

## SCHEDULE 2

### CRIMINAL PROCEDURE RULES 1996

#### *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

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- (b) fix a diet for hearing the petition on the earliest practicable date.

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

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

- (a) the High Court or the sheriff, as the case may be, may make an order granting or refusing the application; or
- (b) where section 271(9) of the Act of 1995 (transfer of cases in which child’s evidence is to be given through television link) applies, the sheriff may make an order under that section transferring the case to another sheriff court in the same sheriffdom.

(2) Where the sheriff makes an order under paragraph (1)(b) transferring the case to another sheriff court (the “receiving court”), the sheriff clerk shall forthwith transmit the record copy of the indictment or the complaint, the minute of proceedings, any productions and any relevant documents to the clerk of the receiving court.

## **CHAPTER 23**

### **LETTERS OF REQUEST**

#### **Applications for letters of request**

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

- (a) where the accused has appeared on petition under Part IV of the Act of 1995 (petition procedure) but an indictment has not been served on him, in Form 23.1-A presented to the High Court; or
- (b) where an indictment or a complaint has been served on the accused, in Form 23.1-B presented to the appropriate court.

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

- (a) where it relates to proceedings in the High Court or to proceedings in respect of which the court where the trial is to take place is not yet known, be lodged with the Clerk of Justiciary, or
- (b) where it relates to proceedings in the sheriff court, be lodged with the sheriff clerk,

and shall be accompanied by a proposed letter of request in Form 23.1-C.

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

(4) Such an application made to the High Court may be disposed of by a single judge of that court.

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

- (a) order intimation on the other party or parties to the proceedings;
- (b) subject to paragraph (6), allow such time for lodging answers as appears appropriate; and
- (c) fix a diet for hearing the petition and answers (if any).

(6) The High Court or the sheriff, as the case may be, may dispense with answers to the petition on cause shown.

### **Powers of court in applications**

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

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

### **Expenses**

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

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

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

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

**23.4.**—(1) On—

- (a) the High Court or the sheriff, as the case may be, pronouncing an order under rule 23.2(2), or
- (b) in a case where a translation requires to be lodged, on the lodging of the translation,

the Clerk of Justiciary or the sheriff clerk, as the case may be, shall send the letter of request and any documents to the Secretary of State for Foreign and Commonwealth Affairs for onward transmission to the body to which the letter of request is addressed.

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

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

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

- (a) note—
    - (i) the documents returned,
    - (ii) by whom they were returned, and
    - (iii) the date on which they were returned,
- on the application, the record copy of the indictment or in the minute of proceedings; and

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- (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—

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- (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.

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### **The commission**

**24.4.**—(1) The commissioner shall, on receiving the order and documents mentioned in rule 24.2 (appointment of commissioner), determine the place and the date of the diet for the examination of the witness to whom the order of the court relates, and shall give reasonable notice of those matters to all the parties concerned.

(2) The commissioner may vary or revoke his determination or adjourn the examination of any witness to such other place, at such other date and time, as he may determine.

(3) If, in the course of the examination of a witness under this rule, any question arises as to the admissibility of any evidence, the commissioner shall not determine any such question but shall allow the evidence subject to all questions of competency and relevancy.

### **Commissioner's report**

**24.5.**—(1) On the carrying out of his commission in accordance with the terms of the order appointing him, or otherwise on concluding his commission, the commissioner shall complete a written report of his commission, and he or his clerk shall return the report and relative documents to the Clerk of Justiciary or sheriff clerk, as the case may be.

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

(a) note—

- (i) the documents returned,
- (ii) by whom they were returned, and
- (iii) the date on which they were returned,

on the application, the record copy of the indictment or in the minute of proceedings; and

(b) intimate what he has noted to all parties concerned.

### **Custody of documents**

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

(2) In any case where the petition for the taking of evidence on commission was made to the High Court on the ground that the court in which the trial was to take place was not then known, the prosecutor shall, as soon as that court is known, inform the Clerk of Justiciary of that fact; and if that court is the sheriff court, the Clerk of Justiciary shall, as soon as is practicable, send to the sheriff clerk of that sheriff court the record of the evidence of the witness or witnesses.

(3) Where the record of the evidence of a witness is in the custody of the Clerk of Justiciary or a sheriff clerk under this rule and where intimation has been given to that effect under rule 24.5(2) to all the parties concerned in the proceedings, the name and address of that witness and the record of his evidence shall be treated as being within the knowledge of those parties; and no party shall be required, notwithstanding any enactment to the contrary—

- (a) to include the name of that witness in any list of witnesses; or
- (b) to include the record of his evidence in any list of productions.

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

**24.7.**—(1) No reference shall be made either directly or indirectly in any proceedings to the evidence, or any part of the evidence, of a witness whose evidence has been taken on commission

under this Chapter unless the party seeking to make such reference has made a motion to the court to that effect and that motion has been granted.

(2) The terms of any motion made under paragraph (1) and the grant or refusal of that motion by the court shall be noted by the clerk of court in the record or minute of proceedings.

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

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

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

## CHAPTER 25

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

#### Use of transcript of judicial examination

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

(2) The clerk of court shall not read to the jury such part of the record as the court refuses to allow to be read to the jury on an application under section 278(2) of the Act of 1995.

(3) The presiding judge may direct that copies of such part of the record as has been read to the jury shall be made available to them together with copies of any written record of a confession allegedly made and received by the accused under section 36(3) of the Act of 1995 (written record of confession allegedly made received from prosecutor or constable).

## CHAPTER 26

### DOCUMENTARY EVIDENCE

#### Authentication of copies of documents

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

(a) by a person who is—

(i) the author of the original of it;

(ii) a person in, or who has been in, possession and control of the original of it or a copy of it; or

(iii) the authorised representative of the person in, or who has been in, possession and control of the original of it or a copy of it; and

(b) by means of a signed certificate, certifying the copy as a true copy, which may be in Form 26.1-A—

(i) endorsed on the copy; or

(ii) attached to the copy.

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

(a) endorsed on the document; or

(b) attached to the document.

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(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).