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STATUTORY INSTRUMENTS

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**1996 No. 513 (S.47)**

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

**Act of Adjournal (Criminal Procedure Rules) 1996**

*Made* - - - - *29th February 1996*  
*Coming into force* - - - *1st April 1996*

The Lord Justice General, Lord Justice-Clerk and Lords Commissioners of Justiciary under and by virtue of the powers conferred on them by section 305 of the Criminal Procedure (Scotland) Act 1995<sup>(1)</sup>, the provisions specified in Schedule 1 to this Act of Adjournal and of all other powers enabling them in that behalf, do hereby enact and declare:

**Citation and commencement**

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules) 1996 and shall come into force on 1st April 1996.

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

**Criminal Procedure Rules**

2. Schedule 2 to this Act of Adjournal shall have effect for the purpose of providing new rules of procedure in the High Court of Justiciary, in the sheriff court in exercise of its criminal jurisdiction, and in the district court.

**Revocations**

3. The Acts of Adjournal mentioned in Schedule 3 to this Act of Adjournal are revoked to the extent specified in the third column of that Schedule.

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**Status:** *This is the original version (as it was originally made). UK  
Statutory Instruments are not carried in their revised form on this site.*

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Edinburgh,  
29th February 1996

*Hope of Craighead*  
Lord Justice General, I.P.D.

## SCHEDULE 1

Preamble

## POWERS UNDER AND BY VIRTUE OF WHICH THIS ACT OF ADJOURNAL IS MADE

Column 1 <i>Relevant enactment conferring power</i>	Column 2 <i>Relevant amending enactment</i>	Column 3 <i>Relevant provision in Schedule 2</i>
Section 1 of the Public Records (Scotland) Act 1937 (c. 43)		Rule 3.6
Section 2A(3) of the Backing of Warrants (Republic of Ireland) Act 1965 (c. 45)	Inserted by paragraph 5 of Schedule 1 to the Criminal Justice Act 1988 (c. 33) and continued by section 37(5) of the Extradition Act 1989 (c. 33)	Rule 30.3(2) and (6)
Section 8 of the Backing of Warrants (Republic of Ireland) Act 1965	Amended by paragraph 5 of Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40)	Chapter 30
Section 38 of the Legal Aid (Scotland) Act 1986 (c. 47)		Chapter 33
Section 90(4) of the Debtors (Scotland) Act 1987 (c. 18)		Rule 20.8(2)
Section 10(3) of the Extradition Act 1989 (c. 33)		Rule 34.2(2) to (8)
Section 14(3) of, and paragraph 9(3) of Schedule 1 to, the Extradition Act 1989		Rule 34.5
Section 8(5) of the Computer Misuse Act 1990 (c. 18)		Rule 35.1
Section 10 of the Criminal Justice (International Co-operation) Act 1990 (c. 5)		Chapter 36
Section 19(2) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9)		Rule 15.2(6)
Section 18(7) of the Proceeds of Crime (Scotland) Act 1995 (c. 43)		Rule 37.2

SCHEDULE 2

Paragraph 2

CRIMINAL PROCEDURE RULES 1996

*PART I*

*Preliminary and administration*

**CHAPTER 1**

**CITATION, INTERPRETATION AND FORMS**

**Citation of these Rules**

**1.1.** These Rules may be cited as the Criminal Procedure Rules 1996.

**Interpretation**

**1.2.—(1)** In these Rules, unless the context otherwise requires—

“the Act of 1995” means the Criminal Procedure (Scotland) Act 1995(2);

“counsel” means a practising member of the Faculty of Advocates or a solicitor having a right of audience before the High Court by virtue of section 25A of the Solicitors (Scotland) Act 1980(3);

(2) Unless the context otherwise requires, a reference to a specified Chapter, Part, rule or form is a reference to the Chapter, Part, rule, or form in the appendix to these Rules, so specified in these Rules; and a reference to a specified paragraph, sub-paragraph or head is a reference to that paragraph of the rule or form, that sub-paragraph of the paragraph or that head of the sub-paragraph, in which the reference occurs.

**Forms**

**1.3.** Where there is a reference to the use of a form in these Rules, that form in the appendix to these Rules, or a form substantially to the same effect, shall be used with such variation as circumstances may require.

**CHAPTER 2**

**SERVICE OF DOCUMENTS**

**Service on Crown**

**2.1.** Any document that requires to be sent to or served on the Lord Advocate or the prosecutor under any enactment or rule of law shall be sent to or served on, as the case may be—

- (a) if it relates to a case set down for trial in the High Court, the Crown Agent;
- (b) if it relates to a case set down for trial in the sheriff court or district court, the appropriate procurator fiscal.

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(2) 1995 c. 46.

(3) 1980 c. 46; section 25A was inserted by section 24 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) and amended by paragraph 31 of Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40).

### **Citation in solemn proceedings**

**2.2.**—(1) Subject to rule 2.4 (service on witnesses), this rule applies to the citation of, and service on, an accused under section 66 of the Act of 1995 (service and lodging of indictment, etc).

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

- (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 the 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.

(3) In this rule, “proper domicile of citation” means the address at which the accused may be cited to appear at any diet relating to the offence with which he is charged or an offence charged in the same proceedings as that offence or to which any other intimation or document may be sent.

### **General provisions for service**

**2.3.**—(1) Subject to the following paragraphs of this rule, the citation of, or the service of any document on, a person under or by virtue of the Act of 1995, these Rules or any other enactment shall, unless otherwise provided in the relevant enactment, be effected in the same manner, with the necessary modifications, as the citation of an accused in summary proceedings under section 141 of that Act (manner of citation) or under rule 2.2 of these Rules (citation in solemn proceedings).

(2) The citation of a probationer to appear before a court following a conviction on indictment under section 232 (probation orders: failure to comply with requirement), or section 233 (probation orders: commission of further offence), of the Act of 1995 shall be effected on the probationer in the same manner, with the necessary modifications, as the citation of an accused under rule 2.2 or by post.

(3) The citation in Form 29.3 of a person to attend a diet fixed for taking his precognition on oath under section 291 of the Act of 1995 (precognition on oath of defence witnesses) shall be made by personal service on him by an officer of law acting on the instructions of the accused or his solicitor.

### **Service on witnesses**

**2.4.**—(1) Service of a citation by the prosecution or defence on a witness in any proceedings may, in the first instance, be by post.

(2) Where citation of a witness has been attempted by post but has not been effected, or the witness has not returned Form 8.2-D or Form 16.6-B, as the case may be, within the period prescribed in rule 8.2(3) or 16.6(1), as the case may be, citation of that witness shall be effected by an officer of law delivering the document to the witness personally.

### **Service by post**

**2.5.**—(1) Subject to any provision in the Act of 1995, service by post shall be by registered post, ordinary first class post or the first class recorded delivery service.

(2) Where the citation of, or service on, any person is effected by post under these Rules, the date of citation shall be deemed to be the day after the date of posting.

### **Forms of execution of service**

**2.6.**—(1) The execution of service of a citation and notice to appear of a person accused on indictment referred to in rule 8.2(1) (citation of accused and witnesses) shall be in Form 2.6-A.

(2) The execution of service of a complaint on an accused shall be in Form 2.6-B.

(3) The execution of personal service of a citation of a witness cited to appear at a trial on indictment shall be in Form 2.6-C.

(4) The execution of personal service of a citation of a witness cited to appear at a trial on summary complaint shall be in Form 2.6-D.

(5) The execution of a citation of a probationer under section 232(1) (failure to comply with requirement of probation order), or section 233(1) (commission of further offence while on probation), of the Act of 1995 shall be in Form 2.6-E.

(6) The execution of a citation or service under rule 2.3(1) (general provisions for service) shall, with the necessary modifications, be in Form 2.6-F.

### **Proof of service furth of Scotland**

**2.7.** Where any citation of an accused is served in England, Wales or Northern Ireland by an officer effecting such service in accordance with section 39(3) of the Criminal Law Act 1977<sup>(4)</sup> (citation of person charged with crime or offence to appear before a court in Scotland), the evidence of—

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

shall be sufficient evidence of that service.

## **CHAPTER 3 COURT RECORDS**

### **Books of Adjournal**

**3.1.**—(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 Form 3.1-A;
  - (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 Form 3.1-B.

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

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(4) 1977 c. 45; section 39(3) was amended by paragraph 79 of Schedule 7 to the Criminal Justice (Scotland) Act 1980 (c. 62).

(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 minuting in solemn proceedings**

**3.2.** 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.

#### **Interlocutors in High Court to be signed by clerk of court**

**3.3.** In the High Court, an interlocutor shall be distinctly minuted or entered in the record, and that entry shall be signed by the clerk of court.

#### **Record copies of indictments etc. to be inserted in record books**

**3.4.—(1)** The record copies of indictments brought before the High Court, and the record copies of all printed proceedings in that court, shall be inserted in the books of adjournal, either at their proper place in the body of such books, or at the end of the volume in which the relative procedure is recorded (in which case they shall be distinctly referred to as so appended); and the books of adjournal so made up and completed shall be and be taken to be and be used as the books of adjournal of that court.

(2) Where an indictment in solemn proceedings in a sheriff court is either wholly or partly printed, a copy of it, either wholly or partly printed, shall be inserted in the record book of court, either in its proper place in the body of that book or at the end of the volume in which the relative procedure is recorded (in which case it shall be distinctly referred to as so appended).

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

**3.5.** 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**

**3.6.—(1)** Subject to the following provisions of this rule, the records of the High Court shall, after the Keeper of the Records of Scotland and the Clerk of Justiciary have consulted as to what records or parts of them 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 of the Records of Scotland under arrangements to be agreed between him and the Clerk of Justiciary.

(2) The Clerk of Justiciary and the Keeper of the Records of Scotland shall arrange for such transmissions at intervals of not less than five years nor more than 10 years from the date of the immediately preceding transmission and after similar consultation, for such periods as may be deemed by them to be appropriate.

(3) The Lord Justice General or Lord Justice-Clerk may make a direction from time to time in relation to the retention, disposal, transmission or destruction by the Clerk of Justiciary of any document or category of document in the records of the High Court.

## *PART II*

### *General*

#### **CHAPTER 4**

#### **BAIL**

##### **Application to alter address in bail order**

**4.1.**—(1) An application under section 25(2) of the Act of 1995 (alteration of 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; and
  - (iii) reasons for the proposed change of address; and
- (b) be served on—
  - (i) the clerk of the court which made the order; and
  - (ii) the prosecutor.

(2) The prosecutor shall, within seven 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.

(3) 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.

(4) 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.

(5) The clerk of court shall give notice in writing of the decision of the court on an application referred to in paragraph (1) to—

- (a) the applicant;
- (b) the prosecutor; and
- (c) any co-accused.

#### **CHAPTER 5**

#### **JUDICIAL EXAMINATION**

##### **Procedure in examination**

**5.1.** Subject to the following provisions of this Chapter, the procedure to be followed in relation to examination of the accused under sections 35 to 39 of the Act of 1995 (which relate to judicial examination) on any charge shall be in accordance with existing law and practice.

##### **Record of examination**

**5.2.**—(1) The record of all proceedings under the sections of the Act of 1995 mentioned in rule 5.1 (procedure in examination) shall be kept by the sheriff clerk in Form 5.2, and shall be kept by him 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 under section 34 of the Act of 1995 (petition for warrant) 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; and
- (b) in relation to any further examination, on the conclusion of that examination.

### **Verbatim record**

**5.3.**—(1) Where the prosecutor provides a shorthand writer for the purposes of section 37(1) of the Act of 1995 (verbatim record of proceedings), the shorthand writer shall be—

- (a) a person recognised by a court as a shorthand writer for the purposes of section 93 of the Act of 1995 (record of trial) or rule 29.18 of Schedule 1 to the Sheriff Courts (Scotland) Act 1907<sup>(5)</sup> (recording of evidence); or
- (b) a person, other than a person mentioned in sub-paragraph (a) of this paragraph, who is skilled in the writing of shorthand (whether or not in the service of the prosecutor).

(2) In proceedings where a verbatim record is made by a person mentioned in paragraph (1)(b), a tape-recorded record of the proceedings shall also be made by the sheriff clerk in accordance with rule 5.4(1) and (2)(use of tape recorders).

(3) The name and address of the shorthand writer or the person recording the questions, answers and declarations by mechanical means shall be recorded in the record of proceedings.

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

- (a) the emitting by the accused of a declaration under section 35(4) of the Act of 1995; and
- (b) any questions the accused is asked and any answers given including his declining to answer, under section 35(5) (accused brought before sheriff for further examination), or section 36 (judicial examination: questioning by prosecutor), of the Act of 1995.

(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 first diet or, as the case may be, preliminary diet, or the High Court of Justiciary on an appeal, may direct for the purposes of considering an application under section 278(2) of the Act of 1995 (application that record of judicial examination not be read or be held inadmissible).

(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 37(4)(b) of the Act of 1995.

### **Use of tape recorders**

**5.4.**—(1) Any tape-recorded record of the proceedings made under rule 5.3(2), shall be made on two separate tapes simultaneously which shall be marked (and in this rule referred to as) “tape A” and “tape B” respectively.

(2) The sheriff clerk shall record on both tapes any proceedings mentioned in rule 5.3(5) (questions disallowed by sheriff), 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.

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(5) [1907 c. 51](#); Schedule 1 was substituted by S.I. [1993/1956](#).

- (4) On the conclusion of the proceedings in question, the sheriff clerk shall—
- (a) 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; and
    - (vi) the time and date of sealing of the tape; and
  - (b) deliver tape B to the prosecutor.
- (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 of tape A 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)(a) 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—
- (a) a decision by the prosecutor to take no further action against the accused in respect of the charge in question;
  - (b) following conviction and sentence of the accused in respect of the charge in question, the expiry of any statutory period of appeal without an appeal being taken; and
  - (c) the final disposal of any appeal which has been taken.

### **Questions by prosecutor**

**5.5.**—(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 36(3) of the Act of 1995 (confession in the hearing of constable) 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 provided with the written record required under paragraph (1), 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 36(1) of the Act of 1995 (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 36(8) of the Act of 1995 (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 a certified copy of the petition need not be included in any list of productions made available 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 the presiding judge with the petition or certified copy of the petition referred to in paragraph (5).

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

**5.6.**—(1) A notice served under section 38(1)(a) of the Act of 1995 (notice of error or incompleteness in transcript) shall be in Form 5.6-A.

(2) The prosecutor shall, on serving or receiving such a notice, immediately lodge with the sheriff clerk the transcript certified in accordance with section 37(4)(b) of the Act of 1995.

(3) An application to the sheriff under section 38(1)(b) of the Act of 1995 (rectification of error or incompleteness) shall be in Form 5.6-B.

(4) The application referred to in paragraph (3) shall be lodged with the sheriff clerk with—

- (a) a copy of the notice served under section 38(1)(a) of the Act of 1995; and
- (b) an execution of service of that notice.

(5) Where the person on whom notice is served under section 38(1)(a) of the Act of 1995 agrees with the opinion to which that notice relates—

- (a) he may intimate his agreement in Form 5.6-C to the person serving notice; and
- (b) he shall, at the same time as intimating his agreement, send a copy of that form to the sheriff clerk.

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

- (a) fix a date for a hearing; and
- (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) Where the sheriff authorises rectification of the transcript, he shall by an order 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 order of the sheriff and by initialling any amendment.

(9) On making any such amendment, the sheriff clerk shall—

- (a) attach to the rectified transcript a copy of the order of the sheriff certified by the sheriff clerk;
- (b) return the rectified transcript to the prosecutor;
- (c) retain the application for rectification and the order of the sheriff made in respect of the application; and
- (d) attach the documents mentioned in sub-paragraph (c) of this paragraph to the record of proceedings mentioned in rule 5.2 (record of examination).

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

**5.7.** Any direction made by the sheriff under section 37(7)(a) of the Act of 1995 (modifications as to time limits) shall be entered in the record of proceedings mentioned in rule 5.2 (record of examination) and authenticated by the sheriff subscribing his signature.

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

**5.8.**—(1) The sheriff shall not make an order under section 37(7)(b) of the Act of 1995 (postponement of trial diet) in respect of a case set down for trial in the High Court.

(2) Any order by a sheriff under section 37(7)(b) of the Act of 1995 in a case not set down for trial in the High Court shall be—

- (a) endorsed on the record copy of the indictment;
- (b) authenticated by the signature of the sheriff; and
- (c) intimated—
  - (i) by the prosecutor to any co-accused by serving on him an intimation of postponement in Form 5.8; and
  - (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**

**5.9.**—(1) If the sheriff considers that it may be appropriate to make an order under section 37(7)(b) of the Act of 1995 (postponement of 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 37(7)(a) (modifications as to time limits)) to the Clerk of Justiciary.

(2) The Clerk of Justiciary, on receiving the report of the sheriff, 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; and
- (b) intimate that diet to the prosecutor, the accused and the governor of any institution in which any accused is detained.

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

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

**5.10.**—(1) An application to the High Court for a direction to extend a time limit referred to in section 37(9) of the Act of 1995 shall be made by petition.

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

(3) The sheriff clerk shall, on the lodging of a petition, transmit it to the Clerk of Justiciary 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—

- (a) fix a diet for the hearing; and
- (b) intimate the diet to the prosecutor and the accused.

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

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

## CHAPTER 6

### PROCEEDINGS INVOLVING CHILDREN

#### Interpretation of this Chapter

**6.1.** In this Chapter—

“the Act of 1937” means the Children and Young Persons (Scotland) Act 1937(6);

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

#### Application of summary procedure

**6.2.** 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 Act of 1937, the Act of 1995 and this Chapter.

#### Assistance for unrepresented child

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

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

#### Procedure in summary proceedings

**6.4.** In a case where a child is brought before a court on a complaint, the sheriff—

- (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 satisfied, after trial or otherwise, that the child has committed an offence, shall so inform the child and—
  - (i) the child and his parent, guardian, relative or other responsible person assisting the child, or the person representing the child, shall be given an opportunity to make a statement, and
  - (ii) shall obtain such information as to the general conduct, home surroundings, school record, health and character of the child as may enable the sheriff to deal with the case in the best interests of the child and may remand the child for such enquiry as may be necessary; and
- (c) if the sheriff considers it necessary in the interests of the child while considering disposal after conviction, may require the parent, guardian, relative or other responsible person assisting the child, or the person representing the child, or the child, as the case may be, to withdraw from the court.

#### Failure to comply with probation order

**6.5.—**(1) Any citation requiring the appearance of a child before the court in respect of a failure to comply with a probation order shall be accompanied by a notice—

- (a) giving the reasons for the issue of such citation, and

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(6) 1937 c. 37.

- (b) stating in what respects it is alleged that any one or more of the requirements of the probation order has or have not been complied with by him;

and, in any case where the child has been apprehended without prior citation, such a notice shall be handed to him in court.

(2) On the child appearing in court, the sheriff 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 probation order as alleged.

(3) Where the child does not admit the alleged failure to comply with the requirements of the probation order, the proceedings shall thereafter be conducted and the matter shall be determined by the court in the same manner as if the same were a matter which had arisen for determination on the original complaint.

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

**6.6.**—(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 additional waiting rooms to be brought into use or may provide for an attendant in the waiting room.

### **Restrictions on reports of proceedings involving children**

**6.7.**—(1) Any direction made by a court under subsection (3)(a) (person under 16 is a witness only) of section 47 (restriction on report of proceedings involving children) of the Act of 1995 shall specify the person in respect of whom the direction is made.

(2) Any direction made by a court under subsection (3)(b) of section 47 of the Act of 1995 (restrictions dispensed with) 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 clerk of court.

## **CHAPTER 7**

### **MENTAL DISORDER**

#### **Application for interim hospital orders**

**7.1.**—(1) Where the court has made or renewed an interim hospital order under section 53 of the Act of 1995 and the responsible medical officer has intimated to the prosecutor that—

- (a) he seeks a continuation of the order, or
- (b) 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 Form 7.1-A, 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 Form 7.1-B, appoint a diet for hearing the application and, where appropriate, grant warrant to authorised officers of the hospital, or officers of law, to bring 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.

### *PART III*

#### *Solemn proceedings*

#### **CHAPTER 8**

#### **THE INDICTMENT**

##### **Appeals in relation to extension of time for trial**

**8.1.**—(1) A note of appeal under section 65(8) of the Act of 1995 (appeal to High Court against grant or refusal of extension of time) in respect of an appeal from a decision under section 65(3) of that Act (extension of 12 months period for commencement of trial on indictment) shall be in Form 8.1-A.

(2) A note of appeal under section 65(8) of the Act of 1995 in respect of an appeal from a decision under section 65(5) or (7) of that Act (extension of 80 or 110 days period of committal) shall be in Form 8.1-B.

(3) A note of appeal mentioned in paragraph (1) or (2) shall be served by the appellant on—

- (a) the respondent;
- (b) any co-accused; and
- (c) the clerk of the court against the decision of which the appeal is taken.

(4) The appellant 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 (3).

(5) The clerk of the court against the decision of which 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.

##### **Citation of accused and witnesses**

**8.2.**—(1) The warrant to cite a person accused on indictment and any witnesses to a diet of trial, under section 66(1) of the Act of 1995 (warrant to cite accused and witnesses), shall be in Form 8.2-A.

(2) The notice for the purposes of section 66(6) of the Act of 1995 (notice to accused to appear) to be served on a person accused on indictment shall be in Form 8.2-B.

(3) The form of postal citation of a witness on a warrant issued under section 66(1) of the Act of 1995 shall be in Form 8.2-C; and the witness shall complete and return Form 8.2-D to the procurator fiscal, or the accused person or his solicitor, as the case may be, in the pre-paid envelope provided within 14 days after the date of citation.

(4) The form of personal citation of a witness on a warrant issued under section 66(1) of the Act of 1995 shall be in Form 8.2-E.

### **Notice of previous convictions**

**8.3.** Any notice to be served on an accused under section 69(2) of the Act of 1995 (notice of previous convictions) shall be in Form 8.3.

## **CHAPTER 9**

### **FIRST DIETS AND PRELIMINARY DIETS**

#### **Minute giving written notice**

**9.1.**—(1) Any notice given under section 71(2) (notice of preliminary matter), or section 72(1) (preliminary diet: notice), of the Act of 1995 shall be by minute in Form 9.1.

(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) That minute shall be lodged—

- (a) if it relates to a case set down for trial in the High Court, with the Clerk of Justiciary, or
- (b) if it relates to a case set down for trial in the sheriff court, with the sheriff clerk.

#### **Intimation of minute**

**9.2.**—(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 an execution mentioned in paragraph (1) is not presented with the minute, the Clerk of Justiciary or the sheriff clerk, as the case may be, shall refuse to accept the minute for lodging.

#### **Procedure on lodging minute**

**9.3.** 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; and
- (b) as soon as possible, place the minute before a judge.

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

**9.4.**—(1) On considering the minute in the absence of the 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 subsection (1) of section 72 of the Act of 1995 (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 subsection (4) of that section; or
- (b) if the minute raises a matter mentioned in paragraph (b), (c) or (d) of subsection (1) of that section, may make or refuse to make such an order.

(2) An order made under paragraph (1) 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.

(3) Any such order shall be—

- (a) endorsed on the minute;
- (b) signed by the judge; and
- (c) attached with the minute to the record copy of the indictment.

### **Intimation of order for preliminary diet**

**9.5.** The Clerk of Justiciary shall, as soon as possible after the making of any order under rule 9.4(1) (order for preliminary diet), intimate its terms to all parties and to the governor of any institution in which any accused is detained.

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

**9.6.** Any order made under rule 9.4(1) (order for preliminary diet) specifying the period for which the trial diet is postponed, and any order made under section 72(5) of the Act of 1995 (extension by High Court of period of postponement of trial diet), extending that period shall, for the purposes of section 66 of the Act of 1995 (service and lodging of indictment, etc.), be treated as being a warrant issued by the Clerk of Justiciary 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 any such order shall have effect for those purposes.

### **Calling postponed diet**

**9.7.** If, in relation to any case a trial diet has been postponed by virtue of an order mentioned in rule 9.6 (order for preliminary diet to be warrant for citation), 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**

**9.8.** A copy of any order for a preliminary diet under rule 9.4(1) certified by the Clerk of Justiciary shall be warrant:—

- (a) for the conveyance to the preliminary diet of any accused who is in custody; and
- (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 to be heard in Edinburgh, for the transmission to the Clerk of Justiciary of any productions specified in the minute.

### **Abandonment of matter to be raised**

**9.9.—(1)** Where a diet has been fixed for a preliminary diet under section 72 of the Act of 1995 and the party raising the matter decides not to proceed with it, he shall give written notice of abandonment.

(2) The notice of abandonment shall be in Form 9.9.

(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 the accused is detained.

(4) On such intimation, it shall not be necessary to convene the court for the preliminary diet unless another minute giving written notice under section 72(1) of the Act of 1995 has been lodged after the lodging of the first notice and before the notice of abandonment.

### **Procedure at first diet or preliminary diet**

**9.10.—(1)** A first diet or preliminary diet shall commence on the diet being called.

(2) For the purposes of the application of section 93 of the Act of 1995 (record of trial) to a first diet or 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, and
- (c) the plea stated under section 71(6) or 73(1) of the Act of 1995 (accused to state how he pleads),

shall be kept in accordance with existing law and practice.

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

(5) A copy of an order continuing or adjourning the first diet or preliminary diet under paragraph (4) certified by the Clerk of Justiciary shall be warrant—

- (a) for the conveyance to the continued or adjourned diet of any accused who may be in custody; and
- (b) for the citation to that diet of any witnesses.

(6) In this rule, “first diet” means a first diet to which section 71(2) of the Act of 1995 (notice of preliminary matter) applies.

### **Applications for leave to appeal**

**9.11.**—(1) An application for leave to appeal to the High Court under section 74(1) of the Act of 1995 (appeals in connection with first diets or preliminary diets) shall be made by motion to the judge at that diet immediately following the making of the decision in question, and shall be granted or refused at that time.

(2) Where leave to appeal is granted, the judge shall consider whether or not to postpone the diet of trial; and, if the judge decides that it is necessary or desirable to do so, he may discharge the trial diet and fix a new diet under section 80 of the Act of 1995 (alteration and postponement of trial diet).

(3) Rule 9.15 (intimation of order postponing trial diet) shall apply to an order postponing a trial diet under this rule as it applies to an order postponing a trial diet under that rule.

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

### **Note of appeal**

**9.12.**—(1) An appeal under section 74(1) of the Act of 1995 (appeals in connection with first diets or preliminary diets) shall be made in Form 9.12.

(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, or
- (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**

**9.13.**—(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 the decision from the sheriff; and
- (c) transmit the note of appeal to the Clerk of Justiciary with a certified copy of—

- (i) the indictment;
- (ii) the record of proceedings; and
- (iii) any relevant document.

### **Report of sheriff**

**9.14.**—(1) The sheriff, on receiving a request for a report under rule 9.13(2)(b) (report on circumstances relating to decision), shall, as soon as possible, send his report to the Clerk of Justiciary.

- (2) The Clerk of Justiciary shall, on receiving the report of the sheriff—
  - (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; and
  - (c) cause to be copied any documents necessary for the appeal.

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

**9.15.**—(1) Where, in relation to an appeal under section 74(1) of the Act of 1995 (appeals in connection with first diets or preliminary diets) in a case set down for hearing in the sheriff court, the High Court makes an order under section 74(3) of that Act postponing the trial diet, the Clerk of Justiciary shall send a copy of the order to—

- (a) the sheriff clerk;
- (b) all parties to the proceedings; and
- (c) the governor of any institution in which any accused is detained.

(2) Rule 9.6 (order for preliminary diet to be warrant for citation) and rule 9.7 (calling postponed diet) shall apply to an order mentioned in paragraph (1) of this rule as they apply to an order mentioned in rule 9.6.

### **Orders of appeal court**

**9.16.**—(1) The Clerk of Justiciary shall intimate to the sheriff clerk the decision of the High Court disposing of an appeal under section 74(1) of the Act of 1995 in relation to a first diet.

(2) Where the High Court in disposing of an appeal under section 74(1) of the Act of 1995 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 66 of that Act (service and lodging of indictment, etc.).

### **Abandonment of appeal**

**9.17.**—(1) An appellant who has taken an appeal under section 74(1) of the Act of 1995 (appeals in connection with first diets or preliminary diets) may abandon the appeal at any time before the hearing of the appeal.

(2) An abandonment of such an appeal shall be made by lodging a minute of abandonment with the Clerk of Justiciary in Form 9.17.

(3) The Clerk of Justiciary, on receiving such 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.

## **CHAPTER 10**

### **PLEA OF GUILTY**

#### **Procedure for plea of guilty**

**10.1.**—(1) A notice to appear at a diet of the appropriate court served on an accused under section 76(1) of the Act of 1995 (procedure where accused desires to plead guilty) shall—

- (a) if an indictment has not already been served, be in Form 10.1-A;
- (b) if an indictment has already been served, be in Form 10.1-B.

(2) In any case set down for trial in the High Court, any diet fixed by virtue of section 76(1) of the Act of 1995 may be called before the High Court sitting in Edinburgh whether or not—

- (a) the case has already been set down for trial at any sitting elsewhere, or
- (b) any notice has already been served on the accused under section 66(6) of that Act (notice of first and trial diet).

(3) In the application of subsection (3) of section 76 of the Act of 1995, the court may postpone the trial diet under that section if, but only if—

- (a) all the accused have been served with a notice in accordance with subsection (1) of that section;
- (b) all the accused are present at the diet called by virtue of subsection (1) of that section; and
- (c) a motion to postpone the trial diet is made to the court at that diet.

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

- (a) be endorsed on the record copy of the indictment;
- (b) be signed by the presiding judge;
- (c) be entered in the record of proceedings; and
- (d) have effect, for the purposes of subsections (1) to (3) of section 66 of the Act of 1995 (service and lodging of indictment, etc.), 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.

## **CHAPTER 11**

### **NOTICES BY ACCUSED IN RELATION TO DEFENCE**

#### **Notices of special defence etc.**

**11.1.** Where a notice under section 78(1) of the Act of 1995 (plea of special defence etc.) is to be served on a co-accused, that notice may be served on his solicitor.

#### **Notices by accused of witnesses and productions**

**11.2.** Any notice given by an accused under section 78(4) of the Act of 1995 (notice of witnesses and productions) shall be served on any co-accused.

## CHAPTER 12

### ALTERATION AND POSTPONEMENT OF SOLEMN TRIAL DIET

#### Alteration of trial diet

**12.1.**—(1) Where circumstances arise in which the court may adjourn the trial diet to a subsequent sitting under section 80(1) of the Act of 1995 (alteration and postponement of trial diet), 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 Form 12.1.

(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 the order of the court adjourning the trial diet to a subsequent sitting under section 80(1) of the Act of 1995 shall be sent by the Clerk of Justiciary or sheriff clerk, as the case may be, to the governor of any institution in which the accused is detained.

#### Applications for postponement of trial diet

**12.2.**—(1) Subject to paragraph (2), an application under section 80(2) of the Act of 1995 (application for postponement of trial diet) shall be made by minute in Form 12.2-A.

(2) Where all the parties join in the application, the application shall be made by joint minute in Form 12.2-B.

(3) A minute under this rule shall be lodged—

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

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

#### Orders fixing diet for hearing of application to postpone trial diet

**12.3.** Where a minute referred to in rule 12.2 (applications for postponement of trial diet) has been lodged, the court shall, or, in a case in which all parties join in the application, may, make an order endorsed on the minute—

(a) fixing a diet for a hearing of the application; and

(b) for service of the minute with the date of the diet on all parties.

#### Calling of diet for hearing application

**12.4.**—(1) A diet fixed under rule 12.3 (orders fixing diet for hearing application to postpone trial diet) shall be held in open court in the presence of all parties (unless the court permits the

hearing to proceed in the absence of the accused under section 80(5) of the Act of 1995, 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 66(1) of the Act of 1995 (warrant to cite accused and witnesses for trial) for a subsequent sitting of the court.

### **Orders relating to postponed trial diet**

**12.5.**—(1) Where 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 80(2) of the Act of 1995 (application for postponement of trial diet), the court shall make an order authorising—

- (a) if citations have been issued to jurors for the original trial diet, the issue to those jurors of intimation that they are not required to attend at the original diet but are required to attend at the new diet; and
- (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 trial diet.

(2) Where the court is informed by the prosecutor that other cases have been set down for trial at that sitting and the court has granted the application under section 80(2) of the Act of 1995, the court shall, in fixing a new trial diet, have regard to the time required to issue citations to jurors who have not been summoned under section 84(3) of that Act (sitting of High Court at town in which it does not usually sit) for the sitting in which the new diet is being fixed.

- (3) Where—
- (a) the court is of opinion that the original trial diet should not proceed, and
  - (b) the court has been informed that a warrant has been issued under section 66(1) of the Act of 1995 (warrant to cite accused and witnesses for trial diet) for a subsequent sitting of the court within the period mentioned in relation to that court in section 80(1) of that Act (alteration and postponement of trial diet),

the court may, without prejudice to the powers under section 80(3) of that Act (power to discharge trial diet and fix, or give leave to prosecutor to serve notice fixing, new trial diet), make an order postponing the trial diet to that subsequent sitting; and that order shall have effect as if it had been made under section 80(1) of that Act.

### **Notice fixing new trial diet**

**12.6.**—(1) Where the court gives leave to the prosecutor to serve a notice fixing a new trial diet under section 80(3) of the Act of 1995, the prosecutor shall consult with the Clerk of Justiciary or sheriff clerk, as the case may be, as to an appropriate date before fixing that diet.

- (2) A notice mentioned in paragraph (1) shall be in Form 12.6, and—
- (a) shall be served by the prosecutor on all parties and on the governor of any institution in which the accused is detained; and
  - (b) a copy of the notice and certificate of execution of service shall be lodged by the prosecutor as soon as possible with the clerk of court.

(3) A notice served under paragraph (2) shall, for the purpose of section 66(1) of the Act of 1995 (warrant to cite accused and witnesses for trial diet), be treated as being a warrant issued by the Clerk of Justiciary or 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 such a notice, attach it to the record copy of the indictment.

### **Record of proceedings under this Chapter**

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

- (a) the calling of the diet of the hearing of an application under section 80(2) of the Act of 1995 (application for postponement of trial diet),
- (b) the proceedings at the hearing, and
- (c) the decision of the court;

and that record shall be signed by the judge, and entered in the record of proceedings.

### **Joint applications without hearing**

**12.8.—**(1) Where, in the case of a joint application under subsection (2) of section 80 of the Act of 1995 (application for postponement of trial diet), the court proposes to proceed without hearing the parties by virtue of subsection (4) of that section (joint application for postponement of trial diet), the Clerk of Justiciary or sheriff clerk, as the case may be, shall on the lodging of the minute attach it to the record copy of the 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 of the indictment;
- (b) signed by the clerk of court;
- (c) entered in the record of proceedings; and
- (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 accused is detained a copy of the following orders of the court:—

- (a) an order under rule 12.3 (order fixing diet for hearing of application to postpone trial diet);
- (b) an order under section 80(3) of the Act of 1995 discharging a trial diet and fixing a new trial diet; and
- (c) an order under rule 12.5(3) adjourning a trial diet to a subsequent sitting.

### **Calling of adjourned diet**

**12.9.** If, in relation to any case, a trial diet has been discharged or adjourned under this Chapter, 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.

### **Form of notice of diet where trial does not take place**

**12.10.** A notice referred to in section 81(1) of the Act of 1995 (procedure where trial does not take place) shall be in Form 8.2-B and signed by the prosecutor.

## CHAPTER 13

### SUMMONING OF JURORS

#### **List of jurors**

**13.1.** The clerk of the court before which the trial is to take place, in preparing a list of jurors for the trial diet for the purposes of section 84(1) of the Act of 1995, 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 the following provisions of the Act of 1995:—

- section 73(5) (postponement of trial diet at preliminary diet),
- section 74(3) (postponement of trial diet in appeals in connection with first diets or preliminary diets),
- section 76(3) (postponement of trial diet where not guilty plea not accepted),
- section 80 (alteration and postponement of trial diet).

#### **Citation of jurors**

**13.2.—(1)** The citation under section 85(4) of the Act of 1995 of a person summoned to serve as a juror shall be served on that person in Form 13.2-A.

(2) The execution of citation under section 85(4) of the Act of 1995 of persons summoned to serve as jurors shall be in Form 13.2-B.

## CHAPTER 14

### PROCEDURE AT TRIAL IN SOLEMN PROCEEDINGS

#### **Recording of not guilty plea**

**14.1.** Where the accused pleads not guilty, the clerk of court shall make an entry in the record of proceedings for the purposes of section 88(1) of the Act of 1995 (recording plea of not guilty and balloting jury) that, in respect that the accused pleaded not guilty, the accused was remitted to an assize and that the jurors were balloted for and duly sworn to try the libel.

#### **Balloting of jurors**

**14.2.—(1)** The clerk of court shall cause the name and address of each juror to be written on a separate piece of paper, all the pieces being of the same size, and shall cause the pieces to be folded up, as nearly as may be in the same shape, and to be put into a box or glass and mixed, and the clerk shall draw out the pieces of paper one by one from the box or glass.

(2) Where any of the persons whose names shall be so drawn does not appear, or is challenged (with or without cause assigned) and is set aside or, before any evidence is led, is excused, then such further names shall be drawn until the number required for the trial is completed.

#### **Form of oath or affirmation to jurors**

**14.3.—(1)** Where the clerk of court administers the oath to the jury in terms of section 88(6) of the Act of 1995 (administration of oath in common form), he shall do so in accordance with the form in Form 14.3-A.

(2) In the case of any juror who elects to affirm, the clerk of court shall administer the affirmation in accordance with the form in Form 14.3-B.

(3) The oath or the affirmation administered in accordance with paragraph (1) or (2), as the case may be, shall be treated as having been administered for the purposes of section 88(6) of the Act of 1995.

#### **Jurors chosen for one trial may continue to serve**

**14.4.**—(1) Where the conditions in section 88(4) of the Act of 1995 (circumstances in which jurors for one trial may serve on another) are met, and subject to paragraph (2) of this rule, the clerk of court shall at the commencement of the first trial engross the names and addresses of the jurors in the record of proceedings; and in the record of proceedings of the subsequent trial it shall be sufficient to mention—

- (a) that the jurors who served on the preceding trial also served on the assize of the accused then under trial; and
- (b) that no objection was made to the contrary.

(2) The jurors referred to in paragraph (1) shall be sworn together in the presence of the accused in the subsequent trial.

#### **Form of oath or affirmation to witnesses**

**14.5.**—(1) Where the judge administers the oath to a witness, he shall do so in accordance with the form in Form 14.5-A.

(2) In the case of any witness who elects to affirm, the judge shall administer the affirmation in accordance with the form in Form 14.5-B.

(3) The oath or affirmation administered in accordance with paragraph (1) or (2), as the case may be, shall be treated as having been administered in common form.

#### **Sheriff's notes of evidence**

**14.6.** The sheriff who has presided at a trial on solemn procedure shall duly authenticate and preserve the notes of the evidence taken by him in the trial and, if called upon to do so by the High Court, shall produce them, or a certified copy of them, to the High Court.

#### **Form of record of proceedings**

**14.7.** Where the proceedings at a trial are recorded, the entry in the record of proceedings shall be signed by the clerk of court and shall be in the form in Form 14.7.

#### **Interruption of trial for other proceedings**

**14.8.**—(1) Where a trial is interrupted under section 102 of the Act of 1995 (interruption of trial for other proceedings), a minute of continuation of the diet of the interrupted trial shall be entered in the record of proceedings.

(2) Where a trial is interrupted under section 102 of the Act of 1995, the trial shall be continued to a time later on the same day or to such other time as may be specified in the minute of proceedings.

#### **Interruption of proceedings for conviction or sentence**

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

- (a) considering a conviction against that accused in other proceedings pending before that court for which he has not been sentenced; or

(b) passing sentence on that accused in respect of the conviction in those other proceedings.

(2) Where the judge has interrupted any proceedings under 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.

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

### **Issue of extract convictions**

**14.10.**—(1) Subject to the following paragraphs, no extract of a conviction shall be issued during the period of four weeks after the day on which the conviction took place.

(2) An extract of a conviction may be issued at any time where it is required as a warrant for the detention of the person convicted under any sentence which shall have been pronounced against him.

(3) In the event of—

- (a) an appeal under section 108 (Lord Advocate’s appeal against sentence),
- (b) an intimation of intention to appeal under section 109(1), or
- (c) a note of appeal under section 110 in respect of an appeal under section 106(1)(b) (appeal against sentence passed on conviction),

of the Act of 1995 being lodged, no extract of a conviction shall be issued until such appeal, if it is proceeded with, is determined.

(4) Where an accused is convicted on indictment in the sheriff court of any crime or offence and an extract of that conviction is subsequently required in evidence, such extract shall be issued at any time by the clerk of the court having the custody of the record copy of the indictment although the plea of the accused may have been taken and the sentence on him pronounced in another court.

## **CHAPTER 15**

### **APPEALS FROM SOLEMN PROCEEDINGS**

#### **Register and lists of appeals**

**15.1.**—(1) The Clerk of Justiciary shall keep a register, in such form as he thinks fit, of all cases in which he receives intimation of intention to appeal or, in the case of an appeal under section 106 (right of appeal) or section 108 (Lord Advocate’s appeal against sentence) of the Act of 1995, a note of appeal under section 110 of that Act.

(2) The register kept under paragraph (1) shall be open for public inspection at such place and at such hours as the Clerk of Justiciary, subject to the approval of the Lord Justice General, considers convenient.

(3) The Clerk of Justiciary shall—

- (a) prepare from time to time, a list of appeals to be dealt with by the High Court; and
- (b) cause such list to be published in such manner as, subject to the approval of the Lord Justice General, he considers convenient for giving due notice to persons having an interest in the hearing of such appeals by the High Court.

#### **Forms of appeal**

**15.2.**—(1) Any intimation under section 109(1) of the Act of 1995 (written intimation of intention to appeal) shall be in Form 15.2-A.

(2) A note under section 110(1) of the Act of 1995 (written note of appeal) shall be in Form 15.2-B.

(3) An application under section 111(2) of the Act of 1995 (application to extend time) shall be made in Form 15.2-C.

(4) An application under section 112(1) of the Act of 1995 (application of appellant for bail) shall be made in Form 15.2-D.

(5) The following documents shall be signed by the appellant or by his counsel or solicitor:—

- (a) an intimation of intention to appeal under section 109(1) of the Act of 1995 except where the appellant is the Lord Advocate;
- (b) an application under section 111(2) of the Act of 1995 (application to extend time); or
- (c) a note of appeal.

(6) An appeal under section 19 of the Prisoners and Criminal Proceedings (Scotland) Act 1993<sup>(7)</sup> (appeals in respect of decisions relating to supervised release orders) shall be in Form 15.2-B.

### **Appeals against refusal of applications heard by single judge**

**15.3.**—(1) Where an application has been dealt with by a single judge of the High Court by virtue of section 103(5) of the Act of 1995 (powers exercisable by single judge), the Clerk of Justiciary shall notify the decision to the applicant in Form 15.3-A.

(2) In the event of such judge refusing any such application, the Clerk of Justiciary on notifying such refusal to the applicant shall forward to him a form in Form 15.3-B to complete and return forthwith if he desires to have his application determined by the High Court as constituted for the hearing of appeals under Part VIII of the Act of 1995 (appeals from solemn proceedings).

### **Extension of time by Clerk of Justiciary**

**15.4.** Where, under section 110(2) of the Act of 1995, the Clerk of Justiciary extends the period for lodging a note of appeal, the period of any such extension shall be recorded on the completed form of intimation of intention to appeal.

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

**15.5.** 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.

### **Abandonment of appeals**

**15.6.** A notice of abandonment under section 116(1) of the Act of 1995 (abandonment of appeal) shall be in Form 15.6.

### **Note of proceedings at trial**

**15.7.** In an appeal under section 106(1) of the Act of 1995 (right of appeal), the High Court may require the judge who presided at the trial to produce any notes taken by him of the proceedings at the trial.

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(7) 1993 c. 9.

### **Clerk to give notice of date of hearing**

**15.8.**—(1) Where the High Court fixes the date for the hearing of an appeal or of an application under section 111(2) of the Act of 1995 (application to extend time), the Clerk of Justiciary shall give notice to the Crown Agent and to the solicitor of the convicted person, or to the convicted person himself if he has no known solicitor; and the appellant or applicant shall, within seven days before the hearing, lodge three copies (typed or printed) of the appeal or application for the use of the court.

(2) Where the powers of the court are to be exercised by a single judge under section 103(5) of the Act of 1995 (powers exercisable by single judge), a copy of the application to be determined shall be lodged for the use of the judge.

(3) A notice by the Clerk of Justiciary to the Secretary of State for the purposes of section 117(4) of the Act of 1995 (notice that appellant or applicant be present at a diet) shall be in Form 15.8.

### **Continuation of hearings**

**15.9.**—(1) The High Court, or any single judge exercising the powers of the High Court under section 103(5) of the Act of 1995 (powers exercisable by single judge), may continue the hearing of any appeal or application to a date, fixed or not fixed.

(2) Any judge of the High Court, or the person appointed by the court to take additional evidence, may fix any diet or proof necessary for that purpose.

### **Note to be kept of appeal**

**15.10.**—(1) The Clerk of Justiciary shall, in all cases of appeal from a conviction obtained or sentence pronounced in the High Court, note on the margin of the record of the trial the fact of an appeal having been taken and the result of the appeal.

(2) In the case of an appeal taken against any conviction obtained or sentence pronounced in the sheriff court on indictment, the Clerk of Justiciary shall notify the clerk of that court of the result of the appeal; and it shall be the duty of the clerk of that court to enter on the margin of the record of the trial a note of such result.

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

**15.11.**—(1) Where a person who has been disqualified from holding or obtaining a driving licence following a conviction on indictment appeals against that disqualification to the High 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; or
- (b) if the sentencing court was the High Court, or if an application to the sheriff under subparagraph (a) has been refused, by petition to the High Court.

(2) An application to the sheriff under paragraph (1)(a) shall be—

- (a) in Form 15.11-A, and
- (b) lodged with the sheriff clerk with a copy of the note of appeal endorsed with the receipt of the Clerk of Justiciary;

and the sheriff clerk shall record the order made by the sheriff on the application in the minute of proceedings.

(3) A petition to the High Court under paragraph (1)(b) shall be—

- (a) in Form 15.11-B; and
- (b) lodged with the Clerk of Justiciary.

### **Provisions supplemental to rule 15.11(3)**

**15.12.**—(1) The petitioner or his solicitor shall, on lodging a petition under rule 15.11(3), send a copy of it to—

- (a) the Crown Agent; and
- (b) if the sentencing court was the sheriff, the clerk of that court.

(2) The High 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.

(3) An order made by a single judge under paragraph (2) shall not be subject to review.

(4) On an order being made on a petition under rule 15.11(3), 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.

(5) Where the order referred to in paragraph (4) suspends a disqualification from driving, 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.

(6) The Clerk of Justiciary shall, on determination of the appeal against a disqualification from driving—

- (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 of that court shall, if appropriate, make the appropriate endorsement on the appellant's driving licence and intimate the disqualification to the persons concerned; or
- (b) if the appeal against the disqualification is refused, make the appropriate endorsement on the appellant's driving licence and intimate the disqualification to the persons concerned.

(7) Where leave to appeal has been refused under section 107 of the Act of 1995, "determination" in paragraph (6) of this rule means—

- (a) the fifteenth day after the date of intimation to the appellant or his solicitor of refusal of leave under subsection (1)(b) of that section, unless the appellant applies to the High Court for leave to appeal; or
- (b) the day two days after the date of intimation to the appellant or his solicitor of the refusal of leave by the High Court under subsection (5)(b) of that section.

### **Suspension of disqualification etc. under section 121 of the Act of 1995**

**15.13.** In the application of section 121 of the Act of 1995 (suspension of disqualification, forfeiture, etc.) to a case in which leave to appeal has been refused under section 107 of the Act of 1995, the word "determined" in subsections (1) and (2) of section 121 of that Act shall be construed as meaning—

- (a) the fifteenth day after the date of intimation to the appellant or his solicitor of refusal of leave under subsection (1)(b) of section 107 of that Act, unless the appellant applies to the High Court for leave to appeal; or
- (b) the day two days after the date of intimation to the appellant or his solicitor of the refusal of leave by the High Court under subsection (5)(b) of section 107 of that Act.

## *PART IV*

### *Summary proceedings*

#### **CHAPTER 16**

#### **COMPLAINTS**

##### **Form of complaints and related notices and forms**

**16.1.**—(1) The form of complaint referred to in section 138(1) of the Act of 1995 shall be in Form 16.1-A.

(2) The form of citation of an accused referred to in section 140(2) of the Act of 1995 shall be in Form 16.1-B.

(3) The procurator fiscal shall send to the accused with the citation in Form 16.1-B—

(a) a reply form in Form 16.1-C for completion and return by him stating whether he pleads guilty or not guilty; and

(b) a means form in Form 16.1-D for completion and return by him.

(4) The form of notice of previous convictions to be served on an accused under section 166(2) of the Act of 1995 shall be in Form 16.1-E.

##### **Signature of prosecutor**

**16.2.**—(1) The prosecutor shall sign the principal complaint and the citation to the accused.

(2) Any document sent with the citation to the accused including the copy complaint shall, for the purposes of such signature, be treated as part of the citation.

##### **Effect of failure by prosecutor to comply with certain requirements**

**16.3.** The validity of any proceedings against an accused shall not be affected by reason only of the failure of the prosecutor to comply in any respect with a requirement of rule 16.1(3) (reply and means forms).

##### **Further procedural forms**

**16.4.**—(1) The form of incidental application referred to in section 134 of the Act of 1995 (incidental applications) shall be in Form 16.4-A.

(2) The form of assignation of a diet shall be in Form 16.4-B.

(3) The form of minutes in the record of proceedings in summary proceedings shall be in Form 16.4-C.

##### **Form of certain warrants**

**16.5.**—(1) The form of warrant referred to in section 135 of the Act of 1995 (warrants of apprehension and search)—

(a) to apprehend an accused shall be in Form 16.5-A;

(b) to search the person, dwelling house and repositories of the accused shall be in Form 16.5-B.

(2) The form of order adjourning a diet and granting warrant to detain an accused shall be in Form 16.5-C.

### **Citation of witnesses**

**16.6.**—(1) The form of postal citation of a person to appear as a witness at a trial on a summary complaint shall be in Form 16.6-A; and the witness shall complete and return Form 16.6-B to the procurator fiscal, or the accused or his solicitor, as the case may be, in the pre-paid envelope provided within 14 days after the date of citation.

(2) The form of personal citation of a witness at a trial on a summary complaint shall be in Form 16.6-C.

### **Applications for alteration of diets**

**16.7.**—(1) Where the prosecutor and the accused propose to make a joint application orally to the court under section 137(2) of the Act of 1995 (application for alteration of diet) for postponement of a diet that has been fixed, they may do so only at a diet which has been duly assigned and which has been called.

(2) An application by an accused under section 137(5) of the Act of 1995 (application to postpone or accelerate diet) shall be made in Form 16.7.

## **CHAPTER 17**

### **SUMMARY PRE-TRIAL PROCEDURE**

#### **Appeals against extension of period of detention**

**17.1.**—(1) A note of appeal presented to the High Court under section 147(3) of the Act of 1995 (appeal against grant or refusal of extension of 40 days detention) shall be made in Form 17.1.

(2) Such a note of appeal shall be served by the appellant on—

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

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

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

(4) The clerk of the court against the decision of which 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 of those documents, assign the appeal to the roll and intimate the date of the diet to the appellant and the respondent.

(5) The Clerk of Justiciary shall intimate the result of the appeal to the court against the decision of which the appeal was taken and to the governor of the institution in which the appellant is detained.

## **CHAPTER 18**

### **PROCEDURE AT TRIAL IN SUMMARY PROCEEDINGS**

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

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

(2) Where 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 150(2) of the Act of 1995 (adjournment to another diet), 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.

(5) Where the accused pleads guilty to the charge or to any part of it, and his plea is accepted by the prosecutor, the plea shall be recorded and signed by the judge or clerk of court, and the court shall thereafter dispose of the case at the same or any adjourned diet.

(6) The plea referred to in paragraph (5) and any sentence may be combined, in which case one signature shall be sufficient to authenticate both.

#### **Form of oath or affirmation to witnesses**

**18.2.**—(1) Where the judge administers the oath to a witness in summary proceedings, he shall do so in accordance with the form in Form 14.5-A.

(2) In the case of any witness who elects to affirm, the judge shall administer the affirmation in accordance with the form in Form 14.5-B.

(3) The oath or the affirmation administered in accordance with paragraph (1) or (2), as the case may be, shall be treated as having been administered in common form.

#### **Warrant to apprehend witness who fails to appear**

**18.3.** The form of warrant to apprehend a witness who has failed to appear at a diet in summary proceedings in answer to a citation shall be in Form 18.3.

#### **Record of proceedings to be written or printed**

**18.4.**—(1) The record of proceedings in summary proceedings may be in writing or printed, or may be partly written and partly printed.

(2) All forms of minute of proceedings or orders of the court may be on the same sheet of paper as the complaint or on a separate sheet attached to it.

#### **Interruption of proceedings after conviction**

**18.5.**—(1) On conviction of an accused 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; or
- (b) passing sentence on that person in respect of the conviction in those other proceedings.

(2) When the judge has interrupted any proceedings under 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.

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

### **Detention in precincts of court**

**18.6.** An order under section 169(1) of the Act of 1995 (detention in precincts of court) shall be in Form 18.6.

## **CHAPTER 19**

### **APPEALS FROM SUMMARY PROCEEDINGS**

#### **Appeals relating to preliminary pleas**

**19.1.—**(1) If—

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

he may apply for leave to appeal against that decision under section 174(1) of the Act of 1995 (appeals relating to preliminary pleas) only 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 which made the decision shall determine that application immediately following the decision in question.

(3) Where the court grants the application, the clerk of court shall enter in the minute of proceedings—

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

(4) An appeal to which this rule applies shall be made by note of appeal in Form 19.1-A.

(5) The note of appeal shall be lodged with the clerk of the court which granted leave to appeal not later than two days after the decision appealed against.

(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 solicitor;
- (b) request a report from the presiding judge; and
- (c) transmit—
  - (i) the note of appeal,
  - (ii) two certified copies of the complaint and the minutes of proceedings, and
  - (iii) any other relevant documents,

to the Clerk of Justiciary.

(7) The presiding judge shall, as soon as possible after receiving a 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 High Court to hear the appeal as soon as possible, and shall cause to be copied any documents necessary for the High Court.

(9) Where the High Court makes any order postponing the trial diet under section 174(2) of the Act of 1995, or makes any such order and gives a direction under that section, the Clerk of Justiciary shall send a copy of that order and any direction to—

- (a) the appropriate clerk of court;
- (b) any accused who are not parties to the appeal or to their solicitors; and
- (c) the governor of any institution in which any accused is detained.

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

(11) Where an appeal is abandoned, a minute of abandonment in Form 19.1-B shall be lodged with the Clerk of Justiciary.

(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.

#### **Forms for appeals by stated case**

**19.2.**—(1) An application under section 176(1) of the Act of 1995 (stated case: manner and time of appeal) shall be in Form 19.2-A.

(2) A stated case shall be in Form 19.2-B.

(3) The form of minutes of procedure in an appeal by stated case shall be in Form 19.2-C.

#### **Forms for appeals against sentence only**

**19.3.**—(1) A note of appeal under section 186(1) of the Act of 1995 (appeals against sentence only) shall be in Form 19.3-A.

(2) The form of minutes of procedure in an appeal under section 186(1) of the Act of 1995 shall be in Form 19.3-B.

#### **Extension of time for appeals**

**19.4.**—(1) An extension of time by the sheriff principal under section 186(5) (extension of time in appeal against sentence only), or section 194(2) (extension of time for stated case), of the Act of 1995 shall be in Form 19.4.

(2) Where, by virtue of subsection (8) of section 186 of the Act of 1995 (application of section 181 where appellant in appeal against sentence only fails to comply with a requirement), 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 two days after the date on which the court makes that order and not from the date of the passing of the sentence.

#### **Abandonment of appeals by stated case**

**19.5.** A minute of abandonment of an appeal under section 184(1) of the Act of 1995 (abandonment of stated case before lodging it with the Clerk of Justiciary) shall be in Form 19.5.

#### **Abandoning appeals against conviction only**

**19.6.**—(1) This rule applies for the purpose of section 175(8) of the Act of 1995 (abandoning appeal against conviction and proceeding with appeal against sentence alone).

(2) An application to abandon an appeal under section 175(8) of the Act of 1995 shall be made by minute in Form 19.6 and intimated by the appellant to the respondent.

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

(4) Where, before the lodging of the minute, the stated case has been lodged with the Clerk of Justiciary, the minute shall be lodged with the Clerk of Justiciary who shall send a copy of the minute to the clerk of the court which imposed the sentence appealed against.

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

(6) On the lodging of the minute, section 186(3) to (9) of the Act of 1995 (provisions relating to appeal against sentence only) shall apply to the stated case as they apply to a note of appeal.

#### **Abandonment of appeals against sentence only**

**19.7.** A minute of abandonment under section 186(9) of the Act of 1995 (abandonment of appeal against sentence only) shall be in Form 19.7.

#### **Intimation of abandonment**

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

- (a) a minute abandoning an appeal under section 184(1) of the Act of 1995 (abandonment of appeal by stated case before lodging of case with the Clerk of Justiciary), or
- (b) a minute abandoning an appeal under section 186(9) of the Act of 1995 (abandonment of appeal against sentence only),

shall immediately notify the Crown Agent or the prosecutor, as the case may be, of the lodging of the minute; and the Clerk of Justiciary shall, where the minute is lodged with him, notify immediately the clerk of the appropriate court.

#### **Applications for suspension of disqualification from driving in appeals**

**19.9.—**(1) Where a person who has been disqualified from holding or obtaining a driving licence appeals against that disqualification under section 176(1) of the Act of 1995 by stated case, any application to suspend the disqualification shall be made 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 seven days of it being made.

(3) Where 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 Form 19.9.

(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 disqualification.

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

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

(7) The High 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 of the court which imposed the disqualification.

(9) Where 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 appeal or review.

### **Applications for suspension of disqualification from driving in bills of suspension**

**19.10.**—(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) Where 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 on the bill with an execution, or acceptance, of service—
    - (i) have been shown to the clerk of the sentencing court and he has endorsed a certificate of exhibition; and
    - (ii) 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 court which imposed the disqualification 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 19.9 (applications for suspension of disqualification from driving in appeals) apply to this rule as they apply to that rule.

### **Solicitor entering appearance etc.**

**19.11.**—(1) Where an appellant in an appeal is represented by a solicitor who does not practise in Edinburgh, that solicitor may appoint a solicitor who practises in Edinburgh 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 stated case, note of appeal, bill of suspension or advocacy.

(3) The solicitor for the appellant or if unrepresented, the appellant, shall enter appearance and comply with the provisions of section 179(9) of the Act of 1995 (lodging of stated case with Clerk of Justiciary).

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

- 19.12.**—(1) The solicitor for the appellant or, if unrepresented, the appellant shall—
- (a) print the complaint, minutes of proceedings and stated case or bill of suspension;
  - (b) not later than seven days before the hearing, return the process to the Clerk of Justiciary; and
  - (c) provide—
    - (i) the Clerk of Justiciary with four copies of the print; and
    - (ii) the respondent or his solicitor with three copies of the print.

(2) Where the solicitor for the appellant or the appellant, as the case may be, cannot comply with any of the requirements of paragraph (1), he shall, not later than seven days before the hearing, so inform the Clerk of Justiciary in writing 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) Where the Clerk of Justiciary does not drop the appeal from the roll under paragraph (3), the court may, at the hearing, allow the appeal to be dropped from the roll or may dismiss the appeal.

### **Duty of solicitor in bill of suspension**

**19.13.** A solicitor who requests a first deliverance in a bill of suspension shall comply with the requirements of rule 19.12(1) and (2) (printing of stated case) whether or not he is the nominated solicitor for the purposes of legal aid.

### **List of appeals**

**19.14.**—(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) The Clerk of Justiciary shall give the respective solicitors representing parties to an appeal so listed at least 14 days notice of the date fixed for the hearing of the appeal.

### **Diet for interim suspension**

**19.15.** Where a bill of suspension contains a prayer for interim suspension of any order or for interim liberation—

- (a) the judge before whom the bill is laid for a first deliverance shall assign a diet at which counsel for each party may be heard on the crave for the interim order; and
- (b) the Clerk of Justiciary shall forthwith give notice of that diet to the parties.

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

**19.16.**—(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 from summary proceedings.

(2) Where the appeal against a disqualification from driving is refused or abandoned, the clerk of the sentencing court shall—

- (a) make the appropriate endorsement on the driving licence of the appellant; and
- (b) intimate the disqualification to the appropriate driving licence and police authorities.

(3) In this rule, “appeal” includes any appeal whether by stated case, note of appeal, bill of suspension or advocacy.

### **Suspension of disqualification etc. under section 193 of the Act of 1995**

**19.17.** In the application of section 193 of the Act of 1995 (suspension of disqualification, forfeiture, etc.) to a case in which leave to appeal has been refused under section 180 or 187 of the Act of 1995, the word “determination” in subsection (1) of section 193 of that Act shall be construed as meaning—

- (a) the fifteenth day after the date of intimation to the appellant or his solicitor of refusal of leave under subsection (1)(b) of section 180 or 187 of that Act, as the case may be, unless the appellant applies to the High Court for leave to appeal; or
- (b) the day two days after the date of intimation to the appellant or his solicitor of the refusal of leave by the High Court under subsection (5)(b) of section 180 or subsection (4)(b) of section 187 of that Act, as the case may be.

## *PART V*

### *Sentencing*

#### **CHAPTER 20**

#### **SENTENCING**

##### **Form of sentence of death**

**20.1.**—(1) The pronouncement of the sentence of death shall be in Form 20.1.

(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 of court shall engross the sentence in the record of proceedings and the presiding judge shall sign it.

##### **Detention in police custody instead of imprisonment**

**20.2.** An order under section 206(2) of the Act of 1995 (detention in police custody instead of imprisonment) shall be in Form 20.2.

##### **Form of supervised release orders**

**20.3.** An order under section 209 of the Act of 1995 (supervised release orders) shall be in Form 20.3.

##### **Application of money found on offender towards fine**

**20.4.**—(1) A direction under section 212(1) of the Act of 1995 that money found on an offender should not be applied towards payment of a fine shall be in Form 20.4-A.

(2) A notice for the purposes of section 212(7) of the Act of 1995 (notice to governor of prison as warrant to convey offender to court) shall be in Form 20.4-B.

##### **Extension of time for payment of fine**

**20.5.** An order under section 214(7) or 215(3) of the Act of 1995 (order allowing further time for payment of fine) shall be in Form 20.5.

##### **Forms for enquiry for non-payment of fine**

**20.6.**—(1) The citation of an offender issued under section 216(3)(a) of the Act of 1995 (citation to appear for enquiry before imprisonment in default of payment of fine) shall be in Form 20.6-A.

(2) The execution of a citation referred to in paragraph (1) which is served other than by post shall be in Form 20.6-B.

(3) The—

- (a) execution of a citation referred to in paragraph (1) which is served by post,
- (b) warrant for apprehension of an offender issued under section 216(3)(b) of the Act of 1995,  
and
- (c) record of proceedings at an enquiry under section 216 of that Act,

shall be in Form 20.6-C.

### **Supervision of payment of fine**

**20.7.** A notice to be sent to an offender under section 217(7) of the Act of 1995 (appointment of different supervising officer to offender allowed time to pay fine) shall be in Form 20.7.

### **Forms of warrant for execution and charge for payment of fine or other financial penalty**

**20.8.—**(1) In every extract of a sentence of a fine or other financial penalty, there shall be included a warrant for execution in the following terms:—“and the Lords [or sheriff or justice(s)] grant(s) warrant for all lawful execution hereon”.

(2) The charge for payment of a fine or other financial penalty to be used by a sheriff officer under section 90 of the Debtors (Scotland) Act 1987<sup>(8)</sup> (provisions relating to charges for payment) shall be in Form 20.8.

### **Transfer of fines**

**20.9.—**(1) A transfer of fine order under section 222(1), and a notice of it required by section 223(1), of the Act of 1995 shall be in Form 20.9-A.

(2) A transfer of fine order made by virtue of section 222(5) of the Act of 1995, and a notice of it required by section 223(1), shall be in Form 20.9-B.

(3) Where a notice of a transfer of fine order is received by a court in Scotland, the clerk of that court shall serve by post a notice to the offender in Form 20.9-C.

### **Probation orders**

**20.10.—**(1) A probation order shall be in Form 20.10-A.

(2) The citation of a probationer to appear before a court under section 232(1) (failure to comply with requirement of probation order), or section 233(1) (commission of further offence while on probation), of the Act of 1995 shall be in Form 20.10-B.

### **Form of supervised attendance orders**

**20.11.—**(1) A supervised attendance order made under section 235(1) of the Act of 1995 shall be in Form 20.11-A.

(2) A supervised attendance order made under section 236 of the Act of 1995 (supervised attendance orders in place of fines for 16 and 17 year olds) shall be in Form 20.11-B.

### **Community service orders**

**20.12.—**(1) A community service order made under section 238 of the Act of 1995 shall be in Form 20.12-A.

(2) The citation of an offender to appear before a court under section 239(4) (failure to comply with requirement of community service order), or section 240(3) (amendment or revocation of community service order), of the Act of 1995 shall be in Form 20.12-B.

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(8) 1987 c. 18.

### **Terms of compensation orders to record of proceedings**

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

### **Legal disability of person entitled to compensation**

**20.14.**—(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) 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, Part IV (except rule 36.17(1) (receipt sufficient discharge) of Chapter 36 of the Ordinary Cause Rules 1993 in Schedule 1 to the Sherriff Courts (Scotland Act 1907(9) (management of damages payable to persons under legal disability) shall apply to the administratio 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.

### **Variation of compensation orders**

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

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

### **Discharge or reduction of compensation order**

**20.16.**—(1) An application to discharge a compensation order or to reduce the amount that remains to be paid under section 25(1) of the Act of 1995 (review of compensation order) shall be made writing to the clerk of the court which made the order.

(2) The clerk of court shall, on any such application being made to him, serve a copy of the application on the prosecutor by post.

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

### **Use of certified copy documents in certain proceedings**

**20.17.**—(1) Subject to paragraph (2), in proceedings relating to—

- (a) an order which imposed a fine,
- (b) a supervised attendance record,
- (c) a community service order,
- (d) a probation order,

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(9) 1907 c. 51; Schedule 1 was substituted by S.I. 1993/1956.

in a court other than the court which made the order, the principal indictment, complaint, record or minute of proceedings, or notice of previous conviction need not be before the court.

(2) The court to which paragraph (1) applies shall have before it a copy of the principal of each such documents certified as a true copy by the clerk of the court which made the order.

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

**20.18.**—(1) An extract of a custodial sentence following a conviction on indictment, and warrant of detention and return of sentence, required for any purpose in connection with any case shall be in Form 20.18-A.

(2) An extract of a sentence of imprisonment, a fine or caution in summary proceedings under the Act of 1995 shall be in the appropriate form in Form 20.18-B

(3) An extract issued in accordance with paragraph (1) or (2) shall be warrant and authority for execution

### **Reduction of disqualification period for drink-drive offenders**

**20.19.**—(1) In this rule—

“the Act of 1988” means the Road Traffic Offencers Act 1988<sup>(10)</sup>;

“course organiser” has the meaning assigned in section 34C(2) of the Act of 1988;

“date specified” means the date specified in an order under section 34A of the Act of 1988;

“supervising court” has the meaning assigned in section 34C(2) of the Act of 1988.

(2) An application to the supervising court for a declaration under section 34B(6) of the Act of 1988 shall be

(a) in Form 20.19-A;

(b) accompanied by a copy of the written notice required by section 34B(5) of the Act of 1988 intimating the course organiser’s decision not to give a course completion certificate; and

(c) lodged with the clerk of court within 28 days after the date specified.

(3) An application to the supervising court for a declaration under section 34B(7) of the Act of 1988 shall be— (a) in Form 20.19.-B; and (b) lodged with the clerk of court within 28 days after the date specified.

(4) On the lodging of an application under section 34B(6) or (7) of the Act of 1988—

(a) the sheriff or stipendiary magistrate, as the case may be, shall fix a date for hearing the application; and

(b) the clerk of court shall—

(i) notify the applicant of the date of hearing; and

(ii) serve a copy of the application, with notice of the hearing, on the course organiser and the procurator fiscal.

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<sup>(10)</sup> 1988 c. 53; sections 34A, 34B and 34C were inserted by the Road Traffic Act 1991 (c. 40), section 30.

## *PART VI*

### *Evidence*

#### **CHAPTER 21**

##### **UNCONTROVERSIAL EVIDENCE, HERESAY AND PRIOR STATEMENTS**

###### **Notice of uncontroversial evidence**

**21.1.**—(1) Where a party to criminal proceedings serves a copy of a statement and document on another party under section 258 of the Act of 1995 (uncontroversial evidence), he shall also serve with that statement and document a statement in Form 21.1-A

(2) Where a document is annexed to a statement under section 258(2) of the Act of 1995 and is not described in the statement, a docquet in Form 21.1-B shall be endorsed on that document.

###### **Notice of challenge of evidence as uncontroversial**

**21.2.** A notice by a party under section 258(3) of the Act of 1995 (notice challenging fact in statement under section 258(2) of the Act of 1995) shall be in Form 21.2.

###### **Notice of intention to have hearsay statement admitted**

**21.3.** A notice under section 259(5) of the Act of 1995 (notice of intention to apply to have evidence of hearsay statement admitted) shall be in Form 21.3

###### **Authentication of certain prior statements of witnesses**

**21.4.** A statement in a document which it is sought to be admitted in evidence under section 260(4) of the Act of 1995 (admissibility of certain prior statements of witnesses) shall be authenticated by a certificate in Form 21.4 endorsed on or attached to the first page of the statement.

#### **CHAPTER 22**

##### **EVIDENCE OF CHILDREN**

###### **Applications for evidence of children by television link**

**22.1.**—(1) An application to the court under section 271(5) of the Act of 1995 (authorisation of the giving of evidence by a child by means of a live television link) shall be made by petition in Form 22.1.

(2) A petition referred to in paragraph (1) shall—

- (a) where it relates to proceedings in the High Court, be lodged with the Clerk of Justiciary, or
- (b) where it relates to proceedings in the sheriff court, be lodged with the sheriff clerk,

not later than 14 days before the trial diet (except on special cause shown).

(3) The High Court or the sheriff, as the case may be, shall—

- (a) order intimation of the petition to be made to the other party or parties to the proceedings; and
- (b) fix a diet for hearing the petition on the earliest practicable date.

###### **Orders and transfer of cases**

**22.2.**—(1) After hearing the parties and allowing such further procedure as the court thinks fit—

- (a) the High Court or the sheriff, as the case may be, may make an order granting or refusing the application; or
  - (b) where section 271(9) of the Act of 1995 (transfer of cases in which child's evidence is to be given through television link) applies, the sheriff may make an order under that section transferring the case to another sheriff court in the same sheriffdom.
- (2) Where the sheriff makes an order under paragraph (1)(b) transferring the case to another sheriff court (the "receiving court"), the sheriff clerk shall forthwith transmit the record copy of the indictment or the complaint, the minute of proceedings, any productions and any relevant documents to the clerk of the receiving court.

## CHAPTER 23

### LETTERS OF REQUEST

#### Applications for letters of request

**23.1.**—(1) An application to the court by the prosecutor or the defence under section 272(1)(a) of the Act of 1995 (evidence by letter of request) for the issue of a letter of request shall be made by petition—

- (a) where the accused has appeared on petition under Part IV of the Act of 1995 (petition procedure) but an indictment has not been served on him, in Form 23.1-A presented to the High Court; or
  - (b) where an indictment or a complaint has been served on the accused, in Form 23.1-B presented to the appropriate court.
- (2) A petition referred to in paragraph (1) shall—
- (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, be lodged with the Clerk of Justiciary, or
  - (b) where it relates to proceedings in the sheriff court, be lodged with the sheriff clerk,
- and shall be accompanied by a proposed letter of request in Form 23.1-C.

(3) An application to the court by the prosecutor or the defence under section 273(2) of the Act of 1995 (television link evidence from abroad) for the issue of a letter of request shall be in Form 23.1-D and shall be accompanied by a letter of request in Form 23.1-E.

- (4) Such an application made to the High Court may be disposed of by a single judge of that court.
- (5) The High Court or the sheriff, as the case may be, shall—
  - (a) order intimation on the other party or parties to the proceedings;
  - (b) subject to paragraph (6), allow such time for lodging answers as appears appropriate; and
  - (c) fix a diet for hearing the petition and answers (if any).
- (6) The High Court or the sheriff, as the case may be, may dispense with answers to the petition on cause shown.

#### Powers of court in applications

**23.2.**—(1) The High Court or the sheriff, as the case may be, may, after considering the petition for the issue of a letter of request and any answers to it, grant the petition with or without modification or refuse it.

- (2) On granting the petition, the High Court or the sheriff, as the case may be, shall—

- (a) in relation to an application under section 272(1)(a) of the Act of 1995 (evidence by letter of request), allow interrogatories to be adjusted summarily;
- (b) pronounce an order approving the terms—
  - (i) of the letter of request to be sent;
  - (ii) of any interrogatories and cross-interrogatories to be sent; and
- (c) if English is not an official language of the body to which the letter of request is addressed, specify a period within which a translation of each of the letter, any interrogatories and cross-interrogatories, and any productions, are to be lodged.

### **Expenses**

**23.3.**—(1) The solicitor for the petitioner or, if he is unrepresented, the petitioner shall be liable for the expenses of the petition for the issue of a letter of request.

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

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

### **Transmission of letters of request**

**23.4.**—(1) On—

(a) the High Court or the sheriff, as the case may be, pronouncing an order under rule 23.2(2),  
or

(b) 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 any documents to the Secretary of State for Foreign and Commonwealth Affairs for onward transmission to the body to which the letter of request is addressed.

(2) On sending the letter of request and any documents to the Secretary of State, the Clerk of Justiciary or sheriff clerk, as the case may be, shall note, on the petition, record copy of the indictment or in the minute of proceedings—

- (a) the documents sent;
- (b) to whom the documents were sent; and
- (c) the date on which the documents were sent.

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

- (a) note—
  - (i) the documents returned,
  - (ii) by whom they were returned, and
  - (iii) the date on which they were returned,on the application, the record copy of the indictment or in the minute of proceedings; and
- (b) intimate what he has noted to all parties concerned.

### **Custody of documents**

**23.5.**—(1) The Clerk of Justiciary or sheriff clerk, as the case may be, shall, subject to paragraph (2), keep the documents referred to in rule 23.4(3) in his custody.

(2) Where the petition for the issue of a letter of request 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 of that fact; and if that court is the sheriff court, the Clerk of Justiciary shall, as soon as is practicable, send to the sheriff clerk of that sheriff court the record of the evidence of the witness obtained by a letter of request under section 272(1)(a) of the Act of 1995.

(3) 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 under rule 23.4(3) to all the parties concerned in the proceedings, 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; or
- (b) to include the record of his evidence in any list of productions.

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

**23.6.**—(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 by virtue of a letter of request under section 272(1)(a) of the Act of 1995 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 or minute of proceedings.

(3) On any such motion in solemn proceedings being granted—

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

### **CHAPTER 24**

#### **EVIDENCE ON COMMISSION**

##### **Applications to take evidence on commission**

**24.1.**—(1) An application to the court by the prosecutor or the defence under section 272(1)(b) of the Act of 1995 for the appointment of a commissioner to examine a witness to whom that section applies, shall be made by petition—

- (a) where the accused has appeared on petition under Part IV of the Act of 1995 (petition procedure) but an indictment has not been served on him, in Form 24.1-A presented to the High Court; or
- (b) where an indictment or a complaint has been served on the accused, in Form 24.1-B presented to the appropriate court.

(2) A petition referred to in paragraph (1) shall—

- (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, be lodged with the Clerk of Justiciary; or
- (b) where it relates to proceedings in the sheriff court, be lodged with the sheriff clerk.

(3) A petition in relation to section 272(1)(b)(i) of the Act of 1995 (examination of witness ill or infirm) shall be accompanied by an appropriate medical certificate duly certified on soul and conscience by a qualified medical practitioner.

- (4) Such an application made to the High Court may be disposed of by a single judge of that court.
- (5) The High Court or the sheriff, as the case may be, shall—
  - (a) order intimation on the other party or parties to the proceedings;
  - (b) subject to paragraph (6), allow such time for lodging answers as appears appropriate; and
  - (c) fix a diet for hearing the petition and answers (if any).
- (6) The High Court or the sheriff, as the case may be, may dispense with answers to the petition on cause shown.

### **Appointment of commissioner**

**24.2.**—(1) The High Court or the sheriff, as the case may be, may, after considering the petition for the taking of evidence on commission and any answers to it, grant the petition with or without modifications or refuse it.

(2) On making an order granting the petition, the High Court or the sheriff, as the case may be, shall appoint—

- (a) a commissioner to examine the witness to whom the order applies, and
- (b) a clerk to assist the commissioner in the carrying out of his duties,

and shall dispense with interrogatories.

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

(4) On sending the order to the commissioner or his clerk under paragraph (2), the Clerk of Justiciary or sheriff clerk, as the case may be, shall note on the petition, record copy of the indictment or in the minute of proceedings—

- (a) the order and documents sent;
- (b) to whom they were sent; and
- (c) the date on which they were sent.

### **Expenses**

**24.3.**—(1) The solicitor for the petitioner or, if he is unrepresented, the petitioner shall be liable for the expenses of the petition for the appointment of a commissioner to take the evidence of a witness on commission.

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

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

### **The commission**

**24.4.**—(1) The commissioner shall, on receiving the order and documents mentioned in rule 24.2 (appointment of commissioner), determine the place and the date of the diet for the examination of the witness 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**

**24.5.**—(1) 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 sheriff clerk, as the case may be.

(2) On the report and any documents being returned to him, the Clerk of Justiciary or sheriff clerk, as the case may be, shall—

- (a) note—
  - (i) the documents returned,
  - (ii) by whom they were returned, and
  - (iii) the date on which they were returned,on the application, the record copy of the indictment or in the minute of proceedings; and
- (b) intimate what he has noted to all parties concerned.

### **Custody of documents**

**24.6.**—(1) The Clerk of Justiciary or the sheriff clerk, as the case may be, shall, subject to paragraph (2), keep the documents referred to in rule 24.5(2) in his custody.

(2) In any case where the petition for the taking of evidence on commission 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 of that fact; and if that court is the sheriff court, the Clerk of Justiciary shall, as soon as is practicable, send to the sheriff clerk of that sheriff court the record of the evidence of the witness or witnesses.

(3) 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 under rule 24.5(2) to all the parties concerned in the proceedings, 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; or
- (b) to include the record of his evidence in any list of productions.

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

**24.7.**—(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 on commission under this Chapter 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 or minute of proceedings.

(3) On any such motion in solemn proceedings being granted—

- (a) the judge may direct copies of the evidence, to which he has granted leave for reference to be made, to be provided to the jury by the party making the motion; and

- (b) the clerk of court shall read the record of that evidence to the jury and shall then record that he has done so in the record of proceedings.

## **CHAPTER 25**

### **RECORD OF JUDICIAL EXAMINATION AS EVIDENCE IN SOLEMN PROCEEDINGS**

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

**25.1.**—(1) The record made under section 37 of the Act of 1995 (judicial examination: record of proceedings) shall be received in evidence in accordance with section 278(1) of that Act by means of the clerk of court, subject to paragraph (2) of this rule, 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 278(2) of the Act of 1995.

(3) The presiding judge may 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 36(3) of the Act of 1995 (written record of confession allegedly made received from prosecutor or constable).

## **CHAPTER 26**

### **DOCUMENTARY EVIDENCE**

#### **Authentication of copies of documents**

**26.1.**—(1) For the purposes of paragraph 1(1) of Schedule 8 to the Act of 1995 (production of copy documents), a copy, or a copy of a material part, of a document shall be authenticated—

- (a) by a person who is—
- (i) the author of the original of it;
  - (ii) a person in, or who has been in, possession and control of the original of it or a copy of it; or
  - (iii) the authorised representative of the person in, or who has been in, possession and control of the original of it or a copy of it; and
- (b) by means of a signed certificate, certifying the copy as a true copy, which may be in Form 26.1-A—
- (i) endorsed on the copy; or
  - (ii) attached to the copy.

(2) For the purposes of paragraph 4 of Schedule 8 to Act of 1995 (documents kept by businesses etc.), a document shall be certified by a docquet in Form 26.1-B—

- (a) endorsed on the document; or
- (b) attached to the document.

(3) For the purposes of paragraph 5(3) of Schedule 8 to the Act of 1995 (statements not contained in business documents), a certificate shall be in Form 26.1-C.

## CHAPTER 27

### ROUTINE EVIDENCE, SUFFICIENT EVIDENCE AND PROOF OF PREVIOUS CONVICTIONS

#### Notices in relation to use of autopsy and forensic science reports

**27.1.**—(1) Any notice given by an accused under subsection (1) or (2) of section 281 of the Act of 1995 (routine evidence: autopsy and forensic science reports) shall be in writing and shall be given to the prosecutor.

(2) For the purposes of the application of section 281(1) of the Act of 1995 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.

(3) For the purposes of the application of subsection (2) of section 281 of the Act of 1995 to any summary proceedings, the prosecutor shall intimate his intention in accordance with that subsection by serving a copy of the autopsy or forensic science report lodged by him on the accused or his solicitor with a notice of his intention not later than 14 days before the date of the trial diet.

#### Form of certificates in relation to certain evidence

**27.2.** A certificate under any of the following provisions of the Act of 1995 shall be in Form 27.2:—

- section 283(1) (certificate as to time and place of video surveillance recordings),
- section 284(1) (certificate in relation to fingerprints),
- section 285(2) (certificate relating to previous convictions),
- section 285(4) (certificate relating to fingerprints),
- section 285(5) (certificate relating to fingerprints of previously convicted person).

#### Form of notice in relation to certain evidential certificates

**27.3.** A notice under any of the following provisions of the Act of 1995 shall be in Form 27.3:—

- section 282(3) (notice not accepting evidence as to controlled drugs or medicinal products),
- section 283(2) (notice not accepting evidence as to video surveillance),
- section 284(2) (notice not accepting evidence in relation to fingerprints),
- section 286(1) (notice denying extract conviction applies to accused).

## PART VII

### *Miscellaneous procedures*

## CHAPTER 28

### IDENTIFICATION PARADES

#### Applications for identification parade

**28.1.**—(1) An application to the sheriff made by an accused under section 290 of the Act of 1995 (application by accused for identification 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 petition—
  - (i) where the accused has appeared on petition under Part IV of the Act of 1995 (petition procedure) but an indictment has not been served on him, in Form 28.1-A; or
  - (ii) where an indictment or a complaint has been served on the accused, in Form 28.1-B.
- (2) On the petition referred to in paragraph (1) being lodged, the sheriff shall—
  - (a) order intimation of the petition to be made to the prosecutor;
  - (b) fix a diet for a hearing of the petition on the earliest practicable date; and
  - (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 petition.
- (3) If—
  - (a) the prosecutor is not present at the hearing of the petition; and
  - (b) the sheriff makes an order granting the petition,
 the sheriff clerk shall issue a certified copy of the order to the petitioner 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.

## CHAPTER 29

### PRECOGNITION ON OATH OF DEFENCE WITNESSES

#### Applications for warrant to cite for precognition

- 29.1.**—(1) An application to the sheriff made by an accused under section 291(1) of the Act of 1995 (warrant to cite any person to appear for precognition on oath) shall be made—
- (a) to the sheriff in whose sheriffdom the proceedings, in respect of which the accused seeks the precognition of that person, have been commenced;
  - (b) by petition—
    - (i) where the accused has appeared on petition under Part IV of the Act of 1995 (petition procedure) but an indictment has not been served on him, in Form 29.1-A; or
    - (ii) where an indictment or a complaint has been served on the accused, in Form 29.1-B.
  - (2) On a petition referred to in paragraph (1) being lodged, the sheriff shall—
    - (a) order intimation of the application to be made to the procurator fiscal; and
    - (b) fix a diet for a hearing of the application.

#### Orders for taking precognition

- 29.2.** Where, after the hearing fixed under rule 29.1(2), 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; and
  - (c) grant warrant to cite the person from whom it is to be taken.

### **Citation to attend for precognition**

**29.3.**—(1) Citation of a person to attend the diet fixed for taking his precognition on oath shall be in Form 29.3; and an execution of service shall be produced at the diet fixed under rule 29.1(2).

(2) Where a person fails to appear at a diet fixed for taking his precognition and the sheriff issues a warrant for his apprehension under section 291(2) of the Act of 1995, execution of that warrant—

- (a) shall be made by an officer of law instructed by the accused or his solicitor; and
- (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**

**29.4.**—(1) Where a 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; and
- (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 writer**

**29.5.**—(1) The solicitor for the accused or, if he is not represented, the accused shall be liable for payment of—

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

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

(2) Where the accused is not represented, the sheriff may, at the hearing of the application or at any time before the precognition is taken, order the accused to consign into 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 into court under paragraph (2) and that sum is not consigned by the date specified in the order, the petition shall be treated as abandoned.

## **CHAPTER 30**

### **PROCEEDINGS FOR THE EXECUTION OF IRISH WARRANTS**

#### **Interpretation of this Chapter**

**30.1.** In this Chapter, unless the context otherwise requires—

- “the Act of 1965” means the Backing of Warrants (Republic of Ireland) Act 1965<sup>(11)</sup>;
- “judicial authority” means a court, judge or justice of a court, or peace commissioner.

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(11) 1965 c. 45.

### Form of endorsement

**30.2.**—(1) The endorsement of a warrant for execution within any part of Scotland under section 1 of the Act of 1965 (endorsement of warrants issued in Republic of Ireland) shall be in Form 30.2-A.

(2) A warrant issued under section 4 of the Act of 1965 (provisional warrants) shall be in Form 30.2-B.

(3) Where a person has been remanded in custody under section 2(1) or 4(3) of the Act of 1965 (which relate to proceedings before the sheriff), the order of the 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) Where 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.

### Procedure in applications for stated case under section 2A of the Act of 1965

**30.3.**—(1) The sheriff clerk of a court which refused to order a person to be delivered under section 2 of the Act of 1965<sup>(12)</sup> (proceedings before sheriff) but made an order under section 2A(2) of that Act<sup>(13)</sup> releasing that person on bail shall, on the procurator fiscal immediately informing the court that he intends to make an application to the court to state a case for the opinion of the High Court, forthwith send a copy of that order to the Crown Agent.

(2) Where a court refuses to make an order in relation to a person under section 2 of the Act of 1965, any application to the court under section 2A(1) of the Act of 1965 (application to state a case for the opinion of the High Court on ground that it is wrong in law) shall be made to the court by the procurator fiscal within 21 days after the day on which the order was refused, unless the court grants a longer period within which the application is to be made.

(3) Such an application shall be made in writing and shall identify the question of law on which the opinion of the High Court is sought.

(4) Within 21 days after receipt of an application to state a case under section 2A(1) of the Act of 1965, the sheriff clerk shall send a draft stated case to the procurator fiscal and to the person to whom the warrant relates or his solicitor; and the sheriff shall allow each party 21 days from the date of the sending of the draft stated case within which to lodge and intimate proposed adjustments.

(5) Within seven days after the latest date on which adjustments may be lodged, the sheriff shall on the motion of either party, or may of his own accord, hear parties on any such adjustments.

(6) Within 14 days after the latest date on which such hearing on adjustments may take place or, if there are no such adjustments, within 14 days after the latest date by which such adjustments could have been lodged, the sheriff shall, after considering any such proposed adjustments and representations, state and sign the case; and the sheriff clerk shall—

- (a) forthwith transmit the case, with the application for the case and all other documents, to the Clerk of Justiciary; and
- (b) send a duplicate of the case to the procurator fiscal and to the person to whom the warrant relates or his solicitor.

(7) Where any period of time specified in paragraphs (4), (5) or (6) expires on a Saturday, Sunday or court holiday prescribed for the sheriff court concerned, the period shall be extended to expire on the next day which is not a Saturday, Sunday or such court holiday.

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(12) Section 2 was amended by the Criminal Jurisdiction Act 1975 (c. 59), Schedule 3, paragraph 1, the Suppression of Terrorism Act 1978 (c. 26), section 2(2) and section 72(2) of the Criminal Justice Act 1993 (c. 36).

(13) Section 2A was inserted by the Criminal Justice (Scotland) Act 1988 (c. 33), Schedule 1, paragraph 5 and continues to have effect by virtue of section 37(5) of the Extradition Act 1989 (c. 33).

(8) Where the sheriff who refuses to make an order referred to in paragraph (2) becomes temporarily absent from duty for any cause, the sheriff principal of the sheriffdom in which the court is situated may extend any period of time specified in that paragraph for such period as he considers reasonable.

(9) Where the sheriff referred to in paragraph (4), (5) or (6) dies before signing the stated case, the applicant for the stated case may present a bill of suspension to the High Court and bring under the review of that court any matter which might have been brought under review by stated case.

### **Power of High Court to extend period of time**

**30.4.**—(1) Without prejudice to any other power of relief which the High Court may have, where it appears to that court, on an application made in accordance with the following provisions of this rule, that a party has failed to comply with any of the requirements of paragraph (2) or (4) of rule 30.3 (procedure in applications for stated case under section 2A of the Act of 1965), the High Court may direct that such further period of time as it considers reasonable be afforded to such party to comply with any requirements of paragraph (2) or (4) of rule 30.3.

(2) An application for a direction under paragraph (1) shall be made in writing to the Clerk of Justiciary and shall state the grounds for the application; and notification of the application shall be made by the applicant to the sheriff clerk.

(3) On receipt of such notification, the sheriff clerk shall transmit a certified copy of the complaint, documentary productions and any other proceedings in the case to the Clerk of Justiciary.

(4) The High Court shall dispose of any application under paragraph (1) in the same manner as an appeal in respect of bail under section 32 of the Act of 1995.

(5) After the High Court has disposed of the application, the Clerk of Justiciary shall inform the sheriff clerk of the result.

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

**30.5.**—(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 Form 30.5, 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) Where 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**

**30.6.**—(1) Where a person has been ordered to be delivered under section 2(1) of the Act of 1965 (proceedings before the sheriff)—

(a) if the person is remanded on bail, the sheriff clerk, or

(b) if the person is detained in custody, the governor of the prison in which he is detained,

shall arrange for the warrant of arrest issued by a judicial authority in the Republic of Ireland and endorsed in accordance with section 1 of that Act to be given to the member of the police force of the Republic of Ireland into whose custody the person is delivered when the person is so delivered.

(2) Where a person ordered to be delivered under 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 that person is to surrender.

### **Certification of warrant**

**30.7.**—(1) A document purporting to be a warrant issued by a judicial authority in the Republic of Ireland shall, for the purposes of section 7(a) of the Act of 1965 (evidence as to warrants), 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 of Ireland and certifying that the document is a warrant and is issued by a judicial authority.

(2) A document purporting to be a copy of a summons issued by a judicial authority in the Republic of Ireland shall, for the purposes of section 7(a) of the Act of 1965, be verified by a certificate purporting to be signed by a judicial authority, clerk of court or member of the police force of the Republic of Ireland and certifying that the document is a true copy of such a summons.

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

## **CHAPTER 31**

### **REFERENCES TO THE EUROPEAN COURT OF JUSTICE**

#### **Interpretation of this Chapter**

**31.1.**—(1) In this Chapter, unless the context otherwise requires—

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

“question” means a question or issue under Article 177 of the E.E.C. Treaty, Article 150 of the Euratom Treaty or Article 41 of the E.C.S.C. Treaty;

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

(2) The expressions “E.E.C. Treaty”, “Euratom Treaty”, and “E.C.S.C. Treaty” have the meanings assigned respectively in Schedule 1 to the European Communities Act 1972<sup>(14)</sup>.

#### **Notice of references in solemn proceedings**

**31.2.**—(1) Where 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 14 days after service of the indictment.

(2) Where such a notice is given, a record of the notice shall be made 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 the parties, may determine the question or may decide that a preliminary ruling should be sought.

(5) Where the court determines the question, the accused shall then (if appropriate) be called on 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; and

(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—

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(14) 1972 c. 68.

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

#### **Notice of references in summary proceedings**

**31.3.**—(1) Where 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 such notice is given, a record of the notice 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) Where the court determines the question, the accused shall then (where appropriate) be called on to plead to the complaint.

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

**31.4.**—(1) Where a question is raised in the High Court in any proceedings on appeal or on a petition for the exercise of the *nobile officium*, the court shall proceed to make a reference.

(2) In paragraph (1), the reference to proceedings on appeal is a reference to proceedings on appeal under the Act of 1995 or on appeal by bill of suspension, bill of advocation or otherwise.

#### **Preparation of case for reference**

**31.5.**—(1) Where 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 or minute of proceedings, as the case may be; and
- (b) continue the proceedings from time to time as necessary for the purposes of the reference.

(2) The reference—

- (a) shall be drafted in Form 31.5 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; and
- (c) after approval and the making of an appropriate order by the court, shall (after the expiry of the period for appeal) be transmitted by the clerk of court to the Registrar of the European Court with a certified copy of the record or minute of proceedings, as the case may be, and, where applicable, a certified copy of the relevant indictment or complaint.

#### **Procedure on receipt of preliminary ruling**

**31.6.**—(1) Where 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, the ruling shall be laid by the clerk before the court.

(2) On the ruling being laid before the court, the court shall then give directions as to further procedure, which directions shall be intimated by the clerk, with a copy of the ruling, to each of the parties to the proceedings.

### **Appeals against references**

**31.7.**—(1) Subject to paragraph (2), where an order making a reference is made under rule 31.4 (proceedings on appeal etc.), any party to the proceedings who is aggrieved by the order may, within 14 days after the date of the order, appeal against the order to the High Court sitting as a court of appeal.

(2) Paragraph (1) shall not apply to such an order made in proceedings in the High Court sitting as a court of appeal or in proceedings on petition to that court for the exercise of its *nobile officium*.

(3) Any appeal under this rule shall be taken by lodging with the clerk of the court which made the order a note of appeal in Form 31.7 and signed by the appellant or his solicitor; and a copy of the note shall be served by the appellant on every other party to the proceedings.

(4) The clerk of court shall record the lodging of the note in the record or minute of proceedings, as the case may be, and shall forthwith transmit the note to the Clerk of Justiciary with the record or minute of proceedings and a certified copy of the relevant indictment or complaint.

(5) In disposing of an appeal under this rule, the High Court (sitting as a court of appeal) may—

- (a) sustain or dismiss the appeal, and in either case remit the proceedings to the court of first instance with instructions to proceed as accords; and
- (b) give such directions for other procedure as it thinks fit.

(6) 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 abandoned.

## **CHAPTER 32**

### **ANNOYING CREATURES**

#### **Interpretation of this Chapter**

**32.1.** In this Chapter, “the Act of 1982” means the Civic Government (Scotland) Act 1982<sup>(15)</sup>.

#### **Form of application to district court and service**

**32.2.**—(1) An application to a district court under section 49(3) of the Act of 1982 (annoying creatures) shall be made in Form 32.2.

(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 of 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.

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(15) 1982 c. 45.

(5) Where the court makes an order in respect of any person under section 49(2) of the Act of 1982, the clerk of court shall, within seven days after 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 Act of 1982.

## CHAPTER 33

### LEGAL AID

#### Interpretation of this Chapter

**33.1.** In this Chapter, unless the context otherwise requires—

“the Act of 1986” means the Legal Aid (Scotland) Act 1986**(16)**;

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

“the Regulations” means the Criminal Legal Aid (Scotland) Regulations 1987**(17)**.

#### Legal aid in High Court

**33.2.** Where an application for legal aid is made to the High Court under section 23 of the Act of 1986**(18)** (power of the court to grant legal aid), the court may—

- (a) determine the application itself; or
- (b) remit the application to the sheriff court for determination.

#### Discontinuance of entitlement to legal aid

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

- (a) that he—
  - (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,
  - (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 counsel or solicitor 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, or
  - (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,

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**(16)** 1986 c. 47.

**(17)** S.I. 1987/307.

**(18)** Section 23 was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), Schedule 4, paragraph 63(4).

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) of this rule in the course of proceedings to which section 22 of the Act of 1986<sup>(19)</sup> (automatic availability of criminal legal aid) applies, the accused 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 Scottish Legal Aid 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 Scottish Legal Aid 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

**33.4.** 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.

### Intimation of determination of High Court

**33.5.** The Clerk of Justiciary shall intimate to the Scottish Legal Aid Board any decision of the High Court made under section 25(2A) of the Act of 1986<sup>(20)</sup> (determination by High Court that applicant should receive legal aid).

## CHAPTER 34 EXTRADITION

### Interpretation of this Chapter

**34.1.** In this Chapter—

“the Act of 1989” means the Extradition Act 1989<sup>(21)</sup>;

“court of committal” has the meaning assigned in section 9(1) of the Act of 1989.

### Procedure in applications for stated case

**34.2.—**(1) Where—

- (a) the court of committal refuses to make an order under section 9 of the Act of 1989 (proceedings for committal) in relation to a person in respect of the offence or, as the case may be, any of the offences to which the authority to proceed relates,
- (b) the state, country or colony seeking the surrender of that person immediately informs the court that it intends to make an application to the court to state a case for the opinion of the High Court, and
- (c) the court of committal makes an order under section 10(2) of the Act of 1989 (detention or bail where refusal of extradition order challenged) releasing that person on bail,

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<sup>(19)</sup> Section 22 was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995, Schedule 4, paragraph 63(3).

<sup>(20)</sup> Subsection (2A) of section 25 was inserted by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995, Schedule 4, paragraph 63(7).

<sup>(21)</sup> 1989 c. 33.

the sheriff clerk shall forthwith send a copy of that order to the Crown Agent.

(2) Where—

- (a) the court of committal refuses to make an order under section 9 of the Act of 1989 in relation to a person in respect of the offence or, as the case may be, any of the offences to which the authority to proceed relates, and
- (b) the state, country or colony seeking his surrender wishes to apply to that court to state a case for the opinion of the High Court under section 10(1) of the Act of 1989,

such an application shall be made to the court of committal within 21 days after the date on which that court refuses to make the order under section 9 of the Act of 1989 unless the sheriff grants a longer period within which the application is to be made.

(3) Such an application shall be made in writing and shall identify the question or questions of law on which the opinion of the High Court is sought.

(4) Within 21 days after receipt of an application to state a case under section 10(1) of the Act of 1989, the clerk of the court of committal shall send a draft stated case prepared by the sheriff to the solicitor for the state, country or colony and to the person whose surrender is sought or his solicitor; and the court of committal shall allow each party 21 days from the date of the sending of the draft stated case within which to lodge and intimate proposed adjustments.

(5) Within seven days after the latest date on which such adjustments may be lodged, the sheriff shall, on the motion of either party, or may of his own accord, hear parties on any such adjustments.

(6) Within 14 days after the latest date on which such hearing on adjustments may take place (or, if there are no such adjustments, within 14 days after the latest date by which such adjustments could have been lodged), the sheriff shall, after considering any such proposed adjustments and representations, state and sign the case; and the sheriff clerk shall—

- (a) forthwith transmit the case, with the application for the case and all other documents in the case to the Clerk of Justiciary; and
- (b) send a duplicate of the case to the solicitor for the state, country or colony and to the person whose surrender is sought or his solicitor.

(7) If any period of time specified in paragraph (4), (5) or (6) expires on a Saturday, Sunday or court holiday prescribed for the court of committal, the period shall be extended to expire on the next day which is not a Saturday, Sunday or such court holiday.

(8) Where the sheriff referred to in paragraph (4), (5) or (6) becomes temporarily absent from duty for any cause, the sheriff principal of the sheriffdom of Lothian and Borders may extend any period of time specified in that paragraph for such period as he considers reasonable.

(9) Where the sheriff referred to in paragraph (4), (5) or (6) dies before signing the stated case, the applicant for the stated case may present a bill of suspension to the High Court and bring under the review of that court any matter which might have been brought under review by stated case.

### **Power of High Court to extend period of time**

**34.3.**—(1) Without prejudice to any other power which the High Court may have, where it appears to that court, on an application made in accordance with the following provisions of this rule, that a party has failed to comply with any of the requirements of paragraph (2) or (4) of rule 34.2 (procedure in applications for stated case), the High Court may direct that such further period of time as it considers reasonable be afforded to such party to comply with any requirements of paragraph (2) or (4) of rule 34.2.

(2) An application for a direction under paragraph (1) shall be made in writing to the Clerk of Justiciary and shall state the grounds for the application; and notification of the application shall

be made by the applicant to the sheriff clerk of the court of committal; and the sheriff clerk shall forthwith transmit one certified copy of all documents in the case to the Clerk of Justiciary.

(3) The High Court shall dispose of any application under paragraph (1) in the same manner as an appeal in respect of bail under section 32 of the Act of 1995 and, when the High Court has disposed of the application, the Clerk of Justiciary shall inform the clerk of the court of committal of the result.

#### **Applications to High Court for order for stated case**

**34.4.** An application to the High Court for an order under section 10(4) of the Act of 1989 (order requiring court of committal to state a case) shall be made in writing to the Clerk of Justiciary and shall state the grounds for the application, and notification of application shall be made by the applicant to the sheriff clerk of the court of committal; and the sheriff clerk shall forthwith transmit one certified copy of all documents in the case to the Clerk of Justiciary.

#### **Notices of waiver of rights and consent**

**34.5.—**(1) A notice given under section 14 of, or paragraph 9 of Schedule 1 to, the Act of 1989 (which relate to waiver of rights) shall be in Form 34.5.

(2) Such a notice shall be signed in the presence of a sheriff, sheriff clerk, justice of the peace or solicitor.

(3) Any such notice given by a person in custody shall be delivered to the governor of the prison in whose custody he is.

(4) Where a person on bail gives such notice he shall deliver it, or send it by post in a registered letter or by the first class recorded delivery service addressed, to the Crown Agent.

### **CHAPTER 35**

#### **COMPUTER MISUSE ACT 1990**

#### **Notices in relation to relevance of external law**

**35.1.** A notice under section 8(5) of the Computer Misuse Act 1990(22) (notice by defence that conditions not satisfied) shall be served on the prosecutor not later than 14 days before the trial diet.

### **CHAPTER 36**

#### **CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT 1990**

#### **Interpretation of this Chapter**

**36.1.** In this Chapter—

“the Act of 1990” means the Criminal Justice (International Co-operation) Act 1990(23); and

“document” means a document to which section 2 of the Act of 1990 (service of United Kingdom process overseas) applies.

#### **Service of orders outside the United Kingdom**

**36.2.** Where a document is to be served on a person outside the United Kingdom, it shall be sent by the Clerk of Justiciary or sheriff clerk, as the case may be, to the Crown Agent with a view to its being served in accordance with arrangements made by the Secretary of State.

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(22) 1990 c. 18.

(23) 1990 c. 5.

### **Proof of service outside the United Kingdom**

**36.3.** The service on any person of a document may be proved in any legal proceedings by a certificate given by or on behalf of the Secretary of State, and such a certificate shall be sufficient evidence of the facts stated in it.

### **Notice of applications for letters of request**

**36.4.** An application under section 3(1) of the Act of 1990 (issue of letter of request)—

- (a) shall be made in Form 36.4-A;
- (b) shall be lodged with the Clerk of Justiciary or sheriff clerk, as the case may be; and
- (c) shall—
  - (i) be made in writing;
  - (ii) state the particulars of the offence which it is alleged has been committed or the grounds on which it is suspected that an offence has been committed;
  - (iii) state whether proceedings in respect of the offence have been instituted or the offence is being investigated; and
  - (iv) include particulars of the assistance requested in a draft letter of request in Form 36.4-B.

### **Hearing of applications for letters of request**

**36.5.—**(1) Where the prosecutor presents an application under section 3(1) of the Act of 1990 (issue of letter of request) before either the first appearance of the accused on petition or the service of a summary complaint, the High Court or sheriff, as the case may be, shall, without requiring intimation to any other party, proceed to consider the application.

(2) Where any party presents such an application following the first appearance of the accused on petition or the service of a summary complaint, the High Court or sheriff, as the case may be, may—

- (a) before the lodging of an indictment, dispense on cause shown with intimation to any other party and proceed to consider the application; or
  - (b) fix a diet for hearing the application and order intimation of the diet and application to any other party.
- (3) The High Court or sheriff, as the case may be, after considering any such application—
- (a) may allow summary adjustment of the statement of assistance required in the letter of request;
  - (b) shall grant the application, with or without any modifications which it or he deems appropriate, or shall refuse it.
- (4) On granting such application the High Court or sheriff, as the case may be, shall—
- (a) approve and sign the letter of request;
  - (b) if English is not an official language of the body to which the letter of request is addressed, specify a period within which a translation of the letter of request and of any production is to be lodged.

### **Court register of applications for letters of request**

**36.6.—**(1) A register shall be kept by the Clerk of Justiciary and by the sheriff clerk of applications under section 3(1) of the Act of 1990 (issue of letter of request).

(2) Save as authorised by the court, the register relating to applications mentioned in paragraph (1) above shall not be open to inspection by any person.

### **Letters of request in cases of urgency**

**36.7.** Where, in a case of urgency, the court sends a letter of request direct to any court or tribunal in accordance with section 3(5) of the Act of 1990 (issue of letter of request), the Clerk of Justiciary or sheriff clerk, as the case may be, shall forthwith notify the Crown Agent and Secretary of State of this and send with the notification a copy of the letter of request.

### **Proceedings before a nominated court**

**36.8.—**(1) In proceedings before a court nominated under section 4(2) of the Act of 1990 (nomination of court to receive evidence for use overseas)—

- (a) the procurator fiscal or Crown counsel shall participate in any hearing;
- (b) the prosecutor of the requesting country mentioned in the request under section 4(1) of the Act of 1990 may participate in any hearing;
- (c) where the request under section 4(1) of the Act of 1990 (request for assistance in obtaining evidence in United Kingdom) originates from current criminal proceedings any party to or persons with an interest in those proceedings may attend and, with the leave of the court, participate in any hearing;
- (d) a judge or investigating magistrate in the current criminal proceedings may participate in any hearing;
- (e) a lawyer or person with a right of audience from the requesting country who represents any party to the current criminal proceedings may participate in any hearing;
- (f) a solicitor or counsel instructed by any party may participate in any hearing;
- (g) any other person may, with the leave of the court, participate in any hearing;
- (h) a shorthand writer may be present to record the proceedings; and
- (i) the proceedings shall be in private.

(2) Where any person applies for leave to participate in any hearing the court shall, in determining such application, consider any relevant representations made by the party making the request under section 4(1) of the Act of 1990.

### **Court record of proceedings before a nominated court**

**36.9.—**(1) Where a court receives evidence in proceedings by virtue of a notice under section 4(2) of the Act of 1990 (nomination of court to receive evidence for use overseas), the Clerk of Justiciary or sheriff clerk, as the case may be, shall record in the minute of proceedings—

- (a) particulars of the proceedings; and
- (b) without prejudice to the generality of (a) above—
  - (i) which persons were present;
  - (ii) which of those persons were represented and by whom; and
  - (iii) whether any of those persons was denied the opportunity of cross-examining a witness as to any part of his testimony.

(2) Save as authorised by the Lord Advocate, or with the leave of the court, the minute of proceedings mentioned in paragraph (1) above shall not be open to inspection by any person.

(3) When so requested by the Lord Advocate, the sheriff clerk shall send to him a certified copy of the minute of proceedings as it relates to any proceedings mentioned in paragraph (1).

(4) The Clerk of Justiciary or sheriff clerk, as the case may be, shall comply with paragraph 5 of Schedule 1 to the Act of 1990 (transmission of evidence) with regard to the transmission of evidence received by the court.

## CHAPTER 37

### PROCEEDINGS UNDER THE PROCEEDS OF CRIME (SCOTLAND) ACT 1995

#### Orders to make material available

**37.1.**—(1) An application by the procurator fiscal to the sheriff for an order under section 18(2) of the Proceeds of Crime (Scotland) Act 1995(24) (order to make material available in investigation of drug trafficking) shall be made by petition; and section 134 (incidental applications) of the Act of 1995 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 18(5) of the Proceeds of Crime (Scotland) Act 1995 (order to allow constable to enter premises to obtain access to material) may be made in the petition applying for an order under section 18(2); and paragraph (2) of this rule shall apply 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 of orders

**37.2.**—(1) A person, in respect of whom an order has been made under section 18(2) or (5) of the Proceeds of Crime (Scotland) Act 1995 (which relate to orders to make material available in investigating drug trafficking), may apply to the sheriff for discharge or variation of the order in question.

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

#### Warrants to search premises

**37.3.** An application by the procurator fiscal to the sheriff under section 19(1) of the Proceeds of Crime (Scotland) Act 1995 (authority for search) shall be made by petition; and section 134 (incidental applications) of the Act of 1995 shall apply to any such application for a warrant as it applies to an application for a warrant referred to in that section.

## SCHEDULE 3

Paragraph 3

### ACTS OF ADJOURNAL REVOKED

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<i>Statutory Instrument Year and Number</i>	<i>Title of Act of Adjournal</i>	<i>Extent of Revocation</i>
1988/110	Act of Adjournal (Consolidation) 1988	The whole Act of Adjournal

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(24) 1995 c. 43.

**Status:** This is the original version (as it was originally made). UK  
Statutory Instruments are not carried in their revised form on this site.

<i>Statutory Instrument Year and Number</i>	<i>Title of Act of Adjournal</i>	<i>Extent of Revocation</i>
1989/48	Act of Adjournal (Consolidation Amendment) (Reference to European Court) 1989	The whole Act of Adjournal
1989/1020	Act of Adjournal (Consolidation Amendment No.2) (Forms of Warrant for Execution and Charge for Payment of Fine or Other Financial Penalty) 1989	The whole Act of Adjournal
1990/718	Act of Adjournal (Consolidation Amendment No.2) (Drug Trafficking) 1990	The whole Act of Adjournal
1990/2106	Act of Adjournal (Consolidation Amendment No.2) (Miscellaneous) 1990	The whole Act of Adjournal
1991/19	Act of Adjournal (Consolidation Amendment) (Extradition Rules and Backing of Irish Warrants) 1991	The whole Act of Adjournal
1991/847	Act of Adjournal (Consolidation Amendment No.1) 1991	The whole Act of Adjournal
1991/1916	Act of Adjournal (Consolidation Amendment No.2) (Evidence of Children) 1991	The whole Act of Adjournal
1991/2676	Act of Adjournal (Consolidation Amendment No.3) 1991	The whole Act of Adjournal
1991/2677	Act of Adjournal (Consolidation Amendment No.4) (Supervised Attendance Orders) 1991	The whole Act of Adjournal
1992/1489	Act of Adjournal (Consolidation Amendment) (Criminal Justice International Co-operation Act 1990) 1992	The whole Act of Adjournal
1993/1955	Act of Adjournal (Consolidation Amendment) (Courses for Drink-drive Offenders) 1993	The whole Act of Adjournal

<i>Statutory Instrument Year and Number</i>	<i>Title of Act of Adjournal</i>	<i>Extent of Revocation</i>
1993/2391	Act of Adjournal (Consolidation Amendment No.2) (Miscellaneous) 1993	The whole Act of Adjournal
1994/1769	Act of Adjournal (Consolidation Amendment) (Miscellaneous) 1994	The whole Act of Adjournal
1995/1875	Act of Adjournal (Consolidation Amendment) (Supervised Release Orders) 1995	The whole Act of Adjournal

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#### **EXPLANATORY NOTE**

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

This Act of Adjournal arises out of the enacting of the Criminal Procedure (Scotland) Act 1995 (c. 46) which consolidates enactments relating to criminal procedure including those mentioned below. The Act of Adjournal makes new rules for the High Court of Justiciary, for the sheriff court in exercise of its criminal jurisdiction, and for the district court, consolidating, with amendments, the Act of Adjournal (Consolidation) 1988 and certain provisions of the Criminal Procedure (Scotland) Act 1887 (c. 35), the Criminal Justice (Scotland) Act 1949 (c. 94), the Summary Jurisdiction (Scotland) Act 1954 (c. 48) and the Criminal Procedure (Scotland) Act 1975 (c. 21).

The provisions in the enactments mentioned above which are consolidated in this Act of Adjournal, and the respective provisions in the Act of Adjournal which re-enact them, are set out in the Table of Destinations attached to this Act of Adjournal.