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**1981 No. 1786 (S. 186)**

**HIGH COURT OF JUSTICIARY, SCOTLAND  
SUMMARY JURISDICTION, SCOTLAND**

**Act of Adjournal (Procedures under Criminal Justice (Scotland)  
Act 1980 No. 4) 1981**

*Made*   -   -   -   -   *9th December 1981*

*Coming into Operation*                      *1st January 1982*

The Lord Justice General, the Lord Justice Clerk, and the Lords Commissioners of Justiciary, under and by virtue of the powers conferred upon them by sections 282 and 457 of the Criminal Procedure (Scotland) Act 1975(a) and of all other powers enabling them in that behalf, do hereby enact and declare—

*Citation, commencement and interpretation*

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Procedures under Criminal Justice (Scotland) Act 1980 No. 4) 1981 and shall come into operation on 1st January 1982.

(2) In this Act of Adjournal, unless the context otherwise requires,

- (a) “the 1975 Act” means the said Act of 1975;
- (b) “the 1980 Act” means the Criminal Justice (Scotland) Act 1980(b);
- (c) “first examination” means the first appearance of an accused before the Sheriff on a criminal petition;
- (d) “further examination” means any subsequent such appearance.

(3) Except when the context otherwise requires, expressions used in this Act of Adjournal and in the 1975 Act shall have the same meaning in this Act of Adjournal as in that Act, and any reference to a section by number is a reference to the section of that number in the 1975 Act.

(4) This Act of Adjournal shall be inserted in the Books of Adjournal.

*Judicial examination*

*Introductory*

2.—(1) Subject to the following provisions of this paragraph, the procedure to be followed in relation to examination of the accused under sections 20, 20A and 20B (Judicial examination) on any charge shall be in accordance with existing law and practice.

(2) The record of all proceedings under those sections shall be kept by the sheriff clerk in the form set out in Form 1 of the Schedule to this Act of Adjournal, or as nearly as may be in that form having regard to the particular circumstances, and shall be kept by him together with the petition containing

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(a) 1975 c. 21, as amended by the Criminal Justice (Scotland) Act 1980 (c. 62).

(b) 1980 c. 62.

the charge or charges in respect of which the accused is brought before the sheriff for examination.

(3) The sheriff clerk shall transmit to the prosecutor a certified copy of the petition and the record of proceedings—

- (a) in relation to proceedings at which the accused is committed until liberated in due course of law, on the conclusion of those proceedings;
- (b) in relation to any further examination, on the conclusion of that examination.

*Verbatim record*

(4) The prosecutor shall provide for a *verbatim* record to be made by a shorthand writer under section 20B(1) if he provides a shorthand writer who is either—

- (a) a person recognised by a court as a shorthand writer for the purposes of sections 274 and 276 of the 1975 Act or rule 65 of the Schedule to the Sheriff Courts (Scotland) Act 1907(a); or
- (b) a person other than a person mentioned in paragraph (a) skilled in the writing of shorthand (whether or not in the service of the prosecutor), and in proceedings where a *verbatim* record is made by a person mentioned in paragraph (b), a tape-recorded record of the proceedings is also made by the sheriff clerk in accordance with the provisions of sub-paragraphs (11) and (12).

(5) The declaration *de fidei administratione officii* shall be administered to the shorthand writer at the commencement of the proceedings.

(6) The name and designation of the shorthand writer and the making of the declaration by him shall be recorded in the record of proceedings.

(7) The shorthand writer shall record the whole proceedings relating to—

- (a) the emitting by the accused of a declaration under section 20;
- (b) any questions the accused is asked and answers given including declining to answer, under section 20A,

and, subject to sub-paragraph (8), make a transcript of those proceedings.

(8) 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.

(9) The shorthand writer shall, in addition to the transcript of proceedings he makes under sub-paragraph (7), also make such further transcript of the record made by him as either the judge at a preliminary diet or the High Court of Justiciary on appeal, may direct for the purposes of considering an application under section 151(2).

(10) 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 20B(2).

*Use of tape recorders*

(11) Any tape recorded record of the proceedings made under sub-paragraph (4) shall be made on two separate tapes simultaneously, one of which shall be marked "Tape A" and the other "Tape B".

(12) The sheriff clerk shall record on both tapes any proceedings mentioned in sub-paragraph (7); 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.

(13) The sheriff clerk shall note in the record of proceedings the time of commencement and the time of termination of the tape recording.

(14) On the conclusion of the proceedings in question, the sheriff clerk shall—

- (a) deliver tape B to the prosecutor;
- (b) 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;
  - (vi) the time and date of sealing and of any occasion on which it is opened or resealed;

and retain it 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.

(15) The sheriff clerk shall not permit the seal on the container to be broken while he retains it except on being authorised to do so by a judge; and on being so authorised 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 sub-paragraph (14)(b).

(16) The sheriff clerk shall maintain a separate record recording the relevant details in connection with the making, sealing, opening (including the reason for opening), re-sealing and disposal of tape A.

(17) The sheriff clerk shall, on being informed in writing by the prosecutor that the proceedings mentioned in sub-paragraph (14)(b) have come to an end, return tape A to the prosecutor.

(18) For the purposes of sub-paragraph (17), the circumstances in which the proceedings have come to an end include—

- (a) a decision by the prosecutor to take no further action against an accused in respect of the charge or charges in question;
- (b) following conviction and sentence of the accused in respect of the charge or charges in question, the expiry of any statutory period of appeal without an appeal being taken against conviction or sentence, and the final disposal of any appeal which has been taken.

*Questions by prosecutor at examination*

(19) 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 paragraph (b) of section 20A(1) applies, be provided by the prosecutor before commencement of the examination with a copy of the written record of the confession allegedly made; and if the sheriff has not been so provided the prosecutor shall not ask the accused any such questions.

(20) The accused shall not be put on oath in the course of any proceedings on examination.

(21) The judge presiding at the trial of an accused who has declined to answer a question under section 20A(1) may, in determining whether his having so declined may be commented upon by virtue of section 20A(5), have regard to the terms of the charge to which the question related.

(22) The petition containing the terms of the charge to which the question referred to in sub-paragraph (21) 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 sub-paragraph; but the petition or certified copy petition in question shall not be included in any list of productions made available at the trial nor referred to in evidence by any witness at the trial.

(23) The prosecutor shall, if the presiding judge proposes to have regard to the terms of that charge for the purposes of sub-paragraph (21), provide him with the petition or certified copy petition referred to in sub-paragraph (22).

*Rectification of error in transcript*

(24) A notice served under section 20B(4)(a) shall be in the form set out in Form 2 of the Schedule to this Act of Adjournal, or as nearly as may be in that form having regard to the particular circumstances.

(25) The prosecutor shall, on serving or on receiving such a notice, immediately lodge with the sheriff clerk the transcript signed and certified by the shorthand writer under section 20B(2).

(26) An application to the sheriff for an error or incompleteness to be rectified under section 20B(4)(b) shall be in the form set out in Form 3 of the Schedule to this Act of Adjournal, or as nearly as may be in that form having regard to the particular circumstances.

(27) The application shall be lodged with the sheriff clerk together with—

- (a) a copy of the notice served under section 20B(4)(a), and
- (b) an execution of service of that notice.

(28) When the person upon whom notice is served under section 20B(4)(a) agrees with the opinion to which that notice relates, he may intimate his agreement to the person serving notice in the form set out in Form 4 of the Schedule to this Act of Adjournal, or as nearly as may be in that form having regard to the particular circumstances, and shall, at the same time as so intimating his agreement, send a copy thereof to the sheriff clerk.

(29) On the lodging of an application under sub-paragraph (26), the sheriff unless he dispenses with a hearing shall by deliverance endorsed on the application—

- (a) fix a date for a hearing;
- (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.

(30) If the sheriff authorises rectification of the transcript he shall by deliverance endorsed on the application and signed by him specify the rectification authorised.

(31) The sheriff clerk shall give effect to any authorised rectification by amending the signed and certified transcript in accordance with the terms of the sheriff's deliverance and initialling any amendment.

- (32) On making any said amendment, the sheriff clerk shall—
- (a) attach to the rectified transcript a copy of the deliverance certified by him;
  - (b) return it to the prosecutor;
  - (c) retain the application for rectification and the deliverance made in respect of the application;
  - (d) attach them to the record of proceedings mentioned in sub-paragraph (2).

*Alteration of time limits by sheriff*

(33) Any direction made by the sheriff under section 20B(5)(a) with modifications as to time limits shall be entered in the record of proceedings mentioned in sub-paragraph (2) and authenticated by the sheriff subscribing his signature.

*Postponement of trial diet by sheriff*

(34) The sheriff shall not make an order under section 20B(5)(b) postponing a trial diet in respect of a case set down for trial in the High Court.

(35) Any order by a sheriff postponing a trial diet in a case not set down for trial in the High Court shall be—

- (a) endorsed on the record copy indictment;
- (b) authenticated by the signature of that sheriff;
- (c) intimated—
  - (i) by the prosecutor to any co-accused by serving on them an intimation of postponement in the form set out in Form 5 of the Schedule to this Act of Adjournal, or as nearly as may be in that form having regard to the particular circumstances,
  - (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*

(36) If the sheriff considers that it may be appropriate to make an order under section 20B(5)(b) postponing a 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 20B(5)(a)) to the Clerk of Justiciary.

(37) The Clerk of Justiciary on receiving the sheriff's report 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;
- (b) intimate that diet to the prosecutor and the accused and to the governor of any institution in which any of the accused is detained.

(38) The judge in determining the diet to which the trial shall be postponed, shall have regard to the terms of the sheriff's report.

*Alteration of time limits by High Court*

(39) All applications to the High Court for a direction to extend a time limit mentioned in section 20B(6) shall be made by way of petition.

(40) A petition under sub-paragraph (39) shall be intimated to the other party and lodged together with the certificate of intimation with the sheriff clerk.

(41) The sheriff clerk on the lodging of the petition shall transmit it to the Clerk of Justiciary together with a certified copy of the relative criminal petition and record of proceedings.

(42) The petition may be disposed of by a single judge of the High Court.

(43) The Clerk of the Justiciary shall as soon as possible after he receives the petition, fix a diet for the hearing and intimate the diet to the prosecutor and the accused.

(44) The Clerk of the Justiciary on the disposal of the petition by the High Court shall transmit a certified copy of the deliverance of the High Court to the sheriff clerk.

(45) The sheriff clerk on receiving the certified copy of the deliverance shall attach it to the record of proceedings.

*Procedure at trial in relation to transcript*

(46) The record made under section 20B of proceedings at the examination of an accused shall be received in evidence in accordance with section 151(1) by means of the clerk of court, subject to sub-paragraph 47, reading the record of these proceedings to the jury.

(47) 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 151(2).

(48) The presiding judge may, if he thinks fit, 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 received by the accused under section 20A(1)(b).

Edinburgh,  
9th December 1981.

*Emslie,*  
Lord Justice General,  
I.P.D.

HIGH COURT OF JUSTICIARY, SCOTLAND  
SUMMARY JURISDICTION, SCOTLAND

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SCHEDULE

Paragraph 2(2)

FORM 1

RECORD OF PROCEEDINGS AT JUDICIAL EXAMINATION  
(FIRST OR FURTHER)

SHERIFF COURT:

DATE:

SHERIFF:

NAME OF ACCUSED APPEARING:

FOR THE PETITIONER:

PROCURATOR FISCAL/DEPUTE

FOR THE ACCUSED:

SOLICITOR (address)

The Sheriff in terms of [Section 19(3)] or [Section 20(3B)] of the Criminal Procedure (Scotland) Act 1975 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), therein to be detained until the said 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 said *verbatim* recorder for subsequent transcription.

Thereafter the Prosecutor questioned the accused in terms of Section 20A of the Criminal Procedure (Scotland) Act 1975 and said proceedings were recorded by the said *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, on the motion of the Prosecutor, Grants Warrant to imprison the Accused in the Prison of (place)

therein to be detained [for Further Examination] [until liberated in due course of law].

(Signed) Sheriff

FORM 2

Paragraph 2(24)

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

in terms of

The Criminal Procedure (Scotland) Act 1975, Section 20B(4)(a)

To: (Name and Designation)

Sheriff Court:

Name of Accused:

Date of Examination:

Date of service of transcript:

TAKE NOTICE that the \*Procurator Fiscal/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/  
Solicitor for the said accused.  
[Address and telephone number]

[Place and Date]

\*Delete as appropriate



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HIGH COURT OF JUSTICIARY, SCOTLAND  
SUMMARY JURISDICTION, SCOTLAND

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Paragraph 2(26)

FORM 3

APPLICATION FOR RECTIFICATION OF TRANSCRIPT  
OF JUDICIAL EXAMINATION

in terms of

The Criminal Procedure (Scotland) Act 1975, Section 20B(4)(b)

Sheriff Court:

Name of Accused:

Date of Examination:

Presiding Sheriff:

Date of Service of Notice of Opinion  
in terms of Section 20B(4)(a):

The \*Procurator Fiscal/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 hereto.

(Signed) \*Procurator Fiscal/  
Solicitor for the said accused.  
[Address and telephone number]

[Place and Date]

\*Delete as appropriate

FORM 4

Paragraph 2(28)

INTIMATION OF AGREEMENT

in terms of

the first proviso to

The Criminal Procedure (Scotland) Act 1975, Section 20B(4)

To: (Name and Designation)

Sheriff Court:

Name of Accused:

Date of Examination:

Date of Service of Notice of Opinion  
in terms of Section 20B(4)(a):

The \*Procurator Fiscal/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/  
Solicitor for the said accused.  
[Address and telephone number]

[Place and Date]

\*Delete as appropriate

HIGH COURT OF JUSTICIARY, SCOTLAND  
SUMMARY JURISDICTION, SCOTLAND

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Paragraph 2(35)

FORM 5

INTIMATION BY PROSECUTOR OF POSTPONEMENT OF TRIAL DIET  
in terms of

The Criminal Procedure (Scotland) Act 1975, Section 20B(5)(b)

HER MAJESTY'S ADVOCATE AGAINST [Here name all accused]

To: (Name and Designation)

- (1) On (date) .....the Court, in exercise of its powers under section 20B(5)(b), 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

Procurator Fiscal

[Place and Date]

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## EXPLANATORY NOTE

*(This Note is not part of the Act of Adjournal.)*

This Act of Adjournal makes provision for the procedure to be followed in criminal proceedings in Scotland in connection with the judicial examination of an accused under section 20 of the Criminal Procedure (Scotland) Act 1975 as amended by section 6 of the Criminal Justice (Scotland) Act 1980, and under sections 20A and 20B of the 1975 Act as added by the said section 6.

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