

SCHEDULE 2

CRIMINAL PROCEDURE RULES 1996

PART VI

Evidence

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.

Status: This is the original version (as it was originally made).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

(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.