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STATUTORY INSTRUMENTS

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**1988 No. 110**

**Act of Adjournal (Consolidation) 1988**

**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)(1) 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.

### *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)(2) 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).

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

(2) Section 331A was inserted by the 1980 Act, section 14(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(3) 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.

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(3) 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.

(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(4) 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.

(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—

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

- (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(5).

### **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)(6)	Minute abandoning appeal against conviction only	70
444(7)	Application for a stated case	71
447(2)(8)	Stated case	72
449(9)	Minute abandoning stated case	70
450(10)	Minutes of procedure in appeal by stated case	73
453B(11)	Minutes of procedure in note of appeal	74
451(2)(12)	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

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

(7) 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.

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

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

(10) Section 450 was amended by the 1980 Act, Schedule 3, paragraph 9, and by S.I.1981/386

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

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

(1) <i>No. of Section</i>	(2) <i>Content</i>	(3) <i>No. of Form</i>
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)(13) 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.

(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.

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

### **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(14) 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—

- (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(15), 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.

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

(15) Section 442 was substituted by the 1980 Act, Schedule 3, paragraph 1.

(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)(16) (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.

#### **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.

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



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<sup>(17)</sup>;

“the Act of 1968” means the Social Work (Scotland) Act 1968<sup>(18)</sup>;

“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.

**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

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(17) 1937 c. 37

(18) 1968 c. 49

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(19);

“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(20) (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<sup>(21)</sup> shall be made by way of petition; and section 310<sup>(22)</sup> (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.

**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.

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(21) 1986 c. 32

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