

## SCHEDULE 2

### CRIMINAL PROCEDURE RULES 1996

#### *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.

#### 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.

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(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).

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### **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.

### **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<sup>(3)</sup> (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—

- (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.

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

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(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.

(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.