

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

Status: This is the original version (as it was originally made).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

SCHEDULE 2

Paragraph 2

CRIMINAL PROCEDURE RULES 1996

ARRANGEMENT OF RULES

PART I

Preliminary and administration

CHAPTER 1

CITATION, INTERPRETATION AND FORMS

- 1.1 Citation of these Rules
- 1.2 Interpretation
- 1.3 Forms

CHAPTER 2

SERVICE OF DOCUMENTS

- 2.1 Service on Crown
- 2.2 Citation in solemn proceedings
- 2.3 General provisions for service
- 2.4 Service on witnesses
- 2.5 Service by post
- 2.6 Forms of execution of service
- 2.7 Proof of service furth of Scotland

CHAPTER 3

COURT RECORDS

- 3.1 Books of Adjournal
- 3.2 Form of minuting in solemn proceedings
- 3.3 Interlocutors in High Court to be signed by clerk of court
- 3.4 Record copies of indictments etc. to be inserted in record books
- 3.5 Form of recording warrants for remission of sentences
- 3.6 Custody and transmission of records

PART II

General

CHAPTER 4

BAIL

- 4.1 Application to alter address in bail order

CHAPTER 5

JUDICIAL EXAMINATION

- 5.1 Procedure in examination
- 5.2 Record of examination
- 5.3 Verbatim record
- 5.4 Use of tape recorders
- 5.5 Questions by prosecutor
- 5.6 Rectification of errors in transcript
- 5.7 Alteration of time limits by sheriff
- 5.8 Postponement of trial diet by sheriff
- 5.9 Postponement of trial diet by High Court
- 5.10 Alteration of time limits by High Court

CHAPTER 6

PROCEEDINGS INVOLVING CHILDREN

- 6.1 Interpretation of this Chapter
- 6.2 Application of summary procedure
- 6.3 Assistance for unrepresented child
- 6.4 Procedure in summary proceedings
- 6.5 Failure to comply with probation order
- 6.6 Separation of children at sittings
- 6.7 Restrictions on reports of proceedings involving children

CHAPTER 7

MENTAL DISORDER

- 7.1 Application for interim hospital orders

PART III

Solemn proceedings

CHAPTER 8

THE INDICTMENT

- 8.1 Appeals in relation to extension of time for trial
- 8.2 Citation of accused and witnesses
- 8.3 Notice of previous convictions

CHAPTER 9

FIRST DIETS AND PRELIMINARY DIETS

- 9.1 Minute giving written notice
- 9.2 Intimation of minute
- 9.3 Procedure on lodging minute
- 9.4 Order for preliminary diet
- 9.5 Intimation of order for preliminary diet

Status: This is the original version (as it was originally made).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

- 9.6 Order for preliminary diet to be warrant for citation
- 9.7 Calling postponed diet
- 9.8 Warrant for conveyance and transmission
- 9.9 Abandonment of matter to be raised
- 9.10 Procedure at first diet or preliminary diet
- 9.11 Applications for leave to appeal
- 9.12 Note of appeal
- 9.13 Procedure on lodging note of appeal
- 9.14 Report of sheriff
- 9.15 Intimation of order postponing trial diet
- 9.16 Orders of appeal court
- 9.17 Abandonment of appeal

CHAPTER 10

PLEA OF GUILTY

- 10.1 Procedure for plea of guilty

CHAPTER 11

NOTICES BY ACCUSED IN RELATION TO DEFENCE

- 11.1 Notices of special defence etc.
- 11.2 Notices by accused of witnesses and productions

CHAPTER 12

ALTERATION AND POSTPONEMENT OF SOLEMN TRIAL DIET

- 12.1 Alteration of trial diet
- 12.2 Applications for postponement of trial diet
- 12.3 Orders fixing diet for hearing of application to postpone trial diet
- 12.4 Calling of diet for hearing application
- 12.5 Orders relating to postponed trial diet
- 12.6 Notice fixing new trial diet
- 12.7 Record of proceedings under this Chapter
- 12.8 Joint applications without hearing
- 12.9 Calling of adjourned diet
- 12.10 Form of notice of diet where trial does not take place

CHAPTER 13

SUMMONING OF JURORS

- 13.1 List of jurors
- 13.2 Citation of jurors

CHAPTER 14

PROCEDURE AT TRIAL IN SOLEMN PROCEEDINGS

- 14.1 Recording of not guilty plea

- 14.2 Balloting of jurors
- 14.3 Form of oath or affirmation to jurors
- 14.4 Jurors chosen for one trial may continue to serve
- 14.5 Form of oath or affirmation to witnesses
- 14.6 Sheriff's notes of evidence
- 14.7 Form of record of proceedings
- 14.8 Interruption of trial for other proceedings
- 14.9 Interruption of proceedings for conviction or sentence
- 14.10 Issue of extract convictions

CHAPTER 15

APPEALS FROM SOLEMN PROCEEDINGS

- 15.1 Register and lists of appeals
- 15.2 Forms of appeal
- 15.3 Appeals against refusal of applications heard by single judge
- 15.4 Extension of time by Clerk of Justiciary
- 15.5 Intimation of appeal against sentence of death
- 15.6 Abandonment of appeals
- 15.7 Note of proceedings at trial
- 15.8 Clerk to give notice of date of hearing
- 15.9 Continuation of hearings
- 15.10 Note to be kept of appeal
- 15.11 Suspension of disqualification from driving pending appeal
- 15.12 Provisions supplemental to rule 15.11(3)
- 15.13 Suspension of disqualification etc. under section 121 of the Act of 1995

PART IV

Summary proceedings

CHAPTER 16

COMPLAINTS

- 16.1 Form of complaints and related notices and forms
- 16.2 Signature of prosecutor
- 16.3 Effect of failure by prosecutor to comply with certain requirements
- 16.4 Further procedural forms
- 16.5 Form of certain warrants
- 16.6 Citation of witnesses
- 16.7 Applications for alteration of diets

CHAPTER 17

SUMMARY PRE-TRIAL PROCEDURE

- 17.1 Appeals against extension of period of detention

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

CHAPTER 18

PROCEDURE AT TRIAL IN SUMMARY PROCEEDINGS

- 18.1 Accused to plead personally and to receive intimation of diets
- 18.2 Form of oath or affirmation to witnesses
- 18.3 Warrant to apprehend witness who fails to appear
- 18.4 Record of proceedings to be written or printed
- 18.5 Interruption of proceedings after conviction
- 18.6 Detention in precincts of court

CHAPTER 19

APPEALS FROM SUMMARY PROCEEDINGS

- 19.1 Appeals relating to preliminary pleas
- 19.2 Forms for appeals by stated case
- 19.3 Forms for appeals against sentence only
- 19.4 Extension of time for appeals
- 19.5 Abandonment of appeals by stated case
- 19.6 Abandoning appeals against conviction only
- 19.7 Abandonment of appeals against sentence only
- 19.8 Intimation of abandonment
- 19.9 Applications for suspension of disqualification from driving in appeals
- 19.10 Applications for suspension of disqualification from driving in bills of suspension
- 19.11 Solicitor entering appearance etc.
- 19.12 Duty to print stated case etc.
- 19.13 Duty of solicitor in bill of suspension
- 19.14 List of appeals
- 19.15 Diet for interim suspension
- 19.16 Intimation of determination of appeal
- 19.17 Suspension of disqualification etc. under section 193 of the Act of 1995

PART V

Sentencing

CHAPTER 20

SENTENCING

- 20.1 Form of sentence of death
- 20.2 Detention in police custody instead of imprisonment
- 20.3 Form of supervised release orders
- 20.4 Application of money found on offender towards fine
- 20.5 Extension of time for payment of fine
- 20.6 Forms for enquiry for non-payment of fine
- 20.7 Supervision of payment of fine
- 20.8 Forms of warrant for execution and charge for payment of fine or other financial penalty
- 20.9 Transfer of fines
- 20.10 Probation orders
- 20.11 Form of supervised attendance orders

- 20.12 Community service orders
- 20.13 Terms of compensation orders in record of proceedings
- 20.14 Legal disability of person entitled to compensation
- 20.15 Variation of compensation orders
- 20.16 Discharge or reduction of compensation order
- 20.17 Use of certified copy documents in certain proceedings
- 20.18. Form of extract of sentence
- 20.19 Reduction of disqualification period for drink-drive offenders

PART VI

Evidence

CHAPTER 21

UNCONTROVERSIAL EVIDENCE, HEARSAY AND PRIOR STATEMENTS

- 21.1 Notice of uncontroversial evidence
- 21.2 Notice of challenge of evidence as uncontroversial
- 21.3 Notice of intention to have hearsay statement admitted
- 21.4 Authentication of certain prior statements of witnesses

CHAPTER 22

EVIDENCE OF CHILDREN

- 22.1 Applications for evidence of children by television link
- 22.2 Orders and transfer of cases

CHAPTER 23

LETTERS OF REQUEST

- 23.1 Applications for letters of request
- 23.2 Powers of court in applications
- 23.3 Expenses
- 23.4 Transmission of letters of request
- 23.5 Custody of documents
- 23.6 Prohibition of reference to evidence without leave

CHAPTER 24

EVIDENCE ON COMMISSION

- 24.1 Applications to take evidence on commission
- 24.2 Appointment of commissioner
- 24.3 Expenses
- 24.4 The commission
- 24.5 Commissioner's report
- 24.6 Custody of documents
- 24.7 Prohibition of reference to evidence without leave

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

CHAPTER 25

RECORD OF JUDICIAL EXAMINATION AS EVIDENCE IN SOLEMN PROCEEDINGS

- 25.1 Use of transcript of judicial examination

CHAPTER 26

DOCUMENTARY EVIDENCE

- 26.1 Authentication of copies of documents

CHAPTER 27

ROUTINE EVIDENCE, SUFFICIENT EVIDENCE AND PROOF OF PREVIOUS CONVICTIONS

- 27.1 Notices in relation to use of autopsy and forensic science reports
27.2 Form of certificates in relation to certain evidence
27.3 Form of notice in relation to certain evidential certificates

PART VII

Miscellaneous procedures

CHAPTER 28

IDENTIFICATION PARADES

- 28.1 Applications for identification parade

CHAPTER 29

PRECOGNITION ON OATH OF DEFENCE WITNESSES

- 29.1 Applications for warrant to cite for precognition
29.2 Orders for taking precognition
29.3 Citation to attend for precognition
29.4 Record of proceedings
29.5 Fees of shorthand writer

CHAPTER 30

PROCEEDINGS FOR THE EXECUTION OF IRISH WARRANTS

- 30.1 Interpretation of this Chapter
30.2 Form of endorsement
30.3 Procedure in applications for stated case under section 2A of the Act of 1965
30.4 Power of High Court to extend period of time
30.5 Notice of consent to early removal
30.6 Handing over of warrant of arrest
30.7 Certification of warrant

CHAPTER 31

REFERENCES TO THE EUROPEAN COURT OF JUSTICE

- 31.1 Interpretation of this Chapter
- 31.2 Notice of references in solemn proceedings
- 31.3 Notice of references in summary proceedings
- 31.4 Proceedings on appeal etc.
- 31.5 Preparation of case for reference
- 31.6 Procedure on receipt of preliminary ruling
- 31.7 Appeals against references

CHAPTER 32

ANNOYING CREATURES

- 32.1 Interpretation of this Chapter
- 32.2 Form of application to district court and service

CHAPTER 33

LEGAL AID

- 33.1 Interpretation of this Chapter
- 33.2 Legal aid in High Court
- 33.3 Discontinuance of entitlement to legal aid
- 33.4 Statements on oath
- 33.5 Intimation of determination of High Court

CHAPTER 34

EXTRADITION

- 34.1 Interpretation of this Chapter
- 34.2 Procedure in applications for stated case
- 34.3 Power of High Court to extend period of time
- 34.4 Applications to High Court for order for stated case
- 34.5 Notices of waiver of rights and consent

CHAPTER 35

COMPUTER MISUSE ACT 1990

- 35.1 Notices in relation to relevance of external law

CHAPTER 36

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT 1990

- 36.1 Interpretation of this Chapter
- 36.2 Service of orders outside the United Kingdom
- 36.3 Proof of service outside the United Kingdom
- 36.4 Notice of applications for letters of request

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

- 36.5 Hearing of applications for letters of request
- 36.6 Court register of applications for letters of request
- 36.7 Letters of request in cases of urgency
- 36.8 Proceedings before a nominated court
- 36.9 Court record of proceedings before a nominated court

CHAPTER 37

PROCEEDINGS UNDER THE PROCEEDS OF CRIME (SCOTLAND) ACT 1995

- 37.1 Orders to make material available
- 37.2 Discharge and variation of orders
- 37.3 Warrants to search premises
 - Signature
 - Explanatory Note

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(1);

“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(2);

(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.

(1) 1995 c. 46.

(2) 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).

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.

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.

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

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⁽³⁾ (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—

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

- (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.
- (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.

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

(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(4) (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).

(4) 1907 c. 51; Schedule 1 was substituted by S.I. 1993/1956.

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

(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.

(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—

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

- (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(5);

“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

(5) 1937 c. 37.

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

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
- (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

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

(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.

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

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.

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

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.

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

(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);

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

- (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.

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

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⁽⁶⁾ (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—

(6) 1993 c. 9.

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

- (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.

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 sub-paragraph (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

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

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

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

(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.

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

(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.

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

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(7) (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.

(7) 1987 c. 18.

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

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.

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(8) (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.

(8) 1907 c. 51; Schedule 1 was substituted by S.I. 1993/1956.

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,

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(9);
- “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

(9) 1988 c. 53; sections 34A, 34B and 34C were inserted by the Road Traffic Act 1991 (c. 40), section 30.

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

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

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.

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

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—

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

- (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

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

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.

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

(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.

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

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⁽¹⁰⁾;

“judicial authority” means a court, judge or justice of a court, or peace commissioner.

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⁽¹¹⁾ (proceedings before sheriff) but made an order under section 2A⁽²⁾ of that Act⁽¹²⁾ 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.

⁽¹⁰⁾ 1965 c. 45.

⁽¹¹⁾ 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).

⁽¹²⁾ 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).

(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.

(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.

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

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(13).

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.

(13) 1972 c. 68.

(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—

- (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 advocacy 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—

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

- (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⁽¹⁴⁾.

⁽¹⁴⁾ 1982 c. 45.

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.

(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⁽¹⁵⁾;

“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⁽¹⁶⁾.

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⁽¹⁷⁾ (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,

⁽¹⁵⁾ 1986 c. 47.

⁽¹⁶⁾ S.I. 1987/307.

⁽¹⁷⁾ Section 23 was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), Schedule 4, paragraph 63(4).

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

- (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,

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(18) (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(19) (determination by High Court that applicant should receive legal aid).

CHAPTER 34 EXTRADITION

Interpretation of this Chapter

34.1. In this Chapter—

(18) Section 22 was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995, Schedule 4, paragraph 63(3).

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

“the Act of 1989” means the Extradition Act 1989(20);

“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,

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.

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

(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(21) (notice by defence that conditions not satisfied) shall be served on the prosecutor not later than 14 days before the trial diet.

(21) 1990 c. 18.

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⁽²²⁾; 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.

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

(22) 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.

- (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(**23**) (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.

(23) 1995 c. 43.

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

(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.

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

APPENDIX

Rule 1.3

FORM 2.6-A Form of execution of service of indictment and of citation of accused under section 66(2) of the Criminal Procedure (Scotland) Act 1995

Rule 2.6(1)

EXECUTION OF SERVICE AND CITATION OF ACCUSED

I, *(name and designation)*, on *(date)* duly served on *(name and address of accused)* the indictment against him, with a notice to appear attached to it for the diet in the High Court of Justiciary [*or Sheriff Court*] at *(place)* on *(date)*.

This I did by *(state method of service)*.

(Signed)
Witness

(Signed)
Officer of Law

FORM 2.6-B Form of execution of service of complaint on accused

Rule 2.6(2)

EXECUTION OF SERVICE OF COMPLAINT

I, *(name and designation)*, on *(date)* lawfully summoned *(name and address of accused as in complaint)* to appear before the Sheriff [*or District*] Court at *(address)* on *(date)* at *(time)* to answer to a complaint at the instance of the procurator fiscal charging him with *(state offence)*.

This I did by delivering a copy of the complaint with a citation attached to it by *(state method of service)*.

(Signed)
Officer of Law

FORM 2.6-C Form of execution of personal service of citation of a witness at a trial on indictment

Rule 2.6(3)

EXECUTION OF PERSONAL SERVICE OF CITATION OF WITNESS

I, *(name and designation)*, on *(date)* duly served on *(name and address of witness)* a citation to attend the sitting of the High Court of Justiciary [*or Sheriff Court*] at *(place)* on *(date)*, as witness in the case *Her Majesty's Advocate v [C.D.]* by delivering to him [*or her*] personally a citation in Form 8.2-E of the Criminal Procedure Rules 1996.

(Signed)
Officer of Law

FORM 2.6-D Form of execution of personal service of citation of witness to appear at summary trial

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

Rule 2.6(4)

EXECUTION OF PERSONAL SERVICE OF CITATION OF WITNESS

I, *(name and designation)*, on *(date)* lawfully cited *(name and address of witness)* to appear before the Sheriff [*or District*] Court at *(address)* on *(date)* to give evidence for the prosecution [*or defence*] in the complaint at the instance of the procurator fiscal against *(name and address of accused)*.

This I did by delivering to him [*or her*] personally a citation in Form 16.6-C of the Criminal Procedure Rules 1996.

(Signed)
Officer of Law

FORM 2.6-E Form of execution of service of citation on a probationer under section 232 or 233 of the Criminal Procedure (Scotland) Act 1995

Rule 2.6(5)

Form of execution of service of citation on a probationer under section 232 or 233 of the Criminal Procedure (Scotland) Act 1995

EXECUTION OF SERVICE

I, *(name and designation)*, on *(date)* lawfully summoned *(name and address of accused as in complaint)* to appear before the Sheriff [*or District*] Court at *(address)* on *(date)* at *(time)* to answer to an allegation that he [*or she*] has failed to comply with a requirement of a probation order [*or has been convicted by a court in Great Britain of an offence committed during the probation period and has been dealt with for that offence*].

This I did by delivering a copy of the order of the court with a citation attached to it in Form 20.10-B of the Criminal Procedure Rules 1996 by *(state method of service)*.

(Signed)
Officer of Law

FORM 2.6-F Form of execution of service under rule 2.3(1)

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

Rule 2.6(6)

EXECUTION OF SERVICE

I, *(name and designation)*, on *(date)* lawfully cited [*or served on*] *(name and address of person cited or served)* to appear before the High Court of Justiciary [*or Sheriff [or District] Court*] at *(address)* on *(date)* at *(time)* for the purpose of *(specify purpose)* [*or the document a copy of which is attached to this execution [or otherwise refer to or describe the document]*][*or set out circumstances of the execution as may be required*].

This I did by *(state method of service)*.

(Signed)

Officer of Law [*or as the case may be*]

FORM 3.1-A Form of summary of proceedings at trial in High Court in Book of Adjournal

Rule 3.1(1)(a)(ii)

SUMMARY OF PROCEEDINGS AT TRIAL

	CASE
1. Place and date	
2. Judge	
3. Procurator for Crown	
4. Procurator for panel	
5. Relevancy	
6. Plea	
7. Jury per list	
8. Crown witnesses, per list	
9. Panel's witnesses, per list	
10. Verdict	
11. Sentence	
12. Previous convictions	
13. Other facts of importance	

FORM 3.1-B Form of summary of proceedings in petition to the High Court in Book of Adjournal

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

Rule 3.1(1)(b)(ii)

SUMMARY OF PROCEEDINGS IN PETITION

	CASE
1. Date of final interlocutor	
2. Judge(s)	
3. Counsel for petitioner(s)	
4. Counsel for respondent(s)	
5. Import of petition	
6. Final interlocutor	

FORM 5.2 Form of record of proceedings at judicial examination

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

Rule 5.2(1)

RECORD OF PROCEEDINGS AT JUDICIAL EXAMINATION

SHERIFF COURT:

DATE:

SHERIFF:

NAME OF ACCUSED APPEARING:

FOR THE PETITIONER:

PROCURATOR FISCAL/DEPUTE

FOR THE ACCUSED:

SOLICITOR (*address*)

The sheriff, under section 35(2) [or 35(6)] of the Criminal Procedure (Scotland) Act 1995 delays the examination until (*date*) at (*time*) in order to allow time for the attendance of the accused's solicitor (*name and address*); and grants warrant to imprison the said accused in the Prison of (*place*) until that date.

(Signed)
Sheriff

*The accused intimated that he did not desire to emit a declaration.

*The accused intimated that he desired to emit a declaration.

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

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

Thereafter the prosecutor questioned the accused by virtue of section 36 of the Criminal Procedure (Scotland) Act 1995 and the proceedings were recorded by the verbatim recorder for subsequent transcription.

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

(Signed)
Sheriff Clerk

The sheriff, having [again] considered the foregoing petition under section 34 of the Criminal Procedure (Scotland) Act 1995, on the motion of the prosecutor, grants warrant to imprison the accused in the Prison of (*place*) for further examination [or until liberated in due course of law].

(Signed)
Sheriff

*Delete whichever is not appropriate

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

FORM 5.6-A Form of notice of opinion as to error in or incompleteness of transcript of judicial examination under section 38(1)(a) of the Criminal Procedure (Scotland) Act 1995

Rule 5.6(1)

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

To: *(name and address)*

Sheriff Court:

Name of accused:

Date of examination:

Date of service of transcript:

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

(here give full specification of all alleged points of error or incompleteness).

(Signed)

Procurator Fiscal
[*or Solicitor for accused*]

(Address and telephone number)

Place and date:

FORM 5.6-B Form of application for rectification of transcript of judicial examination under section 38(1)(b) of the Criminal Procedure (Scotland) Act 1995

APPLICATION FOR RECTIFICATION OF TRANSCRIPT OF JUDICIAL EXAMINATION

Sheriff Court:

Name of accused:

Date of examination:

Presiding sheriff:

Date of service of notice of opinion under section 38(1)(a)
of the Criminal Procedure (Scotland) Act 1995:

The Procurator Fiscal [*or above accused*] applies to the sheriff for rectification of the transcript of the proceedings relating to the above examination. Details of the alleged error and, or, incompleteness are specified in the notice of opinion a copy of which is attached to this application.

(Signed)

Procurator Fiscal
[*or Solicitor for accused*]

(Address and telephone number)

Place and date:

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

Rule 5.6(5)(a)

INTIMATION OF AGREEMENT WITH NOTICE OF OPINION

To: *(name and address)*

Sheriff Court:

Name of accused:

Date of examination:

Date of service of notice of opinion
under section 38(1)(a) of the
Criminal Procedure (Scotland) Act 1995:

The Procurator Fiscal [*or above accused*] agrees with the opinion expressed in the notice specified above.

A copy of this intimation has been sent to the sheriff clerk of the above court.

(Signed)
Procurator Fiscal
[*or Solicitor for accused*]
(Address and telephone number)

Place and date:

FORM 5.8 Form of intimation by prosecutor of postponement of trial diet under section 37(7)(b) of the Criminal Procedure (Scotland) Act 1995

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

Rule 5.8(2)(c)(i)

INTIMATION OF POSTPONEMENT OF TRIAL DIET

HER MAJESTY'S ADVOCATE against *(insert names of all accused)*

To: *(name and address)*

(1) On *(date)* the court, in exercise of its powers under section 37(7)(b) of the Criminal Procedure (Scotland) Act 1995, in your absence postponed the trial diet to the sitting commencing on *(date)*;

(2) TAKE NOTICE THEREFORE that YOU ARE REQUIRED TO APPEAR at *(place)* Sheriff Court on *(date)* at *(time)* to answer to the indictment which has already been served upon you.

BY AUTHORITY OF HER MAJESTY'S ADVOCATE

(Signed)

Procurator Fiscal

Place and date:

FORM 7.1-A Form of application for renewal or termination of interim hospital order for the purposes of section 53(6) of the Criminal Procedure (Scotland) Act 1995

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

Rule 7.1(1)

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*) AT (*place*)]

APPLICATION

under

Section 53(6) of the Criminal Procedure (Scotland) Act 1995

by

Her Majesty's Advocate

[*or* [A.B.] Procurator Fiscal]

in respect of

[C.D.] presently a patient in (*name*)

Hospital

for

Renewal [*or* Termination] of an interim hospital order

1. On (*date*) the court made an interim hospital order in respect of [C.D.] [which order was renewed by the court on (*date*)].
2. The order expires on (*date*).
3. It is necessary to bring the case before the court before the date mentioned in paragraph 2 above for the following reasons:-

(*here state reasons*).

MAY IT THEREFORE please your Lordship[s] to fix a diet for the purpose of considering this application to renew the interim hospital order; [and for that purpose to grant warrant to authorised officers of the hospital [*or* officers of law] to bring [C.D.] before the court for that diet].

[*Or* MAY IT THEREFORE please your Lordship[s] to fix a diet for the purpose of considering this application and further information now available with a view to making a final disposal of the case; [and for that purpose to grant warrant to authorised officers of the hospital [*or* officers of law] to bring [C.D.] before the court for that diet].

ACCORDING TO JUSTICE, etc.

(*Signed*)
for Her Majesty's Advocate
[*or* Procurator Fiscal (Depute)]

(*Place and date*)

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

FORM 7.1-B Form of order for diet of hearing and warrant to bring offender to court for hearing of application for renewal or termination of interim hospital order

Rule 7.1(2)(a)

(Place and date.) The Lord Commissioner of Justiciary [*or* The Sheriff] appoints *(date)* at *(time)* within *(place)* as a diet for hearing the foregoing application; grants warrant to authorised officers of hospital [*or* officers of law] to bring *(name of offender)* before the court for that diet.

(Signed)
Clerk of court

FORM 8.1-A Form of note of appeal against grant or refusal of extension of 12 months period under section 65(8) of the Criminal Procedure (Scotland) Act 1995

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

Rule 8.1(1)

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

NOTE OF APPEAL
under section 65(8) of the
Criminal Procedure (Scotland) Act 1995

by

[A.B.]

[whose domicile of citation has been specified as]

Appellant

against

[HER MAJESTY'S ADVOCATE]

Respondent

HUMBLY SHEWETH:

1. That at the sheriff court of the *(name of sheriffdom and place of court)* on *(date)* the appellant [, along with *(name(s) of co-accused)*,] appeared on petition at the instance of the procurator fiscal of that court on [a] charge[s] of *(specify)*.
2. That the appellant was committed for trial on *(date)* and was released on bail on *(date)*.
3. That an indictment has been served on the appellant to stand trial at the High Court of Justiciary [or sheriff court] at *(place)* on *(date)*.
4. That an application under section 65(3) of the Criminal Procedure (Scotland) Act 1995 was presented to the High Court of Justiciary [or sheriff court] on *(date)* by or on behalf of Her Majesty's Advocate and heard in the High Court of Justiciary [or sheriff court] at *(place)* on *(date)*.
5. That Lord [or Sheriff] *(name)* extended [or refused to extend] the period of 12 months which would have expired on *(date)* by *(number)* days.
6. That the grant [or refusal] of the extension is unreasonable in respect that *(here state shortly reasons for appeal)*.

ACCORDING TO JUSTICE, etc.

(Signed)

[Solicitor for appellant]

(Place and date)

Document Generated: 2024-05-04

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

FORM 8.1-B Form of note of appeal against grant or refusal of extension of 80 or 110 days period of committal under section 65(8) of the Criminal Procedure (Scotland) Act 1995

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

Rule 8.1(2)

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD
JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

NOTE OF APPEAL
under section 65(8) of the
Criminal Procedure (Scotland) Act 1995

by

[A.B.]

[presently a prisoner in the Prison of (*place*)]

Appellant

against

[HER MAJESTY'S ADVOCATE]

Respondent

HUMBLY SHEWETH:

1. That at the sheriff court of the (*name of sheriffdom and place of court*) on (*date*) the appellant [, along with (*name(s) of co-accused*),] appeared on petition at the instance of the procurator fiscal of that court on [a] charge(s) of (*specify*).
2. That the appellant was committed until liberated in due course of law on (*date*) and remains in custody.
3. That no indictment has been served on the appellant [*or* That the appellant was indicted to stand trial within the High Court of Justiciary [*or* sheriff court] sitting at (*place*) on (*date*)].
4. That an application under section 65(5) [*or* 65(7)] of the Criminal Procedure (Scotland) Act 1995 was presented to the High Court of Justiciary sitting at Edinburgh on (*date*) by or on behalf of Her Majesty's Advocate and was heard in that court on (*date*).
5. That Lord (*name*) extended [*or* refused to extend] the period of 80 [*or* 110] days which would have expired on (*date*) by (*number*) days.
6. That the grant [*or* refusal] of the extension is unreasonable in respect that (*here state shortly reasons for appeal*).

ACCORDING TO JUSTICE, etc.

(*Signed*)

[Solicitor for Appellant]

(*Place and date*)

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

FORM 8.2-A Form of warrant to cite accused and witnesses under section 66(1) of the Criminal Procedure (Scotland) Act 1995

Rule 8.2(1)

WARRANT FOR CITATION OF ACCUSED AND WITNESSES

Whereas the High Court of Justiciary [*or sheriff of (sheriffdom)*] is to hold a sitting for the trial of persons accused on indictment at (*place*) on (*date*) with continuation of days, warrant is hereby granted to all officers competent to cite all persons accused to that sitting, and to cite to the sitting witnesses both for the prosecutor and accused.

(Signed)
Clerk of Justiciary
[*or Sheriff Clerk*]

(Place and date)

FORM 8.2-B Form of notice to accused to appear under section 66(6) of the Criminal Procedure (Scotland) Act 1995

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

Rules 8.2(2) and 12.10

To: *(name and address of accused)*

TAKE NOTICE THAT YOU MUST APPEAR at *(place)* High Court of Justiciary *(address)* on *(date)* at *(time)* for a diet of trial [*or* Sheriff Court *(address)* on *(date)* at *(time)* for a first diet and on *(date)* at *(time)* for a trial diet] at which you will be required to answer to the indictment which is attached to this notice.

Served on *(date)* by me *(name and designation)* by *(state method of service)*.

(Signed)
Witness

(Signed)
Officer of Law

FORM 8.2-C Form of postal citation of witness to appear at a trial on indictment

Rule 8.2(3)

IN THE HIGH COURT OF JUSTICIARY [*or* SHERIFF COURT]

AT *(place)*

CITATION

To: *(name and address of witness)*

Date of citation: *(day after the date of posting)*

YOU ARE HEREBY CITED to appear on *(date)* at *(time)* in the High Court of Justiciary [*or* Sheriff Court] at *(address)* to give evidence for the prosecution [*or* defence] in the case of Her Majesty's Advocate against *(name of accused)*.

Please return the enclosed form to the Procurator Fiscal [*or* the accused *or* the solicitor for the accused] in the pre-paid envelope provided within 14 days after the date of citation stated at the top of this citation.

IF YOU DO NOT ATTEND COURT WITHOUT A LAWFUL EXCUSE THE COURT MAY ORDER THAT YOU BE APPREHENDED AND PUNISHED.

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

FORM 8.2-D Form of reply slip to be completed and returned by witness cited to appear at trial on indictment

Rule 8.2(3)

To: Procurator Fiscal [*or accused or his solicitor*] (*address to be completed by person serving the citation*)

From: (*name to be printed by person serving the citation*)

Date:

I, (*name and address of witness to be completed by person serving the citation*), acknowledge that I have received the citation to appear as a witness for the prosecution/defence* in the case of Her Majesty's Advocate against (*name of accused to be completed by person serving the citation*) on (*date to be inserted by person serving the citation*) at (*place to be inserted by person serving the citation*).

I shall attend on that date.

(Signed)

* *Person serving citation to delete whichever is not applicable.*

FORM 8.2-E Form of personal citation of witness to appear at a trial on indictment

Rule 8.2(4)

IN THE HIGH COURT OF JUSTICIARY [*or SHERIFF COURT*]

AT (*place*)

CITATION

To: (*name and address of witness*)

Date: (*date of citation*)

YOU ARE HEREBY CITED to appear on (*date*) at (*time*) in the High Court of Justiciary [*or Sheriff Court*] at (*address*) to give evidence for the prosecution [*or defence*] in the case of Her Majesty's Advocate against (*name of accused*).

IF YOU DO NOT ATTEND COURT WITHOUT A LAWFUL EXCUSE THE COURT MAY ORDER THAT YOU BE APPREHENDED AND PUNISHED.

(Signed)

Officer of Law

FORM 8.3 Form of notice of previous convictions in solemn proceedings

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

Rule 8.3

NOTICE OF PREVIOUS CONVICTIONS APPLYING TO *(name of accused)*

In the event of your being convicted of the charge(s) in the indictment to which this notice is attached, it is intended to place before the court the following previous conviction(s) applying to you.

Date	Place of Trial	Court	Offence	Sentence

(Signed)
Procurator Fiscal

Date:

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

FORM 9.1 Form of minute of notice under section 71(2) or section 72(1) of the Criminal Procedure (Scotland) Act 1995

Rule 9.1(1)

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD
JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)
AT (*place*)]

MINUTE

by

[A.B.] (*address*)
[or Prisoner in the Prison of (*place*)]

HUMBLY SHEWETH:

1. That the minuter [,along with (*name(s) of co-accused*),] has been indicted at the instance of Her Majesty's Advocate for trial in the High Court of Justiciary sitting at (*place*) on (*date*) [or sheriff court at (*place*) on (*date*) with a first diet on (*date*)].
2. That [A.B.] (*here specify the matter, grounds of submission or point which in the opinion of the minuter requires to be dealt with at a first diet or preliminary diet*).
3. That a copy of this minute has been duly intimated to Her Majesty's Advocate [and to the said (*name(s) of co-accused*)] conform to execution[s] attached to this minute.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:

- [(a)] to order that there be a preliminary diet and to assign a date for that diet [or to consider the above preliminary matter at the first diet] [;
- (b) to order that the following productions be made available at that diet].

IN RESPECT WHEREOF

[Solicitor for minuter]

(*Address and telephone number of
solicitor*)

(*Place and date*)

FORM 9.9 Form of notice of abandonment of matter to be raised at preliminary diet

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

Rule 9.9(2)

IN THE HIGH COURT OF JUSTICIARY [*or* SHERIFF COURT]

AT (*place*)

HER MAJESTY'S ADVOCATE against [A.B.]

I, [A.B.], abandon the written notice of intention lodged by me on (*date*) in terms of section 72(1) of the Criminal Procedure (Scotland) Act 1995 for which a preliminary diet has been fixed to be heard at (*place*) at (*time*).

(*Signed*)

[Solicitor [*or* Counsel] for [A.B.]]

(*Address and telephone number of solicitor*)

(*Place and date*)

FORM 9.12 Form of note of appeal under section 74(1) of the Criminal Procedure (Scotland) Act 1995

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

Rule 9.12(1)

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD
JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

NOTE OF APPEAL

by

[A.B.] (*address*)
[or Prisoner in the Prison of (*place*)]

HUMBLY SHEWETH:

1. That in the High Court of Justiciary [or sheriff court] sitting at (*place*) on (*date*) a preliminary [or first] diet was held in the case of Her Majesty's Advocate against [A.B.] [and (*name(s) of co-accused*)].
2. That the diet appointed for the trial on the indictment is [or was] (*specify any postponement of the trial diet ordered in terms of section 72(4)*).
3. That the ground[s] of submission raised at the preliminary [or first] diet was [or were] (*specify*).
4. That the decision of the court was (*specify*).
5. That the court granted leave to appeal to the High Court of Justiciary against that decision.
6. That [A.B.] appeals to the High Court of Justiciary against that decision on the following grounds (*specify*).

ACCORDING TO JUSTICE, etc.

(Signed)

[Solicitor for [A.B.]]

(Address and telephone number of
solicitor)

(Place and date)

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

Rule 9.17(2)

NOTICE OF ABANDONMENT OF APPEAL

Name of appellant:

Date of birth:

Prisoner in the Prison of *(place)* [or as the case may be]

Crime or offence to which appeal relates:

Court:

The above named appellant, having lodged a note of appeal under section 74(1) of the Criminal Procedure (Scotland) Act 1995, abandons, as from this date, that appeal against the decision at the preliminary [or first] diet.

(Signed)
[Solicitor for appellant]

Place and date:

FORM 10.1-A Form of notice of special diet where accused intends to plead guilty (where indictment not already served)

Rule 10.1(1)(a)

To: *(name and address of accused)*

TAKE NOTICE:

- (1) That the Crown Agent has received intimation that you intend to plead guilty to the charge(s) on which you have been committed for trial.
- (2) That YOU MUST THEREFORE APPEAR before the High Court of Justiciary at *(place)* [or *(place)* Sheriff Court *(address)*] on *(date)* at *(time)* to answer to the indictment to which this notice is attached.

Served on the _____ day of _____ by me
by *(here state method of service)*

(Signed)
Witness

(Signed)
Officer of Law
(Designation)

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

FORM 10.1-B Form of notice of special diet where accused intends to plead guilty (where indictment already served)

Rule 10.1(1)(b)

To: *(name and address of accused)*

TAKE NOTICE:

- (1) That the Crown Agent has received intimation that you intend to plead guilty to the charge(s) contained in the indictment the trial of which is to take place at the High Court of Justiciary [or Sheriff Court] sitting at *(place)* on *(date)*.
- (2) That YOU MUST THEREFORE APPEAR before the High Court of Justiciary, at *(place)* [or *(place)* Sheriff Court *(address)*] on *(date)* at *(time)* to answer to the indictment which has already been served on you.

Served on the
by *(here state method of service)*

day of

by me

(Signed)
Witness

(Signed)
Officer of Law

(Designation)

FORM 12.1 Form of intimation by prosecutor of adjournment of trial diet under section 80(1) of the Criminal Procedure (Scotland) Act 1995

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

Rule 12.1(4)

HER MAJESTY'S ADVOCATE against *(here name all accused)*

To: *(name and address of accused)*

TAKE NOTICE:

- (1) That, when the above indictment was not brought to trial at the trial diet fixed for the sitting commencing on *(date)*, the court in your absence adjourned the trial diet to the sitting commencing on *(date)*;
- (2) That YOU ARE THEREFORE REQUIRED TO APPEAR at the High Court of Justiciary [*or Sheriff Court*] sitting at *(place)* on *(date)* at *(time)* to answer to the indictment which has already been served on you.

Served on the _____ day of _____ by me
by *(here state method of service)*

BY AUTHORITY OF HER MAJESTY'S ADVOCATE

Advocate Depute [*or Procurator Fiscal*]

(Place and date)

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

Rule 12.2(1)

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD
JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF
OF (*name of sheriffdom*) AT (*place*)]

MINUTE

by

[A.B.] (*address*)
[or Prisoner in the Prison of (*place*)]

HUMBLY SHEWETH:

1. That the minuter [, along with (*name(s) of co-accused*) ,] has been indicted at the instance of Her Majesty's Advocate for trial in the High Court of Justiciary sitting [or in the sheriff court] at (*place*) on (*date*);
2. That the minuter applies to the court for postponement of the trial diet for the following reasons:--

(*here state reasons*).

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:

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

IN RESPECT WHEREOF

(Signed)

[Solicitor for minuter]

(Address and telephone number of
solicitor)

FORM 12.2-B Form of joint minute for postponement of trial diet under section 80(2) of the Criminal Procedure (Scotland) Act 1995

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

Rule 12.2(2)

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD
JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF
OF *(name of sheriffdom)* AT *(place)*]

JOINT MINUTE

by

(1) Her Majesty's Advocate and
(2) [A.B.] *(address)* [or Prisoner in the Prison of *(place)*]

MINUTERS

HUMBLY SHEWETH:

1. That [A.B.] has been indicted at the instance of Her Majesty's Advocate for trial in the High Court of Justiciary sitting [or in the sheriff court] at *(place)* on *(date)*;
2. That the minuters apply to the court for postponement of the trial diet for the following reasons:—
(here state reasons).

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:

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

IN RESPECT WHEREOF

(Signed)

Advocate Depute [or Procurator
Fiscal]
On behalf of Her Majesty's Advocate

[Solicitor for [A.B.]

*(Address and telephone number of
solicitor)*

FORM 12.6 Form of notice by prosecutor fixing a new trial diet by virtue of section 80(3) of the Criminal Procedure (Scotland) Act 1995

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

Rule 12.6(2)

HER MAJESTY'S ADVOCATE against (*here name all accused*)

To: (*name and address*)

- (1) TAKE NOTICE that on (*date*) the court discharged the trial diet fixed for the sitting commencing on (*date*) and granted leave to the prosecutor to serve on you a notice fixing a new trial diet.
- (2) That the new trial diet will take place within the High Court of Justiciary [*or Sheriff Court*] sitting at (*place*) on (*date*) at (*time*) when YOU ARE REQUIRED TO APPEAR to answer to the indictment which has already been served on you.

BY AUTHORITY OF HER MAJESTY'S ADVOCATE

Advocate Depute [*or Procurator Fiscal*]

(*Place and date*)

FORM 13.2-A Form of citation of person summoned to serve as a juror under section 85(4) of the Criminal Procedure (Scotland) Act 1995

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

Rule 13.2(1)

CITATION TO SERVE AS JUROR

The High Court of Justiciary [or sheriff of (*name of sheriffdom*)] is to hold a sitting for the trial of persons accused on indictment at (*place*) on (*date*) with continuation of days:

YOU ARE HEREBY REQUIRED TO ATTEND at that place on that date as a person who may be called on to serve as a juror.

(Signed)
Clerk of Justiciary
[or Sheriff Clerk]

(Place and date)

FORM 13.2-B Form of certificate of execution of service and citation of witness under section 85(4) of the Criminal Procedure (Scotland) Act 1995

Rule 13.2(2)

EXECUTION OF CITATION OF JURORS

I, (*name and address*), on (*date*) duly served on each of the following persons:

(*here list names of jurors*)

a citation to attend the sitting of the High Court of Justiciary [or Sheriff Court] at (*place*) on (*date*), as jurors for that sitting by sending to or for each of them a notice of citation by first class recorded delivery post.

(Signed)
Sheriff Clerk

FORM 14.3-A Form of oath for jurors

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

Rule 14.3(1)

The jurors to raise their right hands and the clerk of court to ask them: “ Do you swear by Almighty God that you will well and truly try the accused and give a true verdict according to the evidence?”

The jurors to reply: “I do”.

FORM 14.3-B Form of affirmation for juror

Rule 14.3(2)

The juror to repeat after the clerk of court: “I, (name), do solemnly, sincerely and truly declare and affirm that I will well and truly try the accused and give a true verdict according to the evidence”.

FORM 14.5-A Form of oath for witnesses

Rules 14.5(1) and 18.2(1)

The witness to raise his right hand and repeat after the judge: “I swear by Almighty God that I will tell the truth, the whole truth and nothing but the truth”.

FORM 14.5-B Form of affirmation for witnesses

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

Rules 14.5(2) and 18.2(2)

The witness to repeat after the judge: "I solemnly, sincerely and truly declare and affirm that I will tell the truth, the whole truth and nothing but the truth".

FORM 14.7 Form of minute of recording of proceedings

Rule 14.7

The court directed that the whole proceedings in this case [*or in all the cases*] set down for trial at this sitting be recorded by means of (*specify means*) and appointed (*name, designation and address*) to do so.

FORM 15.2-A Form of intimation of intention to appeal under section 109(1) of the Criminal Procedure (Scotland) Act 1995

IN THE HIGH COURT OF JUSTICIARY

INTIMATION OF INTENTION TO APPEAL

under section 109(1) of the Criminal Procedure (Scotland) Act 1995

To: Clerk of Justiciary

Name of convicted person:

Date of birth:

Prisoner in the Prison of:

Date of final determination of the proceedings:

Crime or offence to which the appeal relates:

Court and name of judge:

Sentence:

Intimation is hereby given that the above named convicted person intends to appeal to the High Court of Justiciary against the foregoing *conviction/sentence/conviction and sentence.

(Signed by the convicted person, his counsel or solicitor)

[Counsel [or Solicitor] for appellant]

(Address and telephone number of solicitor)

Date:

** Delete whatever is not applicable.*

FORM 15.2-B Form of note of appeal under section 110(1) of the Criminal Procedure (Scotland) Act 1995 or section 19 of the Prisoners and Criminal Proceedings (Scotland) Act 1993

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

Rule 15.2(2) and (6)

IN THE HIGH COURT OF JUSTICIARY

NOTE OF APPEAL
under section 110 of the
Criminal Procedure (Scotland)
Act 1995
[or section 19 of the Prisoners and Criminal
Proceedings (Scotland) Act 1993]

To: Clerk of Justiciary

Name of convicted person:

Date of birth:

Prisoner in the Prison of:

Date of final determination of the proceedings:

Crime or offence to which the appeal relates:

Court and name of judge:

Sentence:

The above named convicted person appeals against conviction [or as the case may be] on the following grounds:- [here give full statement of all grounds of appeal].

(Signed by convicted person, his counsel or solicitor)

[Counsel [or Solicitor] for appellant]

(Address and telephone number of solicitor)

(Date)

FORM 15.2-C Form of application for extension of time under section 111(2) of the Criminal Procedure (Scotland) Act 1995

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD
JUSTICE-CLERK and LORDS COMMISSIONERS OF JUSTICIARY

APPLICATION FOR EXTENSION OF TIME

under section 111(2) of the
Criminal Procedure (Scotland) Act 1995

Name of convicted person:

Date of birth:

Prisoner in the Prison of:

Date of final determination of the proceedings:

Crime or offence to which the appeal relates:

Court and name of judge:

Sentence:

Application is hereby made for extension of time within which to:-

- *intimate an intention to appeal against conviction
- *intimate an intention to appeal against conviction and sentence
- *lodge a note of appeal against sentence
- *lodge a note of appeal against conviction
- *lodge a note of appeal against conviction and sentence

for the following reasons:-

[here fully state the reasons for the failure to lodge timeously the intimation of intention to appeal or note of appeal as the case may be].

(Signed by the convicted person, his counsel or solicitor)
[Counsel [or Solicitor] for applicant]
(Address and telephone number of solicitor)

(Date)

* Delete whatever is not applicable.

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

Rule 15.2(4)

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK and LORDS COMMISSIONERS OF JUSTICIARY

PETITION

of

[A.B.] presently a prisoner in the
Prison of *(place)*

PETITIONER

HUMBLY SHEWETH:

1. That on *(date)* the petitioner was convicted in the High Court of Justiciary [*or sheriff court*] at *(place)* of *(state crime or offence)* and sentenced to *(state sentence)*.
2. That on *(date)* the petitioner lodged an intimation of intention to appeal [*or a note of appeal*] to the High Court of Justiciary under the Criminal Procedure (Scotland) Act 1995.
3. That *(state the relevant facts in support of grant of bail and, where the petitioner has not lodged a note of appeal, the grounds of appeal)*.
4. That the said crime [*or offence*] is bailable.

MAY IT THEREFORE please your Lordships to remit this petition and relative documents to the sheriff at *(place)* with a direction to admit the petitioner to bail under section 112(1) of the Criminal Procedure (Scotland) Act 1995 so far as detained under said sentence upon his formal acceptance and, or, fulfilment of such conditions as your Lordships shall fix.

ACCORDING TO JUSTICE, etc.

(Signed by the convicted person, his counsel or solicitor)
[Counsel [*or Solicitor*] for petitioner]
(Address and telephone number of solicitor)

(Date)

FORM 15.3-A Form of notification of decision of single judge under section 103(5) of the Criminal Procedure (Scotland) Act 1995

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

Rule 15.3(1)

**NOTIFICATION TO APPLICANT OF A DECISION OF A JUDGE
under section 103(5) of the Criminal Procedure (Scotland) Act 1995**

To: *(name and address)*

I hereby give notice that a judge of the High Court of Justiciary having considered your application for:-

- *extension of time within which an intimation of intention to appeal against *conviction/conviction and sentence may be lodged,
- *extension of time within which a note of appeal against *conviction/conviction and sentence/ sentence may be lodged,
- *permission to you to be present at the hearing of any proceedings in relation to your appeal *and/or application,
- *admission to bail,
- *refused/granted the application.

If you wish to have the above mentioned application(s) which *has/have been refused, determined by the High Court of Justiciary constituted as provided in the Criminal Procedure (Scotland) Act 1995 you are required to fill up the enclosed Form 15.3-B and return it to me within five days of its receipt by you, otherwise the decision of the single judge will be final.

(Signed)
Clerk of Justiciary

Date:

* *Delete whatever is not applicable.*

FORM 15.3-B Form of application for determination by High Court under section 103(6) of the Criminal Procedure (Scotland) Act 1995

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

Rule 15.3(2)

APPLICATION

for

**DETERMINATION BY THE HIGH COURT OF JUSTICIARY
OF APPLICATION(S) REFUSED BY A SINGLE JUDGE**

under section 103(6) of the Criminal Procedure (Scotland)
Act 1995

To: Clerk of Justiciary

I, (*name in full*), having received your notification that my application(s) for:-

- *extension of time within which an intimation of intention to appeal against *conviction/conviction and sentence may be lodged,
- *extension of time within which a note of appeal against *conviction/conviction and sentence/ sentence may be lodged,
- *permission to me to be present at the hearing of any proceedings in relation to my appeal *and/or application,
- *admission to bail,

*has/have been refused, **HEREBY GIVE NOTICE** that I desire that the said application(s) be considered and determined by the High Court of Justiciary constituted as provided in section 103(6) of the Criminal Procedure (Scotland) Act 1995.

(Signed)
Applicant

Date:

Note:- If the applicant desires to be present at the hearing by the court in relation to the application(s), the following should completed and signed:-

I, (*name in full*) , *being/not being legally represented, desire to be present at the hearing of my application(s) above mentioned.

(Signed)
Applicant

Date:

* Delete whatever is not applicable.

FORM 15.6 Form of notice of abandonment of appeal

**ABANDONMENT OF APPEAL
under section 116(1) of the
Criminal Procedure (Scotland) Act 1995**

Name of convicted person:

Date of birth:

Prisoner in the Prison of:

Crime or offence to which the appeal relates:

Court:

Sentence:

I, (*name in full*), abandon as from this date my appeal against:-

*conviction.

*conviction but proceed with my appeal against sentence.

*conviction and sentence.

*sentence.

(Signed)

Appellant

To:- The Clerk of Justiciary
Parliament Square
Edinburgh
EH1 1RF

* Delete whatever is not applicable.

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

Rule 15.8(3)

IN THE HIGH COURT OF JUSTICIARY

NOTICE TO SECRETARY OF STATE

of

INTIMATION OF DIET
for the purposes of section 117(4) of the
Criminal Procedure (Scotland) Act 1995

To: Governor of H M Prison mentioned below for the Secretary of State for Scotland

Name of *appellant/applicant:

Date of birth:

Prisoner in the Prison of:

In respect of the—

*appeal

*continued appeal

*petition for bail

*appeal under section (*specify*) of the Criminal Procedure (Scotland) Act 1995

by the above-named *appellant/applicant:

TAKE NOTICE that the court has fixed (*day*) of (*month*) at 10.30 a.m. as a diet for hearing the above *appeal/petition.

(*Signed*)

Clerk of Justiciary

Date:

* *Delete whatever is not applicable.*

FORM 15.11-A Form of application to sheriff for suspension of order for disqualification pending appeal

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

Rule 15.11(2)(a)

APPLICATION
for
SUSPENSION
OF ORDER FOR DISQUALIFICATION
FROM DRIVING PENDING APPEAL

by

[A.B.] (*address*)

[*or Prisoner in the Prison of (place)*]

APPELLANT

under

Section 41(2) of the Road Traffic Offenders Act 1988

HUMBLY SHEWETH:

1. That on (*date*) the appellant was convicted in the sheriff court at (*place*) and was, *inter alia*, ordered to be disqualified for a period of (*specify*) under section 34 of the Road Traffic Offenders Act 1988.
2. That on (*date*) the appellant lodged with the Clerk of Justiciary a note of appeal under section 110 of the Criminal Procedure (Scotland) Act 1995. A copy of that note is attached to this application and is endorsed as having been received by the Clerk of Justiciary.
3. That the appellant has served a copy of this application on the Procurator Fiscal at (*place*).

MAY IT THEREFORE please your Lordship under section 41(2) of the Road Traffic Offenders Act 1988 to suspend the disqualification on such terms as your Lordship thinks fit.

IN RESPECT WHEREOF

(*Signed*)

[Solicitor for Appellant]

(*Address and telephone number of
solicitor*)

(*Place and date*)

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

FORM 15.11-B Form of petition to High Court of Justiciary for suspension of order for disqualification from driving pending appeal

Rule 15.11(3)(a)

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK and LORDS COMMISSIONERS OF JUSTICIARY

PETITION

of

[A.B.] (*address*)
[or Prisoner in the Prison of (*place*)]

PETITIONER

under

Section 41(2) of the Road Traffic Offenders Act 1988

HUMBLY SHEWETH:

1. That on (*date*) the petitioner was convicted in the High Court of Justiciary [or sheriff court] at (*place*) and was, *inter alia*, ordered to be disqualified for a period of (*specify*) under section 34 of the Road Traffic Offenders Act 1988.
2. That on (*date*) the petitioner lodged with the Clerk of Justiciary a note of appeal under section 110 of the Criminal Procedure (Scotland) Act 1995.
- [3. That an application for suspension of the disqualification made under section 39(2) of the Road Traffic Offenders Act 1988 was refused by the sheriff on (*date*) and that the petitioner has served a copy of this petition on the sheriff clerk of the sheriff court at (*place*).]
- [4.] That the petitioner has served a copy of this petition on the Crown Agent.

MAY IT THEREFORE please your Lordships under section 41(2) of the Road Traffic Offenders Act 1988 to suspend the disqualification on such terms as your Lordships think fit.

ACCORDING TO JUSTICE, etc.

(Signed)

[Solicitor for petitioner]

(Address and telephone number of solicitor)

FORM 16.1-A Form of complaint under section 138(1) of the Criminal Procedure (Scotland) Act 1995

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

Rule 16.1(1)

IN THE SHERIFF [or DISTRICT] COURT

AT (place)

THE COMPLAINT OF THE PROCURATOR FISCAL

AGAINST

(name and address sufficient to distinguish person)
[or at present in custody]

Date of birth:

The charge against you is that on (date) in [or at] you did (set forth charge as nearly as may be in the form set out in Schedule 5 to the Criminal Procedure (Scotland) Act 1995).

(Signed)
Procurator Fiscal
[or Complainer or Solicitor for
Complainer]

FORM 16.1-B Form of citation of accused in summary proceedings

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

Rule 16.1(2)

CITATION OF ACCUSED PERSON

PF REF.....
(This number must be quoted on all correspondence)

A COPY COMPLAINT IS ENCLOSED FROM THE PROCURATOR FISCAL
YOUR CASE WILL BE HEARD ON
IN THE SHERIFF COURT HOUSE at
..... am [or pm]
PROCURATOR FISCAL DEPUTE

WHAT MUST I DO?

You must answer the complaint on or before the date the case is to be heard.

HOW DO I ANSWER THE COMPLAINT?

There are 3 methods-

- (1) Attend court personally.
- (2) Arrange for your lawyer or some other person to attend.
- (3) Write to the court (REPLY FORM and envelope attached).

WHAT WILL HAPPEN IF I DO NOTHING?

A warrant may be issued for your arrest.

WHAT ABOUT MY FINANCIAL CIRCUMSTANCES?

YOU DO NOT HAVE TO GIVE ANY INFORMATION ABOUT THESE: but if you are pleading guilty and you wish the court to consider your financial circumstances you should give as much information as you can on the enclosed form (INFORMATION ABOUT YOUR MEANS).

CAN I GET LEGAL AID?

In certain circumstances Legal Aid is granted. If you want to know more, apply to the clerk of court in the sheriff court where your case will be heard.

NAME AND ADDRESS OF ACCUSED

DATE OF BIRTH

Check that your name, address and date of birth are shown correctly.

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

FORM 16.1-C Form of reply to complaint

Rule 16.1(3)(a)

REPLY FORM

PF REF
COURT DATE
SHERIFF COURT AT

PLEASE COMPLETE WHICHEVER SECTION APPLIES

1. PLEADING NOT GUILTY

I PLEAD NOT GUILTY. Please send me a note of the date of trial.

Signed Date

PLEASE NOW RETURN THIS FORM IN THE ENVELOPE PROVIDED

2. PLEADING GUILTY

I PLEAD GUILTY TO THE CHARGE(S)

except
.....

Signed Date

PLEASE CONTINUE TO COMPLETE THIS FORM

MOTORING OFFENCES

If you are pleading guilty to a motoring offence PLEASE SEND YOUR DRIVING LICENCE (BUT NOT YOUR HGV LICENCE) WITH THIS FORM.

NAME AND ADDRESS
OF ACCUSED

DATE OF BIRTH

Check that your name, address and date of birth are shown correctly.

Please correct anything that is wrong.

PLEASE TURN OVER

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

ONLY COMPLETE THIS PAGE IF PLEADING GUILTY

PREVIOUS CONVICTIONS

If previous convictions are attached to your complaint please tick the appropriate box.

I ADMIT THE PREVIOUS CONVICTIONS

I DO NOT ADMIT THE PREVIOUS CONVICTIONS

I ADMIT THE PREVIOUS CONVICTIONS EXCEPT THOSE LISTED BELOW

.....
.....

NOTE If convictions are listed and you do not complete this section, the court will take it that you admit all of them.

CAN I SEND A WRITTEN EXPLANATION?

YES. If you want to, use the space below and continue on a separate sheet if required.

.....
.....
.....
.....
.....
.....
.....

PLEASE CHECK YOU HAVE SIGNED THE FORM AT THE PROPER PLACE AND RETURN IT IN THE ENVELOPE PROVIDED.

FOR OFFICIAL USE ONLY

D.L.

Documents Returned

Other Documents

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

Rule 16.1(3)(b)

INFORMATION ABOUT YOUR MEANS

PF REF

You are not required by law to return this form completed but it can help you and the court.

If you decide to plead guilty by letter please complete this and the reply form and send them to the court.

If you are found guilty and are fined the information you give here will help the court to set an amount which you can reasonably afford and to give you the time you need to pay.

If you decide to appear in court you may hand the form in when you appear.

If the information you have given below changes a great deal between now and the court hearing you should tell the clerk of court – he will give you another form to fill in.

The information you give on this form will not be used for any other purpose.

PERSONAL DETAILS (Please use BLOCK CAPITALS and tick the appropriate box where required).

1. Your full name
2. Your address
3. Are you Married Single Separated Divorced Widowed
4. Are you the head of your household? Yes No
5. How many children under 16 do you support
6. Is there anyone else financially dependent on you? Yes No
 (a) If YES what is their relationship to you

YOUR JOB

7. Are you Employed Unemployed Self-employed Other
 (a) If OTHER, please give details here.....
 (b) If EMPLOYED, please give your job here

YOUR WEEKLY INCOME

YOUR WEEKLY EXPENSES

You may not receive your money or pay your bills weekly. Even so please try to work out what the weekly figures would be.

	£
8.(a) Your usual weekly take-home pay including overtime (if self-employed give your usual earnings)	_____
(b) Usual total weekly take-home pay of other household earners	_____
(c) Total Social Security payments received in your household each week	_____
(d) Total pensions received in your household each week	_____
(e) Any other form of income (eg student grant, etc), per week	_____
Usual total WEEKLY household income	_____

	£
9.(a) Housing (rent, rates, mortgage) (If you pay board and lodgings give the amount)	_____
(b) Fuel (electricity, coal, gas, etc.)	_____
(c) Food	_____
(d) Travel	_____
(e) Weekly cost of supporting anyone else (see questions 5 and 6)	_____
(f) Other big weekly payments (such as hire purchase agreements or repayment of rent arrears)	_____
Usual total WEEKLY expenses	_____

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

GENERAL DETAILS

10. If the court decides to fine you how much do you think you could afford to pay each week?
£

11. Please give any further information about your finances which you would like the court to know here. (You can continue over the page if you need.)

SIGNATURE BOX

12. I declare that the information I have given in this form is true and complete.

Signed Date

FORM 16.1-EForm of notice of previous convictions in summary proceedings

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

Rule 16.1(4)

NOTICE OF PREVIOUS CONVICTIONS APPLYING TO *(name of accused)*

In the event of your being convicted of the charge(s) in the complaint to which this notice is attached, it is intended to place before the court the following previous conviction(s) applying to you.

Date	Place of Trial	Court	Offence	Sentence

(Signed)
Procurator Fiscal

Date:

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

FORM 16.4-A Form of incidental application in summary proceedings

Rule 16.4(1)

UNTO THE HONOURABLE THE SHERIFF OF *(name of sheriffdom)*
AT *(place of court)*

PETITION

of

[A.B.] *(address)*
[or Prisoner in the Prison of *(place)*]

under

section 134 of the Criminal Procedure (Scotland) Act 1995

PETITIONER

HUMBLY SHEWETH:

(Here set out in numbered paragraphs the reasons for the order sought and the statutory process)

MAY IT THEREFORE please your Lordship to *(set out orders sought)*.

ACCORDING TO JUSTICE, etc

(Signed)

[Solicitor for petitioner]

*(Address and telephone number of
solicitor)*

FORM 16.4-B Form of assignation of a diet in summary proceedings

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

Rule 16.4(2)

(Place and date). The court assigns *(date)* at *(time)* within the Sheriff Court House, *(address)*, as a diet in this case.

(Signed)
Clerk of Court

FORM 16.4-C Form of minutes in minute of proceedings

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

Rule 16.4(3)

(Place and date). (Name of judge), Sheriff [or District Judge].

Plea of guilty.— Compeared the accused and, in answer to the complaint, pled guilty.

Sentence.— Sentence: Twenty-one days' imprisonment.

(Signed)
Clerk of Court

Where different pleas tendered.— Compeared the accused and, in answer to the complaint, [C.D.] pled guilty and [E.F.] pled guilty to the third charge.

Sentence where more than one accused and different pleas.— Sentence: [C.D.] Twenty-one days' imprisonment. [E.F.] seven days' imprisonment.

(Signed)
Clerk of Court

Plea and sentence combined.— Compeared the accused, and, in answer to the complaint, pled guilty (or state to what extent plea tendered), and was sentenced to days' imprisonment (or was fined £ and in default of payment days' imprisonment) (or as the case may be).

(Signed)
Clerk of Court

Plea of not guilty.— Compeared the accused, who, in answer to the complaint, pled not guilty.

Adjournment.— The court adjourned the diet for trial to (date) at (time), and ordained the accused then to appear.

[or The court adjourned the diet for trial to (date) at (time), and ordered the accused to be imprisoned until that date.]

[or The court adjourned the diet for trial to (date) at (time), and ordered the accused to appear personally at that diet under a penalty of £ in default.]

(Signed)
Clerk of Court

Trial.— (Place and date). (Name of judge), Sheriff [or District Judge]. Compeared the accused [or the accused failed to appear after being duly cited or after receiving due intimation of this diet].

Finding.— The court found the accused guilty as libelled [or as first (or last) alternatively libelled, or state to what extent found guilty] [or not guilty], [or found the charge not proven], [or found [C.D.] guilty as libelled and [E.F.] guilty as second libelled (or as the case may be)].

(Signed)
Clerk of Court

Sentence. Imprisonment.— days' imprisonment.

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

[or Fine, time allowed.– Fined £ , [or £ each], days allowed for payment].

Fine, imprisonment imposed for future default.– Fine £ , [or £ each]. days allowed for payment. For the reason stated below days imprisonment [or days imprisonment each] imposed in default of payment within the time allowed:–

(here state reason)

[or Fine, no time to pay.– Fined £ , [or £ each], and in default of payment days' imprisonment. For the reason stated below, no time allowed for payment:–]

(here state reason)

Caution.– To find £ caution for good behaviour, days allowed for finding such caution.

Fine imposed on parent in lieu of child.– The court found the accused [C.D.] guilty as libelled and fined him [£], and, in respect that [E.F.] has conduced to the commission of the said offence by habitually neglecting to exercise due care of the said [C.D.], ordered the fine to be paid by the said [E.F.], and in default of payment sentenced the said [E.F.] to days' imprisonment.

Sentence deferred.– Sentence deferred till (date) at (time), when accused ordained to appear.

Admonition.– Admonished and dismissed.

Desertion of diet.– The court, on the motion of the prosecutor, deserted the diet *pro loco et tempore*.

(Signed)
Clerk of Court

FORM 16.5-A Form of warrant to apprehend an accused person referred to in section 135 of the Criminal Procedure (Scotland) Act 1995

Rule 16.5(1)(a)

(Place and date). The court grants warrant to apprehend the said accused.

(Signed)
Sheriff

FORM 16.5-B Form of warrant to search referred to in section 135 of the Criminal Procedure (Scotland) Act 1995

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

Rule 16.5(1)(b)

(Place and date). The court grants warrants to search the person, dwelling-house, and repositories of the accused, and any place where he may be found, and to take possession of the property mentioned or referred to in the complaint, and all articles and documents likely to afford evidence of his guilt or of guilty participation.

(Signed)
Sheriff

FORM 16.5-C Form of warrant to detain accused in prison or adjourning the case against him

Rule 16.5(2)

(Place and date). The court, on the motion of the prosecutor [*or accused (or as the case may be)*], continued the case against the accused until *(date)*, and meantime grants warrant to detain the accused in prison until that time [*; the accused meantime being liberated on bail conform to separate order attached*].

FORM 16.6-A Form of postal citation of witness to appear in summary proceedings

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

Rule 16.6(1)

IN THE SHERIFF [*or* DISTRICT] COURT

AT (*place*)

CITATION

To: (*name and address of witness*)

Date of citation: (*day after the date of posting*)

YOU ARE HEREBY CITED to appear on (*date*) at (*time*) in the Sheriff [*or* District] Court House at (*address*) to give evidence for the prosecution [*or* defence] in the complaint by the procurator fiscal against (*name of accused person(s)*).

Please return the enclosed form to the procurator fiscal [*or* the accused person *or* the solicitor for the accused] in the pre-paid envelope provided within 14 days after the date of citation stated at the top of this citation.

IF YOU DO NOT ATTEND COURT WITHOUT A LAWFUL EXCUSE THE COURT MAY ORDER THAT YOU BE APPREHENDED AND PUNISHED.

(*Signed*)
Prosecutor
[*or* Solicitor for accused]

FORM 16.6-B Form of reply slip to be completed and returned by witness cited to appear at trial on summary complaint

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

Rule 16.6(1)

To: Procurator Fiscal [or accused or his solicitor] (address to be completed by person serving the citation)

From: (name to be printed by person serving the citation)

Date:

I, (name and address of witness to be completed by person serving the citation), acknowledge that I have received the citation to appear as a witness for the prosecution [or defence] on the complaint by the procurator fiscal against (name of accused person(s) to be completed by person serving the citation) on (date to be inserted by person serving citation) at (place to be inserted by person serving the citation).

I shall attend on that date.

(Signed)

FORM 16.6-C Form of personal citation of witness to appear at trial on summary complaint

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

Rule 16.6(2)

IN THE SHERIFF [or DISTRICT] COURT

AT (place)

CITATION

To: (name and address of witness)

Date: (date of citation)

You are hereby cited to appear on (date) at (time) in the Sheriff [or District] Court House at (address) to give evidence for the prosecution [or defence] in the complaint by the procurator fiscal against (name of accused person(s)).

IF YOU DO NOT ATTEND COURT WITHOUT A LAWFUL EXCUSE THE COURT MAY ORDER THAT YOU BE APPREHENDED AND PUNISHED.

(Signed)

[Officer of Law]

(Designation)

FORM 16.7 Form of petition to postpone or accelerate diet in summary proceedings

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

Rule 16.7(2)

IN THE SHERIFF [*or* DISTRICT] COURT

AT (*place*)

PETITION

of

[A.B.] (*address*)

[*or* Prisoner in the Prison of (*place*)]

under section 137(5) of the Criminal Procedure (Scotland) Act 1995

PETITIONER

HUMBLY SHEWETH:

1. That the petitioner [, along with (*name(s) of co-accused*),] has been charged in the above court on a summary complaint at the instance of the procurator fiscal with the offence of (*specify*).
2. That a diet in the proceedings has been fixed for (*date*).
3. That (*narrate circumstances on which application is based*).
4. That the petitioner has intimated to [(*name(s) of any co-accused*) and] the procurator fiscal that he desired a postponement [*or* an acceleration] of the said trial diet.
5. That the procurator fiscal refuses [and][*or* (*name(s) of co-accused*) refuse] to make a joint application to the court for that purpose.

THE PETITIONER THEREFORE craves the court:

- (a) to appoint intimation of this petition to be made to (*name(s) of co-accused*) [and] [*or* the Procurator Fiscal]
- (b) to appoint parties to be heard on this petition; and
- (c) thereafter, in terms of section 137(5) of the Criminal Procedure (Scotland) Act 1995, to discharge the said diet and to fix in lieu of that diet a later [*or* earlier] diet.

ACCORDING TO JUSTICE, etc

(*Signed*)

[Solicitor for petitioner]

(*Address and telephone number of solicitor*)

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

FORM 17.1 Form of note of appeal against grant or refusal of extension of 40 days period under section 147(3) of the Criminal Procedure (Scotland) Act 1995

Rule 17.1(1)

(Place and date). The court assigns *(date)* at *(time)* within the Sheriff Court House, *(address)*, as a diet in this case.

(Signed)
Clerk of Court

FORM 18.3 Form of warrant to apprehend witness who has failed to answer a citation

Rule 18.3

(Place and date). The court, in respect that [E.F.], a witness in the cause, has failed to appear after being duly cited, adjourns the diet till *(date)* at *(time)*, and ordains the accused and witnesses to appear personally at the said diet, and grants warrant to apprehend [E.F.] and to detain him in any prison or in police cells until the said diet, or bring him before a justice for the purpose of fixing security for his appearance at all diets of the court.

(Signed)
Sheriff

FORM 18.6 Form of order of detention in precincts of court under section 169(1) of the Criminal Procedure (Scotland) Act 1995

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

Rule 18.6

The court ordered the accused [*or offender*] to be detained within the precincts of the court [*or the police station at (place)*] until [*state time*] of this day.

(Signed)
Clerk of Court

FORM 19.1-A Form of note of appeal against decision relating to a preliminary plea

IN THE HIGH COURT OF JUSTICIARY

NOTE OF APPEAL

under section 174(1) of the Criminal Procedure
(Scotland) Act 1995

by

[A.B.] (*address*)
[or Prisoner in the Prison of (*place*)]

APPELLANT

against

[The Procurator Fiscal]

RESPONDENT

To the Sheriff Clerk [or Clerk to the District Court] at (*place of court*)

Date of decision appealed against:

Date of trial:

The appellant appeals to the High Court of Justiciary in respect that:-

- (1) (*State whether objection taken to competency or relevancy of the complaint or the proceedings or denial issued that the appellant was the person charged by the police with the offence and specify the terms of the objection or denial.*)
- (2) (*State the decision which it is desired to bring under review by the High Court.*)
- (3) (*State the grounds of appeal.*)

(Signed)

[Solicitor for Appellant]

(*Address and telephone number of
solicitor*)

Place and date:

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

Rule 19.1(11)

IN THE HIGH COURT OF JUSTICIARY

MINUTE OF ABANDONMENT

of

appeal under section 174(1) of the
Criminal Procedure (Scotland) Act 1995

To: Clerk of Justiciary

Name of appellant:

Name of respondent:

Date of decision appealed against:

Date of appeal hearing:

The above-named appellant abandons his [*or her or its*] appeal.

(Signed)

[Solicitor for Appellant]

*(Address and telephone number of
solicitor)*

[*or* Procurator Fiscal]

Place and date:

FORM 19.2-A Form of application for stated case

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

Rule 19.2(1)

IN THE SHERIFF [or DISTRICT] COURT AT *(place of court)*

APPLICATION FOR STATED CASE

under section 176(1) of the
Criminal Procedure (Scotland) Act 1995

by

[C.D.] [or [A.B.], Procurator Fiscal, *(place)*]

in

The Procurator Fiscal

against

[C.D.] *(address)*
[or Prisoner in the Prison of *(place)*]

1. [C.D.] [or The Procurator Fiscal] craves the court to state a case for the opinion of the High Court of Justiciary in the above proceedings in which the date of final determination was *(date)*.
2. The matter[s] which it is desired to bring under review is [or are]:-
(here specify)
3. The appeal is also against sentence.]
4. The said [C.D.] [or Procurator Fiscal] also craves the court to *(here insert any application for bail, for interim suspension of an order for disqualification imposed under the Road Traffic Acts, or for any other interim order under section 177(1) of the Criminal Procedure (Scotland) Act 1995).*

(Signed)
[Solicitor for [C.D.]]

*(Address and telephone number of
solicitor)*
[or Procurator Fiscal]

(Place and date)

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

Rule 19.2(2)

IN THE SHERIFF [or DISTRICT] COURT AT (place)

CASE
for the Opinion of the High Court of Justiciary at Edinburgh
stated by (name of judge)

in

[A.B.] (address) [or Prisoner in the Prison of (place)] [or
The Procurator Fiscal at (place)]

APPELLANT

against

[C.D.] (address or as the case may be)

RESPONDENT

The appellant [or respondent] was charged with (here summarise the relevant charges).

(Here state concisely the relevant procedural history of the proceedings.)

(Here state the decision and disposal.)

I [or We] found the following facts admitted or proved:-

(Here set out in numbered paragraphs the facts admitted or proved.)

(Where the appeal is against a decision on a submission of no case to answer, identify and summarise the Crown evidence and inferences drawn.)

(Here state the reasons for the decision with reference to the evidence on which the facts were found admitted or proved, objections to the admission or rejection of evidence, the grounds of the decision, and any other matters necessary to be stated for the information of the superior court.)

The question[s] submitted for the opinion of the court is [or are]:- (here state the question or questions in numbered paragraphs for the opinion of the court).

This case is stated by me [or us]

(Signature of the judge(s))

(Name of judge(s))

(Append any additional material required by section 179(7) of the Criminal Procedure (Scotland) Act 1995.)

(Initials of the judge(s))

Document Generated: 2024-05-04

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

FORM 19.2-C Form of minutes of procedure in appeal by stated case

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

Rule 19.2(3)

- (Date) Application for stated case lodged.

Clerk of Court
 - (Date) (Name of judge.) The court refused [or granted] bail conform to separate order attached.

Clerk of Court
 - (Date) (Name of judge.) The court refused to suspend [or ad interim suspended] the order for disqualification under section 41(2) of the Road Traffic Offenders Act 1988.

Clerk of Court
 - (Date) Draft stated case issued to appellant[’s solicitor] and duplicate of it issued to respondent[’s solicitor]. Last date for receipt of adjustment is (date).

Clerk of Court
 - (Date) Adjustments for appellant [or respondent] received.

Clerk of Court
 - (Date) Adjustments for appellant [or respondent] received.

Clerk of Court
 - (Date) Intimation by appellant [or respondent] that no adjustments proposed.

Clerk of Court
 - (Date) Intimation by appellant [or respondent] that no adjustments proposed.

Clerk of Court
 - (Date) Appeal deemed to be abandoned under section 179(3) of the Criminal Procedure (Scotland) Act 1995, and so intimated to appellant[’s solicitor] and to respondent[’s solicitor].

Clerk of Court
 - (Date) Hearing on adjustments and any intended alteration to the draft case to be held on (date and time). Appellant[’s solicitor] and Respondent[’s solicitor] informed.

Clerk of Court
- (Place and date.) (Name(s) of judge(s))
- Appeared: (specify)
- Parties heard on the adjustments and on intended alterations to the draft case.
- Case adjusted.
- The following adjustments rejected by judge:- (here specify)
- The following alterations proposed by judge not accepted by the appellant [or respondent]:- (here specify)
- Clerk of Court
- (Date) Case signed and sent to appellant[’s solicitor] and duplicate sent to respondent[’s solicitor]. Complaint, proceedings and all relevant documents transmitted to Clerk of Justiciary.

Clerk of Court

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

FORM 19.3-A Form of note of appeal against sentence under section 186(1) of the Criminal Procedure (Scotland) Act 1995

Rule 19.3(1)

IN THE SHERIFF [or DISTRICT] COURT AT (place)

NOTE OF APPEAL
against sentence

by

[A.B.] (address)
[or presently prisoner in the Prison of (place)]

APPELLANT

against

The Procurator Fiscal

RESPONDENT

1. The appellant appeals to the High Court of Justiciary against the sentence of (specify) passed in the above court on (date).

2. The ground[s] of appeal is [or are]:-

(here set out the ground(s)).

[3. The appellant also craves the court to (here insert any application for bail, for interim suspension of any order for disqualification imposed under the Road Traffic Acts, or for any other interim order under section 177(1) by virtue of section 188(10) of the Criminal Procedure (Scotland) Act 1995).]

(Signed)

[Solicitor for appellant]

(Address and telephone number of
solicitor)

(Place and date)

FORM 19.3-B Form of minutes of procedure in note of appeal against sentence alone under section 186(1) of the Criminal Procedure (Scotland) Act 1995

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

Rule 19.3(2)

<i>(Date)</i>	Note of appeal lodged.	Clerk of Court
<i>Eo die</i>	Copy note of appeal sent to procurator fiscal.	Clerk of Court
<i>Eo die</i>	Copies of note of appeal, complaint, minutes of proceedings and relevant documents sent to <i>(name of judge)</i> for report. Proceedings to be sent to Clerk of Justiciary no later than <i>(date)</i> .	Clerk of Court
<i>(Date)</i>	<i>(Name of judge.)</i> The court refused bail [<i>or granted bail</i>] conform to separate order attached.	Clerk of Court
<i>(Date)</i>	<i>(Name of judge.)</i> The court refused to suspend [<i>or ad interim suspended</i>] the order for disqualification in terms of section 41(2) of the Road Traffic Offenders Act 1988.	Clerk of Court
<i>(Date)</i>	Report received.	Clerk of Court
<i>(Date)</i>	Copy report sent to [A.B.] [<i>or</i> [C.D.]] and the Procurator Fiscal.	Clerk of Court
<i>Eo die</i>	Note of appeal, report and certified copy of the complaint, minutes of proceedings and relevant documents sent to Clerk of Justiciary.	Clerk of Court

FORM 19.4 Form of extension of time by sheriff principal

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

Rule 19.4

IN THE SHERIFF [or DISTRICT] COURT AT *(place)*

[A.B.] v [Procurator Fiscal]

(Place and date.) I, *(name)*, Sheriff Principal of the Sheriffdom of *(name of sheriffdom)* by virtue of the powers vested in me by section 186(5) [or 194(2)] of the Criminal Procedure (Scotland) Act 1995, and in respect that *(name of judge)* is temporarily absent from duty, extend the period specified in section *(specify relevant section)* of that Act so that it will now expire on *(date)*.

(Signed)

FORM 19.5 Form of minute abandoning appeal under section 184(1) of the Criminal Procedure (Scotland) Act 1995

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

Rule 19.5

IN THE SHERIFF [*or* DISTRICT] COURT AT (*place*)

MINUTE OF ABANDONMENT

in the

APPEAL BY STATED CASE

by

[A.B.] (*address*)

[*or* presently a prisoner in the Prison of (*place*)]

APPELLANT

against

[The Procurator Fiscal (*or as the case may be*)]

RESPONDENT

The appellant abandons his [*or her or its*] appeal as from this date against conviction [*or* conviction and sentence] [*or* the acquittal of the respondent] [*or* the sentence passed on the respondent].

Intimation of the foregoing abandonment has been made to the respondent.

(*Signed*)

[Solicitor for appellant]

(*Address and telephone number of solicitor*)

(*Place and date*)

FORM 19.6 Form of minute abandoning appeal under section 175(8) of the Criminal Procedure (Scotland) Act 1995

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

Rule 19.6(2)

IN THE HIGH COURT OF JUSTICIARY

MINUTE OF ABANDONMENT

in the

APPEAL BY STATED CASE

by

[A.B.] (*address*)

[*or* presently a prisoner in the Prison of (*place*)]

APPELLANT

against

The Procurator Fiscal

RESPONDENT

The appellant abandons his [*or her or its*] appeal as from this date against conviction but proceeds with the appeal against sentence.

Intimation of the foregoing abandonment has been made to the respondent.

(*Signed*)

[Solicitor for appellant]

(*Address and telephone number of solicitor*)

(*Place and date*)

FORM 19.7 Form of minute of abandonment of appeal against sentence alone under section 186(9) of the Criminal Procedure (Scotland) Act 1995

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

Rule 19.7

MINUTE OF ABANDONMENT

of

APPEAL AGAINST SENTENCE

under section 186(9) of the Criminal Procedure (Scotland) Act 1995

Name of appellant:

Date of birth:

Prisoner in the Prison of:

Crime or offence to which appeal relates:

Sheriff/District Court at:

Sentence:

The above named appellant having lodged a note of appeal abandons as from this date the appeal against sentence under section 186(9) of the Criminal Procedure (Scotland) Act 1995.

Intimation of the foregoing abandonment has been made to the respondent.

(Signed)

[Solicitor for appellant]

(Address and telephone number of solicitor)

(Place and date)

FORM 19.9 Form of application to High Court for suspension of disqualification from driving

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

Rule 19.9(3)

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD
JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

NOTE OF APPLICATION

for

SUSPENSION OF DISQUALIFICATION

under section 41(2) of the Road Traffic Offenders Act 1988

in

SUMMARY COMPLAINT

in causa

The Procurator Fiscal

COMPLAINER AND RESPONDENT

against

[C.D.] (*address*)

APPLICANT AND APPELLANT

HUMBLY SHEWETH:

1. That the applicant and appellant, having been convicted on a complaint brought under the Criminal Procedure (Scotland) Act 1995 at the instance of the complainer and respondent of (*specify charge*), was on (*date*) in the sheriff [*or district*] court at (*place*) fined [*or sentenced to (specify)*] and ordered to be disqualified for a period of (*state period of disqualification*) in terms of section [34] of the Road Traffic Offenders Act 1988.
2. That on (*date*) the applicant and appellant applied to the said court to state a case for the opinion of the High Court of Justiciary under section 176 of the Act of 1995.
3. That the applicant and appellant thereafter requested the court to suspend the period of disqualification under section 39(2) of the Road Traffic Offenders Act 1988.
4. That the court, on (*date*), refused to suspend the disqualification.
5. That the applicant and appellant has served a copy of this note on the clerk of the said court and on the respondent.

MAY IT THEREFORE please your Lordships under section 41(2) of the Road Traffic Offenders Act 1988 to suspend the said disqualification on such terms as your Lordships think fit.

ACCORDING TO JUSTICE, etc.

[Solicitor for applicant and appellant]

(*Address and telephone number of solicitor*)

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

FORM 20.1 Form of sentence of death

20.1(1)

[A.B.], the sentence of the court is that you be taken from this place to the Prison of *(name)* [and then to be forthwith transmitted to the Prison of *(name)*] to be detained there until the *(number of day)* day of *(month and year)* and on that day, within the Prison of *(name)* between the hours of eight and ten o'clock forenoon, you suffer death by hanging; which is pronounced for doom.

(Signed by judge)

FORM 20.2 Form of order of detention in police custody instead of imprisonment under section 206(2) of the Criminal Procedure (Scotland) Act 1995

20.2

The court ordered the offender to be detained in the custody of the police at *(place)* for *(number of days not exceeding four)* .

(Signed)
Clerk of Court

FORM 20.3 Form of supervised release order under section 209 of the Criminal Procedure (Scotland) Act 1995

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

Rule 20.3

SUPERVISED RELEASE ORDER

under section 209 of the Criminal Procedure (Scotland) Act 1995

Court:

Date:

Offender:

Address:

Date of birth:

THE COURT, having sentenced the offender to imprisonment for a term of (*state period*) being not less than twelve months but less than four years:

AND being of the opinion that this order is necessary to protect the public from serious harm from the offender on his release:

AND having explained to the offender the effect of the order and the possible consequences for the offender of any breach of it including any failure to comply with the requirements mentioned below:

ORDERS that the offender shall, during a period of (*insert period being a period not exceeding 12 months and not extending beyond the date by which the entire term of imprisonment will elapse*) after the date of his release, be under the supervision either of a relevant officer of a local authority or of a probation officer appointed for or assigned to a petty sessions area designated by the Secretary of State under section 14(4) or 15(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 and shall be subject to—

- (a) the following standard requirements specified by virtue of section 209(4)(a) of the Criminal Procedure (Scotland) Act 1995:—
 - (i) to report to the supervising officer in a manner and at intervals specified by that officer; and
 - (ii) to notify that officer without delay of any change of address;
- (b) such reasonable requirements as may, by virtue of section 209(3)(b) of the Criminal Procedure (Scotland) Act 1995, be specified by the supervising officer; and
- (c) (*insert any requirements which the court may wish to specify, e.g., as to counselling on drug or alcohol abuse, staying away from victims, etc.*).

(Signed)

Clerk of Court

Copy to: Offender
Secretary of State

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

FORM 20.4-A Form of direction as to money found on offender under section 212(1) of the Criminal Procedure (Scotland) Act 1995

Rule 20.4(1)

The court directed that the money found on the person (*name of offender*) should not be applied to payment of the fine of £ imposed on him on (*date*).

(Signed)
Judge

FORM 20.4-B Form of notice to governor of prison under section 212(7) of the Criminal Procedure (Scotland) Act 1995

Rule 20.4(2)

To the Governor of the Prison of (*place*).

TAKE NOTICE that the attendance of (*name*), presently in your custody, is required at (*place and address of court*) on (*date*) at (*time*).

(Signed)
Judge

(*Place and date*)

FORM 20.5 Form of order for further time for payment of fine under section 214(7) or 215(3) of the Criminal Procedure (Scotland) Act 1995

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

Rule 20.5

The court, having considered the application of the offender for extension of time for payment of the fine of £ , allowed payment to be made within days from this date.

(Signed)
Clerk of Court

FORM 20.6-A Form of citation to appear for enquiry under section 216(3)(a) of the Criminal Procedure (Scotland) Act 1995

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

Rule 20.6(1)

Court:

To: <i>(name and address)</i>	No.
	Date
	Fine
	Class of offence
	Rate of payment

Citation to attend for enquiry

Balance
outstanding £

On *(date)*

At *(time)*

In respect that you were fined as shown above, that you are in default of payment and that the outstanding balance of the fine is as shown above, you are ordained to appear personally at the time and date shown above in the Sheriff [*or District*] Court at *(place and address)* for an enquiry under section 216 of the Criminal Procedure (Scotland) Act 1995.

(Place and date)

(Signed)
Clerk of Court

NOTES

- (1) If you fail to appear personally at the enquiry court, the court may issue a warrant for your arrest.
- (2) If you pay the whole outstanding balance of the fine before the enquiry court, it will not be necessary for you to appear.

FORM 20.6-B Form of execution of citation otherwise than by post of offender for enquiry for non-payment of fine

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

Rule 20.6(2)

I, *(name and designation)*, on *(date)*, did lawfully cite *(name and address of offender in the citation)* to appear in person before the Sheriff *[or District]* Court at *(place and address)* on *(date)* at *(time)* for an enquiry under section 216 of the Criminal Procedure (Scotland) Act 1995. This I did by handing the citation to *(name)* personally *[or if not served personally, state other method of service]*.

(Signed)
Officer of Law

FORM 20.6-C Execution of citation by post, warrant to apprehend and record of proceedings at enquiry under section 216 of the Criminal Procedure (Scotland) Act 1995

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

20.6(3)

(Name and address of offender)	No.
	Date
	Fine
	Class of offence
	Rate of payment

To attend for enquiry

Balance
outstanding £

on (date)

at (time)

Today I lawfully cited the above named offender to appear in person before the Sheriff [or District] Court, on the date and time shown above for an enquiry under section 216 of the Criminal Procedure (Scotland) Act 1995.

This I did by posting a copy of the citation to the offender addressed as shown above, by the recorded delivery service.

(Signed)
Clerk of Court

(Place and date)

(Place and date.) In respect that the above named offender has failed to pay the outstanding balance of the fine as shown above within the time allowed and has failed to appear in person for enquiry after being duly cited, the court grants warrant for the apprehension of the said offender for the purposes of his [or her] appearance before the court for enquiry under section 216 of the Criminal Procedure (Scotland) Act 1995.

(Signed)
Judge

(Place and date.)

Judge:

Compared the offender for enquiry. After enquiry, the court in relation to the fine referred to above-

- (1) allowed payment of the fine to be made within days from ;
- (2) allowed payment of the fine to be made by instalments of £ per week commencing on 19 ;
- (3) imposed as an alternative to the fine days imprisonment to commence forthwith.

(Signed)
Clerk of Court

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

FORM 20.7 Form of notice of fines supervision order under section 217(7) of the Criminal Procedure (Scotland) Act 1995

Rule 20.7

Court:

To: *(name and address of offender)*

In respect that a fine of £ was imposed on you by the court at *(place)* on *(date)* and that fine [*or balance of £*] remains unpaid, the court today has placed you under the supervision of *(name of supervising officer)* who will assist you and advise you on the payment of the fine for so long as the fine remains unpaid or until the further order of court.

Payment of the fine is now to be made by weekly instalments of £ per week, the first instalment being due within days from this date.

(Place and date)

(Signed)
Clerk of Court

Copy to: Chief Social Work Officer
(Address)

FORM 20.8 Form of charge for payment of a fine or other financial penalty

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

Rule 20.9(1)

IN THE SHERIFF [or DISTRICT] COURT

AT (place)

(Name of offender)

Date of birth:

was on (date) convicted of (crime or offence) and was sentenced to pay a fine of £ , the fine to be paid by (date) [or by weekly (or otherwise) instalments of £ , the first instalment to be paid on (date)]; and that fine [or the balance of that fine as shown in the statement below] is still unpaid and (state period) of imprisonment has been fixed in the event of a future default in payment of the sum in question.

And as it appears that (name of offender) is now residing at (address) a transfer of fine order is hereby made under section 222(2) of the Criminal Procedure (Scotland) Act 1995, transferring to the (specify the court) at (place) and to the clerk of that court in respect of that fine all the functions referred to in section 222 of that Act.

(Signed)

Clerk of Court

Date:

STATEMENT REFERRED TO

Fine	£
Instalment(s) paid to date of transfer	£

Balance due	_____
In instalments of	£

FORM 20.9-BForm and notice of further transfer of fine order by virtue of section 222(5) of the Criminal Procedure (Scotland) Act 1995

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

Rule 20.9(2)

IN THE SHERIFF [or DISTRICT] COURT

AT (place)

(Name of offender)

Date of birth:

was on (date) at (name of court) convicted of (offence) and was sentenced to pay a fine of £ , the fine to be paid by (date) [or by weekly (or otherwise) instalments of £ , the first instalment to be paid on (date)].

By virtue of a Transfer of Fine Order dated (insert date) the functions of the sheriff [or district] court were transferred to (specify the court) at (place). The clerk of that court has sent a notice stating that (name of offender) is not residing within its jurisdiction.

The fine or the balance of the fine as shown in the statement below is still unpaid and (state period) of imprisonment has been fixed in the event of a future default in payment of the sum in question.

And as it appears that (name of offender) is now residing at (address) outwith the jurisdiction of this court, a further transfer of fine order is hereby made under section 222(1) of the Criminal Procedure (Scotland) Act 1995, transferring to the (specify the court) at (place) and to the clerk of that court in respect of the fine all the functions referred to in section 222 of that Act.

(Signed)
Clerk of Court

Date:

STATEMENT REFERRED TO

Fine	£
Instalment(s) paid to date of transfer	£
Balance due	_____
In instalments of	£

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

Rule 20.9(3)

IN THE SHERIFF [or DISTRICT] COURT

AT (place)

TO: (name and address of offender)

On (date), you were convicted by the (specify the court) at (place) and were sentenced to pay a fine of £ , to be paid by (date) [or by weekly (or otherwise) instalments of £ , the first instalment to be paid on (date)]. The fine has not been [fully] paid and (state period) of imprisonment has been fixed in the event of a future default in payment of the sum in question.

NOTICE IS HEREBY GIVEN TO YOU that in consequence of a transfer of fine order made by the (specify the court) at (place) on (date), the enforcement of the fine [or the balance of the fine] due by you as shown in the statement below, has become a matter for this court.

Payment of that fine [or the balance of that fine] due by you should therefore be made within the time [or times] ordered, either by post or personally to me (clerk of court and address).

If you cannot pay forthwith[or by (date)], you should at once make an application for further time to be granted. Such an application should be made either in person to this court or by letter addressed to me stating fully why you are unable to pay the sum due.

(Signed)
Clerk of Court

(Address)

Date:

NOTE: Any communication sent by post must be properly stamped.
Cash should not be sent in an unregistered envelope.

STATEMENT REFERRED TO

Fine	£
Instalment(s) paid to date of transfer	£
Balance due	_____
In instalments of	£

FORM 20.10-A Form of probation order made under section 228 of the Criminal Procedure (Scotland) Act 1995

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

Rule 20.10(1)

PROBATION ORDER

under section 228 of the Criminal Procedure (Scotland) Act 1995

COURT:
DATE:
OFFENDER:
Address:
Date of birth:

THE COURT, having convicted the offender, and being of the opinion that, having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to make a probation order containing the undernoted requirements;

AND the court having explained to the offender the effect of the probation order (including the requirements set out below), and that if he or she fails to comply with the probation order, he may be brought before the court by his supervising officer for a breach of probation and may be fined or sentenced or dealt with for the original offence, and that, if he or she commits another offence during the period of the probation order, he or she may be dealt with for that offence;

AND the offender having expressed his or her willingness to comply with the requirements of the probation order:

ORDERS that for a period of (*specify period*) from the date of this order the offender who resides [*or is to reside*] in the local authority area of (*specify*) shall be under the supervision of an officer of that local authority allocated for the purpose [*or allocated for the purpose as required by the court*] at (*place*) in the said local authority area; that the offender shall be notified in writing by the clerk of court of the name and official address of the officer who is to supervise him or her and be similarly notified if at any time such supervision is to be undertaken by another officer of the local authority allocated for the purpose; and that the offender shall comply with the following requirements, namely—

- (1) to be of good behaviour;
- (2) to conform to the directions of the supervising officer;
- (3) to inform the supervising officer at once if he or she changes his residence or place of employment;
- (4) (*here insert any additional requirements*).

(Signed)
Clerk of Court

Date:

Note: (*Name of supervising officer*) of (*name of local authority*)
has been allocated as supervising officer in this case.

I confirm that I understand the conditions of the probation order.

Signature of offender:

Signature of supervising officer:

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

FORM 20.10-B Form of citation of probationer under section 232(1) or 233(1) of the Criminal Procedure (Scotland) Act 1995

Rule 20.10(2)

IN THE HIGH COURT OF JUSTICIARY
[or IN THE SHERIFF [or DISTRICT] COURT]

AT (*place*)

CITATION

To: (*name and address of probationer*)

Date of citation: (*date of citation or, if citation by post, the day after the date of posting*)

YOU ARE HEREBY CITED to appear on (*date*) at (*time*) in the High Court of Justiciary [or Sheriff [or District] Court] at (*address*) because it has been reported to the court that you have failed to comply with a requirement of your probation order as alleged in the written information attached [or by (*specify the failure alleged*)] [or committed an offence while on probation, namely, (*specify*)].

IF YOU DO NOT ATTEND COURT WITHOUT A LAWFUL EXCUSE THE COURT MAY ORDER THAT YOU BE APPREHENDED AND PUNISHED

(*Signed*)
Officer of Law
[or Clerk of Court]

FORM 20.11-A Form of supervised attendance order under section 235(1) of the Criminal Procedure (Scotland) Act 1995

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

Rule 20.11(1)

SUPERVISED ATENDANCE ORDER

under section 235(1) of the Criminal Procedure (Scotland) Act 1995

COURT:
DATE:
OFFENDER:
Address:
Date of birth:

(1) THE COURT, being satisfied that the requirements of paragraphs (a), (b) and (c) of section 235(3) of the Criminal Procedure (Scotland) Act 1995 have been met;

AND having explained to the offender the purpose and effect of this order (including the requirements set out below), and that if the offender fails to comply with this order the offender may be brought before the court which may revoke this order and impose a period of imprisonment or may vary the number of hours specified in this order, and that the court has power to review this order on the application either of the offender or of an officer of the local authority in whose area the offender for the time being resides;

AND the offender having expressed his or her willingness to comply with this order;

IN RESPECT that the offender [resides] [or is to reside] in the District of (*specify district of local authority*) in the area of (*specify the local authority*), REQUIRES the said Council to appoint or assign an officer to discharge the functions assigned to him or her by virtue of section 235 of, and Schedule 7 to, the Criminal Procedure (Scotland) Act 1995 in respect of the offender and to notify the offender forthwith of the particulars of the officer;

ORDERS that the offender shall—

- (a) attend a place of supervision notified to him or her by the officer for (*specify number of hours*) hours during the period of 12 months from this date or until the stated hours of attendance have been completed, whichever is the shorter, and while at that place of supervision carry out such instructions as may be given to him or her by the officer; and
- (b) report to the officer and notify the officer without delay of any change of residence or of any change in the times, if any, at which the offender usually works.

(2) IF for any reason the offender fails to carry out the instructions given under this order for the number of hours specified at (1)(a) above within the period of 12 months from the date of this order:—

- (a) this order will remain in force until the offender has carried out the said instruction for the number of hours specified in this order;
- (b) the offender's obligations stated above will continue; and
- (c) the officer shall bring the circumstances to the attention of the court.

(Signed)
Clerk of Court

Copy: Offender
Chief Social Work Officer
[Clerk of appropriate court]

Document Generated: 2024-05-04

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

FORM 20.11-B Form of supervised attendance order under section 236 of the Criminal Procedure (Scotland) Act 1995

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

Rule 20.11(2)

SUPERVISED ATENDANCE ORDER

under section 236 of the Criminal Procedure (Scotland) Act 1995

COURT:
DATE:
OFFENDER:
Address:
Date of birth:

(1) THE COURT, being satisfied that the offender is likely to pay the fine of £ imposed by the court [or is unlikely to pay the fine of £ imposed by the court];

AND having explained to the offender the purpose and effect of this order (including the requirements set out below), and that if the offender fails to comply with this order the offender may be brought before the court which may revoke this order and impose a period of imprisonment or may vary the number of hours specified in this order, and that the court has power to review this order on the application either of the offender or of an officer of the local authority in whose area the offender for the time being resides;

AND the offender having expressed his [or her] willingness to comply with this order;

IN RESPECT that the offender [resides] [or is to reside] in the District of (*specify district of local authority*) in the area of (*specify the local authority*), REQUIRES the said Council to appoint or assign an officer to discharge the functions assigned to him or her by virtue of Schedule 7 to the Criminal Procedure (Scotland) Act 1995 in respect of the offender and to notify the offender forthwith of the particulars of the officer;

ORDERS that the offender shall [in default of payment of the said fine within 28 days of (*date*)]–

- (a) attend a place of supervision notified to him or her by the officer for (*specify number of hours*) hours during the period of 12 months from this date or until the stated hours of attendance have been completed, whichever is the shorter, and while at that place of supervision carry out such instructions as may be given to him or her by the officer; and
- (b) report to the officer and notify the officer without delay of any change of residence or of any change in the times, if any, at which the offender usually works.

(2) IF for any reason the offender fails to carry out the instructions given under this order for the number of hours specified at (1)(a) above within the period of 12 months from the date of this order:–

- (a) this order will remain in force until the offender has carried out the said instruction for the number of hours specified in this order;
- (b) the offender’s obligations stated above will continue; and
- (c) the officer shall bring the circumstances to the attention of the court.

(Signed)
Clerk of Court

Copy: Offender
Chief Social Work Officer
[Clerk of appropriate court]

Document Generated: 2024-05-04

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

FORM 20.12-A Form of community service order made under section 238 of the Criminal Procedure (Scotland) Act 1995

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

Rule 20.12(1)

COMMUNITY SERVICE ORDER

under section 238 of the Criminal Procedure (Scotland) Act 1995

COURT:
DATE:
OFFENDER:
Address:
Date of birth:
Offence(s):

(1) THE COURT, being satisfied that the offender has committed the offence with which he or she is charged [*or in view of the conviction of the offender*], and being of the opinion that, having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to make a community service order containing the undernoted requirements;

AND having explained to the offender the effect of the community service order (including the requirements set out below), and that if he or she fails to comply with the community service order, he or she may be brought before the court by his or her supervising officer for a breach of the community service order and may be fined or sentenced or dealt with for the original offence, and that, if he or she commits another offence during the period of the community service order, he or she may be dealt with for that offence;

IN RESPECT that the offender who resides [*or is to reside*] in the District of (*specify district of local authority*) in the area of (*specify the local authority*) has been convicted of the said offence(s) REQUIRES the said Council to appoint or assign an officer to discharge the functions assigned by sections 239 to 245 of the Criminal Procedure (Scotland) Act 1995 in respect of the offender and to notify the offender forthwith of the particulars of the officer;

ORDERS that the offender shall, during the period of twelve months from this date or until the performance of the hours of unpaid work specified at (2) below, whichever is shorter—

- (a) report to the local authority officer appointed or assigned to him or her and notify the said officer without delay of any change of address or of any change in the times, if any, at which the offender usually works; and
- (b) perform for (*specify number of hours*) hours such unpaid work at times as the local authority officer may instruct.

(2) If for any reason the offender fails to perform the unpaid work specified in paragraph (1)(a) above during the period of twelve months from the date of the order—

- (a) the order shall remain in force beyond the twelve month period;
- (b) the offender's obligation under paragraph (1) above will continue, and;
- (c) the local authority officer appointed under the order shall take whatever action is appropriate to bring the circumstances to the attention of the court.

(Signed)
Clerk of Court

Copy to: Offender
Chief Social Worker

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

FORM 20.12-B Form of citation of offender under section 239(4) or 240(3) of the Criminal Procedure (Scotland) Act 1995

Rule 20.12(2)

IN THE HIGH COURT OF JUSTICIARY
[or IN THE SHERIFF [or DISTRICT] COURT]

AT (*place*)

CITATION

To: (*name and address of probationer*)

Date of citation: (*date of citation or day after the date of posting*)

YOU ARE HEREBY CITED to appear on (*date*) at (*time*) in the High Court of Justiciary [or Sheriff [or District] Court] at (*address*) because it has been reported to the court that you have failed to comply with a requirement of your community service order by (*specify the failure alleged*) [or that, on the application of the local authority officer, the community service order should be amended or revoked because (*specify*)].

IF YOU DO NOT ATTEND COURT WITHOUT A LAWFUL EXCUSE THE COURT MAY ORDER THAT YOU BE APPREHENDED AND PUNISHED.

(*Signed*)
Officer of Law
[or Clerk of Court]

FORM 20.18-A Form of extract of custodial sentence following conviction on indictment, warrant of detention and return of sentence

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

Rule 20.18(1)

PROCEEDINGS ON INDICTMENT
under the Criminal Procedure (Scotland) Act 1995

EXTRACT SENTENCE, WARRANT OF DETENTION AND RETURN OF SENTENCE

Court	Judge	
Accused	Date of Sentence	
Address (where known)	Method of conviction	
	Jury trial	Sec. 76
	Plea	Sec. 195
Date of Birth	Marital Status	Occupation

Offence(s) for which sentenced

Sentence:

The court sentenced the accused to be imprisoned/detained as from this date for the period specified below and thereafter to be set at liberty.

Period of imprisonment/detention:

Total period:

To date from:

Warrant:

In respect of the foregoing sentence, the court ordained the accused to be conveyed by officers of law to the Prison of

thereafter to be dealt with in due course of law.

Officers
to prove conviction

Previous record
(as per list attached)

Extracted by me (*name*)

(*Signed*)
Clerk of Justiciary
[or Sheriff Clerk]

Document Generated: 2024-05-04

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

FORM 20.18-BForms of extract of sentence imposed in summary proceedings

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

Rule 20.18(2)

In the Sheriff [or District] Court of _____ at (place)

Name of accused:
Date of conviction:
Offence of which convicted:

[Imprisonment] Sentence, Imprisonment _____ months [or days].
In respect of which sentence, warrant is hereby granted to officers of law to convey the accused to the prison of (place) and for the detention of the accused therein for _____ days from the date of imprisonment.

[Fine or imprisonment immediate] Sentence, £ _____ fine or _____ months' [or days'] imprisonment. In respect of which sentence warrant is hereby granted to officers of law to convey the accused to the prison of (place) and for the detention of the accused therein until the said fine is paid, but not exceeding _____ months [or days] from the date of imprisonment.

[Fine or imprisonment time allowed and expired] Sentence, £ _____ fine (payable within _____ days) or _____ months' [or days'] imprisonment.
In respect of which sentence, the period allowed for payment of the said fine having expired and the said fine not having been paid, warrant is hereby granted to officers of law to convey the accused to the prison of (place) and for the detention of the accused therein until the fine is paid, but not exceeding _____ months [or days] from the date of imprisonment.

[Fine and surrender of accused for imprisonment] Sentence, £ _____ fine payable within _____ months [or days] or _____ months' [or days'] imprisonment.
In respect of which sentence the accused, having surrendered himself to the court and stated that he prefers immediate imprisonment to waiting for the expiry of the time allowed, warrant is hereby granted to officers of law to convey the accused to the prison of (place) and for the detention of the accused therein until such fine is paid, but not exceeding _____ days from the date of imprisonment.

[Caution] Sentence, £ _____ caution for good behaviour for six months (from date of conviction) or _____ months' [or days'] imprisonment.
In respect of which sentence warrant is hereby granted to officers of law to convey the accused to the prison of (place) and for the detention of the accused therein until the said caution is found, but not exceeding _____ days from the date of imprisonment.

[Fine and caution] Sentence, £ _____ fine or _____ months' [or days'] imprisonment and £ _____ caution for good behaviour for _____ months (from payment of the fine or from the expiry of the period of imprisonment for non-payment) or _____ months' [or days'] imprisonment further.
In respect of which sentence warrant is hereby granted to officers of law to convey the accused to the prison of (place) and for the detention of the accused therein until the said fine is paid and the said caution is found, the detention for non-payment of the said fine not exceeding _____ months [or days] from the date of imprisonment, and the detention for failure to find the said caution not exceeding _____ months [or days] further from payment of the fine or from expiry of the term of imprisonment for non-payment thereof.

[Imprisonment and caution] Sentence, imprisonment _____ months [or days] and £ _____ caution for good behaviour for _____ months thereafter, or _____ months' [or days'] imprisonment.
In respect of which sentence warrant is hereby granted to officers of law to convey the accused to the prison of (place) and for the detention of the accused therein for _____ months [or days] from the date of imprisonment and for his further detention thereafter until the said caution is found, but not exceeding _____ months [or days] further.

(Signed)
Clerk of Court

Document Generated: 2024-05-04

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

FORM 20.19-A Form of application under section 34B(6) of the Road Traffic Offenders Act 1988

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

Rule 20.19(2)(a)

UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)
[or UNTO THE STIPENDIARY MAGISTRATE OF
THE CITY OF GLASGOW DISTRICT]
AT (*place*)

APPLICATION

under

section 34B(6) of the Road Traffic Offenders Act 1988

by

[A.B.] (*address*)

APPLICANT

HUMBLY SHEWETH:

1. That the applicant is (*name of applicant*), and resides at (*address*).
2. That the sheriff [*or stipendiary magistrate*] on (*date of order*) made an order under section 34A of the Road Traffic Offenders Act 1988 (hereinafter referred to as "the Act of 1988") that the period of disqualification imposed on the applicant under section 34 of the Act of 1988 shall be reduced, if, by the date specified in the order, the applicant has completed satisfactorily an approved course as specified in the order.
3. That the course organiser of the course specified in the order was (*name and address of course organiser*).
4. That the date specified in the order for satisfactory completion by the applicant of the course was (*insert date specified*).
5. That the course organiser has given to the applicant the written notice required by section 34B(5) of the Act of 1988, by means of the notice dated (*date of notice*) which is lodged with this application, that he has decided not to give a course completion certificate to the applicant.
6. That the course organiser's decision not to give a course completion certificate is contrary to section 34B(4) of the Act of 1988 because (*state grounds of application*).

MAY IT THEREFORE please Your Lordship [*or Your Honour*]:

- (1) to fix a date for hearing this application;
- (2) to order the clerk of court to serve this application, with notice of the hearing, on the course organiser and the procurator fiscal; and thereafter
- (3) to declare that the course organiser's decision not to give a course completion certificate is contrary to section 34B(4) of the Act of 1988.

IN RESPECT WHEREOF

(Signed)
Applicant
[*or Solicitor for applicant*]

(*Address and telephone number of solicitor*)

(Date)

Document Generated: 2024-05-04

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

FORM 20.19-B Form of application under section 34B(7) of Road Traffic Offenders Act 1988

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

Rule 20.19(3)(a)

UNTO THE HONOURABLE THE SHERIFF OF *(name of sheriffdom)*
[or UNTO THE STIPENDIARY MAGISTRATE OF
THE CITY OF GLASGOW DISTRICT]
AT *(place)*

APPLICATION

under

section 34B(7) of the Road Traffic Offenders Act 1988

by

[A.B.] *(address)*

APPLICANT

HUMBLY SHEWETH:

1. That the applicant is *(name of applicant)*, and resides at *(address)*.
2. That the sheriff [or stipendiary magistrate] on *(date of order)* made an order under section 34A of the Road Traffic Offenders Act 1988 (hereinafter referred to as "the Act of 1988") that the period of disqualification imposed on the applicant under section 34 of the Act of 1988 shall be reduced, if, by the date specified in the order, the applicant has completed satisfactorily an approved course as specified in the order.
3. That the course organiser of the course specified in the order was *(name and address of course organiser)*.
4. That the date specified in the order for satisfactory completion by the applicant of the course was *(insert date specified)*.
5. That the course organiser has not given to the applicant either a course completion certification under section 34B(1) and (4) of the Act of 1988 or the written notice required by section 34B(5) of the Act of 1988 that he has decided not to give a course completion certificate, and that accordingly the course organiser is in default.

MAY IT THEREFORE please Your Lordship [or Your Honour]:

- (1) to fix a date for hearing this application;
- (2) to order the clerk of court to serve this application, with notice of the hearing, on the course organiser and the procurator fiscal; and thereafter
- (3) to declare that the course organiser is in default.

IN RESPECT WHEREOF

(Signed)
Applicant
[or Solicitor for applicant]

*(Address and telephone number of
solicitor)*

(Date)

Document Generated: 2024-05-04

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

FORM 21.1-A Form of statement of uncontroversial evidence under section 258 of the Criminal Procedure (Scotland) Act 1995

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

Rule 21.1(1)

IN THE HIGH COURT OF JUSTICIARY
[or IN THE SHERIFF [or DISTRICT] COURT]
AT (place)

STATEMENT OF UNCONTROVERSIAL EVIDENCE

by

[A.B.] (address)
[or Prisoner in the Prison of (place)]

in

HER MAJESTY'S ADVOCATE [or THE PROCURATOR FISCAL, (place)]

against

(Insert name(s) of accused)

TAKE NOTICE:

1. That the fact[s] listed below has [or have] been identified by me [or us] as uncontroversial and capable of being agreed in advance of trial under section 258 of the Criminal Procedure (Scotland) Act 1995.

[Or (1) That the fact[s] set out in the [following] document(s) annexed to this statement has [or have] been identified as uncontroversial and capable of being agreed in advance of trial under section 258 of the Criminal Procedure (Scotland) Act 1995:-

(here describe the documents)].

2. That a failure to challenge [any of] the foregoing fact[s] within seven days of the date of service of this notice will result in the unchallenged fact being treated by the court as having been conclusively proved unless the court makes a direction under subsection (6) of section 258 of the above-mentioned Act.

Served on (date) by me [or as the case may be] by (state method of service).

(Signed)

Procurator Fiscal
[or Accused]
[or Solicitor for [A.B.]

(Address and telephone number of
solicitor)]

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

FORM 21.1-B Form of docquet to be endorsed on document annexed to, but not described in, statement of uncontroversial evidence

Rule 21.1(2)

I, *(insert name and address of party serving the notice)*, hereby certify that this document is a document referred to in the foregoing statement of uncontroversial facts.

(Signed)

(Date)

FORM 21.2 Form of notice of challenge under section 258(3) of the Criminal Procedure (Scotland) Act 1995

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

Rule 21.2

NOTICE OF CHALLENGE OF FACT[S]
specified [or referred to] in statement under
section 258(2) of the Criminal Procedure (Scotland) Act 1995

by

[A.B.] (address)
[or Prisoner in the Prison of (place)]

in

HER MAJESTY'S ADVOCATE [or THE PROCURATOR FISCAL, (place)]

against

(Insert name(s) of accused)

NOTICE IS HEREBY GIVEN that the following document[s] [or fact[s]] specified [or referred to] in the statement of uncontroversial evidence under section 258(2) of the Criminal Procedure (Scotland) Act 1995 served on (date) is [or are] challenged by me:-

(here state or refer to the statement(s), document(s) or fact(s) challenged).

(Signed)
Accused
[or Solicitor for accused or Procurator
Fiscal]

(Address and telephone number of
solicitor)

(Date)

FORM 21.3 Form of notice under section 259(5) of the Criminal Procedure (Scotland) Act 1995

IN THE HIGH COURT OF JUSTICIARY
[or IN THE SHERIFF [or DISTRICT] COURT]
AT (*place*)

NOTICE

under

Section 259(5) of the Criminal Procedure (Scotland) Act 1995

by

[A.B.]

in

HER MAJESTY'S ADVOCATE [or THE PROCURATOR FISCAL, (*place*)]

against

(*Insert name(s) of accused*)

TAKE NOTICE:

1. That [A.B.] intends to apply to the court to have evidence of a statement by (*name and address of person not giving oral evidence*) admitted in evidence under section 259 of the Criminal Procedure (Scotland) Act 1995 and that evidence of that statement will be given—
 - * orally to the court by (*name and address of witness who will give evidence of the statement of that person*). A copy of an affidavit stating what the witness will say is attached.
 - * in the form of a document, a copy of which is attached.
 - * in the form of a document, a copy of which is attached, made by (*insert name, designation and address of maker of document*).
2. That there is evidence that the statement referred to in paragraph 1 above was made and that the person who will give evidence about it has direct personal knowledge of the making of the statement as appears from the affidavit of that person attached to this notice [or that the statement is contained in the document, the copy of which is attached to this notice].
3. That the reason why this evidence is not to be given personally by (*name*) is that:—
 - * He/She is dead. An extract death certificate (*or specify other means of proof*) is attached.
 - * He/She is unfit by reason of *his/her bodily condition to give evidence in any other competent manner. A copy of a report to this effect by a certified medical practitioner is attached.
 - * He/She is unfit by reason of *his/her mental condition to give evidence in any other competent manner. A copy of a report to this effect by a certified medical practitioner is attached.
 - * He/She is outwith the United Kingdom and is at (*address*) and it is not reasonably practicable to secure *his/her attendance at trial because (*state steps which have been taken to secure attendance*). The evidence may not be obtained in any other competent manner because (*state why the evidence may not be obtained in any other competent manner*).
 - * He/She cannot be found and the following steps which are all reasonable steps which, in the circumstances, could have been taken to find *him/her have been taken (*state steps which have been taken*).

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

4. That I, (insert name and address of party serving the notice), procurator fiscal [or solicitor acting on behalf of (specify)] certify that, the information given above is accurate in every respect to the best of my knowledge.

Served on (date) by me [or as the case may be] by (state method of service).

(Signed)

(Capacity in which signing)

(Date of service if not by post)

* Delete whatever is not applicable.

FORM 21.4 Form of certificate of authentication of documents containing a prior statement for the purposes of section 260(4) of the Criminal Procedure (Scotland) Act 1995

Rule 21.4

I, (insert name and designation of person authenticating), HEREBY CERTIFY THAT this document [or the attached document], comprising [this and] the following (insert number) pages is a full and accurate record of evidence given by (insert name and designation of person who gave the prior statement and brief details of the nature, place and date of the proceedings during which the statement was made).

(Signed)

(Date)

FORM 22.1 Form of petition for authorisation of the giving of evidence by a child by means of a live television link

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

Rule 22.1(1)

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)
AT (*place*)]

PETITION

of

HER MAJESTY'S ADVOCATE [or THE PROCURATOR FISCAL, (*place*)]

[or [A.B.] (*address*)
[or Prisoner in the Prison of (*place*)]]

PETITIONER

HUMBLY SHEWETH:

1. That the petitioner [or [C.D.]] has appeared on petition [or been indicted] [or charged] in your Lordships' [or Lordship's] court at the instance of Her Majesty's Advocate [or the procurator fiscal at (*place*)] with the crime of [or on a summary complaint at the instance of the procurator fiscal with the crime [or offence] of] (*specify*).
2. That the trial of the petitioner [or [C.D.]] is to take place in your Lordships' [or Lordship's] court [sitting at (*place*)] on (*date*).
3. That [E.F.], a child born on (*date of birth*) and residing at (*address*) has been [or is likely to be] cited to give evidence at the trial.
4. That (*here state reasons for application*).
5. That accordingly it is appropriate under section 271(5) of the Criminal Procedure (Scotland) Act 1995 that the evidence of [E.F.] should be given by means of live television link.
- [6. That your Lordship's court at (*place*) lacks the accommodation or equipment necessary to enable [E.F.] to give evidence by such means.
7. That the sheriff court at (*specify*) has such accommodation and equipment available.]

MAY IT THEREFORE please your Lordship[s]:

- (1) to appoint intimation of this petition to be made to (*specify*);
- (2) to appoint parties to be heard on this petition on the earliest practicable date hereafter; [and]
- (3) thereafter, on being satisfied in terms of section 271(7) of the Criminal Procedure (Scotland) Act 1995, to order that the evidence of [E.F.] shall be given by means of a live television link; and
- (4) thereafter, on being satisfied in terms of section 271(8) of the said Act, to order that the case shall be transferred to the court at (*specify*).

ACCORDING TO JUSTICE, etc.

(Signed)

[Solicitor for petitioner]

(Address and telephone number of solicitor)

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

FORM 23.1-A Form of petition for issue of letter of request in High Court before indictment served

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

Rule 23.1(1)(a)

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD
JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

PETITION

of

HER MAJESTY'S ADVOCATE

[or [A.B.] (address)
[or Prisoner in the Prison of (place)]]

PETITIONER

HUMBLY SHEWETH:

1. That the petitioner [or [C.D.]] [, along with (name(s) of co-accused),] on (date) in the sheriff court at (place) was committed to prison till liberated in due course of law on a petition at the instance of the Procurator Fiscal [or the petitioner] in that court charging the petitioner [or [C.D.]] with the crime of (specify).
2. That no indictment has been served on the petitioner [or [C.D.]] in respect of the said crime and that accordingly the court in which any trial of the petitioner [or [C.D.]] in respect of the crime for which he stands committed is not yet known.
3. That (name of witness) residing at (address) is a witness whose evidence the petitioner intends to adduce in the course of the trial.
4. That the evidence to the effect specified in the schedule attached to this petition which it is averred that the said witness is able to give is necessary for the proper adjudication of the trial.
5. That there would be no unfairness to the prosecutor [or as the case may be] if such evidence were to be received in the form of the record of an examination conducted by virtue of section 272(1)(a) of the Criminal Procedure (Scotland) Act 1995.
6. That (name of court) is a court or tribunal exercising jurisdiction in the country or territory of (specify) in which the said witness resides being a country or territory outside the United Kingdom, Channel Islands or Isle of Man.
7. That English is [not] the official language or one of the official languages of the said country or territory.

MAY IT THEREFORE please your Lordships:

- (1) to appoint intimation of this petition and schedule to be made to (specify);
- (2) to appoint parties to be heard on the petition on the earliest practicable date hereafter; and
- (3) thereafter, on being duly satisfied in terms of section 272(3) of the Criminal Procedure (Scotland) Act 1995, to issue a letter of request to (state judge or tribunal within whose jurisdiction the witness is resident) to take the evidence of the said witness; and to do further or otherwise as to your Lordships shall seem proper.

ACCORDING TO JUSTICE, etc.

(Signed)
[Solicitor for petitioner]

(Address and telephone number of
solicitor)

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

FORM 23.1-B Form of petition for issue of letter of request where indictment served or in summary proceedings

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

Rule 23.1(1)(b)

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD
JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)
AT (*place*)]

PETITION

of

HER MAJESTY'S ADVOCATE [or THE PROCURATOR FISCAL, (*place*)]

[or [A.B.] (*address*)
[or Prisoner in the Prison of (*place*)]]

PETITIONER

HUMBLY SHEWETH:

1. That the petitioner [or [C.D.]] [, along with (*name(s) of co-accused*),] has been indicted [or charged] in your Lordships' [or Lordship's] court at the instance of Her Majesty's Advocate [or the petitioner] with the crime of (*specify*) [or on a summary complaint at the instance of the procurator fiscal [or the petitioner] with the crime [or offence] of (*specify*)].
2. That the trial of the petitioner [or [C.D.]] is to take place in your Lordships' [or Lordship's] court [sitting at (*place*)] on (*date*).
3. That (*name of witness*) residing at (*address*) in the country or territory of (*specify*) is a witness whose evidence the petitioner intends to adduce in the course of the trial.
4. That the evidence to the effect specified in the schedule attached to this petition, which it is averred that the said witness is able to give, is necessary for the proper adjudication of the trial.
5. That there would be no unfairness to the prosecutor [or as the case may be] if such evidence were to be received in the form of the record of an examination conducted by virtue of section 272(1)(a) of the Criminal Procedure (Scotland) Act 1995.
6. That (*name of court*) is a court or tribunal exercising jurisdiction in the said country or territory of (*specify*) being a country or territory outside the United Kingdom, Channel Islands or Isle of Man.
7. That English is [not] the official language or one of the official languages of the said country or territory.

MAY IT THEREFORE please your Lordship[s]:

- (1) to appoint intimation of this petition and schedule to be made to (*specify*);
- (2) to appoint parties to be heard thereon on the earliest practicable date hereafter; and
- (3) thereafter, on being duly satisfied in terms of section 272(3) of the Criminal Procedure (Scotland) Act 1995, to issue a letter of request to (*state judge or tribunal within whose jurisdiction the witness is resident*) to take the evidence of the said witness; and to do further or otherwise as to your Lordship[s] shall seem proper.

ACCORDING TO JUSTICE, etc.

(Signed)

[Solicitor for petitioner]

(Address and telephone number of
solicitor)

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

FORM 23.1-C Form of letter of request

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

Rule 23.1(2)

LETTER OF REQUEST

(Items to be included in all letters of request)

- 1. Sender *(identity and address)*
.....
.....
- 2. Central authority of the requested State *(identity and address)*
.....
.....
- 3. Person to whom the executed request is to be returned *(identity and address)*
.....
.....
- 4. The undersigned applicant has the honour to submit the following request:
(a) Requesting judicial authority *(identity and address)*
.....
(b) To the competent authority *(the requested State)*
.....
.....
- 5. Names and addresses of the parties and their representatives:
(a) Prosecutor
(b) Accused
.....
.....
- 6. Nature and purpose of the proceedings and summary of the facts
.....
.....
- 7. Evidence to be obtained or other judicial act to be performed
.....
.....

(Items to be completed where applicable)

- 8. Identity and address of any person to be examined
.....
.....
- 9. Questions to be put to the persons to be examined or statement of the subject-matter about which they are to be examined *(or see attached list)*
.....
.....
- 10. Documents or other property to be inspected *(specify whether it is to be produced, copied, valued, etc.)*
.....
.....
.....

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

- 11. Any requirement that the evidence be given on oath or affirmation and any special form to be used *(in the event that the evidence cannot be taken in the manner requested, specify whether it is to be taken in such manner as provided by local law for the formal taking of evidence)*
.....
.....
- 12. Special methods or procedure to be followed
.....
.....
- 13. Request for notification of time and place for the execution of the request and identity and address of any person to be notified
.....
.....
- 14. Request for attendance or participation of judicial personnel of the requesting authority at the execution of the letter of request
.....
.....
- 15. Specification of privilege or duty to refuse to give evidence under the law of the State of origin
.....
.....
- 16. The fees and costs incurred will be borne by *(identity and address)*
.....
.....

(Items to be included in all letters of request)

- 17. Date of request
.....
.....
- 18. Signature and seal of the requesting authority
.....
.....

FORM 23.1-D Form of petition for issue of letter of request under section 273(2) of the Criminal Procedure (Scotland) Act 1995

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)
AT (*place*)]

PETITION

of

HER MAJESTY'S ADVOCATE
[or [A.B.] (*address*)
[or Prisoner in the Prison of (*place*)]]

PETITIONER

HUMBLY SHEWETH:

1. That the petitioner [or [C.D.]] [, along with (*name(s) of co-accused*),] has appeared on petition [or been indicted] [or charged] in your Lordships' [or Lordship's] court at the instance of Her Majesty's Advocate [or the procurator fiscal at (*place*)] [or the petitioner] with the crime of (*specify*).
2. That no indictment has been served on the petitioner [or [C.D.]] in respect of the said crime and that accordingly the court in which any trial of the petitioner [or C.D.] in respect of the said crime for which he stands committed is not yet known. [or That the trial of the petitioner [or [C.D.]] is to take place in your Lordships' [or Lordship's] court [sitting at (*place*)] on (*date*).]
3. That (*name of witness*) residing at (*address*) in the country or territory of (*specify*) is a witness whose evidence the petitioner intends to adduce in the course of the trial. He seeks to adduce that evidence through a live television link in that country or territory under section 273 of the Criminal Procedure (Scotland) Act 1995.
4. That the evidence to the effect specified in the schedule attached to this petition, which it is averred that the said witness is able to give, is necessary for the proper adjudication of the trial.
5. That (*name of court*) is a court or tribunal exercising jurisdiction in the said country or territory of (*specify*) being a country or territory outside the United Kingdom.
6. That English is [not] the official language or one of the official languages of the said country or territory.
- [7. That there would be no unfairness to the accused if such evidence were to be given through a live television link.]

MAY IT THEREFORE please your Lordship[s]:

- (1) to appoint intimation of this petition and schedule to be made to (*specify*);
- (2) to appoint parties to be heard thereupon on the earliest practicable date hereafter; and
- (3) thereafter, on being duly satisfied in terms of section 273(3) of the Criminal Procedure (Scotland) Act 1995, to issue a letter of request to (*state judge or tribunal within whose*

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

jurisdiction the witness is resident) for assistance in facilitating the giving of evidence by the said witness through a live television link; and to do otherwise as to your Lordship[s] shall seem proper.

ACCORDING TO JUSTICE, etc.

(Signed)

[Solicitor for petitioner]

(Address and telephone number of solicitor)

FORM 23.1-EForm of letter of request for evidence to be obtained by television link

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

Rule 23.1(3)

IN THE HIGH COURT OF JUSTICIARY

[or IN THE SHERIFF COURT OF (*name of sheriffdom*)
AT (*place*)]

LETTER OF REQUEST

in the Indictment [or
Petition or Complaint]

at the instance of
THE RIGHT HONOURABLE [A.B.],
HER MAJESTY'S ADVOCATE
[or PROCURATOR FISCAL]
for the Public Interest

against

[C.D.] (*address*)
[or Prisoner in the Prison of (*place*)]

The Honourable Lord (*name*), one of the Lords Commissioners of Justiciary, [or (*name*), Sheriff of (*name of sheriffdom*) at (*place*)] presents his compliments to (*here specify the court, tribunal or authority to which the request is addressed*) and has the honour of informing it of the following facts:

1. The High Court of Justiciary, of which the Honourable Lord (*name*) is one of the judges, is the supreme criminal court in Scotland and exercises a jurisdiction as a trial court [or The Sheriff Court of which Sheriff (*name*) is one of the judges, is a criminal court in Scotland which exercises jurisdiction as a trial court and in pre-trial procedures in all prosecutions for crime].
2. (*Specify briefly the applicant's part in the proceedings including, where appropriate, his relationship to the investigating agency.*)
3. Criminal proceedings have been instituted before the High Court of Justiciary at the instance of the Right Honourable [A.B.], Her Majesty's Advocate, [or, before the Sheriff Court of (*name sheriffdom*) at (*place*), at the instance of [A.B.], Procurator Fiscal.] against [C.D.] (*specify the nationality of the accused*) who is presently charged that (*here narrate the charge on the indictment, petition or complaint*). [In a case where the accused has appeared on petition but has not yet been indicted, insert the following if it is known in which court the case will be indicted:— It is expected that in due course the trial of [C.D.] will take place in the High Court of Justiciary [or the Sheriff Court of (*name of sheriffdom*)] at (*place*).]
4. The crime of (*specify the nomen juris of the crime charged or under investigation*) is a criminal offence at common law in Scotland and is not contained in any statute. It consists of (*summarise the essential elements of the crime*) [or It is a criminal offence under (*narrate statutory provision and its terms and add any explanation beyond the bare words of the statute thought necessary in order to enable the foreign court, tribunal or authority to understand clearly the elements of the crime*)]. The penalties for conviction are (*specify*).
5. It has been shown to the Honourable Lord (*name*) on application by Her Majesty's Advocate [or [C.D.]] [or It has been shown to the Sheriff of (*name of sheriffdom*) at (*place*) on application by the procurator fiscal [or [C.D.]]], a copy of which is annexed to this request, that it is necessary for the proper adjudication of the trial that the evidence of (*name and address of witness*) be given through a live television link.
6. The Criminal Procedure (Scotland) Act 1995 empowers the High Court of Justiciary [or the Sheriff Court] to request your assistance in facilitating the giving of that evidence by (*name of witness*) who resides within your jurisdiction through a live television link.
7. [*Here specify arrangements to be made and name, address and telephone number of clerk of court with whom arrangements are to be made.*]

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

[8.] In thanking (*specify the court, tribunal or authority to which the request is addressed*) in advance for its co-operation in this case, the Honourable Lord (*name*) [*or Sheriff (name)*] avails himself [*or herself*] of this opportunity to renew the assurance of his [*or her*] high consideration.

(*Signed*)
Lord Commissioner of Justiciary
[*or Sheriff of (name of sheriffdom) at*
(*place*)]

Dated this (*date*).

FORM 24.1-A Form of petition for appointment of commissioner to examine a witness in High Court before indictment served

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

Rule 24.1(1)(a)

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD
JUSTICE-LERK AND LORDS COMMISSIONERS OF JUSTICIARY

PETITION

of

HER MAJESTY'S ADVOCATE
[or [A.B.] (address)
[or Prisoner in the Prison of (place)]]

PETITIONER

HUMBLY SHEWETH:

1. That the petitioner [or [C.D.]] [, along with (name(s) of co-accused),] on (date) in the sheriff court at (place) was committed to prison till liberated in due course of law on a petition at the instance of the procurator fiscal [or the petitioner] in the said court charging the petitioner with the crime of (specify).
2. That no indictment has been served on the petitioner [or [C.D.]] in respect of the said crime and that accordingly the court in which any trial of the petitioner [or [C.D.]] in respect of the crime for which he stands committed is not yet known.
3. That (name of witness) residing at (address) is a witness whose evidence the petitioner intends to adduce in the course of the trial. The witness is unable to attend the trial diet by reason of being ill [or infirm] as appears from the medical certificate produced with this petition [or the witness is not ordinarily resident, and is, at the time of the trial diet, unlikely to be present, in the United Kingdom, Channel Islands or Isle of Man].
4. That the evidence to the effect specified in the schedule attached to this petition, which it is averred that the said witness is able to give, is necessary for the proper adjudication of the trial.
5. That there would be no unfairness to the prosecutor [or as the case may be] if such evidence were to be received in the form of the record of an examination conducted by virtue of section 272(1)(b) of the Criminal Procedure (Scotland) Act 1995.

MAY IT THEREFORE please your Lordships—

- (1) to appoint intimation of this petition and schedule to be made to (specify);
- (2) to appoint parties to be heard on the petition on the earliest practicable date hereafter; and
- (3) thereafter, on being duly satisfied in terms of section 272(3) of the Criminal Procedure (Scotland) Act 1995, to appoint (name of proposed commissioner) or such other person as your Lordships shall think fit to be a commissioner to take the evidence of the said witness within the United Kingdom, Channel Islands or Isle of Man and to report to your Lordships *quam primum*; and to do further or otherwise as to your Lordships shall seem proper.

ACCORDING TO JUSTICE, etc.

(Signed)

[Solicitor for petitioner]

(Address and telephone number of
solicitor)

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

FORM 24.1-B Form of petition for appointment of commissioner to examine a witness where indictment served or in summary proceedings

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

Rule 24.1(1)(b)

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD
JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)
AT (*place*)]

PETITION

of

HER MAJESTY'S ADVOCATE [or THE PROCURATOR FISCAL, (*place*)]

[or [A.B.] (*address*)
[or Prisoner in the Prison of (*place*)]]

PETITIONER

HUMBLY SHEWETH:

1. That the petitioner [or [C.D.]] [, along with (*name(s) of co-accused*),] has been indicted [or charged] in your Lordships' [or Lordship's] Court at the instance of Her Majesty's Advocate [or the petitioner] with the crime of (*specify*) [or on a summary complaint at the instance of the procurator fiscal [or the petitioner] with the crime [or offence] of (*specify*)].

2. That the trial of the petitioner [or [C.D.]] is to take place in your Lordships' [or Lordship's] court [sitting at (*place*)] on (*date*).

3. That (*name of witness*) residing at (*address*) is a witness whose evidence the petitioner intends to adduce in the course of the trial. The witness is unable to attend the trial diet by reason of being ill [or infirm] as appears from the medical certificate produced with this petition [or the witness is not ordinarily resident, and is, at the time of the trial diet, unlikely to be present, in the United Kingdom, Channel Islands or Isle of Man].

4. That the evidence to the effect specified in the schedule attached to this petition, which it is averred that the witness is able to give, is necessary for the proper adjudication of the trial.

5. That there would be no unfairness to the prosecutor [or *as the case may be*] if such evidence were to be received in the form of the record of an examination conducted by virtue of section 272(1)(b) of the Criminal Procedure (Scotland) Act 1995.

MAY IT THEREFORE please your Lordship[s]-

- (1) to appoint intimation of this petition and schedule to be made to (*specify*);
- (2) to appoint parties to be heard on the petition on the earliest practicable date hereafter;
and
- (3) thereafter, on being duly satisfied in terms of section 272(3) of the Criminal Procedure (Scotland) Act 1995, to appoint (*name of proposed commissioner*) or such other person as your Lordship[s] shall think fit to be a commissioner to take the evidence of the said witness within the United Kingdom, Channel Islands or Isle of Man and to report to your Lordship[s] *quam primum*; and to do further or otherwise as to your Lordship[s] shall seem proper.

ACCORDING TO JUSTICE, etc.

(Signed)

[Solicitor for petitioner]

(Address and telephone number of
solicitor)

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

FORM 26.1-A Form of certificate of authentication of document

Rule 26.1(1)(b)

I, *(insert name, address and title of office held)*, being
the author
[or the person in [or who was on *(date)* in] possession and control]
[or the authorised representative of *(name and address)* who [or which] is in [or who [or which]
was on *(date)* in] possession and control]
of
the original(s)
[or a copy [or copies] of the original(s)]
[or a copy [or copies] of a material part [or material parts] of the original(s)]
of the copy document [or documents listed and described below] on which this certificate is endorsed
[or to which this certificate is attached]
hereby certify that
it is a true copy
[or they are true copies]
of [or part(s) of]
the original(s)
[or the copy [or copies] of the original(s)]
[or the copy [or copies] of the material part [or material parts] of the original(s)]
[of] which
I am the author
[or is [or are] [or was] [or were] in my possession and control]
[or is [or are] [or was] [or were] in the possession and control of *(name and address)* of whom
[or which] I am the authorised representative.]

(Signed)

*(Add authorised capacity in which
certificate signed)*

Date: *(insert date)*

[List and describe documents]

FORM 26.1-B Form of docquet certifying a document as one kept by a business or undertaking

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

Rule 26.1(2)

I, *(insert name and title of office held)*, hereby certify that this document [*or the documents listed and described below and to which this certificate is attached*] is [*or are*] a document [*or documents*] kept by a business [*or undertaking*] [*or by or on behalf of the holder of a paid [*or unpaid*] office*], namely *(insert name and address of business, undertaking or office)*.

(Signed)

(Add authorised capacity in which certificate signed)

Date: *(insert date)*

[List and describe documents]

FORM 26.1-Form of certificate that statement not contained in business document

Rule 26.1(3)

I, *(insert name and title of office held)*, being a person authorised to give evidence on behalf of *(insert name and address of business or undertaking, or body of which the signatory is an officeholder)*, hereby state that *(name and describe document)* being a document [*or that no document within the category of documents of (name and describe category) being documents*] in respect of which the conditions *(specify the conditions in paragraph 2(1)(a) or 2(1)(b) of Schedule 8 to the Criminal Procedure (Scotland) Act 1995 which apply)* are satisfied does not contain [*or, where no documents within a category of documents satisfying those conditions contains such a statement, contains*] *(specify the relevant statement as to the particular matter not contained in the documents)*.

(Signed)

(Add authorised capacity in which certificate signed)

Date: *(insert date)*

FORM 27.2-Form of certificate under section 283(1), 284(1) or 285(2), (4) or (5) of the Criminal Procedure (Scotland) Act 1995

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

Rule 27.2

I, *(insert name, designation and capacity in which the certificate is given)*, being a person who may sign a certificate under section 283(1) [*or 284(1) or 285(2), (4) or (5)*] of the Criminal Procedure (Scotland) Act 1995,

HEREBY CERTIFY THAT *(here insert the matter which is being certified and specify enactment in respect of which the evidence is given)*.

[If a notice is not served by you, under section 283(2) [*or 284(2)*] not more than seven days after the date of service of this certificate, the evidence contained in this certificate shall be sufficient evidence of the facts contained in the certificate.]

(Signed)

(Date)

FORM 27.3 Form of notice in relation to certain evidential certificates

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

Rule 27.3

IN THE HIGH COURT OF JUSTICIARY
[or IN THE SHERIFF [or DISTRICT] COURT]

AT (*place*)

NOTICE

by

[A.B.] (*address*) [or Prisoner in the Prison of (*place*)]

under section (*specify*)

of the Criminal Procedure (Scotland) Act 1995

To: (*name of person to whom notice sent*)

I HEREBY GIVE NOTICE under section (*specify*) that I [or [A.B.]] do [or does] not accept the evidence contained in the certificate under section (*specify*).

(Signed)

[A.B.]

[or Solicitor for [A.B.]]

(Address and telephone number of
Solicitor)

FORM 28.1-A Form of petition for order to hold identification parade in solemn proceedings before service of indictment under section 290(1) of the Criminal Procedure (Scotland) Act 1995

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

Rule 28.1(1)(b)(i)

UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)

AT (*place*)

PETITION

of

[A.B.] (*address*)
[or Prisoner in the Prison of (*place*)]

PETITIONER

HUMBLY SHEWETH:

1. That the petitioner [, along with (*name(s) of co-accused*),] has been charged in your Lordship's court at (*place*) on a petition at the instance of the procurator fiscal with the offence of (*specify*).
2. That the trial of the petitioner is to take place in your Lordship's court [or the High Court of Justiciary sitting at (*place*)] on (*date*).
3. That an identification parade in which the petitioner was one of those constituting the parade has not been held.
4. That the petitioner has requested the prosecutor to hold such a parade but he has refused to hold, or has unreasonably delayed holding, such a parade.
5. That it is reasonable in the circumstances in relation to the alleged crime [or offence] that such an identification parade should be held (*specify circumstances*).

MAY IT THEREFORE please your Lordship—

- (1) to appoint intimation of this petition to be made to the procurator fiscal;
- (2) to appoint parties to be heard thereon on the earliest practicable date hereafter; and
- (3) thereafter, on being duly satisfied in terms of section 290(2) of the Criminal Procedure (Scotland) Act 1995, to order the prosecutor to hold an identification parade in which the petitioner shall be one of those constituting the parade, in relation to the offence referred to above with which the petitioner has been charged.

ACCORDING TO JUSTICE, etc.

(Signed)
[Solicitor for petitioner]

(Address and telephone number of
solicitor)

Document Generated: 2024-05-04

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

FORM 28.1-B Form of petition for order to hold identification parade where indictment served or in summary proceedings under section 290(1) of the Criminal Procedure (Scotland) Act 1995

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

Rule 28.1(1)(b)(ii)

UNTO THE HONOURABLE THE SHERIFF OF *(name of sheriffdom)*

AT *(place)*

PETITION

of

[A.B.] (address)
[or Prisoner in the Prison of (place)]

PETITIONER

HUMBLY SHEWETH:

1. That the petitioner [, along with *(name(s) of co-accused)*,] has been indicted [*or charged*] in your Lordship's court [*or the High Court of Justiciary sitting at (place)*] [*or the District Court at (place)*] at the instance of Her Majesty's Advocate [*or the procurator fiscal*] with the crime [*or offence*] of *(specify)*.
2. That the trial of the petitioner is to take place in your Lordship's court [*or the High Court of Justiciary sitting at (place)*] [*or the District Court at (place)*] on *(date)*.
3. That an identification parade in which the petitioner was one of those constituting the parade has not been held.
4. That the petitioner has requested the prosecutor to hold such a parade but he has refused to hold, or has unreasonably delayed holding, such a parade.
5. That it is reasonable in the circumstances in relation to the alleged crime [*or offence*] that such an identification parade should be held *(specify circumstances)*.

MAY IT THEREFORE please your Lordship—

- (1) to appoint intimation of this petition to be made to Her Majesty's Advocate [*or the procurator fiscal*];
- (2) to appoint parties to be heard thereon on the earliest practicable date hereafter; and
- (3) thereafter, on being duly satisfied in terms of section 290(2) of the Criminal Procedure (Scotland) Act 1995, to order the prosecutor to hold an identification parade in which the petitioner shall be one of those constituting the parade, in relation to the offence referred to above with which the petitioner has been charged.

ACCORDING TO JUSTICE, etc.

(Signed)

[Solicitor for petitioner]

(Address and telephone number of solicitor)

Document Generated: 2024-05-04

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

FORM 29.1-A Form of petition to take precognition on oath before service of indictment under section 291(1) of the Criminal Procedure (Scotland) Act 1995

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

Rule 29.1(1)(b)(i)

UNTO THE HONOURABLE THE SHERIFF OF *(name of sheriffdom)*

AT *(place)*

PETITION

of

[A.B.] (address)

[or Prisoner in the Prison of (place)]

PETITIONER

HUMBLY SHEWETH:

1. That the petitioner [, along with *(name(s) of co-accused)*,] has been charged in your Lordship's court at *(place)* on a petition at the instance of the procurator fiscal with the crime *[or offence]* of *(specify)*.
2. That the trial of the petitioner is to take place in your Lordship's court *[or the High Court of Justiciary sitting at (place)]* on *(date)*.
3. That the petitioner believes that *[C.D.]* residing at *(address)* is a witness in relation to the said crime *[or offence]*.
4. That *(narrate all steps taken to obtain precognition from the witness and, or, the circumstances justifying the taking of the precognition on oath)*.
5. That the petitioner *[or the solicitor for the petitioner]* is unable to complete his *[or her]* investigation *[on behalf of the petitioner]* without precognosing *[C.D.]*.

MAY IT THEREFORE please your Lordship—

- (1) to appoint intimation of this petition to be made to the procurator fiscal;
- (2) to appoint parties to be heard thereon on the earliest practicable date hereafter; and
- (3) thereafter, on being duly satisfied in terms of section 291(1) of the Criminal Procedure (Scotland) Act 1995, that it is reasonable to require such precognition on oath, to grant warrant to cite *[C.D.]* to attend for precognition on oath before your Lordship on the earliest practicable date thereafter; and to do further or otherwise as to your Lordship shall seem proper.

ACCORDING TO JUSTICE, etc.

(Signed)

[Solicitor for petitioner]

(Address and telephone number of solicitor)

Document Generated: 2024-05-04

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

FORM 29.1-B Form of petition to take precognition on oath where indictment served or in summary proceedings under section 291(1) of the Criminal Procedure (Scotland) Act 1995

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

Rule 29.1(1)(b)(ii)

UNTO THE HONOURABLE THE SHERIFF OF *(name of sheriffdom)*

AT *(place)*

PETITION

of

[A.B.] (address)

[or Prisoner in the Prison of (place)]

HUMBLY SHEWETH:

1. That the petitioner [, along with *(name(s) of co-accused)*,] has been indicted [*or charged*] in your Lordship's court [*or the High Court of Justiciary sitting at (place)*] [*or the District Court at (place)*] at the instance of Her Majesty's Advocate [*or the procurator fiscal*] with the crime [*or offence*] of *(specify)*.
2. That the trial of the petitioner is to take place in your Lordship's court [*or the High Court of Justiciary sitting at (place)*] [*or the District Court at (place)*] on *(date)*.
3. That the petitioner believes that *[C.D.]* residing at *(address)* is a witness in relation to the said crime [*or offence*] [*or is witness no. (state number) on the list of witnesses attached to the indictment*].
4. That *(narrate all steps taken to obtain a precognition from the witness and, or, the circumstances justifying the taking of the precognition on oath)*.
5. That the petitioner [*or the solicitor for the petitioner*] is unable to complete his [*or her*] investigation [*on behalf of the petitioner*] without precognosing *[C.D.]*.

MAY IT THEREFORE please your Lordship—

- (1) to appoint intimation of this petition to be made to Her Majesty's Advocate [*or the procurator fiscal*];
- (2) to appoint parties to be heard thereupon on the earliest practicable date hereafter; and
- (3) thereafter, on being duly satisfied in terms of section 291(1) of the Criminal Procedure (Scotland) Act 1995 that it is reasonable to require such precognition on oath, to grant warrant to cite *[C.D.]* to attend for precognition on oath before your Lordship on the earliest practicable date thereafter; and to do further or otherwise as to your Lordship shall seem proper.

ACCORDING TO JUSTICE, etc.

(Signed)

[Solicitor for petitioner]

(Address and telephone number of solicitor)

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

FORM 29.3 Form of citation of person to attend a diet for taking his precognition on oath

Rule 29.3(1)

IN THE SHERIFF COURT AT *(place)*

CITATION

To: *(name and address of witness)*

Date of citation: *(date of citation or, if citation by post, the day after the date of posting)*

YOU ARE HEREBY CITED to appear on *(date)* at *(time)* in the Sheriff Court House at *(address)* in chambers to be precognosed on oath for the accused, *(name)*, in relation to the offence with which he has been charged.

IF YOU DO NOT ATTEND COURT WITHOUT A REASONABLE EXCUSE THE COURT MAY ORDER THAT YOU BE APPREHENDED AND PUNISHED.

(Signed)
Officer of Law
[or Solicitor for accused]

FORM 30.2-A Form of endorsement of warrant of arrest under section 1(1) of the Backing of Warrants (Republic of Ireland) Act 1965

Rule 30.2(1)

I, *(name)*, one of Her Majesty's justices of the peace in and for the commission area of *(specify)* [*or as the case may be*] being satisfied that this warrant may be endorsed under section 1 of the Backing of Warrants (Republic of Ireland) Act 1965, hereby authorise *(name)*, who brings me this warrant, and all other constables in Scotland to execute the same and to bring him as soon as practicable before a sheriff.

Given under my hand this *(date)*

(Signed)
Justice of the Peace [*or as the case may be*]

FORM 30.2-B Form of provisional warrant of arrest under section 4 of the Backing of Warrants (Republic of Ireland) Act 1965

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

Rule 30.2(2)

WHEREAS a constable, (*name*), has stated to me on oath that he has reason to believe that a warrant has been issued by a judicial authority in the Republic of Ireland for the arrest of (*name*) (hereinafter called "the accused") who is accused [*or has been convicted*] of an indictable offence against the laws of the Republic of Ireland but that the warrant is not yet in his possession; and that he has received a request made on grounds of urgency by a member of the police force of the Republic of Ireland holding the rank of inspector or above for the issue in the United Kingdom of a warrant for the arrest of the accused; and that he has reason to believe that the accused is within the county of (*specify*); [*(words to be omitted when a provisional warrant is issued for the arrest of a person not yet convicted)*] and that he has reason to believe the requirements of section 1(3) of the Backing of Warrants (Republic of Ireland) Act 1965 are satisfied].

THEREFORE, I, (*name*), one of Her Majesty's justices of the peace in and for the commission area of (*specify*) [*or as the case may be*], hereby grant warrant to and authorise all constables in Scotland to apprehend the accused within five days after issue of this warrant and to bring him as soon as practicable before a sheriff.

Given under my hand this (*date*)

(*Signed*)

Justice of the Peace [*or as the case may be*]

Note: This warrant is not authority for the making of an arrest more than five days after its issue.

FORM 30.5 Form of consent to earlier return under section 3(1)(a) of the Backing of Warrants (Republic of Ireland) Act 1965

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

Rule 30.5(1)

WHEREAS on the *(date)* the Sheriff of *(name of sheriffdom)* sitting at *(place)* ordered that I, *(name)*, should be delivered into the custody of a member of the police force of the Republic of Ireland;

AND WHEREAS I understand that, unless I consent to an earlier removal, I cannot be so delivered until the end of the period of 15 days beginning with the date on which the order was made;

NOW, THEREFORE, I give notice that I consent to my removal before the said period of 15 days has expired.

(Signed)

This form was signed by the above-named person in my presence on *(date)*

(Signed)

Justice of the Peace for the commission area of *(specify)* [*or as the case may be*]

FORM 31.5 Form of reference to the European Court of Justice

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

Rule 31.5(2)(a)

REFERENCE

to

THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

for a Preliminary Ruling

from

HER MAJESTY'S HIGH COURT OF JUSTICIARY [or SHERIFF
[or DISTRICT] COURT] IN SCOTLAND

in

HER MAJESTY'S ADVOCATE [or THE PROCURATOR FISCAL]

against

[C.D.] (address)
[or Prisoner in the Prison of (place)]

This reference for a preliminary ruling of the Court of Justice of the European Communities is made following an order of (*name of judge*) in the High Court of Justiciary [or sheriff [or district] court] sitting at (*place*) on (*date*).

[*Here set out statement of the reference for the European Court, giving brief particulars of the case and the issues between the parties, any relevant facts found by the court, any relevant rules or provisions of Scots Law and any relevant provisions of European Community Law.*]

The preliminary ruling of the Court of Justice of the European Communities is sought on the following questions:-

(*here set out the questions in numbered paragraphs*).

Dated the (*date*).

(*Signed*)

FORM 31.7 Form of appeal to High Court from the making of a reference to the European Court of Justice

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

Rule 31.7(3)

NOTE OF APPEAL

by

[C.D.]

APPELLANT

in

HER MAJESTY'S ADVOCATE [or THE PROCURATOR FISCAL, (place)]

against

[C.D.] (address)

[or Prisoner in the Prison of (place)]

1. The appellant appeals to the High Court of Justiciary sitting as a court of appeal against the order of (name of judge) in the High Court of Justiciary sitting at (place) [or the sheriff [or district] court at (place)] on (date).

2. The appellant appeals against the order on the following grounds:-

(here set out the grounds of appeal).

IN RESPECT WHEREOF

(Signed)

[Solicitor for appellant]

(Address and telephone number of
solicitor)

(Date)

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

Rule 32.2(1)

IN THE DISTRICT COURT OF *(place)*

APPLICATION

under

section 49(2) and (3) Civic Government (Scotland) Act 1982

by

[A.B.] *(address)*

COMPLAINER

against

[C.D.] *(address)*

RESPONDENT

HUMBLY SHEWETH:

1. That the complainer is resident at *(address)*.
2. That the respondent occupies premises at *(specify address or place)* being in the vicinity of *(specify complainer's address)*.
3. That at those premises [C.D.] keeps *(here identify the creature and describe the circumstances in which the creature is kept)*.
4. *(Here describe in detail in one or more paragraphs the circumstances in which it is alleged the creature is causing annoyance.)*

MAY IT THEREFORE please the court to order service of a copy of this application on the said [C.D.]; to fix a date for the hearing of this application no earlier than 14 days after such service; and thereafter to make an order on [C.D.] to take within such period as may be specified in the order such steps (short of destruction of the creature) as may be so specified to prevent the continuance of the annoyance.

IN RESPECT WHEREOF

(Signed)

[Solicitor for complainer]

(Address and telephone number of solicitor)

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

FORM 34.5 Notice of waiver and consent under section 14 of, or paragraph 9 of Schedule 1 to, the Extradition Act 1989

Rule 34.5(1)

WHEREAS on *(date)*, the Sheriff of Lothian and Borders sitting at *(place)* ordered that I, *(name)*, be committed to await the Secretary of State's decision as to my return to *(name of foreign state, Commonwealth country or United Kingdom dependency)* which has requested my extradition;

AND WHEREAS I understand that I have the right—

- (a) to apply for a review of the order of committal; and
- (b) not to be returned in any case until the expiry of the period of 15 days beginning with the date on which the order was made and, if I apply for a review of the order of committal, for so long as proceedings on that application are pending:

NOW, THEREFORE, I give notice:—

- 1. That I waive my right to make an application for a review of the order of committal.
- *2. That I consent to my earlier return before the said period of 15 days has expired.

(Signed)

This form was signed by the above-named person in my presence on *(date)*.

(Signed)

Sheriff [*or sheriff clerk or justice of the peace or solicitor*]

* *Delete if consent is not given.*

FORM 36.4-A Form of application for letter of request under section 3(1) of the Criminal Justice (International Co-operation) Act 1990

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

Rule 36.4(a)

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF OF *(name of sheriffdom)*

AT *(place)*]

PETITION

of

THE RIGHT HONOURABLE [A.B.],
HER MAJESTY'S ADVOCATE
[or THE PROCURATOR FISCAL]
for the Public Interest [or [C.D.]
Accused Person]

PETITIONER

HUMBLY SHEWETH:

1. That [C.D.] born on *(specify accused's date of birth)*, was on *(date)* in the sheriff court at *(place)* fully committed on a petition at the instance of the petitioner [or *as the case may be*] charging [C.D.] with *(specify the nomen juris of the charge)* as more particularly specified in the copy petition annexed to this petition. [Insert the following if it is known in which court the case will be indicted: It is expected that in due course the trial of [C.D.] will take place in the High Court of Justiciary [or the sheriff court of *(name of sheriffdom)*] sitting at *(place)*.]

[or 1. That there are reasonable grounds for suspecting that an offence has been committed, namely, *(specify the nomen juris of or otherwise describe the offence or specify the statute and section contravened)* in respect that on *(specify the date of the offence)* at *(specify the locus of the offence)* it is alleged that *(specify the modus of the offence)*. Police officers [or Officers of Customs and Excise] acting on the instructions of the petitioner are investigating the alleged offence.]

2. That in order that justice may be done in the case against [C.D.] [or in order that the investigation may be completed], it is necessary that evidence be obtained from *(specify country to which the request is being sent)*. The precise evidence required is *(specify)*.

3. That section 3(1) and (2) of the Criminal Justice (International Co-operation) Act 1990 provides that where on an application made by a prosecuting authority or, where proceedings have been instituted, by the person charged in those proceedings, it appears to a judge or a sheriff (a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed and (b) that proceedings in respect of the offence have been instituted or that the offence is being investigated, the prosecutor may issue a letter of request requesting assistance in obtaining outside the United Kingdom such evidence as is specified in the letter for use in the proceedings or investigation.

MAY IT THEREFORE please your Lordship[s] to issue a letter of request to *(specify the court, tribunal or authority to whom it is desired to have the request addressed)* to obtain the evidence specified herein; and to do further or otherwise as to your Lordship[s] shall seem proper.

ACCORDING TO JUSTICE, etc.

(Signed)

[Solicitor for petitioner]

(Address and telephone number of solicitor)

Document Generated: 2024-05-04

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

FORM 36.4-B Letter of request under section 3 of the Criminal Justice (International Co-operation) Act 1990

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

Rule 36.4(c)(iv)

IN THE HIGH COURT OF JUSTICIARY

[or IN THE SHERIFF COURT OF (*name of sheriffdom*) AT (*place*)]

LETTER OF REQUEST

in the Indictment [*or*
Petition *or* Complaint]

at the instance of
THE RIGHT HONOURABLE [A.B.],
HER MAJESTY'S ADVOCATE
[*or* THE PROCURATOR FISCAL]
for the Public Interest

against

[C.D.] (*address*)

[*or* LETTER OF REQUEST

In the Investigation into

(*here specify the crime*
under investigation
eg. Murder of [E.F.])

The Honourable Lord (*name*), one of the Lords Commissioners of Justiciary, [*or* (*name*), Sheriff of (*name of sheriffdom*) at (*place*)] presents his compliments to (*here specify the court, tribunal or authority to which the request is addressed*) and has the honour of informing it of the following facts:

1. The High Court of Justiciary, of which the Honourable Lord (*name*) is one of the judges, is the supreme criminal court in Scotland and exercises a jurisdiction as a trial court [*or* The Sheriff Court of which Sheriff (*name*) is one of the judges, is a criminal court in Scotland which exercises jurisdiction as a trial court and in pre-trial procedures in all prosecutions for crime].

2. (*Specify briefly the applicant's part in the proceedings including, where appropriate, his relationship to the investigating agency.*)

3. Criminal proceedings have been instituted before the High Court of Justiciary at the instance of the Right Honourable [A.B.], Her Majesty's Advocate, [*or*, before the Sheriff Court of (*name of sheriffdom*) at (*place*), at the instance of [A.B.], Procurator Fiscal,] against [C.D.] (*specify the nationality of the accused*) who is presently charged that (*here narrate the charge on the indictment, petition or complaint*). [*In a case where the accused has appeared on petition but has not yet been indicted, insert the following if it is known in which court the case will be indicted:— It is expected that in due course the trial of [C.D.] will take place in the High Court of Justiciary [*or*, the Sheriff Court of (*name of sheriffdom*)] at (*place*).*]

[*or* 3. There are reasonable grounds for suspecting that an offence has been committed, namely (*specify the nomen juris of or otherwise describe the offence or specify the statute and section contravened*) in respect that on (*specify the date of the offence*) at (*specify the locus of the offence*) it is alleged that (*specify the modus of the offence*). Police officers [*or* Officers of Customs and Excise] acting on the instructions of the procurator fiscal are investigating the alleged offence.]

4. The crime of (*specify the nomen juris of the crime charged or under investigation*) is a criminal offence at common law in Scotland and is not contained in any statute. It consists of (*summarise the*

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

essential elements of the crime) [or It is a criminal offence under (*narrate statutory provision and its terms and add any explanation beyond the bare words of the statute thought necessary in order to enable the foreign court, tribunal or authority to understand clearly the elements of the crime*)]. The penalties for conviction are (*specify*).

[Where relevant, insert:– [5.] A person may be convicted of an attempt at crime where he has taken an overt step in pursuance of his criminal intention and has passed from the stage of preparation to the stage of perpetration but has not completed the crime. Paragraph 10 of Schedule 3 to the Criminal Procedure (Scotland) Act 1995 provides:–

“(1) Under an indictment or, as the case may be, a complaint which charges a completed offence, the accused may be lawfully convicted of an attempt to commit the offence.

(2) Under an indictment or complaint charging an attempt, the accused may be convicted of such attempt although the evidence is sufficient to prove the completion of the offence said to have been attempted.

(3) Under an indictment or complaint which charges an offence involving personal injury inflicted by the accused, resulting in death or serious injury to the person, the accused may be lawfully convicted of the assault or other injurious act, and may also be lawfully convicted of the aggravation that the assault or other injurious act was committed with intent to commit such offence.”

[Where relevant, insert:– The Law of Scotland makes no distinction between commission and accession, and by the common law of Scotland anyone who gives assistance to or otherwise acts in previous concert with the principal or who is guilty of concert, assistance or participation in the crime is liable to be convicted of the crime.]]

[6.] It has been shown to the Honourable Lord (*name*) on application by Her Majesty’s Advocate [or [C.D.]] [or, it has been shown to the Sheriff of (*name of sheriffdom*) at (*place*) on application by the procurator fiscal [or [C.D.]]], a copy of which is annexed to this request, that in order that justice may be done in the proceedings [or, in order that the investigation may be completed] it is necessary that evidence be obtained from (*specify country to which the request is being sent*).

[7.] The circumstances giving rise to this request are as follows:– (*narrate fully such evidence as is known which has relevance to the request so that the foreign court, tribunal or authority will have a clear understanding of the subject-matter of the case and the need for the evidence they are requested to obtain*).

[8.] The Criminal Justice (International Co-operation) Act 1990 empowers the High Court of Justiciary [or the Sheriff Court] to seek from and to give to courts, tribunals and other authorities exercising criminal jurisdiction in countries or territories outside the United Kingdom reciprocal assistance in the obtaining of evidence and it is requested in the present case that (*specify the court, tribunal or authority to which the request is addressed*) give assistance in the obtaining of the evidence herein specified. In particular, it is requested that (*specify the assistance requested, whether that is by the interview of witnesses, recovery of documents or other articles, search of premises, issue of extracts or otherwise. If witnesses are to be interviewed, identify them clearly and state nationality if known. If relevant, state any privilege which the witness might be able to claim and provide for the witness to claim that privilege under interview but to be required to answer the question nevertheless, leaving the application of that privilege and the admissibility of the answers given for the determination of the trial court. Specify the subject-matter of the questions to be put or formulate questions as appropriate; also specify any special procedures desired to be followed (for example, It is desired that, where competent, a witness be interviewed on oath). Where it is sought to recover documents or other articles specify precisely what is sought and identify the holder of the documents and other articles. State any request for parties or their agents or counsel to be present at the execution of the request and state any other request made. Schedules may be used.*)

[9.] [Here narrate any time limit to which the case is subject and, if appropriate, insert: In view of the foregoing it is respectfully requested that this request be treated as urgent.]

[10.] Any evidence provided in response to this letter of request will not, without the consent of the appropriate authority in (*name the country*), be used for any purpose other than the said proceedings [or the said investigation and any criminal proceedings arising out of it].

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

[11.] In thanking (specify the court, tribunal or authority to which the request is addressed) in advance for its co-operation in this case, the Honourable Lord (name) [or Sheriff (name)] avails himself [or herself] of this opportunity to renew the assurance of his [or her] high consideration.

(Signed)
Lord Commissioner of Justiciary
[or Sheriff of (name of sheriffdom) at
(place)]

Dated this (date).

SCHEDULE 3

Paragraph 3

ACTS OF ADJOURNAL REVOKED

<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
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

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

<i>Statutory Instrument Year and Number</i>	<i>Title of Act of Adjournal</i>	<i>Extent of Revocation</i>
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
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