



Criminal Justice (Scotland) Act 1980

1980 CHAPTER 62

PART II

PROCEDURE AND EVIDENCE

Evidence

32 Evidence by letter of request or on commission

- (1) In any criminal proceedings in the High Court or the sheriff court the prosecutor or the defence may, at an appropriate time, apply to a judge of the court in which the trial is to take place (or, if that is not yet known, to a judge of the High Court) for—
 - (a) the issue of a letter of request to a court, or tribunal, exercising jurisdiction in a country or territory outside the United Kingdom, Channel Islands and Isle of Man for the examination of a witness resident in the said country or territory ; or
 - (b) the appointment of a commissioner to examine, at any place in the United Kingdom, Channel Islands, or Isle of Man, a witness who by reason of being ill or infirm is unable to attend the trial diet.
- (2) A hearing, as regards any application under subsection (1) above by a party, shall be conducted in chambers but may be dispensed with if the application is not opposed. The application may be granted only if the judge is satisfied that—
 - (a) the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial; and
 - (b) there would be no unfairness to the other party were such evidence to be received in the form of the record of an examination conducted by virtue of that subsection.
- (3) Any such record as is mentioned in paragraph (b) of subsection (2) above shall, without being sworn to by witnesses, be received in evidence in so far as it either accords with the averment mentioned in paragraph (a) of that subsection or can be so received without unfairness to either party.

Status: This is the original version (as it was originally enacted).

- (4) The procedure as regards the foregoing provisions of this section shall be prescribed by Act of Adjournal under the 1975 Act.
- (5) In subsection (1) above, " appropriate time" means as regards—
 - (a) solemn proceedings, any time before the oath is administered to the jury;
 - (b) summary proceedings, any time before the first witness is sworn,or (but only in relation to an application under paragraph (b) of that subsection) any time during the course of the trial if the circumstances on which the application is based had not arisen, or would not have merited such application, within the period mentioned in paragraph (a), or as the case may be (b), of this subsection.
- (6) This section is without prejudice to any existing power at common law to adjourn a trial diet to the place where a witness is.