out in Form 35 of Schedule 1.

**Compensation orders: application**

77. The provisions of rules 78 to 82 apply to compensation orders made by courts against convicted persons under Part IV of the 1980 Act.

**Terms of order**

78. Entries shall be made in the record of proceedings by the clerk of court on the making of a compensation order, specifying the terms of the order and in particular—

- (a) the name of the convicted person or persons required to pay compensation;
- (b) the amount of compensation required to be paid by such person or persons;
- (c) the name of the person or persons entitled to the compensation payable;
- (d) where there is more than one such person, the amount of compensation each is entitled to and the priority, if any, among those persons for payment.



### **Information of disability**

**79.**—(1) The prosecutor, if he knows that any person entitled to payment of compensation under a compensation order is under any legal disability, shall so inform the court immediately it makes any such order in respect of any such person, and that information shall be entered by the clerk of court in the record of proceedings.

(2) Those entries shall be authenticated by the signature of the clerk of court.

### **Variation**

**80.**—(1) The judge may, at any time before a compensation order is fully complied with, and after such further enquiries as the court may order, vary the terms of the order as he thinks fit.

(2) A variation order under paragraph (1) may be made in chambers and in the absence of the parties, or any of them.

### **Discharge or reduction of amount**

**81.**—(1) An application to discharge a compensation order or to reduce the amount that remains to be paid under section 64 of the 1980 Act shall be made in writing to the clerk of the court to whom application may be made in accordance with the provisions of that section.

(2) The clerk of court shall, on any such application being made to him, cause intimation of the application to be given to the prosecutor.

(3) The court to whom the application is made may dispose of the application after such enquiry as it thinks fit.

### **Administration where person under disability**

**82.** Where payment of any sum is made under a compensation order to the clerk of court in respect of a person known to be under a legal disability, paragraphs (1) to (3) and (5) of rule 128 of the First Schedule to the Sheriff Courts (Scotland) Act 1907 shall apply to the administration of that sum as they apply to the administration of a sum of money paid into court in respect of damages for such a person.

### **Form of extract of sentence**

**83.**—(1) This rule applies to any case where an accused person has been sentenced to a custodial sentence following upon conviction on indictment.

(2) An extract of a custodial sentence and warrant of detention and return of sentence required for any purpose in connection with any case to which this rule applies, shall be in the form set out in Form 36 of Schedule 1 and shall be signed by the clerk of court.

(3) An extract issued in accordance with the provisions of paragraph (2) above shall be warrant and authority for execution.

## PART IV APPEAL PROCEDURE

### **Forms for appeal**

**84.**—(1) For the purposes of appeals, the forms specified by number in column 3 of the Table set out below and set out under those numbers in Schedule 1 are the forms prescribed under the 1975 Act for the purposes of the sections of that Act specified in column 1 of the Table relating respectively to the matters summarised in column 2 of the Table, and shall have effect for those purposes.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

TABLE

(1) <i>No. of Section</i>	(2) <i>Content</i>	(3) <i>No. of Form</i>
231(20)	Intimation of intention to appeal	37
233(21)	Note of appeal	38
236B(22)	Application for extension of time	39
238	Application for bail pending appeal	40
244(23)	Notice of abandonment of appeal	41
251	Notification of decision	42
251	Application for determination by High Court	43.

(2) Where the Clerk of Justiciary extends the period for lodging a written note of appeal under section 233(1) he shall record the period of any such extension on the completed form of intimation of intention to appeal.

#### **Intimation of appeal against sentence of death**

**85.** The Clerk of Justiciary shall intimate an appeal against a conviction in respect of which sentence of death has been pronounced and the determination in any such appeal immediately on such intimation or determination, as the case may be, to—

- (a) the Secretary of State for Scotland; and
- (b) the governor of the prison in which the appellant is detained.

#### **Suspension of disqualification from driving pending appeal**

**86.—**(1) Where a person who has been disqualified from holding or obtaining a driving licence appeals against that disqualification to the Court, any application to suspend that disqualification pending the hearing of the appeal shall be made—

- (a) if the sentencing court was the sheriff, by application to the sheriff;
- (b) if the sentencing court was the High Court, or if an application to the sheriff under subparagraph (a) has been refused, by petition in the form set out in Form 44 of Schedule 1.

(2) An application to the sheriff under paragraph (1)(a) shall be in the form set out in Form 44A of Schedule 1 and shall be lodged with the sheriff clerk together with a copy of the Note of Appeal endorsed with the receipt of the Clerk of Justiciary.

(3) The sheriff clerk shall record the order made by the sheriff on the application in the minute of proceedings.

- (4) A petition under paragraph (1)(b) shall be lodged with the Clerk of Justiciary.

(20) Section 231 was substituted by the 1980 Act, Schedule 2, paragraph 3.

(21) Section 233 was substituted by the 1980 Act, Schedule 2, paragraph 5.

(22) Section 236B was inserted by the 1980 Act, Schedule 2, paragraph 8.

(23) Section 244 was substituted by the 1980 Act, Schedule 2, paragraph 13.

- (5) The petitioner or his solicitor shall, on lodging the petition, send a copy of it to—
- (a) the Crown Agent, and
  - (b) if the sentencing court was the sheriff, of the clerk of that court.
- (6) The court may order such further intimation (including intimation to the Lord Advocate) as it thinks fit, and may dispose of the application in open court or in chambers as it thinks fit.
- (7) An order made by a single judge under paragraph (6) shall not be subject to review.
- (8) On an order being made on the petition, the Clerk of Justiciary shall, if the sentencing court was the sheriff, send a certified copy of the order to the clerk of that court.
- (9) If the order suspends the disqualification, the Clerk of Justiciary shall also send a certified copy of the order to the Secretary of State with such further information as the Secretary of State may require.
- (10) The Clerk of Justiciary shall, on determination of the appeal—
- (a) if the sentencing court was the sheriff, send the clerk of that court a certified copy of the order determining the appeal and the clerk shall, if appropriate, make the appropriate endorsement on the appellant's driving licence and intimate the disqualification;
  - (b) otherwise if the appeal against the disqualification is refused, make the appropriate endorsement on the appellant's driving licence, and intimate the disqualification.

## CHAPTER 2

### SUMMARY PROCEDURE

#### PART I

#### PROCEDURE PRIOR TO TRIAL

##### *Forms*

##### **Forms of complaint and related notices**

**87.**—(1) The form of complaint referred to in section 311(1) shall be in the form set out in Form 45 of Schedule 1.

(2) The form of notice referred to in section 311(5) shall be in the form set out in Form 46 of Schedule 1.

(3) The form of citation of the accused referred to in section 315(2) shall be in the form set out in Form 47 of Schedule 1.

(4) The form of notice of previous convictions referred to in section 357(1)(a) shall be in the form set out in Form 48 of Schedule 1.

##### **Ancillary forms**

**88.** The procurator fiscal shall send to the accused person together with the citation—

- (a) a reply form for completion and return by him stating whether he pleads guilty or not guilty in the form set out in Form 49 of Schedule 1;
- (b) a means form for completion and return by him in the form set out in Form 50 of Schedule 1.

### **Signature of procurator fiscal**

**89.** The procurator fiscal shall require to sign the principal complaint and the citation to the accused person only, and any documents sent with the citation, including the copy complaint, and the documents mentioned in rule 88 shall, for the purposes of such signature, be treated as part of the citation.

### **Validity**

**90.** The validity of any proceedings against an accused person shall not be affected by reason only of the failure of the procurator fiscal to comply in any respect with the provisions of rule 88.

### *Service*

### **Proof of service outside Scotland**

**91.** Where any citation of an accused person is served in England, Wales or Northern Ireland by an officer effecting such service in accordance with the provisions of section 39(3) of the Criminal Law Act 1977, the evidence of either—

- (a) that officer on oath; or
- (b) written execution of service or citation signed by him,

shall be sufficient evidence of such service.

### *Bail Order*

### **Application to alter address**

**92.—**(1) An application in writing under section 2(2) of the Bail etc. (Scotland) Act 1980 to alter the address specified in the order granting bail shall—

- (a) include the following information:—
  - (i) identification of the proceedings in which the order was made;
  - (ii) details of the new address;
  - (iii) reasons for the proposed change of address; and
- (b) be sent to the clerk of court of the court which made the order.

(2) On receipt of the application, the clerk of court shall forthwith send a copy to the prosecutor.

(3) The prosecutor shall, within 7 days of receipt of the copy of the application, notify the clerk of court in writing whether or not he intends to oppose the application.

(4) Where the prosecutor notifies the clerk of court that he does not intend to oppose the application, the court shall proceed to dispose of the application and may do so in the absence of the applicant.

(5) Where the prosecutor notifies the clerk of court that he intends to oppose the application, the clerk of court shall arrange a hearing before the court in chambers at which the applicant and the prosecutor may appear or be represented.

(6) The clerk of court shall give notice in writing, to the applicant and the prosecutor, of the decision of the court on an application made under paragraph (1) of this rule.

### *Citation of Defence Witnesses for Precognition*

#### **Application for warrant to cite**

**93.**—(1) An application to the sheriff made by an accused under section 9(1) of the 1980 Act for warrant to cite any person to appear before the sheriff in chambers for precognition on oath by the accused or his solicitor shall be made—

- (a) to the sheriff in whose sheriffdom the proceedings in respect of which the accused seeks that person's precognition have been commenced;
  - (b) by way of petition in the form set out in Form 51 of Schedule 1.
- (2) On an application being made to the sheriff under paragraph (1), he shall—
- (a) order intimation of the application to be made to the procurator fiscal;
  - (b) fix a diet for a hearing of the application.

#### **Order for taking precognition**

**94.** If, after the hearing, the sheriff is satisfied that it is reasonable to require such precognition on oath in the circumstances, he shall—

- (a) order the precognition to be taken;
- (b) fix a diet for it to be taken;
- (c) grant warrant to cite the person from whom it is to be taken.

#### **Citation**

**95.**—(1) Citation of that person to attend the diet fixed for taking his precognition on oath shall be made by way of personal service on him by an officer of law acting on the instructions of the accused or his solicitor, and relative execution of service shall be produced at the diet fixed under rule 94.

(2) If that person fails to appear at that diet and the sheriff issues a warrant for his apprehension under section 9(2) of the 1980 Act, execution of that warrant—

- (a) shall be executed by an officer of law instructed by the accused or his solicitor;
- (b) may proceed on a copy of the petition and warrant duly certified by the sheriff clerk.

(3) The sheriff clerk shall immediately give notice of that person's failure to appear at the diet to the procurator fiscal.

#### **Record of proceedings**

**96.**—(1) Where that person appears before the sheriff to have his precognition taken on oath, the proceedings shall be recorded in shorthand by an official shorthand writer instructed by the accused or his solicitor.

(2) The shorthand writer shall extend his shorthand notes recording the proceedings, sign the transcript, and lodge it with the sheriff clerk.

- (3) On the transcript being lodged, the sheriff clerk shall—
- (a) send a copy to the solicitor for the accused, or if he is not represented, to the accused;
  - (b) fix a diet for the person whose precognition has been taken on oath to attend before the sheriff to sign the precognition.

### **Fees of shorthand writers**

**97.**—(1) The solicitor for the accused, or if he is unrepresented the accused, shall be liable for payment of—

- (a) the fees of the shorthand writer;
- (b) the expenses of the person precognosced on oath,

and shall tender any such expenses in advance if required by that person to do so.

(2) If the accused is unrepresented, the sheriff may at the hearing of the application, or at any time before the precognition is taken, order the accused to consign in court such sum as he may be required to pay under paragraph (1) in respect of fees and expenses on or before such date as the sheriff may specify in the order.

(3) If the sheriff orders the accused to consign a sum in court under paragraph (2) and that sum is not consigned by the date specified in the order, the application shall be treated as abandoned.

### *Identification Parades on Application of Accused*

### **Application**

**98.**—(1) An application to the sheriff made by an accused under section 10(1) of the 1980 Act for an order that the prosecutor shall hold an identification parade in which the accused shall be one of those constituting the parade shall be made—

- (a) to the sheriff in whose sheriffdom the proceedings in relation to which the order is sought have been commenced;
- (b) by way of petition in the form set out in Form 52 of Schedule 1.

(2) On an application being made to the sheriff under paragraph (1), he shall—

- (a) order intimation of the application to be made to the prosecutor;
- (b) fix a diet for a hearing of the application on the earliest practicable date;
- (c) after giving the prosecutor an opportunity to be heard at the hearing and allowing such further procedure as he thinks fit, make an order granting or refusing the application.

(3) If—

- (a) the prosecutor is not present at the hearing of the application; and
- (b) the sheriff makes an order granting the application,

the sheriff clerk shall issue a certified copy of the order to the applicant or his solicitor.

(4) The sheriff clerk shall record the order made by the sheriff under paragraph 2(c) in the minute of proceedings, and shall keep the petition and relative documents in his custody.

### *Alteration of Diet*

### **Joint application**

**99.**—(1) Where the prosecutor and the accused propose to make a joint application orally to the court under section 314(4)(**24**) for postponement of a diet that has been fixed, they may only do so at a diet which has been duly assigned and which has been regularly called.

(2) An application by an accused under section 314(6) shall be made in the form set out in Form 53 of Schedule 1.

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(24) Paragraphs (4) to (6) of section 314 were added by the 1980 Act, section 11(c).

### *Appeal against Extension of 40 Day Period*

#### **Form and service**

**100.**—(1) A note of appeal presented to the High Court under section 331A(3)(25) shall be made in the form set out in Form 54 of Schedule 1.

(2) A note of appeal under section 331A(3) shall be served by the appellant on—

- (a) the respondent, and
- (b) the clerk of the court against whose decision the appeal is taken.

(3) The appellant in a note of appeal under that section shall lodge with the Clerk of Justiciary—

- (a) the note of appeal, and
- (b) the execution of service in respect of the persons mentioned in paragraph (2).

(4) The clerk of the court against whose decision the appeal is taken shall, as soon as practicable after being served with the note of appeal, transmit to the Clerk of Justiciary the original application and all the relative documents; and the Clerk of Justiciary shall on receipt thereof assign the appeal to the roll and intimate the date of the diet to the appellant and the respondent.

### *Letters of Request*

#### **Application**

**101.**—(1) An application to the court by the prosecutor or the defence under section 32(1)(a) of the 1980 Act for the issue of a letter of request shall be made by way of petition in the form set out in Form 55 of Schedule 1.

(2) An application so made shall be lodged with the sheriff clerk and shall be accompanied by a proposed letter of request including the matters set out in Form 27 of Schedule 1.

#### **Powers of sheriff**

**102.**—(1) The sheriff shall on the application being placed before him—

- (a) order intimation on the other party or parties to the proceedings;
- (b) subject to paragraph (2), allow such time for lodging answers as appears appropriate;
- (c) fix a diet for hearing the application and answers (if any).

(2) The sheriff may dispense with answers to an application under this rule on cause shown.

(3) The sheriff may, after considering the application and answers (if any), either grant the application with or without modifications, or refuse it.

(4) On granting an application under this rule, the sheriff shall—

- (a) allow interrogatories to be adjusted summarily;
- (b) pronounce a deliverance approving the terms—
  - (i) of the letter of request to be sent;
  - (ii) of the interrogatories and cross-interrogatories (if any) to be sent;
- (c) If English is not an official language of the body to whom the letter of request is addressed, specify a period within which a translation of the letter and of the interrogatories and cross-interrogatories and of any productions is to be lodged.

### **Expenses**

**103.**—(1) The solicitor for the applicant, or if he is unrepresented the applicant, shall be liable for the expenses of the application.

(2) The sheriff may order the solicitor for the applicant, or the applicant, to consign in court such sum in respect of those expenses as he may specify on or before such date as he may specify.

(3) In the event of the sum so specified not being consigned in court on or before the date so specified, the application shall be treated as having been abandoned.

### **Transmission**

**104.**—(1) On the sheriff pronouncing a deliverance under rule 102(4), or in a case where a translation requires to be lodged, on the lodging of the translation, the sheriff clerk shall send the letter of request and relative documents to the Secretary of State for Foreign and Commonwealth Affairs for onward transmission to the body to whom the letter of request is addressed.

(2) On sending the letter of request and relative documents to the Secretary of State, the sheriff clerk shall note the documents sent, to whom they were sent, and the date on which they were sent, on the application or in the minutes of proceedings.

(3) On the relative documents being returned to him the sheriff clerk shall—

(a) note the documents returned, by whom they were returned and the date on which they were returned, on the application or in the minutes of proceedings; and

(b) intimate those facts to all parties concerned.

### **Custody of documents**

**105.**—(1) The sheriff clerk shall keep the documents mentioned in rule 104(3) in his custody.

(2) In any case where the record of the evidence of a witness is in the custody of a sheriff clerk under this rule and where intimation has been given to that effect to all the parties concerned in the proceedings under rule 104(3), the name and address of that witness and the record of his evidence shall be treated as being within the knowledge of those parties.

### **Prohibition of reference to evidence without leave**

**106.**—(1) No reference shall be made either directly or indirectly in any proceedings to the evidence, or any part of the evidence, of a witness whose evidence has been taken under rule 102 unless the party seeking to make such reference has made a motion to the court to that effect and that motion has been granted.

(2) The terms of any motion made under paragraph (1) and the grant or refusal of that motion by the court shall be noted by the clerk of court in the minutes of proceedings.

### *Evidence on Commission*

### **Application**

**107.**—(1) An application to the court by the prosecutor or the defence under section 32(1)(b) of the 1980 Act for the appointment of a commissioner to examine a witness to whom that section applies shall be made by way of petition in the form set out in Form 56 of Schedule 1.

(2) An application so made shall be lodged with the sheriff clerk.



### **Appointment of Commissioner**

**108.**—(1) On making an order granting an application under rule 107, the sheriff shall appoint a commissioner to examine the witness or witnesses to whom the order applies and a clerk to assist the commissioner in the carrying out of his duties; and shall dispense with interrogatories.

(2) On the sheriff making an order under paragraph (1), the sheriff clerk shall send the order to either the commissioner or his clerk together with the other relative documents.

(3) On the sending of the relative order and documents to the commissioner or his clerk under paragraph (2), the sheriff clerk shall note the order and documents sent, to whom they were sent, and the date on which they were sent, on the application, or in the minutes of proceedings.

### **Commission**

**109.**—(1) The Commissioner shall, on receiving the order and documents mentioned in rule 108, determine the place and the date and time of the diet or diets for the examination of the witness or witnesses to whom the order of the court relates and shall give reasonable notice of those matters to all the parties concerned.

(2) The commissioner may vary or revoke his determination or adjourn the examination of any witness to such other place, at such other date and time as he may determine.

(3) If in the course of the examination of a witness under this rule any question arises as to the admissibility of any evidence, the commissioner shall not determine any such question, but shall allow the evidence subject to all questions of competency and relevancy.

### **Commissioner's report**

**110.** On the carrying out of his commission in accordance with the terms of the order appointing him, or otherwise on concluding his commission, the commissioner shall complete a written report of his commission and he or his clerk shall return the report and relative documents to the sheriff clerk.

### **Application of other provisions**

**111.** The following rules shall apply to an application under rule 107 as they apply to an application under rule 101:—

- rule 102(1) to (3);
- rule 103;
- rule 104(3);
- rule 105;
- rule 106.

### *Interim Hospital Order*

### **Application**

**112.**—(1) Where the court has made or renewed an interim hospital order under section 375A(26) and the responsible medical officer has intimated to the prosecutor either—

- (a) that he seeks a continuation of the order, or

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(26) Section 375A was inserted by the Mental Health (Amendment) (Scotland) Act 1983 (c. 39), section 34(c), and amended by the Mental Health (Scotland) Act 1984 (c. 36), Schedule 3, paragraph 32.

- (b) that he seeks termination of the order before the date on which it would otherwise cease to have effect,

the prosecutor shall make an application in the form set out in Form 29 of Schedule 1 to the court which made the order, to renew or terminate the order, as the case may be.

- (2) Where an application is made under paragraph (1)—

- (a) the court shall, by interlocutor in the form set out in Form 30 of Schedule 1 appoint a diet for hearing the application and, where appropriate, grant warrant to authorised officers of the hospital, or officers of law, for conveyance of the offender from the hospital to the court for that diet; and

- (b) the clerk of court shall intimate the application and the diet to the offender or his solicitor.

(3) Where, in an application under paragraph (1)(a), the court renews an interim hospital order before the date on which the order would otherwise cease to have effect, the period of renewal shall commence from the date on which the order would otherwise cease to have effect.

(4) Where the court makes an order to renew or terminate an interim hospital order before the date on which it would otherwise cease to have effect, the adjourned diet fixed when the previous order of the court was made shall be treated as being discharged.

#### *Reference to European Court*

#### **Interpretation**

**113.** In this rule and in rules 114 to 118, unless the context otherwise requires—

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

“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;

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

#### **Notice**

**114.—**(1) If a question is to be raised in any summary proceedings (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 it shall be entered in the minute 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.

(5) If the court determines the question the accused shall then (where appropriate) be called on to plead to the complaint.

#### **Proceedings on appeal, etc.**

**115.—**(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.

(2) In this rule references to proceedings on appeal are references to proceedings on appeal under the 1975 Act and on appeal by bill of suspension, bill of advocation or otherwise.

### **Reference**

- 116.**—(1) If the court decides that a preliminary ruling should be sought the court shall—
- (a) give its reasons and cause those reasons to be recorded in the minute of proceedings;
  - (b) continue the proceedings from time to time as necessary for the purposes of the reference.
- (2) The reference—
- (a) shall be drafted in the form set out in Form 31 of Schedule 1 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 (after the expiry of the period of appeal) be transmitted by the clerk of the court to the Registrar of the European Court, along with a certified copy of the relative minute of proceedings and, where applicable, a certified copy of the relative complaint.

### **Preliminary ruling**

**117.** 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.

### **Appeal against reference**

**118.**—(1) Where an order making a reference is made under rule 116, any party to the proceedings who is aggrieved by the order may within 14 days thereafter appeal against the order to the High Court sitting as a court of appeal, but this rule does not apply to such an order made in 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.

(2) Any appeal under this rule shall be taken by lodging with the clerk of the court that made the order a note of appeal in the form set out in Form 32 of Schedule 1 and 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.

(3) The clerk shall record the lodging of the note in the minute of proceedings and shall forthwith transmit the note to the Clerk of Justiciary, together with the minute and a certified copy of the relative complaint.

- (4) In disposing of an appeal under this rule the High Court (sitting as a court of appeal) may—
- (a) 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;
  - (b) give such directions for other procedure as it thinks fit.

(5) 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 rule for appealing against the order has expired or before the appeal has been disposed of or withdrawn.

## PART II

### PROCEDURE AT TRIAL

#### **Accused to plead personally and to receive intimation of diets**

**119.**—(1) Subject to paragraph (2), in any summary proceedings where a person accused in those proceedings is personally present in court, that person shall himself plead to the charge against him whether or not he is represented.

(2) If the judge is satisfied that the accused is not capable for any reason of pleading personally to the charge against him, it shall be sufficient if the plea is tendered by a solicitor or by counsel on his behalf.

(3) Where an accused is not represented or not personally present and a court continues a diet without taking a plea from the accused, the prosecutor shall intimate the continuation and the date of the adjourned diet to the accused.

(4) Subject to section 338(1)(a), where an accused is not represented or not personally present, on the fixing of—

- (a) a diet of trial;
- (b) a diet after conviction; or
- (c) any diet after a plea from the accused has been recorded,

the sheriff clerk or clerk of the district court shall intimate the diet to the accused.

#### **Restrictions on report of proceedings involving a person under 16**

**120.**—(1) Any direction made by a court under sub-paragraph (i) of the proviso to section 374(27) shall specify the person in respect of whom the direction is made.

(2) Any direction made by a court under sub-paragraph (ii) of the proviso to that section shall specify the person in respect of whom the direction is made and the extent to which the provisions of that section are dispensed with in relation to that person.

(3) Any such direction shall be pronounced in open court and its terms shall be recorded in the minute of proceedings and the direction as so recorded shall be authenticated by the signature of the presiding judge.

#### **Form of oaths to witnesses**

**121.**—(1) Where the judge administers the oath to a witness, he shall do so in accordance with the form set out in Part 3 of Form 33 of Schedule 1.

(2) In the case of any witness who elects to affirm, the judge shall administer the affirmation in accordance with the form set out in Part 4 of that Form.

(3) The oath or the affirmation so administered shall be treated as having been administered in common form.

#### **Notice of use of autopsy and forensic science reports in evidence**

**122.**—(1) For the purposes of the application of section 26(6) of the 1980 Act to any summary proceedings, an autopsy report shall not be treated as having been lodged as a production by the prosecutor unless it has been lodged as a production not later than 14 days before the date of the trial diet.

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(27) Section 374 was substituted by the 1980 Act, section 22.

(2) For the purpose of the application of section 26(7) of the Act to any summary proceedings, the prosecutor shall intimate his intention in accordance with the provisions of sub-section (7) by serving a copy of the autopsy or forensic science report lodged by him on the accused together with a notice of his said intention not later than 14 days before the date of the trial diet.

(3) Any notice given by an accused under section 26(6) shall be in writing and shall be given to the prosecutor.

### PART III

## CONVICTION AND SENTENCE

### Interruption of proceedings

**123.**—(1) On conviction of an accused person in summary proceedings the judge may, without adjourning those proceedings, interrupt them by—

- (a) considering a conviction against that person in other proceedings pending before that court for which he has not been sentenced;
- (b) passing sentence on that person in respect of the conviction in those other proceedings.

(2) When the judge has interrupted any proceedings under the powers contained in paragraph (1), he may in passing sentence on an accused person in respect of a conviction in those proceedings at the same time pass sentence on that person in respect of any other conviction he has considered thereunder.

(3) No interruption of any proceedings under the powers contained in paragraphs (1) and (2) shall cause the instance to fall in respect of any person accused in those proceedings or shall otherwise affect the validity of those proceedings.

### Forms for fines enquiry and related matters

**124.**—(1) The forms set out in Forms 57 to 69 of Schedule 1 shall have effect in summary proceedings for the purpose of determining means in respect of fines and related matters.

(2) Those forms may be used for that purpose with such variations as circumstances may require.

(3) This rule does not affect the Second Schedule to the Summary Jurisdiction (Scotland) Act 1954(28).

### Compensation orders

**125.**—(1) The provisions of this rule apply to compensation orders made by courts against convicted persons under Part IV of the 1980 Act.

(2) Entries shall be made in the minutes of proceedings by the clerk of court on the making of a compensation order, specifying the terms of the order and in particular—

- (a) the name of the convicted person or persons required to pay compensation;
- (b) the amount of compensation required to be paid by such person or such persons;
- (c) the name of the person or persons entitled to the compensation payable;
- (d) where there is more than one such person, the amount of compensation each is entitled to and the priority, if any, among those persons for payment.

(3) The prosecutor, if he knows that any person entitled to payment of compensation under a compensation order is under any legal disability, shall so inform the court immediately it makes any

such order in respect of any such person, and that information shall be entered by the clerk of court in the minutes of proceedings.

(4) Those entries shall be authenticated by the signature of the clerk of court.

(5) The judge may, at any time before a compensation order is fully complied with, and after such further enquiries as the court may order, vary the terms of the order as he thinks fit.

(6) A variation order under paragraph (5) may be made in chambers and in the absence of the parties, or any of them.

(7) An application to discharge a compensation order or to reduce the amount that remains to be paid under section 64 of the 1980 Act shall be made in writing to the clerk of the court to whom application may be made in accordance with the provisions of that section.

(8) The clerk of court shall, on any such application being made to him, cause intimation of the application to be given to the procurator fiscal.

(9) The court to whom the application is made may dispose of the application after such inquiry as it thinks fit.

(10) Where payment of any sum is made under a compensation order to the clerk of court in respect of a person known to be under a legal disability, paragraphs (1) to (3) and (5) of rule 128 of the First Schedule to the Sheriff Courts (Scotland) Act 1907 shall apply to the administration of that sum as they apply to the administration of a sum of money paid into court in respect of damages for such a person.

### Form of probation order

126. A probation order shall be in the form set out in Form 35 of Schedule 1.

## PART IV

### APPEAL PROCEDURE

### Forms for appeal

127. For the purposes of appeals in summary proceedings the forms specified by numbers in column 3 of the Table set out below and set out under those numbers in Schedule 1 are the forms prescribed under the 1975 Act for the purposes of the sections of that Act specified in column 1 of the Table relating respectively to the matters summarised in column 2 of the Table, and shall have effect for those purposes.

TABLE

(1) <i>No. of Section</i>	(2) <i>Content</i>	(3) <i>No. of Form</i>
442A(2)(29)	Minute abandoning appeal against conviction only	70
444(30)	Application for a stated case	71
447(2)(31)	Stated case	72

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(29) Section 442A was inserted by the 1980 Act, Schedule 3, paragraph 1.

(30) Section 444 was amended by the 1980 Act, Schedule 3, paragraph 3 and Schedule 8, and by the Bail etc.(Scotland) Act 1980 (c. 4), Schedule 1, paragraph 10.

(31) Section 447(2) was amended by the 1980 Act, Schedule 8.

(1) <i>No. of Section</i>	(2) <i>Content</i>	(3) <i>No. of Form</i>
449 <b>(32)</b>	Minute abandoning stated case	70
450 <b>(33)</b>	Minutes of procedure in appeal by stated case	73
453B <b>(34)</b>	Minutes of procedure in note of appeal	74
451(2) <b>(35)</b>	Extension of time limit by sheriff principal	75
453B(1)	Note of appeal against sentence	76
453B(4)	Extension of time limit by sheriff principal	75
453B(7)	Minute abandoning appeal	77.

### Appeals from decisions on competency and relevancy

**128.**—(1) If—

- (a) an accused states an objection to the competency or relevancy of the complaint or the proceedings; and
- (b) that objection is repelled,

he may only apply for leave to appeal against that decision under section 334(2A)**(36)** after stating how he pleads to the charge or charges set out in the complaint.

(2) Subject to paragraph (1), the accused shall apply for leave to appeal against any decision to which that paragraph applies and the court shall determine that application immediately following the decision in question.

(3) If the court grants the application, the clerk of court shall enter in the minutes of proceedings—

- (a) details of the decision in question, and
- (b) the granting of leave to appeal against it.

(4) An appeal under section 334 shall be made by way of note of appeal in the form set out in Form 78 of Schedule 1.

(5) The note of appeal shall be lodged with the clerk of the court that granted leave to appeal not later than 2 days after the decision in question.

(6) The clerk of court shall, on the lodging of the note of appeal with him—

- (a) send a copy to the respondent or his solicitors;
- (b) request a report from the presiding judge;
- (c) transmit the note of appeal, and certified copies of the complaint, minutes of proceedings and relevant documents to the Clerk of Justiciary.

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**(32)** Section 449 was amended by the 1980 Act, Schedule 3, paragraph 8.

**(33)** Section 450 was amended by the 1980 Act, Schedule 3, paragraph 9, and by S.I. [1981/386](#)

**(34)** Section 453B was inserted by the 1980 Act, Schedule 3, paragraph 13.

**(35)** Section 451 was substituted by the 1980 Act, Schedule 3, paragraph 10.

**(36)** Section 334 was amended by the 1980 Act, section 36 and Schedule 7, paragraph 54.

(7) The presiding judge shall, as soon as possible after receiving the request for a report, send his report to the Clerk of Justiciary, who shall send a copy to the appellant and respondent or their solicitors.

(8) The Clerk of Justiciary shall arrange for the Appeal Court to hear the appeal as soon as possible, and shall cause to be copied any documents necessary for the Appeal Court.

(9) If the High Court makes any order postponing the trial diet under section 334(2B), or makes any such order and gives a direction under that section, the Clerk of Justiciary shall send a copy of that order, or of that order and direction, to the appropriate clerk of court and to any accused who are not parties to the appeal, or to their solicitors, and to the governor of any institution in which any of the accused is detained.

(10) Any such appeal may be abandoned at any time prior to the hearing of the appeal.

(11) An appeal shall be abandoned by lodging with the Clerk of Justiciary a minute of abandonment in the form set out in Form 79 of Schedule 1.

(12) On the lodging of a minute of abandonment under paragraph (11), the Clerk of Justiciary shall inform the appropriate clerk of court and the respondent or his solicitor that the appeal has been abandoned, and the court of first instance may then proceed as accords.

#### **Abandoning appeal against conviction only**

**129.**—(1) The provisions of this rule apply to an appellant abandoning his appeal against conviction and proceeding with the appeal against sentence alone under section 442A(2).

(2) An application to abandon under paragraph (1) shall be made by way of minute signed by the appellant or his solicitor and intimated by him to the respondent.

(3) Subject to paragraph (4), the minute shall be lodged with the clerk of the court which imposed sentence.

(4) If prior to the lodging of the minute the stated case has been lodged with the Clerk of Justiciary, the minute shall be lodged with him and he shall immediately send a copy of the minute to the clerk of the court which imposed sentence.

(5) If prior to the lodging of the minute prints of the stated case and relative proceedings have been lodged with the Clerk of Justiciary, those prints shall be used for the purposes of the hearing of the appeal against sentence.

(6) On the lodging of the minute, the provisions of sections 453B(3) to 453E(37) shall apply to the minute as they apply to a note of appeal.

#### **Extension of time for appeal against sentence only**

**130.**—(1) Where by virtue of the provisions of section 453B(6), the court makes an order extending the period within which the note of appeal shall be lodged under subsection (2) of that section, the periods mentioned in subsections (2) and (4) of that section shall run from the date which is 2 days after the date on which the court makes that order and not from the passing of the sentence.

(2) If the date from which an extended period runs by virtue of paragraph (1) is a Saturday, Sunday or court holiday prescribed for the relevant court, the date shall be the next date that is not a Saturday, Sunday or court holiday.

#### **Intimation to Crown of abandonment**

**131.** The Clerk of Justiciary or the clerk of court, as the case may be, on the lodging with him of—

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(37) Sections 453A to 453E were inserted by the 1980 Act, Schedule 3, paragraph 13.



- (a) a minute abandoning an appeal by stated case under section 449;
- (b) a minute abandoning a note of appeal against sentence under section 453B(7),

shall notify immediately the Crown Agent or the prosecutor, as the case may be, of the lodging of the minute.

### **Suspension of disqualification from driving pending application to sentencing court**

**132.**—(1) Where a person who has been disqualified from holding or obtaining a driving licence appeals against that disqualification by stated case under section 442(**38**), any application to suspend the disqualification shall be made together with the application to the court to state a case for the opinion of the High Court.

(2) On an application being made under paragraph (1) to suspend a disqualification, the court shall grant or refuse to grant the application within 7 days of it being made.

(3) If the court refuses to grant the application and the appellant applies to the High Court to suspend the disqualification, any such application shall be made by Note in the form set out in Form 80 of Schedule 1.

(4) The Note shall be lodged by the appellant or his solicitor with the Clerk of Justiciary.

(5) The appellant or his solicitor shall intimate the lodging of the Note to the respondent and the clerk of the court which imposed the sentence of disqualification.

(6) The clerk shall on receiving such intimation forthwith send to the Clerk of Justiciary—

- (a) a certified copy of the complaint;
- (b) a certified copy of the minute of proceedings.

(7) The Court may order such further intimation (including intimation to the Lord Advocate) as it thinks fit, and may dispose of the application in open court or in chambers after such hearing as it thinks fit.

(8) On the High Court making an order on the Note, the Clerk of Justiciary shall send a certified copy of the order to the clerk.

(9) If the order suspends the disqualification, the Clerk of Justiciary shall also send a certified copy of the order to the Secretary of State with such further information as the Secretary of State may require.

(10) An order made by a single judge of the High Court under this rule shall not be subject to review.

### **Bill of Suspension**

**133.**—(1) Where a person who has been disqualified from holding or obtaining a driving licence appeals against that disqualification by Bill of Suspension, an application to suspend the disqualification shall be made by requesting *interim* suspension of the disqualification in the prayer of the Bill.

(2) If the Court orders *interim* suspension that order shall not have effect until—

- (a) the Bill has been served on the respondent; and
- (b) the principal Bill and first deliverance together with an execution or acceptance of service have been exhibited to the clerk of the sentencing court and he has endorsed a certificate of exhibition, and they have been returned to the Clerk of Justiciary by the complainer or his solicitor.

(3) On certifying the Bill under paragraph (2), the clerk of the sentencing court shall send a certified copy of the complaint and the relative minute of proceedings to the Clerk of Justiciary.

(4) Paragraphs (2), (8), (9) and (10) of rule 132 apply to this rule as they apply to that rule.

### **Intimation of determination of appeal**

**134.**—(1) The Clerk of Justiciary shall send to the clerk of the sentencing court a certified copy of the order made on determination of the appeal or complaint.

(2) If the appeal or complaint against the disqualification is refused, the clerk shall make the appropriate endorsement on the appellant’s or complainer’s driving licence, and intimate the disqualification.

### *Duties of Solicitors*

#### **Edinburgh solicitor**

**135.**—(1) Where an appellant in any appeal is represented by a solicitor who does not practise in Edinburgh, that solicitor shall appoint a solicitor who practises in Edinburgh (“Edinburgh solicitor”, to carry out the duties of solicitor to the appellant in relation to that appeal.

(2) In paragraph (1), “appeal” includes any appeal whether by way of stated case, note of appeal, or Bill of Suspension or Advocation.

(3) The Edinburgh solicitor so appointed or if unrepresented, the appellant or complainer, shall enter appearance and comply with the provisions of section 448(4)(39) (intimation of stated case to respondent and lodging with Clerk of Justiciary together with certificate of intimation).

#### **Duty to print stated case, etc.**

**136.**—(1) The Edinburgh solicitor (or, if unrepresented, the appellant or complainer) shall—

- (a) have printed the complaint, minutes of proceedings, and stated case or Bill;
- (b) not later than 7 days before the hearing, return the process to the Clerk of Justiciary;
- (c) provide copies of the print to—
  - (i) the Clerk of Justiciary, and
  - (ii) the Edinburgh solicitor for the respondent.

(2) If the Edinburgh solicitor or the appellant or complainer, as the case may be, cannot comply with any of the requirements of paragraph (1), he shall, not later than 7 days before the hearing, so inform the Clerk of Justiciary with reasons.

(3) On being so informed the Clerk of Justiciary may in his discretion postpone the hearing by dropping the appeal from the Justiciary Roll.

(4) If he does not do so, the Court may at the hearing allow the appeal to be dropped from the Roll, or may dismiss the appeal.

#### **List of appeals**

**137.**—(1) The Clerk of Justiciary shall, after consultation with the Lord Justice General or Lord Justice Clerk, issue a list of appeals with the respective dates of hearing on the Justiciary Roll.

(2) He shall give the respective Edinburgh solicitors representing appellants whose appeal is so listed at least 14 days notice of the date fixed for the hearing of the appeal.

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(39) Section 448(4) was substituted by the 1980 Act, Schedule 3, paragraph 7(b).

### **Duty of Edinburgh solicitor in Bills of Suspension**

**138.**—(1) This rule and rules 134 to 136 apply to Bills of Suspension and of Suspension and Liberation.

(2) An Edinburgh solicitor who requests a first deliverance shall comply with the requirements of rule 136(1) and (2) whether or not he is so nominated for the purposes of legal aid.

(3) The Clerk of Justiciary shall in appropriate cases inform such a solicitor who has not been so nominated of the requirements of the rules where appropriate.

### **Diet for interim suspension**

**139.** Where a Bill contains a prayer for *interim* suspension of any order or for *interim* liberation, the judge before whom the Bill is laid for a first deliverance shall assign a diet at which counsel for the parties may be heard on the *interim* prayer; and the Clerk of Justiciary shall forthwith give notice of that diet to the parties.

## **PART V**

### **PROCEDURE IN SPECIAL SUMMARY PROCEEDINGS**

#### *Proceedings against Children*

### **Interpretation**

**140.** In this rule and in rules 141 to 147—

“the Act of 1937” means the Children and Young Persons (Scotland) Act 1937(**40**);

“the Act of 1968” means the Social Work (Scotland) Act 1968(**41**);

“child” means a child within the meaning of Part III of the Act of 1968;

“court” means the sheriff sitting as a court of summary jurisdiction.

### **Application of normal procedure**

**141.** The procedure in summary proceedings shall apply in relation to proceedings against a child as it applies to proceedings against an adult subject to the provisions of the Acts of 1937, 1968, 1975 and 1980 and this Part.

### **Commencement of proceedings**

**142.** Proceedings against a child shall be commenced only on the instructions of the Lord Advocate by complaint at the instance of the procurator fiscal.

### **Assistance for unrepresented child**

**143.**—(1) If the child is unrepresented in any such proceedings, the parent or guardian of the child may assist him in conducting his defence.

(2) If the parent or guardian cannot be found, or cannot in the opinion of the court reasonably be required to attend, the court may allow any relative or other responsible person to assist the child in conducting his defence.

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(40) 1937 c. 37

(41) 1968 c. 49

## Procedure

144. In any case where a child is brought before a court on a complaint the court—
- (a) shall explain to the child the substance of the charge in simple language suitable to his age and understanding, and shall then ask the child whether he admits the charge;
  - (b) if the child has been brought before the court on apprehension, shall inform him that he is entitled to an adjournment of the case for not less than 48 hours;
  - (c) if the child does not admit the charge, may adjourn the case for trial to as early a diet as is fair to both parties, and in that event shall give intimation or order intimation to be given of such adjourned diet to such child and his parent or guardian: but the court may proceed to trial forthwith if the court considers this to be advisable in the interests of the child or to be necessary to secure the examination of witnesses who would not otherwise be available;
  - (d) if in any case, where the child is not represented by solicitor or counsel or assisted in his defence under rule 143, the child, instead of asking questions by way of cross-examination, makes assertions, shall then put to the witness such questions as it thinks necessary on behalf of the child and may for this purpose question the child in order to clarify any point arising out of any such assertions;
  - (e) at the close of the case for the prosecution, shall tell the child that he may give evidence or make a statement and the evidence of any witness for the defence shall be heard;
  - (f) if satisfied, after trial or otherwise, that the child has committed an offence, shall so inform the child and—
    - (i) he and his parent or guardian, or other representative, shall be given an opportunity of making a statement;
    - (ii) shall obtain such information as to the general conduct, home surroundings, school record, health and character of the child as may enable it to deal with the case in his best interests and may remand the child for such enquiry as may be necessary;
    - (iii) shall take into consideration any report which may be rendered to it by a local authority under section 308;
  - (g) may receive and consider any written report of a local authority, education authority, or registered medical practitioner without it being read aloud, provided that—
    - (i) the child shall be told of the substance of any part of the report bearing on his character or conduct which the court considers to be material to the disposal of the case:
    - (ii) the parent or guardian, or other representative shall, if present, be told the substance of any part of the report which the court considers to be material and which has reference to his character or conduct, or the character, conduct, home surroundings or health of the child; and
    - (iii) if the child or his parent or guardian, or other representative, having been told the substance of any part of any such report, desires to produce evidence in relation to any matter contained in it, the court, if it thinks the evidence material, shall adjourn the proceedings for the production of further evidence, and shall, if necessary, require the attendance at the adjourned hearing of the person who made the report;
  - (h) if it considers it necessary in the interests of the child, may require the parent or guardian, or other representative, or the child, as the case may be, to withdraw from the court;
  - (i) shall, unless it thinks it undesirable to do so, inform the parent or guardian, or other representative, of the manner in which it proposes to deal with the child and shall allow that person to make a statement, if he so desires.

### **Failure to comply with probation order**

**145.** In any case where a child is to be brought before a court upon information given on oath that he has failed to comply with any of the requirements of a probation order—

- (a) the person under whose supervision the child has been placed shall immediately on being placed on oath inform the procurator fiscal on oath of the respects in which the child has so failed to comply, as far as known to him;
- (b) the citation (if any) requiring the appearance of the child shall be accompanied by a notice giving the reasons for the issue of such citation and stating in what respects it is alleged that any one or more of the requirements of the order has or have not been complied with by him, and in any case where the child has been apprehended without prior citation such notice shall be handed to him in court;
- (c) the court shall explain to the child in simple language suitable to his age and understanding the effect of the notice and shall then ask him whether he admits having failed to comply with the requirements of the order as alleged; provided that, where the notice has been handed to the child in court, the court may, if it thinks it desirable, adjourn the proceedings for 48 hours before so asking him;
- (d) if the child does not admit the alleged failure to comply with the requirements of the order, the proceedings shall thereafter be conducted and the matter shall be determined by the court in like manner as if the same were a matter which had arisen for determination upon the original complaint.

### **Remand**

**146.** The court may from time to time and at any stage of a case remand a child for information to be obtained with respect to him.

### **Separation of children at sittings**

**147.—(1)** The court shall take steps so far as possible to prevent children attending sittings of the court from mixing with one another.

(2) If this cannot be achieved by holding separate sittings or fixing different hours for the different cases and types of cases coming before it, the court may order extra waiting rooms to be brought into use or may provide for an attendant in the waiting room or rooms.

### *Proceedings for the Execution of Irish Warrants*

### **Interpretation**

**148.** In this rule and rules 149 to 152—

- “the Act of 1965” means the Backing of Warrants (Republic of Ireland) Act 1965(42);
- “judicial authority” means a court, judge or justice of a court, or peace commissioner;
- “the Republic” means the Republic of Ireland.

### **Form of endorsement**

**149.—(1)** The endorsement of a warrant for execution within any part of Scotland in terms of section 1 of the Act of 1965 shall be in the form set out in Form 81 of Schedule 1.

(2) A provisional warrant issued under section 4 of the Act of 1965 shall be in the form set out in Form 82 of Schedule 1.

(3) Where a person has been remanded in custody in terms of section 2(1) or section 4(3) of the Act of 1965, the order of court shall be endorsed by the court on the warrant and delivered to the prison governor to whose custody the person has been remanded.

(4) When a person who has been ordered to be delivered in accordance with section 2(1) of the Act of 1965 is remanded on bail, the bail order shall contain a condition requiring him to surrender at a specified police station at a time and date to be notified to him by or on behalf of the officer in charge of that station.

#### **Notice of consent to early removal**

**150.**—(1) A notice given under section 3(1)(a) of the Act of 1965 (consent to removal earlier than is otherwise permitted) shall be in the form set out in Form 83 of Schedule 1, and shall be signed in the presence of a sheriff, a justice of the peace or a sheriff clerk who shall also sign it.

(2) Any such notice given by a person who has been remanded in custody shall be delivered to the governor of the prison in which he is detained.

(3) If a person remanded on bail gives such notice, he shall deliver or send it to the clerk of the court which so remanded him.

#### **Handing over of warrant of arrest**

**151.**—(1) When a person has been ordered to be delivered in accordance with section 2(1) of the Act of 1965, the sheriff clerk when the person is remanded on bail, or the governor of the prison when the person is detained in custody, shall arrange for the warrant of arrest issued by a judicial authority in the Republic and endorsed in accordance with section 1 of that Act to be given to the member of the police force of the Republic into whose custody the person is delivered when the person is so delivered.

(2) When a person ordered to be delivered in accordance with section 2(1) of the Act of 1965 is remanded on bail, the sheriff clerk shall send a copy of the bail order to the police station at which the person is to surrender.

#### **Certification of warrant**

**152.**—(1) A document purporting to be a warrant issued by a judicial authority in the Republic shall, for the purpose of section 7(a) of the Act of 1965, be verified by a certificate purporting to be signed by a judicial authority, a clerk of a court or a member of the police force of the Republic and certifying that the document is a warrant and is issued by a court, judge or justice of a court or a peace commissioner.

(2) A document purporting to be a copy of a summons issued by a judicial authority in the Republic shall, for the purposes of the said section 7(a), be verified by a certificate purporting to be signed by a judicial authority, a clerk of a court or a member of the police force of the Republic and certifying that the document is a true copy of such a summons.

(3) A deposition purporting to have been made in the Republic, or affidavit or written statement purporting to have been sworn therein, shall, for the purposes of section 7(c) of the Act of 1965, be verified by a certificate purporting to be signed by the person before whom it was sworn and certifying that it was so sworn.

*Proceedings in District Court in respect of Annoying Creatures*

**Form of application and service**

**153.**—(1) An application to a district court under section 49(3) of the Civic Government (Scotland) Act 1982(43) (annoying creatures) shall be made in the form set out in Form 84 of Schedule 1.

(2) On the lodging of any such application, the District Court shall make an order for service of a copy of the application on any person mentioned in the application as having the creature so mentioned in his charge or keeping the creature, and fixing a date and time for the hearing of the application.

(3) A copy of the application and of the order made under paragraph (2) shall be served on any such person by recorded delivery at the normal place or residence or place of business of that person, and such service shall be treated as sufficient notice to that person of the terms of the application and the order for the purposes of paragraph (4).

(4) If any person upon whom service has been made in accordance with paragraph (3) fails to appear or be represented at the time and date of the hearing specified in the order without reasonable excuse, the court may proceed to hear and decide the application in his absence.

(5) Where the court makes an order in respect of any person under section 49(2) of the said Act of 1982, the clerk of court shall, within 7 days of the date on which the order was made, serve on that person by recorded delivery at the normal place of residence or place of business of that person, a copy of the order and a notice setting out the terms of section 49(4) of the said Act.

*Proceedings for certain orders and warrants under the Drug Trafficking Offences Act 1986*

**Order to make material available**

**154.**—(1) An application by the procurator fiscal to the sheriff for an order under section 27(2) of the Drug Trafficking Offences Act 1986(44) shall be made by way of petition; and section 310(45) (incidental applications) shall apply to any such application as it applies to an application referred to in that section.

(2) The sheriff may make the order sought in the petition under paragraph (1) before intimation of the petition to the person who appears to him to be in possession of the material to which the application relates.

(3) An application by the procurator fiscal for an order under section 27(5) of the Act of 1986 (entry) may be made in the petition applying for an order under section 27(2); and paragraph (2) applies to an order in respect of a person who appears to the sheriff to be entitled to grant entry to the premises in question as it applies to an order in respect of the person mentioned in that paragraph.

**Discharge and variation**

**155.**—(1) A person, in respect of whom an order has been made under said section 27(2) or (5), may apply to the sheriff for discharge or variation of the order in question.

(2) The sheriff may, after hearing the parties, either grant or refuse to grant the discharge or variation sought.

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(43) 1982 c. 45

(44) 1986 c. 32

(45) Section 310 was amended by the 1980 Act, Schedule 6, paragraph 1 and Schedule 7, paragraph 53.

### **Warrant to search premises**

**156.** An application by the procurator fiscal to the sheriff under section 28(1) of the Act of 1986 (authority for search) for a warrant authorising the search of specified premises shall be made by way of petition; and section 310 (incidental applications) shall apply to any such application for a warrant as it applies to an application for a warrant referred to in that section.

## **CHAPTER 3**

### **ADMINISTRATION**

#### **PART I**

#### **RECORDS**

### **Form of minuting in solemn proceedings**

**157.** Subject to the provisions of any other enactment, the forms of minuting in solemn proceedings before the sheriff shall be in accordance with the forms used in the High Court.

### **Books of Adjournal**

**158.—**(1) The Edinburgh Book of Adjournal and the Book of Adjournal for cases heard outwith Edinburgh shall respectively contain—

- (a) in the case of a trial in the High Court—
  - (i) the record copy of the indictment;
  - (ii) a summary of the proceedings in the form set out in Form 85 of Schedule 1;
  - (iii) the relative printed list of Assize;
- (b) in the case of a petition to the High Court—
  - (i) the record copy of the petition;
  - (ii) a summary of the proceedings in the form set out in Form 86 of Schedule 1.

(2) The Edinburgh Book of Adjournal shall contain the Acts of Adjournal.

(3) The summary of proceedings referred to in paragraph (1) shall be signed by the Clerk of Justiciary and on being so signed shall have effect and shall be treated for all purposes, including extracts, as a true and sufficient record of the proceedings to which it relates.

### **Form of recording warrants for remission of sentences**

**159.** The Clerk of Justiciary shall cause all warrants under the royal sign manual for remission of sentences received by him to be bound in volumes and indexed, and a note of each warrant referring to a High Court sentence shall be entered in the margin of the Minute Book opposite the case to which it relates.

### **Custody and transmission of records**

**160.—**(1) The records of the High Court of Justiciary specified in Column (1) of Form 87 of Schedule 1 for the periods specified in Column (2) shall, after the Keeper of the Records for Scotland and the Clerk of Justiciary have consulted as to what records or parts thereof may first be destroyed as not being considered to have a value for legal purposes or for historical or other research, be transmitted to the Keeper under arrangements to be agreed between him and the Clerk of Justiciary.



(2) On completion of such transmission, the Clerk of Justiciary and the Keeper shall, at intervals of not less than 5 years nor more than 10 years from the date of the immediately preceding transmission and after similar consultation, arrange for further transmissions of records falling within the categories specified in column (1) of Form 87 for such periods as may be deemed by them to be appropriate.

(3) The Lord Justice General may by order direct that any record comprised in those categories which might otherwise fall to be transmitted to the Keeper in terms of the said arrangements be retained in the custody of the Clerk of Justiciary.

(4) All other records, papers and productions presently in the custody of the Clerk of Justiciary not specified in column (1) of Form 87 shall be retained by him subject to such directions as to disposal, transmission or destruction as may from time to time be issued by the Lord Justice General or Lord Justice Clerk.

### **Return of productions**

**161.**—(1) All productions lodged in connection with proceedings in the High Court of Justiciary shall be returned by the Clerk of Justiciary to the party on whose behalf they were lodged at the following times or as soon thereafter as may be convenient—

- (a) in any case in which a verdict of acquittal is returned, at the conclusion of the proceedings;
- (b) in any case in which no appeal is taken, after the lapse of 14 days from the conclusion of the proceedings; and
- (c) in any other case, upon the determination of any matters which may have been referred to the Court under the provisions of section 228(46).

(2) Without prejudice to rule 160(4), the Lord Justice General or the Lord Justice Clerk or the presiding judge at the trial may by order direct that any production or other document relating to any case indicted in the High Court of Justiciary remain in the custody of the Clerk of Justiciary.

## **PART II**

### **LEGAL AID**

#### **Interpretation**

**162.** In the following rules relating to legal aid, unless the context otherwise requires—

“the Act of 1986” means the Legal Aid (Scotland) Act 1986(47);

“assisted person” means a person who is in receipt of criminal legal aid in the proceedings in question;

“clerk of court” means clerk of justiciary, sheriff clerk, sheriff clerk depute or clerk of the district court, as the case may be;

“court” means the High Court of Justiciary, a sheriff court or a district court, as the case may be;

“the Regulations” means the Criminal Legal Aid (Scotland) Regulations 1987(48).

#### **Legal aid in High Court of Justiciary**

**163.** Where an application for legal aid is made to the High Court of Justiciary under section 23 of the Act of 1986, the court may—

- (a) determine the application itself; or

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(46) Section 228 was substituted by the 1980 Act, Schedule 2, paragraph 1.

(47) 1986 c. 47

(48) S.I. 1987/307

- (b) remit the application to the sheriff court for determination.

### **Discontinuance of entitlement to criminal legal aid**

**164.**—(1) Where the court, before which there are proceedings in which an assisted person is an accused person or appellant, after hearing that person, is satisfied—

- (a) that that person—
- (i) has without reasonable cause failed to comply with a proper request made to him by the solicitor acting for him to supply any information relevant to the proceedings;
  - (ii) has delayed unreasonably in complying with any such request as is mentioned in head (i);
  - (iii) has without reasonable cause failed to attend at a diet of the court at which he has been required to attend or at a meeting with the solicitor or counsel acting for him under the Act of 1986 at which he has reasonably and properly been required to attend;
  - (iv) has conducted himself in connection with the proceedings in such a way as to make it appear to the court unreasonable that he should continue to receive criminal legal aid;
  - (v) has wilfully or deliberately given false information for the purpose of misleading the court in considering his financial circumstances under section 23(1) of the Act of 1986;
  - (vi) has without reasonable cause failed to comply with a requirement of the Regulations;
- or
- (b) that it is otherwise unreasonable for the solicitor to continue to act on behalf of the assisted person in the proceedings,

the court may direct that the assisted person shall cease to be entitled to criminal legal aid in connection with those proceedings.

(2) Where a direction is made under paragraph (1) in the course of proceedings to which section 22 of the Act of 1986 applies, the accused person shall not be entitled to criminal legal aid in relation to any later stages of the same proceedings before the court of first instance.

(3) Where a court issues a direction under paragraph (1), the clerk of court shall send notice of it to the Board.

(4) Where a court of first instance has made a direction under paragraph (1)(a), it shall instruct the clerk of court to report the terms of the finding made by the court to the Board for its consideration in any application for criminal legal aid in an appeal in connection with the proceedings in that court.

### **Statements on oath**

**165.** In considering any matter in regard to the entitlement of a person to criminal legal aid, the court may require that person to make a statement on oath for the purpose of ascertaining or verifying any fact material to his entitlement to criminal legal aid.

## PART III GENERAL

### **Service on Crown**

**166.** Any document that requires to be sent to the Lord Advocate or the prosecutor under any enactment or rule of law (including this Act of Adjournal) shall be sent—

- (a) if it relates to a case set down for trial in the High Court, to the Crown Agent;

- (b) if it relates to a case set down for trial in the Sheriff Court, to the appropriate procurator fiscal.

### **Service on accused persons**

**167.**—(1) This rule applies to the service of any document on an accused person under section 71(49) (manner of service of indictment, etc.).

(2) Service shall be effected by an officer of law by—

- (a) delivering the document to the accused personally;
- (b) leaving the document in the hands of a member of the family of the accused or other occupier or employee at the proper domicile of citation of the accused;
- (c) affixing the document to the door of, or depositing it in, the proper domicile of citation of the accused; or
- (d) where the officer of law serving the document has reasonable grounds for believing that an accused, for whom no proper domicile of citation has been specified, is residing at a particular place but is unavailable—
  - (i) leaving the document in the hands of a member of the family of the accused or other occupier or employee at that place; or
  - (ii) affixing the document to the door of, or depositing it in, that place.

### **Revocation**

**168.** The Acts of Adjournal specified in Schedule 2 are revoked.

Edinburgh  
21st January 1988

*Emslie*  
I.P.D.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE 1

PART I

FORMS REFERRED TO IN CHAPTER I (SOLEMN PROCEDURE)  
FORM 1 PETITION TO TAKE PRECOGNITION ON OATH IN SOLEMN PROCEDURE WHERE  
INDICTMENT SERVED

Rule 5

Under the Criminal Justice (Scotland) Act 1980

UNTO THE HONOURABLE THE SHERIFF OF.....

AT .....

PETITION  
of  
A.B.  
designation, address or Prisoner in  
the Prison of.....

HUMBLY SHEWETH:

- (1) That the petitioner has (along with C.D., E.F. and G.H.) been indicted in your Lordship's Court/in the High Court of Justiciary at the instance of X.Y., Her Majesty's Advocate with the offence of .....
- (2) That the trial of the said A.B. is to take place in your Lordship's Court/in the High Court of Justiciary sitting at ..... on .....
- (3) That the petitioner believes that M.N. residing at ..... is a witness in relation to the said offence./That M.N. residing at ..... is witness no. .... on the List of Witnesses attached to the Indictment;
- (4) That (narrate all steps taken to obtain precognition from the witness and/or the circumstances justifying the taking of the precognition on oath);
- (5) That I am unable to complete my investigation on behalf of the petitioner without precognoscing the said M.N.:

MAY IT THEREFORE please your Lordship:

- (1) to appoint intimation of this petition to be made to the said X.Y.;
- (2) to appoint parties to be heard thereupon on the earliest practicable date hereafter; and
- (3) thereafter, on being satisfied in terms of section 9 of the said Act that it is reasonable to require such precognition on oath, to grant warrant to cite the said M.N. to attend for precognition on oath before your Lordship on the earliest practicable date thereafter or to do otherwise as to your Lordship shall seem proper.

IN RESPECT WHEREOF

FORM 2 PETITION TO TAKE PRECOGNITION ON OATH IN SOLEMN PROCEEDINGS  
PRIOR TO SERVICE OF INDICTMENT

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rule 5

*Under the Criminal Justice (Scotland) Act 1980*

UNTO THE HONOURABLE THE SHERIFF OF.....  
AT .....

PETITION  
of  
A.B.  
designation, address or Prisoner in  
the Prison of.....

HUMBLY SHEWETH:

- (1) That the petitioner has (along with C.D., E.F. and G.H.) been charged in your Lordship's Court at ..... on a summary complaint/petition at the instance of the Procurator Fiscal with the offence of .....
- [(2) That the trial of the said A.B. is to take place in the said Court on..... ;]
- (3) That the petitioner believes that M.N. residing at ..... is a witness in relation to the said offence;
- (4) That *(narrate all steps taken to obtain precognition from the witness and/or the circumstances justifying the taking of the precognition on oath)*;
- (5) That I am unable to complete my investigation on behalf of the petitioner without precognoscing the said M.N.:

MAY IT THEREFORE please your Lordship:

- (1) to appoint intimation of this Petition to be made to the Procurator Fiscal;
- (2) to appoint parties to be heard thereupon on the earliest practicable date hereafter; and
- (3) thereafter, on being satisfied in terms of section 9 of the said Act that it is reasonable to require such precognition on oath, to grant warrant to cite the said M.N. to attend for precognition on oath before your Lordship on the earliest practicable date thereafter or to do otherwise as to your Lordship shall seem proper.

IN RESPECT WHEREOF

Solicitor for the said petitioner

FORM 3 WARRANT TO CITE

Rule 10

*Under the Criminal Procedure (Scotland) Act 1975*

WARRANT FOR CITATION OF PERSONS ACCUSED, WITNESSES AND JURORS

Whereas the High Court of Justiciary/Sheriff of .....  
(place) is to hold a sitting for the trial of persons accused on indictment at.....  
..... (place) on ..... (date) with continuation  
of days, warrant is hereby granted to all officers competent to cite all persons accused to the said sitting,  
and to cite to the said sitting witnesses both for the prosecutor and persons accused, and to cite jurors.

Clerk of Justiciary/  
Sheriff Clerk

(Place and date)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM 4 EXECUTION OF SERVICE OF INDICTMENT AND OF CITATION OF ACCUSED

Rule 10

Under the Criminal Procedure (Scotland) Act 1975

I, ..... (name and designation) on ..... (date) duly served on ..... (name and designation of accused) the indictment against him, with a notice of comparance thereto attached for the said diet in the High/Sheriff Court at ..... (place) on ..... (date).

This I did by [here state method of service].

(Signature of Officer of Law effecting service)

(Signature of witness to service) ..... Witness

FORM 5 NOTICE TO ACCUSED TO APPEAR

Rule 10

Under the Criminal Procedure (Scotland) Act 1975

NOTICE TO ACCUSED IN TERMS OF SECTION 75

TO ..... (name and designation of accused) TAKE NOTICE THAT YOU MUST APPEAR at ..... (place) High/Sheriff Court ..... (address) on ..... (date) at ..... (time) for a diet of trial at which you will be required to answer to the Indictment which is attached to this Notice.

Served on the ..... day of ..... 19... by me ..... (name and designation) by [here state method of service]

(Signature of Officer of Law effecting service)

(Signature of witness to service) ..... Witness

FORM 6 NOTICE OF SPECIAL DIET WHERE ACCUSED INTENDS TO PLEAD GUILTY (WHERE INDICTMENT NOT ALREADY SERVED)

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rule 12(1)(a)

To: *(Name and Designation of accused)*

TAKE NOTICE THAT:

- (1) the Crown Agent has received intimation that you intend to plead guilty to the charge(s) on which you have been committed for trial;
- (2) YOU MUST THEREFORE APPEAR before the High Court of Justiciary, 4 Parliament Square, Edinburgh/or ..... Sheriff Court ..... (address) on ..... (date) at ..... (time) to answer to the Indictment to which this Notice is attached.

Served on the ..... day of ..... 19... by me by [*here state method of service*] .....

.....  
*(Signature of Officer of Law serving Notice)*

*(Signature of witness to service of Notice)* ..... *Witness*

FORM 7NOTICE OF SPECIAL DIET WHERE ACCUSED INTENDS TO PLEAD GUILTY (WHERE INDICTMENT ALREADY SERVED)

Rule 12(1)(b)

To: *(Name and Designation of accused)*

TAKE NOTICE THAT:

- (1) the Crown Agent has received intimation that you intend to plead guilty to the charge(s) contained in the Indictment the trial of which is to take place at ..... (place) High/Sheriff Court on ..... (date);
- (2) YOU MUST THEREFORE APPEAR before the High Court of Justiciary, 4 Parliament Square, Edinburgh/or ..... Sheriff Court ..... (address) on ..... (date) at ..... (time) to answer to the said Indictment which has already been served upon you.

Served on the ..... day of ..... 19... by me by [*here state method of service*] .....

.....  
*(Signature of Officer of Law serving Notice)*

*(Signature of witness to service of Notice)* ..... *Witness*

FORM 8PETITION FOR ORDER TO HOLD IDENTIFICATION PARADE IN SOLEMN PROCEEDINGS PRIOR TO SERVICE OF INDICTMENT

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 13

Under the Criminal Justice (Scotland) Act 1980

UNTO THE HONOURABLE THE SHERIFF OF.....  
AT .....

PETITION  
of  
A.B.  
designation, address or Prisoner in  
the Prison of.....

HUMBLY SHEWETH:

- (1) That the petitioner has been charged in your Lordship's Court at .....  
..... on a petition at the instance of the Procurator Fiscal with the offence of  
..... ;
- [(2) That the trial of the said A.B. is to take place in the said Court on ..... ;]
- (3) That an identification parade in which the petitioner was one of those constituting the parade has not been held;
- (4) That the petitioner has requested the prosecutor to hold such a parade but he has refused to hold, or has unreasonably delayed holding, the same;
- (5) That it is reasonable in the circumstances in relation to the alleged offence that such an identification parade should be held (*specify circumstances*).

MAY IT THEREFORE please your Lordship:

- (1) to appoint intimation of this petition to be made to the said Procurator Fiscal;
- (2) to appoint parties to be heard thereupon on the earliest practicable date hereafter; and
- (3) thereafter, upon being satisfied in terms of Section 10(2) of the said Act, to order the prosecutor to hold an identification parade in which the petitioner shall be one of those constituting the parade, in relation to the offence referred to above with which the petitioner has been charged.

IN RESPECT WHEREOF

Solicitor for the said petitioner

FORM 9 PETITION FOR ORDER TO HOLD IDENTIFICATION PARADE WHERE  
INDICTMENT SERVED



**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

UNTO THE HONOURABLE THE SHERIFF OF.....  
AT .....

PETITION  
of  
A.B.  
designation, address or Prisoner in  
the Prison of.....

HUMBLY SHEWETH:

- (1) That the petitioner has been indicted in your Lordship's Court/in the High Court of Justiciary at the instance of X.Y., Her Majesty's Advocate with the offence of..... ;
- (2) That the trial of the said A.B. is to take place in your Lordship's Court/in the High Court of Justiciary sitting at ..... on .....
- (3) That an identification parade in which the petitioner was one of those constituting the parade has not been held;
- (4) That the petitioner has requested the prosecutor to hold such a parade but he has refused to hold, or has unreasonably delayed holding, the same;
- (5) That it is reasonable in the circumstances in relation to the alleged offence that such an identification parade should be held (*specify circumstances*).

MAY IT THEREFORE please your Lordship:

- (1) to appoint intimation of this petition to be made to the said X.Y.;
- (2) to appoint parties to be heard thereupon on the earliest practicable date hereafter; and
- (3) thereafter, upon being satisfied in terms of Section 10(2) of the said Act, to order the prosecutor to hold an identification parade in which the petitioner shall be one of those constituting the parade, in relation to the offence referred to above with which the petitioner has been charged.

IN RESPECT WHEREOF

Solicitor for the said petitioner

FORM 10RECORD OF PROCEEDINGS AT JUDICIAL EXAMINATION (FIRST OR FURTHER)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 15

SHERIFF COURT:

DATE:

SHERIFF:

NAME OF ACCUSED APPEARING:

FOR THE PETITIONER:

PROCURATOR FISCAL/DEPUTE

FOR THE ACCUSED:

SOLICITOR (address)

The Sheriff in terms of [Section 19(3)] or [Section 20(3B)] of the Criminal Procedure (Scotland) Act 1975 Delays the examination until ..... (date) at ..... (time) in order to allow time for the attendance of the Accused's solicitor, ..... (name and address) and Grants Warrant to imprison the said Accused in the Prison of ..... (place), therein to be detained until the said date.

(Signed) Sheriff

The Accused intimated that he did not desire to emit a Declaration.

The Accused intimated that he desired to emit a Declaration.

VERBATIM RECORDER: (Name and Address) to whom the declaration de fidei administratione officii was administered. Operation of tape recorder, for these proceedings was commenced at ..... (time)

Thereafter the Accused, having been judicially admonished, emitted a declaration which was recorded by the said verbatim recorder for subsequent transcription.

Thereafter the Prosecutor questioned the accused in terms of Section 20A of the Criminal Procedure (Scotland) Act 1975 and said proceedings were recorded by the said verbatim recorder for subsequent transcription.

Operation of tape recorder for these proceedings was terminated at ..... (time).

(Signed) Sheriff Clerk

The Sheriff, having [again] considered the foregoing Petition, on the motion of the Prosecutor, Grants Warrant to imprison the Accused in the Prison of ..... (place) therein to be detained [for Further Examination] [until liberated in due course of law].

(Signed) Sheriff

FORM 11 NOTICE OF OPINION AS TO ERROR IN OR INCOMPLETENESS OF TRANSCRIPT OF JUDICIAL EXAMINATION

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 19

in terms of

*The Criminal Procedure (Scotland) Act 1975, Section 20B(4)(a)*

To: *(Name and Designation)*

Sheriff Court:

Name of Accused:

Date of Examination:

Date of service of transcript:

TAKE NOTICE that the \*Procurator Fiscal/above accused is of the opinion that the transcript of the proceedings at the above examination contains an error and/or is incomplete in respect that:

*[here give full specification of all alleged points of error or incompleteness].*

*(Signed)* \*Procurator Fiscal/  
Solicitor for the said accused.

*[Address and telephone number]*

*[Place and Date]*

\*Delete as appropriate

FORM 12APPLICATION FOR RECTIFICATION OF TRANSCRIPT OF JUDICIAL EXAMINATION

Rule 19

in terms of

*The Criminal Procedure (Scotland) Act 1975, Section 20B(4)(b)*

Sheriff Court:

Name of Accused:

Date of Examination:

Presiding Sheriff:

Date of Service of Notice of Opinion  
in terms of Section 20B(4)(a):

The \*Procurator Fiscal/above accused applies to the Sheriff for rectification of the transcript of the proceedings relating to the above examination. Details of the alleged error and/or incompleteness are specified in the Notice of Opinion a copy of which is attached hereto.

*(Signed)* \*Procurator Fiscal/  
Solicitor for the said accused.

*[Address and telephone number]*

*[Place and Date]*

\*Delete as appropriate

FORM 13INTIMATION OF AGREEMENT

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rule 19(5)

in terms of  
the first proviso to  
The Criminal Procedure (Scotland) Act 1975, Section 20B(4)

To: *(Name and Designation)*

Sheriff Court:

Name of Accused:

Date of Examination:

Date of Service of Notice of Opinion  
in terms of Section 20B(4)(a):

The \*Procurator Fiscal/above accused agrees with the opinion expressed in the Notice specified above.

A copy of this intimation has been sent to the Sheriff Clerk of the above Court.

*(Signed)* \*Procurator Fiscal/  
Solicitor for the said accused.

*[Address and telephone number]*

*[Place and Date]*

\*Delete as appropriate

FORM 14 INTIMATION BY PROSECUTOR OF POSTPONEMENT OF TRIAL DIET

Rule 21(2)

in terms of  
*The Criminal Procedure (Scotland) Act 1975, Section 20B(5)(b)*

HER MAJESTY'S ADVOCATE AGAINST *[Here name all accused]*

To: *(Name and Designation)*

- (1) On ..... *(date)* the Court, in exercise of its powers under Section 20B(5)(b), in your absence postponed the trial diet to the sitting commencing on ..... *(date)*;
- (2) TAKE NOTICE THEREFORE that YOU ARE REQUIRED TO APPEAR at ..... *(place)* Sheriff Court on ..... *(date)* at ..... *(time)* to answer to the indictment which has already been served upon you.

BY AUTHORITY OF HER MAJESTY'S ADVOCATE

Procurator Fiscal

*[Place and Date]*

FORM 15 MINUTE OF NOTICE

*Status:* This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

*Under the Criminal Procedure (Scotland) Act 1975, Section 76*

Unto the Right Honourable the Lord Justice General, the Lord Justice Clerk and Lords Commissioners of Justiciary

(or)

Unto the Honourable the Sheriff of .....  
at.....

MINUTE OF NOTICE  
by  
A.B.  
designation, address or Prisoner in  
the Prison of.....

HUMBLY SHEWETH:

- (1) That the Minuter has (along with C.D., E.F., and G.H.) been indicted at the instance of Her Majesty's Advocate for trial in the High Court of Justiciary sitting at .....  
on ..... /in the Sheriff Court at .....  
on .....
- (2) That the said A.B. [*here specify the matter, grounds of submission or point which in the opinion of the Minuter requires to be dealt with at a preliminary diet*].
- (3) That a copy of this Minute has been duly intimated to the Lord Advocate (and to the said C.D., E.F. and G.H.) conform to execution(s) attached hereto.

MAY IT THEREFORE PLEASE YOUR LORDSHIP(S):

- (a) to order that there be a preliminary diet and to assign a date therefor;
- [(b) to order that the following productions be made available at such preliminary diet].

High Court  
sitting outside  
Edinburgh

IN RESPECT WHEREOF

Solicitor for the Minuter  
[*add address and telephone number*]

FORM 16FORM OF NOTICE OF ABANDONMENT OF MATTER TO BE RAISED AT  
PRELIMINARY DIET

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 32

HER MAJESTY'S ADVOCATE v A.B. HIGH COURT/SHERIFF COURT

..... (place)

I, A.B. ...., abandon the written notice of intention lodged by me on ..... (date) in terms of section 76 of the Criminal Procedure (Scotland) Act 1975 for which a preliminary diet has been fixed to be heard at ..... (place) at ..... (time)

(Signed) A.B.

[or Solicitor or Counsel for A.B. (address and telephone number of solicitor)]

(Place and date)

FORM 17 NOTE OF APPEAL

Rule 35

Under the Criminal Procedure (Scotland) Act 1975, Section 76A

Unto the Right Honourable the Lord Justice General, the Lord Justice Clerk and Lords Commissioners of Justiciary

NOTE OF APPEAL

by A.B.

designation, address or Prisoner in the Prison of.....

HUMBLY SHEWETH:

- (1) That in the High Court of Justiciary/Sheriff Court sitting at ..... on ..... a Preliminary Diet was held in the case of Her Majesty's Advocate against the said A.B. (and C.D., E.F., and G.H.);
(2) That the diet appointed for the trial on the said Indictment is/was ..... [here specify any postponement of the trial diet ordered in terms of Section 76(4)];
(3) That the matter, the grounds of submission or the point(s) raised at the said Preliminary Diet was/were [here specify];
(4) That the decision of the Court thereon was [here specify];
(5) That the Court granted leave to appeal to the High Court against the said decision;
(6) That the said A.B. appeals to the High Court against the said decision on the following grounds [here specify].

(Signed) A.B.

[or C.D.

Solicitor for the said A.B. (add address and telephone number)]

Date .....

FORM 18 MINUTE OF ABANDONMENT NOTICE OF ABANDONMENT OF APPEAL

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 40

*Under the Criminal Procedure (Scotland) Act 1975, Section 76A*

Name of Appellant:

Date of Birth:

Prisoner in the Prison of..... [or as the case may be]

Crime or offence to which appeal relates:

Court:

The above named Appellant having lodged a Note of Appeal in terms of Section 76A of said Act abandons as from this date said appeal against the decision at the preliminary diet.

(Signed) A.B.

[or C.D. Solicitor for the said A.B.]

[Place and date]

FORM 19 INTIMATION BY PROSECUTOR OF ADJOURNMENT OF TRIAL DIET

Rule 41

in terms of

*The Criminal Procedure (Scotland) Act 1975, Section 77*

HER MAJESTY'S ADVOCATE AGAINST [here name all accused]

To: (Name and Designation)

- (1) When the above indictment was not brought to trial at the trial diet fixed for the sitting commencing on ..... (date) the Court in your absence adjourned the trial diet to the sitting commencing on ..... (date);
- (2) TAKE NOTICE THEREFORE that YOU ARE REQUIRED TO APPEAR at ..... (place) High/Sheriff Court on ..... (date) at ..... (time) to answer to the indictment which has already been served upon you.

FORM 20 MINUTE OF POSTPONEMENT OF DIET

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rule 42

*Under the Criminal Procedure (Scotland) Act 1975, Section 77A*

Unto the Right Honourable the Lord Justice General, the Lord Justice Clerk and Lords Commissioners of Justiciary

(or)

Unto the Honourable the Sheriff of .....  
at.....

MINUTE

by  
A.B.

designation, address or Prisoner in  
the Prison of.....

HUMBLY SHEWETH:

- (1) That the Minuter has (along with C.D., E.F., and G.H.) been indicted at the instance of Her Majesty's Advocate for trial in the High Court of Justiciary sitting at .....  
..... (place) on ..... (date);
- (2) That the said A.B. applies to the Court for postponement of the said trial diet for the following reasons:

[here specify].

MAY IT THEREFORE PLEASE YOUR LORDSHIP(S):

- (a) to fix a diet for hearing this application and to order intimation of this application and the diet to all the parties;
- (b) thereafter, after hearing all the parties, to discharge said trial diet and either to fix a new trial diet or to give leave to the prosecutor to serve a Notice fixing a new trial diet;
- (c) or to do otherwise as to your Lordship(s) shall seem proper.

IN RESPECT WHEREOF

Solicitor for the Minuter  
[add address and telephone number]

FORM 21JOINT MINUTE



*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rule 42(2)

*Under the Criminal Procedure (Scotland) Act 1975, Section 77A*

Unto the Right Honourable the Lord Justice General, the Lord Justice Clerk and Lords Commissioners of Justiciary

(or)

Unto the Honourable the Sheriff of .....

at .....

JOINT MINUTE

by

- (1) Her Majesty's Advocate and
- (2) A.B., designation, address or Prisoner in the Prison of

.....  
(C.D., E.F., and G.H.)

[here specify all accused]

HUMBLY SHEWETH:

- (1) That the said A.B., (C.D., E.F., and G.H.) has/have been indicted at the instance of Her Majesty's Advocate for trial in the High Court of Justiciary sitting at .....  
..... (place)/in the Sheriff Court at .....  
..... (place) on ..... (date);

- (2) That the Minuters apply to the Court for postponement of the said trial diet for the following reasons:

[here specify].

MAY IT THEREFORE PLEASE YOUR LORDSHIP(S):

- (a) to dispense with a hearing of this application;
- (b) to discharge said trial diet and either to fix a new trial diet or to give leave to the prosecutor to serve a Notice fixing a new trial diet;
- (c) or to do otherwise as to your Lordship(s) shall seem proper.

IN RESPECT WHEREOF

Advocate Depute/Procurator Fiscal  
On behalf of Her Majesty's Advocate

Solicitor for the said A.B.,  
(C.D., E.F., and G.H.)  
[add address and telephone number]

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rule 46

in terms of  
*The Criminal Procedure (Scotland) Act 1975, Section 77A(2)*

HER MAJESTY'S ADVOCATE against [*here name all accused*]

To: (*Name and Designation*)

(1) On ..... (*date*) the Court discharged the trial diet fixed for the sitting commencing on ..... (*date*) and granted leave to the prosecutor to serve on you a notice fixing a new trial diet;

(2) TAKE NOTICE that said new trial diet will take place within ..... (*place*) High/Sheriff Court..... (*address*) on ..... (*date*) at ..... (*time*) when YOU ARE REQUIRED TO APPEAR to answer to the indictment which has already been served upon you.

BY AUTHORITY OF HER MAJESTY'S ADVOCATE

Advocate Depute/Procurator Fiscal

[*Place and Date*]

FORM 23NOTE OF APPEAL AGAINST EXTENSION OF 12 MONTHS PERIODNOTE OF APPEAL

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rule 50

*Criminal Procedure (Scotland) Act 1975, Section 101(1) and (5) as amended by Criminal Justice (Scotland) Act 1980, Section 14*

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

The Appeal of .....  
whose domicile of citation has been specified as .....  
Appellant  
against Her Majesty's Advocate, ..... Respondent

HUMBLY SHEWETH:

- (1) That at the Sheriff Court .....  
on ..... (date) the Appellant (along with C.D., E.F. and G.H.) appeared on  
Petition at the instance of the Procurator Fiscal of that Court on charges of .....  
.....;
- (2) That he was committed for trial on ..... and was released on bail on  
.....;
- (3) \*That an indictment has been served on him to stand trial at .....  
..... on .....
- (4) \*That an application in terms of section 101(1)(ii) was presented to .....  
Court on ..... by .....  
and heard within the .....  
Court at .....  
on .....
- (5) That Lord/Sheriff ..... extended the  
period of 12 months which would have expired on ..... by .....  
days;
- (6) That the grant of said extension is unreasonable in respect that (*here state shortly reasons for appeal*).

\*Delete and adopt as appropriate

ACCORDING TO JUSTICE &c

Solicitor for Appellant.

Date ..... 19....

FORM 24NOTE OF APPEAL AGAINST EXTENSION OF 80 DAYS PERIODNOTE OF APPEAL

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 50

*Criminal Procedure (Scotland) Act 1975, Section 101(3) and (5) as amended by Criminal Justice (Scotland) Act 1980, Section 14*

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

The Appeal of ..... presently prisoner in the Prison of ..... Appellant against Her Majesty's Advocate, ..... Respondent

HUMBLY SHEWETH:

- (1) That at the Sheriff Court ..... on ..... (date) the Appellant (along with C.D., E.F. and G.H.) appeared on Petition at the instance of the Procurator Fiscal of that Court on charges of .....
- (2) That he was committed until liberated in due course of law on ..... and remains in custody;
- (3) That no indictment has been served on him;
- (4) That an application in terms of section 101(3) was presented to the High Court, Edinburgh on ..... (date) by or on behalf of the Lord Advocate and was heard within that Court on ..... (date);
- (5) That Lord ..... extended the period of 80 days which would have expired on ..... (date) by ..... days;
- (6) That the grant of such extension is unreasonable in respect that (here state shortly the reasons for Appeal).

ACCORDING TO JUSTICE &c

Solicitor for Appellant.

Date ..... 19....

FORM 25NOTE OF APPEAL AGAINST EXTENSION OF 110 DAYS PERIODNOTE OF APPEAL

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

*Criminal Procedure (Scotland) Act 1975, Section 101(4) and (5) as amended by Criminal Justice (Scotland) Act 1980, Section 14*

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

The Appeal of ..... presently prisoner in the Prison of ..... Appellant against Her Majesty's Advocate, ..... Respondent

HUMBLY SHEWETH:

- (1) That at the Sheriff Court ..... on ..... (date) the Appellant (along with C.D., E.F. and G.H.) appeared on Petition at the instance of the Procurator Fiscal of that Court on charges of .....
- (2) That he was committed until liberated in due course of law on ..... and remains in custody;
- (3) That he had been indicted to stand trial within the Court sitting at ..... on .....
- (4) That an application in terms of section 101(4) was presented to the High Court, Edinburgh on ..... (date) by or on behalf of the Lord Advocate and was heard within the Court on ..... (date);
- (5) That Lord ..... extended the period of 110 days which would have expired on ..... (date) by ..... days;
- (6) That the grant of such extension is unreasonable in respect that (*here state shortly the reasons for Appeal*).

ACCORDING TO JUSTICE &c

Solicitor for Appellant.

Date ..... 19....

FORM 26 APETITION FOR ISSUE OF LETTER OF REQUEST WHERE INDICTMENT IN HIGH COURT SERVED

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 51

HIGH COURT OF JUSTICIARY, SCOTLAND

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

PETITION
of
A.B
Prisoner in the Prison of
.....

HUMBLY SHEWETH:

- (1) That the said A.B. has (along with C.D., E.F. and G.H.) been indicted in your Lordships' Court at the instance of X.Y., Her Majesty's Advocate with the crime of .....;
(2) That the trial of the said A.B. is to take place in your Lordship's Court sitting at ..... on .....;
(3) That M.N. residing at ..... in the country or territory of ..... is a witness whose evidence the said A.B. intends to adduce in the course of the said trial;
(4) That the evidence to the effect specified in the Schedule attached hereto which it is averred that the said witness is able to give is necessary for the proper adjudication of the said trial;
(5) That there would be no unfairness to the said (C.D., E.F., G.H. or) prosecutor if such evidence were to be received in the form of the record of an examination conducted by virtue of section 32(1) of the Criminal Justice (Scotland) Act 1980;
(6) That Z..... is a court or tribunal exercising jurisdiction in the said country or territory of..... being a country or territory outside the United Kingdom, Channel Islands or Isle of Man;
(7) That English is (not) the official language or one of the official languages of the said country or territory.

MAY IT THEREFORE please your Lordships:

- (1) to appoint intimation of this Petition and Schedule to be made to the said (C.D., E.F., G.H., or) X.Y.;
(2) to appoint parties to be heard thereupon on the earliest practicable date hereafter; and
(3) thereafter, upon being duly satisfied in terms of section 32(2) of the said Act, to issue a letter of request to ..... (state judge or tribunal within whose jurisdiction the witness is resident) to take evidence of the said witness; and to do otherwise as to your Lordships shall seem proper.

IN RESPECT WHEREOF

Solicitor for the said petitioner

FORM 26BPETITION FOR ISSUE OF LETTER OF REQUEST IN HIGH COURT BEFORE INDICTMENT SERVED

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rule 51

HIGH COURT OF JUSTICIARY, SCOTLAND

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

PETITION  
of  
A.B.  
Prisoner in the Prison of  
.....

HUMBLY SHEWETH:

- (1) That the said A.B. was (along with C.D., E.F. and G.H.) on ..... in the Sheriff Court at ..... committed to prison till liberated in due course of law on a petition at the instance of the Procurator Fiscal in the said Court charging the said ..... with the crime of .....
- (2) That no indictment has been served upon the said A.B. in respect of the said crime and that accordingly the Court in which any trial of the said A.B. in respect of the crime for which he stands committed is not yet known;
- (3) That M.N. residing at ..... in the country or territory of ..... is a witness whose evidence the said A.B. intends to adduce in the course of the said trial;
- (4) That the evidence to the effect specified in the Schedule attached hereto which it is averred that the said witness is able to give is necessary for the proper adjudication of the said trial;
- (5) That there would be no unfairness to the said (C.D., E.F., G.H. or) prosecutor if such evidence were to be received in the form of the record of an examination conducted by virtue of section 32(1) of the Criminal Justice (Scotland) Act 1980;
- (6) That Z..... is a court or tribunal exercising jurisdiction in the said country or territory of..... being a country or territory outside the United Kingdom, Channel Islands or Isle of Man;
- (7) That English is (not) the official language or one of the official languages of the said country or territory.

MAY IT THEREFORE please your Lordships:

- (1) to appoint intimation of this Petition and Schedule to be made to the said (C.D., E.F., G.H., or) Procurator Fiscal;
- (2) to appoint parties to be heard thereupon on the earliest practicable date hereafter; and
- (3) thereafter, upon being duly satisfied in terms of section 32(2) of the said Act, to issue a letter of request to ..... (*state judge or tribunal within whose jurisdiction the witness is resident*) to take evidence of the said witness; and to do otherwise as to your Lordships shall seem proper.

IN RESPECT WHEREOF

Solicitor for the said petitioner

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM 26CPETITION FOR ISSUE OF LETTER OF REQUEST IN SOLEMN PROCEEDINGS IN SHERIFF COURT

Rule 51

Under the Criminal Justice (Scotland) Act 1980

UNTO THE HONOURABLE THE SHERIFF OF.....

AT .....

PETITION

of

A.B.

designation, address or Prisoner in

the Prison of .....

HUMBLY SHEWETH:

- (1) That the petitioner has been indicted (along with C.D., E.F., and G.H.) in your Lordship's Court at the instance of X.Y., Her Majesty's Advocate with the offence of .....
- (2) That the trial of the said A.B. is to take place in your Lordship's Court sitting at .....
- (3) That M.N. residing at ..... in the country or territory of ..... is a witness whose evidence the said A.B. intends to adduce in the course of the said trial;
- (4) That the evidence to the effect specified in the Schedule attached hereto which it is averred that the said witness is able to give is necessary for the proper adjudication of the said trial;
- (5) That there would be no unfairness to the said (C.D., E.F., G.H. or) prosecutor if such evidence were to be received in the form of the record of an examination conducted by virtue of section 32(1) of the Criminal Justice (Scotland) Act 1980:
- (6) That Z..... is a court or tribunal exercising jurisdiction in the said country or territory of..... being a country or territory outside the United Kingdom, Channel Islands or Isle of Man;
- (7) That English is (not) the official language or one of the official languages of the said country or territory.

MAY IT THEREFORE please your Lordship:

- (1) to appoint intimation of this Petition and Schedule to be made to the said (C.D., E.F., G.H., or) X.Y.;
- (2) to appoint parties to be heard thereupon on the earliest practicable date hereafter; and
- (3) thereafter, upon being duly satisfied in terms of section 32(2) of the said Act, to issue a letter of request to ..... (state judge or tribunal within whose jurisdiction the witness is resident) to take evidence of the said witness; and to do otherwise as to your Lordship shall seem proper.

IN RESPECT WHEREOF

Solicitor for the said petitioner



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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## FORM 27FORM OF LETTER OF REQUEST

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rules 51(2) and 101(2)

(Items to be included in all Letters of Request)

- 1 Sender ..... (identity and address)
  - .....
  - .....
- 2 Central authority of the requested State ..... (identity and address)
  - .....
  - .....
- 3 Person to whom the executed request is to be returned ..... (identity and address)
  - .....
  - .....
- 4 The undersigned applicant has the honour to submit the following request:
  - (a) Requesting judicial authority ..... (identity and address)
    - .....
    - .....
  - (b) To the competent authority ..... (the requested State) .....
    - .....
    - .....
- 5 Names and addresses of the parties and their representatives:
  - (a) Prosecutor .....
    - .....
    - .....
  - (b) Accused .....
    - .....
    - .....
- 6 Nature and purpose of the proceedings and summary of the facts .....
  - .....
  - .....
- 7 Evidence to be obtained or other judicial act to be performed .....
  - .....
  - .....
- (Items to be completed where applicable)
- 8 Identity and address of any person to be examined .....
  - .....
  - .....
- 9 Questions to be put to the persons to be examined or statement of the subject-matter about which they are to be examined ..... (or see attached list) .....
  - .....
  - .....
- 10 Documents or other property to be inspected (specify whether it is to be produced, copied, valued, etc.) .....
  - .....
  - .....
- 11 Any requirement that the evidence be given on oath or affirmation and any special form to be used (in the event that the evidence cannot be taken in the manner requested, specify whether it is to be taken in such manner as provided by local law for the formal taking of evidence) .....
  - .....
  - .....
- 12 Special methods or procedure to be followed .....
  - .....
  - .....

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- 13 Request for notification of time and place for the execution of the request and identity and address of any person to be notified .....
  - 14 Request for attendance or participation of judicial personnel of the requesting authority at the execution of the letter of request .....
  - 15 Specification of privilege or duty to refuse to give evidence under the law of the State of origin .....
  - 16 The fees and costs incurred will be borne by ..... (*identity and address*) .....
- (*Items to be included in all Letters of Request*)
- 17 Date of request .....
  - 18 Signature and seal of the requesting authority .....

FORM 28APETITION FOR COMMISSION TO TAKE EVIDENCE IN HIGH COURT WHERE INDICTMENT SERVED

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 57

HIGH COURT OF JUSTICIARY, SCOTLAND

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

PETITION
of
A.B.
Prisoner in the Prison of
.....

HUMBLY SHEWETH:

- (1) That the said A.B. has (along with C.D., E.F., and G.H.) been indicted in your Lordships' Court at the instance of X.Y., Her Majesty's Advocate with the crime of .....;
(2) That the trial of the said A.B. is to take place in your Lordships' Court sitting at ..... on .....;
(3) That M.N. residing at ..... being a country or territory within the United Kingdom, Channel Islands or Isle of Man is a witness whose evidence the said A.B. intends to adduce in the course of the said trial;
(4) That the evidence to the effect specified in the Schedule attached hereto which it is averred that the said witness is able to give is necessary for the proper adjudication of the said trial;
(5) That there would be no unfairness to the said (C.D., E.F., G.H. or) prosecutor if such evidence were to be received in the form of the record of an examination conducted by virtue of section 32(1) of the Criminal Justice (Scotland) Act 1980.

MAY IT THEREFORE please your Lordships:

- (1) to appoint intimation of this Petition and Schedule to be made to the said (C.D., E.F., G.H., or) X.Y.;
(2) to appoint parties to be heard thereupon on the earliest practicable date hereafter; and
(3) thereafter, upon being duly satisfied in terms of section 32(2) of the said Act to appoint ..... or such other person as your Lordships shall think fit to be a Commissioner to take the evidence of the said witness and to report to your Lordships quam primum; and to do otherwise as to your Lordships shall seem proper.

IN RESPECT WHEREOF

Solicitor for the said petitioner

FORM 28BPETITION FOR COMMISSION TO TAKE EVIDENCE IN HIGH COURT WHERE NO INDICTMENT SERVED

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

HIGH COURT OF JUSTICIARY, SCOTLAND

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

PETITION  
of  
A.B.  
Prisoner in the Prison of  
.....

HUMBLY SHEWETH:

- (1) That the said A.B. was (along with C.D., E.F. and G.H.) on ..... in the Sheriff Court at ..... committed to prison till liberated in due course of law on a petition at the instance of the Procurator Fiscal in the said Court charging the said ..... with the crime of .....
- (2) That no indictment has been served upon the said A.B. in respect of the said crime and that accordingly the Court in which any trial of the said A.B. in respect of the crime for which he stands committed is not yet known;
- (3) That M.N. residing at ..... being a country or territory within the United Kingdom, Channel Islands or Isle of Man is a witness whose evidence the said A.B. intends to adduce in the course of the said trial;
- (4) That the evidence to the effect specified in the Schedule attached hereto which it is averred that the said witness is able to give is necessary for the proper adjudication of the said trial;
- (5) That there would be no unfairness to the said (C.D., E.F., G.H. or) prosecutor if such evidence were to be received in the form of the record of an examination conducted by virtue of section 32(1) of the Criminal Justice (Scotland) Act 1980:

MAY IT THEREFORE please your Lordships:

- (1) to appoint intimation of this Petition and Schedule to be made to the said (C.D., E.F., G.H., or) X.Y.;
- (2) to appoint parties to be heard thereupon on the earliest practicable date hereafter; and
- (3) thereafter, upon being duly satisfied in terms of section 32(2) of the said Act to appoint ..... or such other person as your Lordships shall think fit to be a Commissioner to take the evidence of the said witness and to Report to your Lordships *quam primum*; and to do otherwise as to your Lordships shall seem proper.

IN RESPECT WHEREOF

Solicitor for the said petitioner

FORM 28CPETITION FOR COMMISSION TO TAKE EVIDENCE IN SOLEMN PROCEEDINGS IN SHERIFF COURT

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 57

Under the Criminal Justice (Scotland) Act 1980

UNTO THE HONOURABLE THE SHERIFF OF.....

AT .....

PETITION
of
A.B.
designation, address or Prisoner in
the Prison of.....

HUMBLY SHEWETH:

- (1) That the petitioner has (along with C.D., E.F., and G.H.) been indicted in your Lordship's Court at the instance of X.Y., Her Majesty's Advocate with the offence of .....;
(2) That the trial of the said A.B. is to take place in your Lordship's Court sitting at ..... on .....;
(3) That M.N. residing at ..... within the United Kingdom, Channel Islands or Isle of Man is a witness whose evidence the said A.B. intends to adduce in the course of the said trial;
(4) That the evidence to the effect specified in the Schedule attached hereto which it is averred that the said witness is able to give is necessary for the proper adjudication of the said trial;
(5) That there would be no unfairness to the said (C.D., E.F., G.H. or) prosecutor if such evidence were to be received in the form of the record of an examination conducted by virtue of section 32(1) of the Criminal Justice (Scotland) Act 1980:

MAY IT THEREFORE please your Lordship:

- (1) to appoint intimation of this Petition and Schedule to be made to the said (C.D., E.F., G.H., or) X.Y.;
(2) to appoint parties to be heard thereupon on the earliest practicable date hereafter; and
(3) thereafter, upon being duly satisfied in terms of section 32(2) of the said Act, to appoint such person as your Lordship shall think fit to be a Commissioner to take the evidence of the said witness and to report to your Lordship quam primum; and to do otherwise as to your Lordship shall seem proper.

IN RESPECT WHEREOF

Solicitor for the said petitioner

FORM 29APPLICATION FOR RENEWAL OR TERMINATION OF INTERIM HOSPITAL ORDER UNDER SECTION 174A(1) AND 375A(1) OF THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1975

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rules 62 and 112

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

OF (or UNTO THE HONOURABLE THE SHERIFF  
AT )

APPLICATION

under

Section 174A(6), 375A(7) of the Criminal  
Procedure (Scotland) Act 1975

by

Her Majesty's Advocate  
(or AB Procurator Fiscal)  
in respect of  
CD presently a patient in  
Hospital

for

Renewal (or Termination) of an *interim* hospital order

- (1) On (*date*) the Court made an *interim* hospital order in respect of CD (which order was renewed by the Court on (*date*)).
- (2) The order expires on (*date*).
- (3) It is necessary to bring the case before the Court before the date mentioned in paragraph 2 above for the following reasons

(*here state reasons*).

MAY IT THEREFORE please your Lordship(s) to fix a diet for the purpose of considering this application to renew the *interim* hospital order; (and for that purpose to grant warrant to authorised officers of the hospital (or officers of law) to bring CD before the court for said diet).

Or MAY IT THEREFORE please your Lordship(s) to fix a diet for the purpose of considering this application and further information now available with a view to making a final disposal of the case; (and for that purpose to grant warrant to authorised officers of the hospital (or officers of law) to bring CD before the Court for said diet).

According to Justice, etc.

(*signed*)  
for Her Majesty's Advocate  
(or Procurator Fiscal (Depute))

(*Place and Date*)

FORM 30FORM OF ORDER FOR DIET OF HEARING AND WARRANT FOR CONVEYANCE  
OF OFFENDER TO COURT FOR HEARING OF APPLICATION FOR RENEWAL OR  
TERMINATION OF INTERIM ORDER

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rules 62 and 112

Appoints (place) the (date) 19 day of  
198 at within  
as a diet for hearing the foregoing application; Grants  
warrant to (authorised officers of hospital) (officers of  
law) to bring  
before the court for said diet.

(signed)  
(Lord Commissioner of Justiciary)  
(Sheriff)

FORM 31 REFERENCE TO EUROPEAN COURT

Rules 65 and 116

*(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 32 APPEAL TO HIGH COURT

Rules 67 and 118

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*)

FORM 33 FORMS OF OATH AND AFFIRMATION



*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rules 67, 70 and 121

**PART 1  
FORM OF OATH FOR JURORS**

The jurors to raise their right hands and the clerk of court to ask them: "Do you swear by Almighty God that you will well and truly try the accused and give a true verdict according to the evidence?"  
The jurors to reply: "I do".

**PART 2  
FORM OF AFFIRMATION FOR JURORS**

The juror to repeat after the clerk of court: "I, [name], do solemnly, sincerely and truly declare and affirm that I will well and truly try the accused and give a true verdict according to the evidence".

**PART 3  
FORM OF OATH FOR WITNESSES**

The witness to raise his right hand and repeat after the judge: "I swear by Almighty God that I will tell the truth, the whole truth and nothing but the truth".

**PART 4  
FORM OF AFFIRMATION FOR WITNESSES**

The witness to repeat after the judge: "I solemnly, sincerely and truly declare and affirm that I will tell the truth, the whole truth and nothing but the truth".

**FORM 34 FORMS OF SENTENCE OF DEATH**

Rule 75

A.B., the sentence of the Court is that you be taken from this place to the Prison of .....  
.....[thence to be forthwith transmitted to the Prison of ..... ] therein  
to be detained until the ..... day of ..... and upon that day within  
the said prison of .....  
between the hours of eight and ten o'clock forenoon you suffer death by hanging which is pronounced  
for Doom.

**FORM 35 FORM OF PROBATION ORDER**

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rules 76 and 126

*Under the Criminal Procedure (Scotland) Act 1975, Sections 183 and 384*

COURT:

ON

19

OFFENDER:

Address:

Date of Birth:

The Court being satisfied that the Offender has committed the offence with which he is charged  
(or)  
in view of the conviction of the Offender

and being of the opinion that having regard to the circumstances, including the nature of the offence and the character of the Offender, it is expedient to make a Probation Order containing the under-noted requirements; and THE COURT having explained to the Offender the effect of the Order (including the requirements set out below), and that if he fails to comply with the Order, he may be brought before the Court by his supervising officer for a breach of probation and may be sentenced/dealt with for the original offence, and that, if he commits another offence during the period of the Probation Order, he may be dealt with likewise:

And the Offender having expressed his willingness to comply with the requirements of the Order:

THE COURT therefore orders that for a period of  
the date hereof the Offender who resides/is to reside in the local authority area of  
shall be under the  
supervision of an officer of that local authority allocated for the purpose/allocated for the purpose as  
required by the Court at  
in  
the said local authority area; that the Offender shall be notified in writing by the Clerk of Court of the  
name and official address of the officer who is to supervise him and similarly if at any time such supervision  
is to be undertaken by another officer of the local authority allocated for the purpose; and that the  
Offender shall comply with the following requirements, namely—

- (1) to be of good behaviour;
- (2) to conform to the directions of the supervising officer;
- (3) to inform the supervising officer at once if he changes his residence or place of employment;
- (4) (*Here insert any additional requirements*)

Clerk of Court.

Date:

Note: \_\_\_\_\_ of  
has been allocated as supervising officer in this case.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

CRIMINAL PROCEDURE (SCOTLAND) ACT 1975

**EXTRACT SENTENCE, WARRANT OF DETENTION AND RETURN OF SENTENCE**

Court		Judge
Accused		Date of Sentence
		Address (where known)
Date of Birth	Marital Status	Occupation
Offence(s) for which sentenced		Method of conviction Jury trial Plea Sec. 102

**Sentence:** The Court Sentenced, Decerned and Adjudged the said Accused to be imprisoned as from this date for the period specified below and thereafter to be set at liberty

**Period of Imprisonment:**

**Warrant:** In respect of the foregoing sentence the Court Ordained, and hereby Ordains, the said accused to be conveyed by Officers of law to the Prison of

thereafter to be dealt with in due course of law.

Officers to prove conviction	
------------------------------	--

Previous record (as per list attached)
--

Extracted by me .....

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 84 (Section 231)

**HIGH COURT OF JUSTICIARY**

To: Clerk of Justiciary

**Intimation of Intention to  
Appeal  
under  
Criminal Procedure (Scotland)  
Act 1975**

Name of convicted person

Date of Birth

Prisoner in the Prison of

Date of final determination of the proceedings

Crime or offence to which appeal relates

Court and name of judge

Sentence

*[or as the  
case may be]*

Intimation is hereby given that the above named intends to appeal to the High Court against the foregoing \*conviction/conviction and sentence. \* *[delete as appropriate]*

*(Signed by convicted person, his Counsel or Solicitor)  
[Solicitor to add address and telephone number]*

*(Date)*

FORM 38NOTE OF APPEAL

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 84 (Section 233)

**HIGH COURT OF JUSTICIARY**

To: Clerk of Justiciary

**NOTE OF APPEAL  
under  
Criminal Procedure (Scotland)  
Act 1975**

Name of convicted person

Date of Birth

Prisoner in the Prison of

*[or as the  
case may be]*

Date of final determination of the proceedings

Crime or offence to which appeal relates

Court and name of judge

Sentence

The above named convicted person appeals against \*conviction/  
sentence/conviction and sentence on the following grounds:- *[here give full  
statement of all grounds of appeal]*.

\* *[delete as  
appropriate]*

*(Signed by convicted person, his Counsel or Solicitor)  
[Solicitor to add address and telephone number]*

*(Date)*

FORM 39APPLICATION FOR EXTENSION OF TIME

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rule 84 (Section 236B)

HIGH COURT OF JUSTICIARY

Application for Extension of Time under Section 236B(2) of the Criminal Procedure (Scotland) Act 1975

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

Name of convicted person

Date of Birth

Prisoner in the Prison of

*[or as the case may be]*

Date of final determination of the proceedings

Crime or offence to which appeal relates

Court and name of judge

Sentence

Application is hereby made for extension of time within which to:

*[delete as appropriate]*

- (a) intimate an Intention to Appeal against conviction
- (b) intimate an Intention to Appeal against conviction & sentence
- (c) lodge a Note of Appeal against sentence
- (d) lodge a Note of Appeal against conviction
- (e) lodge a Note of Appeal against conviction and sentence

for the following reasons:-

*[here fully state the reasons for the failure to lodge timeously the Intimation of Intention to Appeal or Note of Appeal as the case may be].*

*(Signed by convicted person, his Counsel or Solicitor)*

*[Solicitor to add address and telephone number]*

*(Date)*

FORM 40APPLICATION FOR BAIL PENDING APPEAL

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 84 (Section 238)

CRIMINAL PROCEDURE (SCOTLAND) ACT 1975

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

The Petition of  
presently a prisoner in the  
Prison of .....

HUMBLY SHEWETH:

THAT on [date] he was convicted  
in the Court at  
of [here state crime or offence]

and sentenced to

THAT On [date] he lodged an Intimation of Intention to  
Appeal/Note of Appeal to the High Court of Justiciary under The Criminal Procedure (Scotland) Act  
1975.

[Here state the  
relevant facts  
in support of  
grant of bail]

That the said crime is bailable.

May it therefore please your Lordships to Remit this Petition and relative documents to the Sheriff  
at with a  
direction to admit the Petitioner to Bail so far as detained under said sentence upon his formal acceptance  
and/or fulfilment of such conditions as your Lordships shall fix.

According to Justice &c.,

(Signature) .....  
(Petitioner or Counsel or Solicitor for Petitioner)  
[Solicitor to add address and telephone number]

(Date) .....

FORM 41NOTICE OF ABANDONMENT OF APPEAL

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rule 84 (Section 244)

**CRIMINAL APPEAL**  
**THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1975**

Name of convicted person

Date of birth

Prisoner in the Prison of

*[or as the case may be]*

Crime or offence to which appeal relates

Court

Sentence

I, *[name in full]*  
this date my appeal against:

abandon as from

- (a) Conviction
- (b) Conviction but proceed with my appeal against Sentence
- (c) Conviction and Sentence
- (d) Sentence

*[delete as appropriate]*

(Signature) .....

Appellant

*[Place and date]*

To:- The Clerk of Justiciary  
Parliament Square  
Edinburgh  
EH1 1RF

FORM 42NOTIFICATION OF DECISION



**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 84 (Section 251)

**CRIMINAL PROCEDURE (SCOTLAND) ACT 1975  
NOTIFICATION UNDER SECTION 251 TO APPLICANT OF A DECISION OF A JUDGE  
UNDER SECTION 247**

To: *(Name and designation)*

I hereby give notice that a judge of the High Court of Justiciary having considered your Application for:-

- (a) Extension of time within which an Intimation of Intention to Appeal against conviction/conviction and sentence may be lodged;
- (b) Extension of time within which a Note of Appeal against conviction/conviction and sentence/sentence may be lodged;
- (c) Permission to you to be present at the hearing of any proceedings in relation to your Appeal and/or Application; *[delete as appropriate]*
- (d) Admission to Bail  
has refused/granted the Application .....

If you desire to have the above mentioned Application(s) which has/have been refused, determined by the High Court of Justiciary constituted as provided in the Act above mentioned you are required to fill up the enclosed Form and return it to me within five days of its receipt by you, otherwise the decision of the single judge will be final.

[Date]

.....  
Clerk of Justiciary

FORM 43 APPLICATION FOR DETERMINATION BY HIGH COURT

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rule 84 (Section 251)

**CRIMINAL PROCEDURE (SCOTLAND) ACT 1975  
REQUISITION UNDER SECTION 251 FOR DETERMINATION BY THE COURT UNDER  
SECTION 247 OF APPLICATION(S) REFUSED BY A SINGLE JUDGE**

To: Clerk of Justiciary

I, *(name in full)* having received your notification that my Application(s) for:-

- (a) Extension of time within which an Intimation of Intention to Appeal against conviction/conviction and sentence may be lodged;
- (b) Extension of time within which a Note of Appeal against conviction/conviction and sentence/sentence may be lodged;
- (c) Permission to me to be present at the hearing of any proceedings in relation to my Appeal and/or Application; *[delete as appropriate]*
- (d) Admission to Bail;

has/have been refused hereby give notice that I desire that the said Application(s) shall be considered and determined by the High Court of Justiciary constituted as provided in the Act above mentioned.

[Date] (Signature) ..... Applicant

Note:-If the Applicant desires to be present at the hearing by the Court in relation to his Application(s), he should complete and sign the following:-

I, *(name in full)* \* If legally represented  
\*(not being legally represented) desire to be present at the hearing of my Application(s) above mentioned. represent  
ed  
delete  
these  
words

[Date] (Signature) ..... Applicant

FORM 44

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 86

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

THE PETITION OF

presently

HUMBLY SHEWETH:

THAT on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ the Petitioner was convicted in the \_\_\_\_\_ Court at \_\_\_\_\_ and was *inter alia* ordered to be disqualified for a period of \_\_\_\_\_ in terms of Section 93 of the Road Traffic Act 1972.

THAT on \_\_\_\_\_ the Petitioner lodged with the Clerk of Justiciary a Note of Appeal in terms of the provisions of Sections 233 of the Criminal Procedure (Scotland) Act 1975.

\*THAT an application for suspension of the said disqualification made in terms of section 94(3) of the said Road Traffic Act was refused by the said Sheriff Court on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ and that the Petitioner has served a copy of this Petition on the Clerk of the said Sheriff Court.

THAT the Petitioner has served a copy of this Petition on the Crown Agent.

May it therefore please your Lordships in terms of section 94B(2) of the Road Traffic Act 1972 to suspend the said disqualification on such terms as your Lordships think fit.

ACCORDING TO JUSTICE &c

Solicitor for Petitioner

\*Delete as applicable  
(Sheriff Court case only)

FORM 44AAPPLICATION TO SHERIFF FOR SUSPENSION OF ORDER FOR DISQUALIFICATION PENDING APPEAL

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rule 86

AB  
*Appellant*  
against  
HER MAJESTY'S ADVOCATE  
*Respondent*

HUMBLY SHEWETH:

- (1) THAT on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ the Appellant was convicted in the Sheriff Court at \_\_\_\_\_ and was *inter alia* ordered to be disqualified for a period of \_\_\_\_\_ in terms of Section 93 of the Road Traffic Act 1972.
- (2) THAT on \_\_\_\_\_ the appellant lodged with the Clerk of Justiciary a Note of Appeal in terms of the provisions of Section 233 of the Criminal Procedure (Scotland) Act 1975. A copy of said Note is attached hereto and is endorsed as having been received by the Clerk of Justiciary.
- (3) THAT the Appellant has served a copy of this Application on the Procurator Fiscal at \_\_\_\_\_

May it therefore please your Lordships in terms of Section 94(3) of the Road Traffic Act 1972 to suspend the said disqualification on such terms as your Lordships think fit.

Solicitor for Appellant

(Place and date)

## PART II

FORMS REFERRED TO IN CHAPTER 2 (SUMMARY PROCEDURE)  
FORM 45FORM OF COMPLAINT

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 87

*Under the Criminal Procedure (Scotland) Act 1975*

\_\_\_\_\_  
IN THE { SHERIFF COURT OF  
DISTRICT  
\_\_\_\_\_

THE COMPLAINT OF THE PROCURATOR FISCAL AGAINST

A.B. (*Name and address sufficient to distinguish person*) (or at present in custody)

Date of Birth:

The charge against you is that on \_\_\_\_\_, 19\_\_\_\_, in (or at) you did (*set forth charge as in Forms set out in Part 2 of the Second Schedule to the Summary Jurisdiction (Scotland) Act 1954*)

(*signed*) thus

C.D.  
Procurator Fiscal,  
or  
E.F. Complainer,  
or  
G.H.  
Solicitor for Complainer.

FORM 46FORM OF NOTICE AS TO PENALTY FOR STATUTORY OFFENCE

Rule 87

A.B.

Date of Birth:

whose case is to be called in Court on  
in the { Sheriff Court House  
District

NOTICE OF PENALTY applicable to the contravention of  
(*give reference to the section of Act or Order*) charged in the Complaint to which  
this Notice is attached.

(*set forth shortly the penalties*)

FORM 47FORM OF CITATION

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 87

CITATION

PF REF .....  
 (This number must be quoted on all correspondence)

A COPY COMPLAINT IS ENCLOSED FROM THE PROCURATOR FISCAL .....

YOUR CASE WILL BE HEARD ON .....

IN THE SHERIFF COURT HOUSE at .....  
 ..... am ..... pm

PROCURATOR FISCAL DEPUTE .....

---

**WHAT MUST I DO?**

You must answer the complaint on or before the date the case is to be heard.

**HOW DO I ANSWER THE COMPLAINT?**

There are 3 methods:-

- (1) Attend Court personally.
- (2) Arrange for your lawyer or some other person to attend.
- (3) Write to the Court (REPLY FORM and envelope attached).

**WHAT WILL HAPPEN IF I DO NOTHING?**

A warrant may be issued for your arrest.

**WHAT ABOUT MY FINANCIAL CIRCUMSTANCES?**

YOU DO NOT HAVE TO GIVE ANY INFORMATION ABOUT THESE: but if you are pleading guilty and you wish the Court to consider your financial circumstances you should give as much information as you wish on the enclosed form (INFORMATION ABOUT YOUR MEANS).

**CAN I GET LEGAL AID?**

In certain circumstances Legal Aid is granted. If you want to know more apply to the clerk of court in the sheriff court where your case will be heard.

**NAME AND ADDRESS OF ACCUSED**

DATE OF BIRTH .....  
 Check that your name, address and date of birth are shown correctly.

**FORM 48FORM OF NOTICE OF PREVIOUS CONVICTIONS**

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

**NOTICE OF PREVIOUS CONVICTIONS APPLYING TO A.B.**

In the event of your being convicted of the charge(s) in the Complaint it is intended to place before the Court the following previous conviction(s) applying to you.

Date	Place of Trial	Court	Offence	Sentence

FORM 49FORM OF REPLY TO COMPLAINT

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 88

REPLY FORM PF REF .....  
COURT DATE .....  
AT SHERIFF COURT .....

PLEASE COMPLETE WHICHEVER SECTION APPLIES

1. PLEADING NOT GUILTY

I PLEAD NOT GUILTY. Please send me a note of the date of trial

Signed..... Date .....

PLEASE NOW RETURN THIS FORM IN THE ENVELOPE PROVIDED

2. PLEADING GUILTY

I PLEAD GUILTY TO THE CHARGE(S)

except.....

.....  
Signed..... Date .....

PLEASE CONTINUE TO COMPLETE THIS FORM

MOTORING OFFENCES

If you are pleading guilty to a motoring offence and if the Notice of Penalty for that offence shows that your licence could be endorsed:-

PLEASE SEND YOUR DRIVING LICENCE (BUT NOT YOUR HGV) WITH THIS FORM

NAME AND ADDRESS  
OF ACCUSED

PLEASE TURN OVER

DATE OF BIRTH .....

Check that your name, address and date of birth are shown correctly.

Please correct anything that is wrong.



**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

**ONLY COMPLETE THIS PAGE IF PLEADING GUILTY**

**PREVIOUS CONVICTIONS**

If previous convictions are attached to your complaint please tick the appropriate box.

I ADMIT THE PREVIOUS CONVICTIONS

I DO NOT ADMIT THE PREVIOUS CONVICTIONS

I ADMIT THE PREVIOUS CONVICTIONS EXCEPT THOSE LISTED BELOW

.....  
.....

**NOTE** If convictions are listed and you do not complete this section the Court will take it that you admit all of them.

\_\_\_\_\_

**CAN I SEND A WRITTEN EXPLANATION?**

**YES.** If you want to, use the space below and continue on a separate sheet if required.

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

**PLEASE CHECK YOU HAVE SIGNED THE FORM AT THE PROPER PLACE AND RETURN IT IN THE ENVELOPE PROVIDED.**

\_\_\_\_\_

**FOR OFFICIAL USE ONLY**

D.L.

Documents Returned

Other Documents

FORM 50MEANS FORM

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rule 88

**INFORMATION ABOUT YOUR MEANS**

PF REF .....

You are not required by law to return this form completed but it can help you and the court.

If you decide to plead guilty by letter please complete this and the reply form and send them to the court.

If you are found guilty and are fined the information you give here will help the court to set an amount which you can reasonably afford and to give you the time you need to pay.

If you decide to appear in court you may hand the form in when you appear.

The information you give on this form will not be used for any other purpose.

If the information you have given below changes a great deal between now and the court hearing you should tell the clerk of court—he will give you another form to fill in.

**PERSONAL DETAILS** (Please use **BLOCK CAPITALS** and tick the appropriate box where required).

1. Your full name .....
2. Your address .....
3. Are you      Married      Single      Separated      Divorced      Widowed
4. Are you the head of your household?      Yes      No
5. How many children under 16 do you support .....
6. Is there anyone else financially dependent on you?      Yes      No  
 (a) If YES what is their relationship to you .....

**YOUR JOB**

7. Are you      Employed      Unemployed      Self-employed      Other  
 (a) If OTHER please give details here .....
- (b) If EMPLOYED, please give your job here.....

**YOUR WEEKLY INCOME**

**YOUR WEEKLY EXPENSES**

You may not receive your money or pay your bills weekly. Even so please try to work out what the weekly figures would be.

	£		£
8. (a) Your usual weekly take-home pay including overtime. (If self-employed give your usual earnings)	_____	9. (a) Housing (rent, rates, mortgage) (If you pay board and lodgings give the amount)	_____
(b) Usual total take-home pay of other household earners	_____	(b) Fuel (electricity, coal, gas, etc.)	_____
(c) Total Social Security payments received in your household each week	_____	(c) Food	_____
(d) Total pensions received in your household each week	_____	(d) Travel	_____
Usual total WEEKLY household income	_____	(e) Weekly cost of supporting anyone else (see question 6)	_____
		(f) Other big weekly payments (such as Hire Purchase agreements or repayment of rent arrears)	_____
		Usual total WEEKLY expenses	_____

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

GENERAL DETAILS

- 10. If the court decides to fine you how much do you think you could afford to pay each week?  
£.....
- 11. Please give any further information about your finances which you would like the court to know here. (You can continue over the page if you need to).

SIGNATURE BOX

12. I declare that the information I have given in this form is true  
 Signed..... Date .....

FORM 51 PETITION TO TAKE PRECOGNITION ON OATH WHERE COMPLAINT SERVED

Rule 93

*Under the Criminal Justice (Scotland) Act 1980*

UNTO THE HONOURABLE THE SHERIFF OF.....  
 AT .....

PETITION  
 of  
 A.B.  
 designation, address or Prisoner in  
 the Prison of.....

HUMBLY SHEWETH:

- (1) That the petitioner has (along with C.D., E.F. and G.H.) been charged in your Lordship's Court/in the District Court at ..... on a summary complaint at the instance of the Procurator Fiscal with the offence of .....
- [(2) That the trial of the said A.B. is to take place in the said Court on ..... (date);]
- (3) That the petitioner believes that M.N. residing at ..... is a witness in relation to the said offence;
- (4) That (narrate all steps taken to obtain precognition from the witness and/or the circumstances justifying the taking of the precognition on oath);
- (5) That I am unable to complete my investigations on behalf of the petitioner without precognoscing the said M.N.

MAY IT THEREFORE please your Lordship:

- (1) to appoint intimation of this Petition to be made to the Procurator Fiscal;
- (2) to appoint parties to be heard thereupon on the earliest practicable date hereafter; and
- (3) thereafter, on being satisfied in terms of section 9 of the said Act, that it is reasonable to require such precognition on oath, to grant warrant to cite the said M.N. to attend for precognition on oath before your Lordship on the earliest practicable date thereafter or to do otherwise as your Lordship shall deem proper.

IN RESPECT WHEREOF

Solicitor for the said petitioner

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM 52 PETITION FOR ORDER TO HOLD IDENTIFICATION PARADE WHERE COMPLAINT SERVED

Rule 98

Under the Criminal Justice (Scotland) Act 1980

UNTO THE HONOURABLE THE SHERIFF OF.....

AT .....

PETITION

of

A.B.

designation, address or Prisoner in

the Prison of.....

HUMBLY SHEWETH:

- (1) That the petitioner has (along with C.D., E.F. and G.H.) been charged in your Lordship's Court/in the District Court at ..... on a summary complaint at the instance of the Procurator Fiscal with the offence of ..... ;
- [(2) That the trial of the said A.B. is to take place in the said Court on ..... (date);]
- (3) That an identification parade in which the petitioner was one of those constituting the parade has not been held;
- (4) That the petitioner has requested the prosecutor to hold such a parade but he has refused to hold, or has unreasonably delayed holding, the same;
- (5) That it is reasonable in the circumstances in relation to the alleged offence that such an identification parade should be held (specify circumstances).

MAY IT THEREFORE please your Lordship:

- (1) to appoint intimation of this Petition to be made to the Procurator Fiscal;
- (2) to appoint parties to be heard thereupon on the earliest practicable date hereafter; and
- (3) thereafter, upon being satisfied in terms of section 10(2) of the said Act, to order the prosecutor to hold an identification parade in which the petitioner shall be one of those constituting the parade, in relation to the offence referred to above with which the petitioner has been charged.

IN RESPECT WHEREOF

Solicitor for the said petitioner

FORM 53 PETITION FOR ALTERATION OF DIET IN SUMMARY PROCEEDINGS

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 99

*Under the Criminal Procedure (Scotland) Act 1975, as amended*

IN THE ..... COURT AT .....

PETITION  
of  
A.B.  
designation, address or Prisoner in  
the Prison of.....

HUMBLY SHEWETH:

- (1) That the petitioner has (along with C.D., E.F. and G.H.) been charged in the above Court on a summary complaint at the instance of the Procurator Fiscal with the offence of .....
- (2) That a diet in the proceedings has been fixed for ..... (date);
- (3) That (*narrate circumstances on which application is based*);
- (4) That the said A.B. has intimated to the said (C.D., E.F., G.H. and) Procurator Fiscal that he desires a postponement/an acceleration of the said trial diet;
- (5) That the Procurator Fiscal refuses and/or the said C.D., E.F. and G.H. refuse to make a joint application to the Court for that purpose.

The Petitioner therefore craves the Court:

- (1) to appoint intimation of this Petition to be made to the said (C.D., E.F., G.H. or) Procurator Fiscal;
- (2) to appoint parties to be heard thereupon; and
- (3) thereafter, in terms of section 314(6) of the said Act, to discharge the said diet and to fix in lieu thereof a later/earlier diet.

ACCORDING TO JUSTICE &c

Solicitor for the said petitioner

FORM 54NOTE OF APPEAL AGAINST EXTENSION OF 40 DAYS PERIOD

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 100

NOTE OF APPEAL

Under the Criminal Procedure (Scotland) Act 1975, Section 331A(2) and (3)

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

The Appeal of ..... presently prisoner in the Prison of .....

Appellant

HUMBLY SHEWETH:

- (1) That at the Sheriff/District Court ..... on .....(date) the Appellant (along with C.D., E.F. and G.H.) appeared on a Complaint at the instance of the Procurator Fiscal on charges of .....
- (2) That he pled not guilty and trial was fixed for ..... and the appellant was remanded in custody;
- (3) That an application in terms of section 331A(2) was presented to the Sheriff at ..... on .....(date) (in District Court cases add:- he having concurrent territorial jurisdiction with the Lay Justices/Stipendary Magistrate(s) of said District Court) and said application was heard before Sheriff ..... in said Sheriff Court on .....(date);
- (4) That Sheriff ..... extended the period of 40 days which would have expired on ..... (date) by ..... days;
- (5) That the grant of said extension is unreasonable in respect that (*here state shortly reasons for Appeal*).

ACCORDING TO JUSTICE &c

Solicitor for Appellant.

Date ..... 19....

FORM 55 PETITION FOR ISSUE OF LETTER OF REQUEST IN SUMMARY PROCEEDINGS IN SHERIFF COURT

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

*Under the Criminal Justice (Scotland) Act 1980*

UNTO THE HONOURABLE THE SHERIFF OF.....

AT .....

PETITION

of

A.B.

designation, address or Prisoner in

the Prison of .....

HUMBLY SHEWETH:

- (1) That the petitioner has been charged (along with C.D., E.F. and G.H.) in your Lordship's Court on a summary complaint at the instance of the Procurator Fiscal with the offence of .....
- (2) That the trial of the said A.B. is to take place in your Lordship's Court sitting at ..... on .....(date);
- (3) That M.N. residing at ..... in the country or territory of ..... is a witness whose evidence the said A.B. intends to adduce in the course of the said trial;
- (4) That the evidence to the effect specified in the Schedule attached hereto which it is averred that the said witness is able to give is necessary for the proper adjudication of the said trial;
- (5) That there would be no unfairness to the said (C.D., E.F., G.H. or) prosecutor if such evidence were to be received in the form of the record of an examination conducted by virtue of section 32(1) of the Criminal Justice (Scotland) Act 1980;
- (6) That Z..... is a court or tribunal exercising jurisdiction in the said country or territory of ..... being a country or territory outside the United Kingdom, Channel Islands or Isle of Man;
- (7) That English is (not) the official language or one of the official languages of the said country or territory.

MAY IT THEREFORE please your Lordship:

- (1) to appoint intimation of this Petition and Schedule to be made to the said (C.D., E.F., G.H. or) Procurator Fiscal;
- (2) to appoint parties to be heard thereupon on the earliest practicable date hereafter; and
- (3) thereafter, upon being duly satisfied in terms of section 32(2) of the said Act, to issue a letter of request to (state judge or tribunal within whose jurisdiction the witness is resident) to take the evidence of the said witness, and to do otherwise as to your Lordship shall seem proper.

IN RESPECT WHEREOF

Solicitor for the said petitioner

FORM 56PETITION FOR COMMISSION TO TAKE EVIDENCE IN SUMMARY PROCEEDINGS IN SHERIFF COURT

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 5

Under the Criminal Justice (Scotland) Act 1980

UNTO THE HONOURABLE THE SHERIFF OF.....

AT .....

PETITION

of

A.B.

designation, address or Prisoner in

the Prison of.....

HUMBLY SHEWETH:

- (1) That the petitioner has been charged (along with C.D., E.F. and G.H.) in your Lordship's Court on a summary complaint at the instance of the Procurator Fiscal with the offence of .....
- (2) That the trial of the said A.B. is to take place in your Lordship's Court sitting at ..... on ..... (date);
- (3) That M.N. residing at ..... within the United Kingdom, Channel Islands or Isle of Man is a witness whose evidence the said A.B. intends to adduce in the course of the said trial;
- (4) That the evidence to the effect specified in the Schedule attached hereto which it is averred that the said witness is able to give is necessary for the proper adjudication of the said trial;
- (5) That there would be no unfairness to the said (C.D., E.F., G.H. or) prosecutor if such evidence were to be received in the form of the record of an examination conducted by virtue of section 32(1) of the Criminal Justice (Scotland) Act 1980.

MAY IT THEREFORE please your Lordship:

- (1) to appoint intimation of this Petition and Schedule to be made to the said (C.D., E.F., G.H. or) Procurator Fiscal;
- (2) to appoint parties to be heard thereupon on the earliest practicable date hereafter; and
- (3) thereafter, upon being duly satisfied in terms of section 32(2) of the said Act, to appoint such person as your Lordship shall think fit to be a commissioner to take the evidence of the said witness and to report to your Lordship *quam primum*; and to do otherwise as to your Lordship shall seem proper.

IN RESPECT WHEREOF

Solicitor for the said petitioner

FORM 57CITATION TO APPEAR FOR ENQUIRY





**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 124

*Under the Criminal Procedure (Scotland) Act 1975, Section 398*

I, \_\_\_\_\_,  
Officer of Law, upon the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, did lawfully cite  
(name and designation as in the Citation)

to appear in person before the \_\_\_\_\_ Court  
at \_\_\_\_\_  
on \_\_\_\_\_ 19\_\_\_\_ at \_\_\_\_\_ .m. for an enquiry under Section 398 of the Criminal  
Procedure (Scotland) Act 1975. This I did by handing a copy of the citation to the said  
personally. (If served otherwise, state how)

Police Constable

FORM 59 EXECUTION OF CITATION BY POSTWARRANT TO APPREHEND FOR  
ENQUIRY RECORD OF PROCEEDINGS AT ENQUIRY





*Status:* This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

*Under the Criminal Procedure (Scotland) Act 1975, Section 403*

IN THE

COURT AT

(Name)

Date of birth:

was on 19 convicted of (offence)

and was sentenced to pay a fine of £ , said fine to be paid by 19 or by weekly instalments of £ , the first instalment to be paid on 19 ; and the said fine or the balance of the said fine as shown in the statement annexed hereto is still unpaid and

imprisonment has been fixed in the event of a future default in payment of the sum in question.

And as it appears that the said (name) is now residing at

a Transfer of Fine Order is hereby made in pursuance of Section 403 of the Criminal Procedure (Scotland) Act 1975, transferring to the Court of at and to the Clerk thereof with respect of the said fine all the functions referred to in said Section.

Date: 19 Judge

STATEMENT REFERRED TO

Fine	£
Instalment(s) paid to date of transfer	£
Balance due	£
In instalments of	£

Clerk of Court

FORM 63TRANSFER OF FINE ORDER (TO ENGLAND AND WALES AND NORTHERN IRELAND)

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rule 124

*Under the Criminal Procedure (Scotland) Act 1975, Section 403*

IN THE COURT AT

(Name)

Date of birth:

was on 19 convicted of (offence)

and was sentenced to pay a fine of £ , said fine to be paid by weekly instalments of £ , the first instalment to be paid on 19 ; and the said fine or the balance of the said fine as shown in the statement annexed hereto is still unpaid and

imprisonment has been fixed in the event of a future default in payment of the sum in question.

And as it appears that the said (name) is now residing at

a Transfer of Fine Order is hereby made in pursuance of Section 403 of the Criminal Procedure (Scotland) Act 1975, transferring to the

and to the Clerk thereof with respect of the said fine all the functions referred to in said Section.

Date: 19 Judge

STATEMENT REFERRED TO

Fine	£
Instalment(s) paid to date of transfer	£
Balance due	£
In instalments of	£

Clerk of Court

FORM 64 FURTHER TRANSFER OF FINE ORDER

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rule 124

*Under the Criminal Procedure (Scotland) Act 1975, Section 403*

IN THE COURT AT  
(or the Magistrates Court acting for the Petty Sessions Area of  
or in the District of )

(Name)

Date of birth:

was on 19 convicted of (offence)

and was sentenced to pay a fine of £ , said fine to be paid by weekly instalments of £ , the first instalment to be paid on 19 ; by virtue of a Transfer of Fine Order dated 19 , the function of the last mentioned Court and the Clerk thereof with respect to that sum are exerisable by this Court at and the Clerk thereof; and the said fine or the balance of the said fine as shown in the statement annexed hereto is still unpaid and

imprisonment has been fixed in the event of a future default in payment of the sum in question.

And as it appears that the said (name) is now residing at

outwith the jurisdiction of this Court, a further Transfer of Fine Order is hereby made in pursuance of Section 403 of the Criminal Procedure (Scotland) Act 1975, transferring to the

and to the Clerk thereof with respect of the said fine all the functions referred to in said Section.

Date: 19 Judge

STATEMENT REFERRED TO

Fine	£
Instalment(s) paid to date of transfer	£ _____
Balance due	£ _____
In instalments of	£

Clerk of Court

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 124

Under the Criminal Procedure (Scotland) Act 1975, Section 403

IN THE COURT AT

TO: (Name and designation)

On 19 , you were convicted by the Court at and were sentenced to pay a fine of £ , said fine to be paid by 19 ; the said fine has not been fully paid and

imprisonment has been fixed in the event of a future default in payment of the sum in question.

NOTICE IS HEREBY GIVEN TO YOU that in consequence of a Transfer of Fine Order made by the Court at on 19 , the enforcement of the said fine or balance thereof due by you as shown in the Statement annexed hereto, has become a matter for this Court.

Payment of the due by you should therefore be made within the time (or times) ordered, either by post or personally to me (Clerk of Court and address)

If you cannot pay forthwith (or by 19 ), you should at once make an application for further time to be granted. Such an application should be made either in person to this Court or by letter addressed to me stating fully why you are unable to pay the sum due.

Clerk of Court

NOTE: Any communication sent by post must be properly stamped. Cash should not be sent in an unregistered envelope.

STATEMENT REFERRED TO

Fine	£
Instalment(s) paid to date of transfer	£
Balance due	£
In instalments of	£

Clerk of Court

FORM 66DIRECTION OF COURT AS TO MONEY FOUND ON OFFENDER



**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 124

*Under the Criminal Procedure (Scotland) Act 1975, Section 395(2)*

The Court directed that the money found on the person of .....  
..... (name of offender) should not be applied to payment of the fine of £ ..... imposed  
upon him on ..... 19.....

Clerk of Court

FORM 67ORDER OF DETENTION IN PRECINCTS OF COURT

Rule 124

*Under the Criminal Procedure (Scotland) Act 1975, Section 424*

The Court ordered the accused to be detained within the precincts of the Court (or police station)  
until (state time) of this day.

Clerk of Court

FORM 68ORDER FOR DETENTION IN POLICE CUSTODY NOT EXCEEDING FOUR DAYS,  
INSTEAD OF IMPRISONMENT

Rule 124

*Under the Criminal Procedure (Scotland) Act 1975, Section 425*

The Court ordered the accused to be detained in the custody of the Police, at (place)  
for the space of (time).

Clerk of Court

FORM 69ORDER FOR EXTENSION OF TIME FOR PAYMENT OF FINE

Rule 124

*Under the Criminal Procedure (Scotland) Act 1975, Section 396(7) and 397*

The Court having considered the application of the accused for extension of time for payment of the  
foregoing fine allowed payment to be made within ..... days from this date.

Clerk of Court

FORM 70MINUTE ABANDONING APPEAL

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rule 127 (Sections 422A(2) and 449)

SHERIFF COURT/DISTRICT COURT, .....

UNDER THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1975

SECTION 442A(2)/449

MINUTE OF ABANDONMENT  
IN THE  
APPEAL BY STATED CASE

A.B., APPELLANT v THE PROCURATOR FISCAL, RESPONDENT

*(delete  
where not  
applicable)*

The said A.B. abandons his appeal as from this date against:

- (a) conviction;
- (b) conviction and sentence;
- (c) conviction but proceeds with his appeal against sentence on the following ground:-  
*(here specify)*

Intimation of the foregoing abandonment has been made to the Respondent.

*(Signed)* A.B.

[or C.D.]

Solicitor for the said A.B.]  
*(address and telephone number)*

*(Place and Date)*

FORM 71 APPLICATION FOR STATED CASE

SHERIFF COURT/DISTRICT COURT, .....

UNDER THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1975

APPLICATION FOR STATED CASE

PROCURATOR FISCAL v A.B.

- (1) The said \*A.B./Procurator Fiscal craves the Court to state a case for the Opinion of the High Court of Justiciary in the above proceedings in which the date of final determination was (date).
- (2) The matters which it is desired to bring under review are:- (here specify)
  - (a)
  - (b)
  - (c)
  - (d)
- \*(3) The appeal is also against sentence.
- \*(4) The said A.B. also craves the Court to (here insert any application for bail, for interim suspension of an order for disqualification imposed under the Road Traffic Acts, or for any other interim order in terms of Section 446(1) of the Criminal Procedure (Scotland) Act 1975)

(Signed) \*A.B./Procurator Fiscal

[or C.D.]

Solicitor for the said A.B.]  
(address and telephone number)

(Place and Date)

\*Delete as appropriate

FORM 72STATED CASE

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 127

IN THE COURT AT

Case for the Opinion of the High Court of Justiciary at Edinburgh *in causa*

Appellant v

Respondent

This is a cause (*here state concisely and without argument the nature of the cause and the facts if any admitted or proved in evidence, any objections to the admission or rejection of evidence taken in the proof, the grounds of the decision, and any other matters necessary to be stated for the information of the superior court*)

The question submitted for the opinion of the Court is:– (*Here state the question or questions seriatim, for the opinion of the Court*)

This case is stated by me (or us)

(*Signature of the Judge(s)*)

(*Append any additional material required by Section 448(2D) of the Criminal Procedure (Scotland) Act 1975*)

(*Initials of the Judge(s)*)

FORM 73MINUTES OF PROCEDURE IN APPEAL BY STATED CASE

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

MINUTES OF PROCEDURE IN APPEAL BY STATED CASE

- (Date) Application for stated case lodged  
Clerk of Court
- (Date) (Name of Judge) The Court Refused Bail/Granted Bail conform to separate order attached  
Clerk of Court
- (Date) (Name of Judge) The Court *ad interim* Suspended the order for disqualification in terms of Section 94(3) of the Road Traffic Act 1972  
Clerk of Court
- (Date) Draft stated case issued to appellant('s solicitor) and duplicate thereof issued to respondent('s solicitor). Last date for receipt of adjustments is (date)  
Clerk of Court
- (Date) Adjustments for received  
Clerk of Court
- (Date) Adjustments for received  
Clerk of Court
- (Date) Intimation by that no adjustments proposed  
Clerk of Court
- (Date) Intimation by that no adjustments proposed  
Clerk of Court
- (Date) Appeal deemed to be abandoned in terms of Section 448(2) of the Criminal Procedure (Scotland) Act 1975, and so intimated to appellant('s solicitor) and to respondent('s solicitor)  
Clerk of Court
- (Date) Hearing on adjustments and any intended alteration to the draft case to be held on (date and time). Appellant('s solicitor) and Respondent('s solicitor) informed  
Clerk of Court
- (Place and date) Name(s) of Judge(s)
- Appeared
- Parties heard on the adjustments and on intended alterations to the draft case
- Case adjusted
- The following adjustments rejected by Judge:- (here specify)
- The following alteration proposed by Judge not accepted by:- (here specify)
- Clerk of Court
- (Date) Case signed and sent to Appellant('s solicitor) and duplicate sent to Respondent('s solicitor). Complaint, proceedings and all relevant documents transmitted to Clerk of Justiciary

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM 74MINUTES OF PROCEDURE IN NOTE OF APPEAL (SECTION 453B)

Rule 127

- (Date) Note of Appeal lodged  
Clerk of Court
- Eodie Copy Note of Appeal sent to Procurator Fiscal  
Clerk of Court
- Eodie Copies of Note of Appeal. Complaint, Minutes of proceedings and relevant documents to (name of Judge) for report. Proceedings to be sent to Clerk of Justiciary no later than (date)  
Clerk of Court
- (Date) (Name of Judge) The Court Refused Bail/Granted Bail conform to separate order attached  
Clerk of Court
- (Date) (Name of Judge) The Court ad interim Suspended the order for disqualification in terms of Section 94(3) of the Road Traffic Act 1972  
Clerk of Court
- (Date) Report Received  
Clerk of Court
- (Date) Copy report sent to A.B. (or C.D.) and Procurator Fiscal  
Clerk of Court
- Eodie Note of Appeal, Report and certified copy of the complaint minutes of proceedings and relevant documents sent to Clerk of Justiciary  
Clerk of Court

FORM 75EXTENSION OF PERIOD BY SHERIFF PRINCIPAL

Rule 127

Under the Criminal Procedure (Scotland) Act 1975

SHERIFF COURT/DISTRICT COURT, .....

PROCURATOR FISCAL v A.B.

(Place and date), I  
of the Sheriffdom of  
by virtue of the powers vested in me by Section 451(2)/453B(4) of the said Act, and in respect that (name of Judge) is temporarily absent from duty, extend the period specified, in Section 447(1)/448(2A)/448(2D)/453B(4) of the said Act so that it will now expire on (date).

(or as the case may be)

Sheriff Principal

Signed .....

FORM 76NOTE OF APPEAL AGAINST SENTENCE

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 127

*Under the Criminal Procedure (Scotland) Act 1975, Section 453B*

SHERIFF COURT/DISTRICT COURT, .....

NOTE OF APPEAL  
against sentence  
by  
A.B. presently prisoner  
in the Prison of

(or now residing at )

APPELLANT  
against  
the Procurator Fiscal  
RESPONDENT

- (1) The said A.B. appeals to the High Court of Justiciary against the sentence of passed in the above Court on (date)
- (2) The ground of appeal is:- (*here specify*)
- (3) The said A.B. also craves the Court to (*here insert any application for bail, for interim suspension of an order for disqualification imposed under the Road Traffic Acts, or for any other interim order in terms of Section 446(1) of the Criminal Procedure (Scotland) Act 1975*).

(Signed) A.B.

(or C.D.

Solicitor for the said A.B.)  
(*address and telephone number*)

(Place and Date)

FORM 77MINUTE OF ABANDONMENT OF APPEAL AGAINST SENTENCE

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 127

*Under the Criminal Procedure (Scotland) Act 1975, Section 453B(7)*

Name of Appellant

Date of birth

Prisoner in the Prison of

Crime or offence to which appeal relates

Sheriff/District Court at

Sentence

The above named Appellant having lodged a Note of Appeal in terms of Section 442(1)(a)(ii) of said Act abandons as from this date said appeal against sentence.

Intimation of the foregoing abandonment has been made to the Respondent.

(Signed) A.B.

(or C.D.

Solicitor for the said A.B.)

(Place and Date)

FORM 78



To: Sheriff Clerk/Clerk to the District Court  
at

**NOTE OF APPEAL**

under  
the Criminal Procedure (Scotland) Act 1975,  
Section 334,  
by  
A.B.  
residing at  
(or presently a prisoner in the Prison  
of )  
APPELLANT  
against  
the Procurator Fiscal  
RESPONDENT

Date of Decision appealed against:

Date of Trial:

The said Appellant appeals to the High Court of Justiciary in respect that

- (1) *(State whether objection taken to competency or relevancy of the Complaint or the Proceedings and specify the terms of said objection)*
- (2) *(State the decision which it is desired to bring under review by the High Court)*
- (3) *(State the grounds of appeal)*

*(Signed)* A.B.

(or C.D.)

Solicitor for the said A.B.)  
*(address and telephone number)*

*(Place and Date)*

FORM 79MINUTE OF ABANDONMENT OF APPEAL

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rule 128(11)

To: Clerk of Justiciary

Minute of Abandonment  
of  
Appeal under Criminal Procedure  
(Scotland) Act 1975, Section  
334(2A)

Name of Appellant .....

Name of Respondent .....

Date of Decision appealed against.....

Date of Appeal Hearing .....

The above named Appellant abandons the said Appeal

(Signed) \* A.B./Procurator Fiscal

(or C.D.

Solicitor for the said A.B.)  
(address and telephone number)

(Place and Date)

\* Delete as appropriate

FORM 80



Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM 81ENDORSEMENT OF WARRANT OF ARREST

Rule 149(1)

(Backing of Warrants (R. of I.) Act 1965, Section 1(1))

I, (name), one of Her Majesty's Justices of the Peace in and for the Commission area of (or as the case may be), being satisfied that this warrant may be endorsed under Section 1 of the Backing of Warrants (Republic of Ireland) Act 1965, hereby authorise (name), who brings me this warrant, and all other constables in Scotland to execute the same and to bring him as soon as practicable before a sheriff court.

Given under my hand this day of Nineteen hundred and

(Signed) Justice of the Peace for the county aforesaid (or as the case may be)

FORM 82PROVISIONAL WARRANT OF ARREST

Rule 149(2)

(Backing of Warrants (R. of I.) Act 1965, Section 4(1))

Whereas a constable (name), has stated to me on oath that he has reason to believe that a warrant has been issued by a judicial authority in the Republic of Ireland for the arrest of (name) (hereinafter called the accused) who is accused (or has been convicted) of an indictable offence against the laws of the Republic but that the warrant is not yet in his possession; and that he has received a request made on grounds of urgency by a member of the police force of the Republic holding the rank of inspector or above for the issue in the United Kingdom of a warrant for the arrest of the accused; and that he has reason to believe that the accused is within the county of ; [and that he has reason to believe the requirements of section 1(3) of the Backing of Warrants (Republic of Ireland) Act 1965 are satisfied] (words in square brackets to be omitted when a provisional warrant is issued for the arrest of a person not yet convicted).

Therefore, I, (name), one of Her Majesty's Justices of the Peace in and for the County of (or as the case may be), hereby grant warrant to and authorise all constables in Scotland to apprehend the accused within five days after issue of this warrant and to bring him as soon as practicable before a sheriff court.

Given under my hand this day of Nineteen hundred and

(Signed) Justice of the Peace for the county aforesaid (or as the case may be)

Note. This warrant is not authority for the making of an arrest more than five days after its issue.

FORM 83CONSENT TO EARLIER RETURN

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 150(1)

(Backing of Warrants (R. of I.) Act 1965, Section 3(1)(a)).

Whereas on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, the Sheriff of \_\_\_\_\_ sitting at \_\_\_\_\_ ordered that I, \_\_\_\_\_ (*name*), should be delivered into the custody of a member of the police force of the Republic of Ireland;

And whereas I understand that, unless I consent to an earlier removal, I cannot be so delivered until the expiration of the period of fifteen days beginning with the date on which the order was made;

Now, therefore, I give notice that I consent to my removal before the said period of fifteen days has expired.

(*Signed*)  
This form was signed by the above-named person in my presence on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

(*Signed*)  
Justice of the Peace for \_\_\_\_\_ (*or as the case may be*)

FORM 84FORM OF APPLICATION UNDER SECTION 49 OF CIVIC GOVERNMENT (SCOTLAND) ACT 1982

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rule 153(1)

IN THE DISTRICT COURT OF

APPLICATION  
under  
The Civic Government (Scotland) Act 1982,  
Section 49(2) and (3)  
I.C.

A.B. *(name and design)*  
Complainer

against

C.D. *(name and design)*  
Respondent

Humbly Sheweth:

- (1) That A.B. is resident at *(specify address)*
- (2) That C.D. occupies premises at *(specify address or place)* being in the vicinity of *(specify A.B.'s address)*
- (3) That at said premises C.D. keeps *(here identify the creature and describe the circumstances in which said creature is kept)*
- (4) *(Here describe in detail the circumstances in which it is alleged said creature is causing annoyance)*

May it therefore please the Court to order service of a copy of this application upon the said C.D.; to fix a date for the hearing of this application no earlier than 14 days after such service and thereafter to make an Order upon the said C.D. to take within such period as may be specified in the Order such steps (short of destruction of the creature) as may be so specified to prevent the continuance of the annoyance.

*(Signed)*  
*(complainer, or his solicitor, name, address, Tel. No.)*

PART III

FORMS REFERRED TO IN CHAPTER 3 (ADMINISTRATION)  
FORM 85BOOKS OF ADJOURNALSUMMARY OF PROCEEDINGS AT TRIAL

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rule 158(1)

	CASE
1. Place and Date, 2. Judge, 3. Procurator for Crown, 4. Do. for Panel, 5. Relevancy, 6. Plea, 7. Jury per List, 8. Crown Witnesses, per List, 9. Panel's Witnesses, per List, 10. Verdict, 11. Sentence, 12. Previous convictions, 13. Legal aid, 14. Other facts of importance,	

FORM 86BOOKS OF ADJOURNALSUMMARY OF PROCEEDINGS AT TRIAL

Rule 158(1)

	CASE
1. Date of Final Interlocutor, 2. Judge(s) 3. Counsel for Petitioner(s) 4. Counsel for Respondent(s) 5. Import of Petition 6. Final Interlocutor	

FORM 87TRANSMISSION OF RECORDS OF HIGH COURT

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rule 160

(1) <i>Nature of Record</i>	(2) <i>Period of Transmission</i>
1. Books of Adjournal	1800–1920
2. Circuit Books of Adjournal	1890–1920
3. High Court Minute Books	1799–1920
4. Circuit Minute Books	
North	1800–1920
South	1800–1885
West	1800–1920
Glasgow Second Court	1850–1920
5. Circuit Indictments	1821–1836
6. Remissions of Sentence	1894–1920
7. Appeals Registers	1864–1920
8. Miscellaneous Registers	19th Century
9. Small Papers (Edinburgh and Circuit)	1800–1920
10. Bills of Suspension and relevant processes	1800–1920
11. Stated cases and relevant processes	1908–1920
12. Papers Under Criminal Appeal (Scotland) Act 1926	No transmission meantime
13. Petitions for Liberation	1800–1840
14. Correspondence	1800–1830
15. Miscellaneous Papers	16th–19th Century
16. Transcripts of Evidence	No transmission meantime
17. Bills for Criminal Letters and Papers relative thereto	No transmission meantime

## SCHEDULE 2

Rule 168

## REVOCATIONS

<i>Title</i>	<i>Date or Number</i>
Regulating the form of process in criminal causes before the Sheriff and Burgh Courts	17 March 1827
Regulating form and content of Circuit Books of Adjournal	13 May 1890
Relative to remission of sentence	31 October 1907
Relative to the Criminal Appeal (Scotland) Act 1926	<a href="#">S. R. &amp; O. 1926/1373</a>
(Death Sentence)	<a href="#">S.I.1950/909</a>
(Summary Procedure)	<a href="#">S.I. 1964/249</a>



<i>Title</i>	<i>Date or Number</i>
(Backing of Warrants) (Republic of Ireland)	S.I. 1965/1947
(Probation Orders)	S.I. 1969/1597
(Summary Proceedings) (Children)	S.I. 1971/446
(Records of High Court of Justiciary)	S.I. 1972/227
(Fees in the Inferior Courts)	S.I. 1972/308
(References to the European Court)	S.I. 1973/450
(Alteration of Fees in the Inferior Courts)	S.I. 1973/672
(Suspension of Disqualification from Driving pending Appeal)	S.I. 1975/473
(Summary Procedure)	S.I. 1975/837
(Form of Oaths)	S.I. 1976/172
(Sentencing Powers etc.)	S.I. 1978/123
(Reference to European Court) (Amendment)	S.I. 1978/125
(Sentencing Powers etc) (Amendment)	S.I. 1978/491
(Forms of Complaint)	S.I. 1978/834
(Proof of Service outside Scotland)	S.I. 1980/425
(Edinburgh Book of Adjournal)	S.I. 1980/1929
(Procedures under Criminal Justice (Scotland) Act No. 1)	S.I. 1981/22
(Procedures under Criminal Justice (Scotland) Act No. 2)	S.I. 1981/386
(Form of Extract of Sentence)	S.I. 1981/1151
(Procedures under Criminal Justice (Scotland) Act No. 3)	S.I. 1981/1766
(Procedures under Criminal Justice (Scotland) Act No. 4)	S.I. 1981/1786
(Notices of Special Defences etc.)	S.I. 1984/19
(Fees in the Inferior Courts)	S.I. 1984/232
(Notice of Abandonment of Matter before Preliminary Diet)	S.I. 1984/820
(Applications to District Court under s.49 of Civic Government (Scotland) Act 1982)	S.I. 1984/1955
(Forms of Complaint) (Amendment)	S.I. 1985/43
(Interim Hospital Orders)	S.I. 1985/316
(Applications to alter address in Bail Orders)	S.I. 1985/1565
(Summary Procedure) (Amendment)	S.I. 1986/1191

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<i>Title</i>	<i>Date or Number</i>
(Summary Procedure) (Intimation of Diets)	S.I. 1986/1686
(Drug Trafficking)	S.I. 1986/2184
(Criminal Legal Aid Rules)	S.I. 1987/430
(Service of Documents on Accused Persons)	S.I. 1987/1328

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### **EXPLANATORY NOTE**

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

This Act of Adjournal re-enacts with minor amendments the provisions of the Acts of Adjournal revoked by rule 168 and Schedule 2 so far as not already revoked, except those relative to fees in inferior Courts which are revoked as unnecessary.