

SCHEDULE 2

CRIMINAL PROCEDURE RULES 1996

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.

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- (2) On a petition referred to in paragraph (1) being lodged, the sheriff shall—
 - (a) order intimation of the application to be made to the procurator fiscal; and
 - (b) fix a diet for a hearing of the application.

Orders for taking precognition

29.2. Where, after the hearing fixed under rule 29.1(2), the sheriff is satisfied that it is reasonable to require such precognition on oath in the circumstances, he shall—

- (a) order the precognition to be taken;
- (b) fix a diet for it to be taken; and
- (c) grant warrant to cite the person from whom it is to be taken.

Citation to attend for precognition

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

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

- (a) shall be made by an officer of law instructed by the accused or his solicitor; and
- (b) may proceed on a copy of the petition and warrant duly certified by the sheriff clerk.

(3) The sheriff clerk shall immediately give notice of that person's failure to appear at the diet to the procurator fiscal.

Record of proceedings

29.4.—(1) Where a person appears before the sheriff to have his precognition taken on oath, the proceedings shall be recorded in shorthand by an official shorthand writer instructed by the accused or his solicitor.

(2) The shorthand writer shall extend his shorthand notes recording the proceedings, sign the transcript, and lodge it with the sheriff clerk.

- (3) On the transcript being lodged, the sheriff clerk shall—
 - (a) send a copy to the solicitor for the accused or, if he is not represented, to the accused; and
 - (b) fix a diet for the person whose precognition has been taken on oath to attend before the sheriff to sign the precognition.

Fees of shorthand writer

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

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

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

(2) Where the accused is not represented, the sheriff may, at the hearing of the application or at any time before the precognition is taken, order the accused to consign into court such sum as he may be required to pay under paragraph (1) in respect of fees and expenses on or before such date as the sheriff may specify in the order.

(3) If the sheriff orders the accused to consign a sum into court under paragraph (2) and that sum is not consigned by the date specified in the order, the petition shall be treated as abandoned.

CHAPTER 30

PROCEEDINGS FOR THE EXECUTION OF IRISH WARRANTS

Interpretation of this Chapter

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

“the Act of 1965” means the Backing of Warrants (Republic of Ireland) Act 1965(1);

“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(2) (proceedings before sheriff) but made an order under section 2A(2) of that Act(3) 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.

(1) 1965 c. 45.

(2) 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).

(3) 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).

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

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

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

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

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

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

Power of High Court to extend period of time

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

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

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

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

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

Notice of consent to early removal

30.5.—(1) A notice given under section 3(1)(a) of the Act of 1965 (consent to removal earlier than is otherwise permitted) shall be in Form 30.5, and shall be signed in the presence of a sheriff, a justice of the peace or a sheriff clerk who shall also sign it.

(2) Any such notice given by a person who has been remanded in custody shall be delivered to the governor of the prison in which he is detained.

(3) Where a person remanded on bail gives such notice, he shall deliver or send it to the clerk of the court which so remanded him.

Handing over of warrant of arrest

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

- (a) if the person is remanded on bail, the sheriff clerk, or
- (b) if the person is detained in custody, the governor of the prison in which he is detained,

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

(2) Where a person ordered to be delivered under section 2(1) of the Act of 1965 is remanded on bail, the sheriff clerk shall send a copy of the bail order to the police station at which that person is to surrender.

Certification of warrant

30.7.—(1) A document purporting to be a warrant issued by a judicial authority in the Republic of Ireland shall, for the purposes of section 7(a) of the Act of 1965 (evidence as to warrants), be verified by a certificate purporting to be signed by a judicial authority, a clerk of a court or a member of the police force of the Republic of Ireland and certifying that the document is a warrant and is issued by a judicial authority.

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

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

CHAPTER 31

REFERENCES TO THE EUROPEAN COURT OF JUSTICE

Interpretation of this Chapter

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

- “the European Court” means the Court of Justice of the European Communities;
- “question” means a question or issue under Article 177 of the E.E.C. Treaty, Article 150 of the Euratom Treaty or Article 41 of the E.C.S.C. Treaty;
- “reference” means a request to the European Court for a preliminary ruling on a question.

(2) The expressions “E.E.C. Treaty”, “Euratom Treaty”, and “E.C.S.C. Treaty” have the meanings assigned respectively in Schedule 1 to the European Communities Act 1972⁽⁴⁾.

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.

(4) 1972 c. 68.

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(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 advocation or otherwise.

Preparation of case for reference

31.5.—(1) Where the court decides that a preliminary ruling should be sought, the court shall—

(a) give its reasons and cause those reasons to be recorded in the record or minute of proceedings, as the case may be; and

(b) continue the proceedings from time to time as necessary for the purposes of the reference.

(2) The reference—

- (a) shall be drafted in Form 31.5 and the court may give directions to the parties as to the manner in which and by whom the case is to be drafted and adjusted;
- (b) shall thereafter be adjusted at the sight of the court in such manner as may be so directed; and
- (c) after approval and the making of an appropriate order by the court, shall (after the expiry of the period for appeal) be transmitted by the clerk of court to the Registrar of the European Court with a certified copy of the record or minute of proceedings, as the case may be, and, where applicable, a certified copy of the relevant indictment or complaint.

Procedure on receipt of preliminary ruling

31.6.—(1) Where a preliminary ruling has been given by the European Court on a question referred to it and the ruling has been received by the clerk of the court which made the reference, the ruling shall be laid by the clerk before the court.

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

Appeals against references

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

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

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

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

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

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

(6) Unless the court making the order otherwise directs, a reference shall not be transmitted to the Registrar of the European Court before the time allowed by this rule for appealing against the order has expired or before the appeal has been disposed of or abandoned.

CHAPTER 32

ANNOYING CREATURES

Interpretation of this Chapter

32.1. In this Chapter, “the Act of 1982” means the Civic Government (Scotland) Act 1982(5).

(5) 1982 c. 45.

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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⁽⁶⁾;

“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⁽⁷⁾.

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⁽⁸⁾ (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,

⁽⁶⁾ 1986 c. 47.

⁽⁷⁾ S.I. 1987/307.

⁽⁸⁾ Section 23 was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), Schedule 4, paragraph 63(4).

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- (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(9) (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(10) (determination by High Court that applicant should receive legal aid).

CHAPTER 34 EXTRADITION

Interpretation of this Chapter

34.1. In this Chapter—

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

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

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“the Act of 1989” means the Extradition Act 1989(11);

“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.

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

(12) 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(13); 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

(13) 1990 c. 5.

- (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.

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 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⁽¹⁴⁾ (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.

(14) 1995 c. 43.

(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.