

## SCHEDULE 2

### CRIMINAL PROCEDURE RULES 1996

#### *PART VII*

#### *Miscellaneous procedures*

#### **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<sup>(1)</sup>; 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.

##### **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.

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(1) 1990 c. 5.

*Status: This is the original version (as it was originally made).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

### **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.