

SCHEDULE 2

CRIMINAL PROCEDURE RULES 1996

PART IV

Summary proceedings

CHAPTER 16

COMPLAINTS

Form of complaints and related notices and forms

16.1.—(1) The form of complaint referred to in section 138(1) of the Act of 1995 shall be in Form 16.1-A.

(2) The form of citation of an accused referred to in section 140(2) of the Act of 1995 shall be in Form 16.1-B.

(3) The procurator fiscal shall send to the accused with the citation in Form 16.1-B—

(a) a reply form in Form 16.1-C for completion and return by him stating whether he pleads guilty or not guilty; and

(b) a means form in Form 16.1-D for completion and return by him.

(4) The form of notice of previous convictions to be served on an accused under section 166(2) of the Act of 1995 shall be in Form 16.1-E.

Signature of prosecutor

16.2.—(1) The prosecutor shall sign the principal complaint and the citation to the accused.

(2) Any document sent with the citation to the accused including the copy complaint shall, for the purposes of such signature, be treated as part of the citation.

Effect of failure by prosecutor to comply with certain requirements

16.3. The validity of any proceedings against an accused shall not be affected by reason only of the failure of the prosecutor to comply in any respect with a requirement of rule 16.1(3) (reply and means forms).

Further procedural forms

16.4.—(1) The form of incidental application referred to in section 134 of the Act of 1995 (incidental applications) shall be in Form 16.4-A.

(2) The form of assignation of a diet shall be in Form 16.4-B.

(3) The form of minutes in the record of proceedings in summary proceedings shall be in Form 16.4-C.

Form of certain warrants

16.5.—(1) The form of warrant referred to in section 135 of the Act of 1995 (warrants of apprehension and search)—

(a) to apprehend an accused shall be in Form 16.5-A;

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(b) to search the person, dwelling house and repositories of the accused shall be in Form 16.5-B.

(2) The form of order adjourning a diet and granting warrant to detain an accused shall be in Form 16.5-C.

Citation of witnesses

16.6.—(1) The form of postal citation of a person to appear as a witness at a trial on a summary complaint shall be in Form 16.6-A; and the witness shall complete and return Form 16.6-B to the procurator fiscal, or the accused or his solicitor, as the case may be, in the pre-paid envelope provided within 14 days after the date of citation.

(2) The form of personal citation of a witness at a trial on a summary complaint shall be in Form 16.6-C.

Applications for alteration of diets

16.7.—(1) Where the prosecutor and the accused propose to make a joint application orally to the court under section 137(2) of the Act of 1995 (application for alteration of diet) for postponement of a diet that has been fixed, they may do so only at a diet which has been duly assigned and which has been called.

(2) An application by an accused under section 137(5) of the Act of 1995 (application to postpone or accelerate diet) shall be made in Form 16.7.

CHAPTER 17

SUMMARY PRE-TRIAL PROCEDURE

Appeals against extension of period of detention

17.1.—(1) A note of appeal presented to the High Court under section 147(3) of the Act of 1995 (appeal against grant or refusal of extension of 40 days detention) shall be made in Form 17.1.

(2) Such a note of appeal shall be served by the appellant on—

(a) the respondent; and

(b) the clerk of the court against the decision of which the appeal is taken.

(3) The appellant in such a note of appeal shall lodge with the Clerk of Justiciary—

(a) the note of appeal; and

(b) the certificate of execution of service in respect of the persons mentioned in paragraph (2).

(4) The clerk of the court against the decision of which the appeal is taken shall, as soon as practicable after being served with the note of appeal, transmit to the Clerk of Justiciary the original application and all the relative documents; and the Clerk of Justiciary shall, on receipt of those documents, assign the appeal to the roll and intimate the date of the diet to the appellant and the respondent.

(5) The Clerk of Justiciary shall intimate the result of the appeal to the court against the decision of which the appeal was taken and to the governor of the institution in which the appellant is detained.

CHAPTER 18

PROCEDURE AT TRIAL IN SUMMARY PROCEEDINGS

Accused to plead personally and to receive intimation of diets

18.1.—(1) Subject to paragraph (2), in any summary proceedings where a person accused in those proceedings is present in court, that person shall personally plead to the charge against him whether or not he is represented.

(2) Where the judge is satisfied that the accused is not capable for any reason of pleading personally to the charge against him, it shall be sufficient if the plea is tendered by a solicitor or by counsel on his behalf.

(3) Where an accused is not represented or not personally present and a court continues a diet without taking a plea from the accused, the prosecutor shall intimate the continuation and the date of the adjourned diet to the accused.

(4) Subject to section 150(2) of the Act of 1995 (adjournment to another diet), where an accused is not represented or not personally present, on the fixing of—

- (a) a diet of trial,
- (b) a diet after conviction, or
- (c) any diet after a plea from the accused has been recorded,

the sheriff clerk or clerk of the district court shall intimate the diet to the accused.

(5) Where the accused pleads guilty to the charge or to any part of it, and his plea is accepted by the prosecutor, the plea shall be recorded and signed by the judge or clerk of court, and the court shall thereafter dispose of the case at the same or any adjourned diet.

(6) The plea referred to in paragraph (5) and any sentence may be combined, in which case one signature shall be sufficient to authenticate both.

Form of oath or affirmation to witnesses

18.2.—(1) Where the judge administers the oath to a witness in summary proceedings, he shall do so in accordance with the form in Form 14.5-A.

(2) In the case of any witness who elects to affirm, the judge shall administer the affirmation in accordance with the form in Form 14.5-B.

(3) The oath or the affirmation administered in accordance with paragraph (1) or (2), as the case may be, shall be treated as having been administered in common form.

Warrant to apprehend witness who fails to appear

18.3. The form of warrant to apprehend a witness who has failed to appear at a diet in summary proceedings in answer to a citation shall be in Form 18.3.

Record of proceedings to be written or printed

18.4.—(1) The record of proceedings in summary proceedings may be in writing or printed, or may be partly written and partly printed.

(2) All forms of minute of proceedings or orders of the court may be on the same sheet of paper as the complaint or on a separate sheet attached to it.

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Interruption of proceedings after conviction

18.5.—(1) On conviction of an accused in summary proceedings, the judge may, without adjourning those proceedings, interrupt them by—

- (a) considering a conviction against that person in other proceedings pending before that court for which he has not been sentenced; or
- (b) passing sentence on that person in respect of the conviction in those other proceedings.

(2) When the judge has interrupted any proceedings under paragraph (1), he may, in passing sentence on an accused person in respect of a conviction in those proceedings, at the same time pass sentence on that person in respect of any other conviction he has considered.

(3) No interruption of any proceedings under paragraph (1) shall cause the instance to fall in respect of any person accused in those proceedings or shall otherwise affect the validity of those proceedings.

Detention in precincts of court

18.6. An order under section 169(1) of the Act of 1995 (detention in precincts of court) shall be in Form 18.6.

CHAPTER 19

APPEALS FROM SUMMARY PROCEEDINGS

Appeals relating to preliminary pleas

19.1.—(1) If—

- (a) an accused states an objection to the competency or relevancy of a complaint or the proceedings, and
- (b) that objection is repelled,

he may apply for leave to appeal against that decision under section 174(1) of the Act of 1995 (appeals relating to preliminary pleas) only after stating how he pleads to the charge or charges set out in the complaint.

(2) Subject to paragraph (1), the accused shall apply for leave to appeal against any decision to which that paragraph applies; and the court which made the decision shall determine that application immediately following the decision in question.

(3) Where the court grants the application, the clerk of court shall enter in the minute of proceedings—

- (a) details of the decision in question; and
- (b) the granting of leave to appeal against it.

(4) An appeal to which this rule applies shall be made by note of appeal in Form 19.1-A.

(5) The note of appeal shall be lodged with the clerk of the court which granted leave to appeal not later than two days after the decision appealed against.

(6) The clerk of court shall, on the lodging of the note of appeal with him—

- (a) send a copy to the respondent or his solicitor;
- (b) request a report from the presiding judge; and
- (c) transmit—

- (i) the note of appeal,
- (ii) two certified copies of the complaint and the minutes of proceedings, and

(iii) any other relevant documents,
to the Clerk of Justiciary.

(7) The presiding judge shall, as soon as possible after receiving a request for a report, send his report to the Clerk of Justiciary who shall send a copy to the appellant and respondent or their solicitors.

(8) The Clerk of Justiciary shall arrange for the High Court to hear the appeal as soon as possible, and shall cause to be copied any documents necessary for the High Court.

(9) Where the High Court makes any order postponing the trial diet under section 174(2) of the Act of 1995, or makes any such order and gives a direction under that section, the Clerk of Justiciary shall send a copy of that order and any direction to—

- (a) the appropriate clerk of court;
- (b) any accused who are not parties to the appeal or to their solicitors; and
- (c) the governor of any institution in which any accused is detained.

(10) Any such appeal may be abandoned at any time prior to the hearing of the appeal.

(11) Where an appeal is abandoned, a minute of abandonment in Form 19.1-B shall be lodged with the Clerk of Justiciary.

(12) On the lodging of a minute of abandonment under paragraph (11), the Clerk of Justiciary shall inform the appropriate clerk of court and the respondent or his solicitor that the appeal has been abandoned.

Forms for appeals by stated case

19.2.—(1) An application under section 176(1) of the Act of 1995 (stated case: manner and time of appeal) shall be in Form 19.2-A.

(2) A stated case shall be in Form 19.2-B.

(3) The form of minutes of procedure in an appeal by stated case shall be in Form 19.2-C.

Forms for appeals against sentence only

19.3.—(1) A note of appeal under section 186(1) of the Act of 1995 (appeals against sentence only) shall be in Form 19.3-A.

(2) The form of minutes of procedure in an appeal under section 186(1) of the Act of 1995 shall be in Form 19.3-B.

Extension of time for appeals

19.4.—(1) An extension of time by the sheriff principal under section 186(5) (extension of time in appeal against sentence only), or section 194(2) (extension of time for stated case), of the Act of 1995 shall be in Form 19.4.

(2) Where, by virtue of subsection (8) of section 186 of the Act of 1995 (application of section 181 where appellant in appeal against sentence only fails to comply with a requirement), the court makes an order extending the period within which the note of appeal shall be lodged under subsection (2) of that section, the periods mentioned in subsections (2) and (4) of that section shall run from the date which is two days after the date on which the court makes that order and not from the date of the passing of the sentence.

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Abandonment of appeals by stated case

19.5. A minute of abandonment of an appeal under section 184(1) of the Act of 1995 (abandonment of stated case before lodging it with the Clerk of Justiciary) shall be in Form 19.5.

Abandoning appeals against conviction only

19.6.—(1) This rule applies for the purpose of section 175(8) of the Act of 1995 (abandoning appeal against conviction and proceeding with appeal against sentence alone).

(2) An application to abandon an appeal under section 175(8) of the Act of 1995 shall be made by minute in Form 19.6 and intimated by the appellant to the respondent.

(3) Subject to paragraph (4), the minute shall be lodged with the clerk of the court which imposed the sentence being appealed against.

(4) Where, before the lodging of the minute, the stated case has been lodged with the Clerk of Justiciary, the minute shall be lodged with the Clerk of Justiciary who shall send a copy of the minute to the clerk of the court which imposed the sentence appealed against.

(5) Where, before the lodging of the minute, copies of the stated case and relative proceedings have been lodged with the Clerk of Justiciary, those copies shall be used for the purposes of the hearing of the appeal against sentence.

(6) On the lodging of the minute, section 186(3) to (9) of the Act of 1995 (provisions relating to appeal against sentence only) shall apply to the stated case as they apply to a note of appeal.

Abandonment of appeals against sentence only

19.7. A minute of abandonment under section 186(9) of the Act of 1995 (abandonment of appeal against sentence only) shall be in Form 19.7.

Intimation of abandonment

19.8. The Clerk of Justiciary or clerk of court, as the case may be, on the lodging with him of—

- (a) a minute abandoning an appeal under section 184(1) of the Act of 1995 (abandonment of appeal by stated case before lodging of case with the Clerk of Justiciary), or
- (b) a minute abandoning an appeal under section 186(9) of the Act of 1995 (abandonment of appeal against sentence only),

shall immediately notify the Crown Agent or the prosecutor, as the case may be, of the lodging of the minute; and the Clerk of Justiciary shall, where the minute is lodged with him, notify immediately the clerk of the appropriate court.

Applications for suspension of disqualification from driving in appeals

19.9.—(1) Where a person who has been disqualified from holding or obtaining a driving licence appeals against that disqualification under section 176(1) of the Act of 1995 by stated case, any application to suspend the disqualification shall be made with the application to the court to state a case for the opinion of the High Court.

(2) On an application being made under paragraph (1) to suspend a disqualification, the court shall grant or refuse to grant the application within seven days of it being made.

(3) Where the court refuses to grant the application and the appellant applies to the High Court to suspend the disqualification, any such application shall be made by note in Form 19.9.

(4) The note shall be lodged by the appellant or his solicitor with the Clerk of Justiciary.

(5) The appellant or his solicitor shall intimate the lodging of the note to the respondent and the clerk of the court which imposed the disqualification.

(6) The clerk shall, on receiving such intimation, forthwith send to the Clerk of Justiciary—

- (a) a certified copy of the complaint; and
- (b) a certified copy of the minute of proceedings.

(7) The High Court may order such further intimation (including intimation to the Lord Advocate) as it thinks fit, and may dispose of the application in open court or in chambers after such hearing as it thinks fit.

(8) On the High Court making an order on the note, the Clerk of Justiciary shall send a certified copy of the order to the clerk of the court which imposed the disqualification.

(9) Where the order suspends the disqualification, the Clerk of Justiciary shall also send a certified copy of the order to the Secretary of State with such further information as the Secretary of State may require.

(10) An order made by a single judge of the High Court under this rule shall not be subject to appeal or review.

Applications for suspension of disqualification from driving in bills of suspension

19.10.—(1) Where a person who has been disqualified from holding or obtaining a driving licence appeals against that disqualification by bill of suspension, an application to suspend the disqualification shall be made by requesting interim suspension of the disqualification in the prayer of the bill.

(2) Where the court orders interim suspension, that order shall not have effect until—

- (a) the bill has been served on the respondent; and
- (b) the principal bill and first deliverance on the bill with an execution, or acceptance, of service—
 - (i) have been shown to the clerk of the sentencing court and he has endorsed a certificate of exhibition; and
 - (ii) they have been returned to the Clerk of Justiciary by the complainer or his solicitor.

(3) On certifying the bill under paragraph (2), the clerk of the court which imposed the disqualification shall send a certified copy of the complaint and the relative minute of proceedings to the Clerk of Justiciary.

(4) Paragraphs (2), (8), (9) and (10) of rule 19.9 (applications for suspension of disqualification from driving in appeals) apply to this rule as they apply to that rule.

Solicitor entering appearance etc.

19.11.—(1) Where an appellant in an appeal is represented by a solicitor who does not practise in Edinburgh, that solicitor may appoint a solicitor who practises in Edinburgh to carry out the duties of solicitor to the appellant in relation to that appeal.

(2) In paragraph (1), “appeal” includes any appeal whether by stated case, note of appeal, bill of suspension or advocacy.

(3) The solicitor for the appellant or if unrepresented, the appellant, shall enter appearance and comply with the provisions of section 179(9) of the Act of 1995 (lodging of stated case with Clerk of Justiciary).

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Duty to print stated case etc.

19.12.—(1) The solicitor for the appellant or, if unrepresented, the appellant shall—

- (a) print the complaint, minutes of proceedings and stated case or bill of suspension;
- (b) not later than seven days before the hearing, return the process to the Clerk of Justiciary;
and
- (c) provide—
 - (i) the Clerk of Justiciary with four copies of the print; and
 - (ii) the respondent or his solicitor with three copies of the print.

(2) Where the solicitor for the appellant or the appellant, as the case may be, cannot comply with any of the requirements of paragraph (1), he shall, not later than seven days before the hearing, so inform the Clerk of Justiciary in writing with reasons.

(3) On being so informed, the Clerk of Justiciary may in his discretion postpone the hearing by dropping the appeal from the Justiciary Roll.

(4) Where the Clerk of Justiciary does not drop the appeal from the roll under paragraph (3), the court may, at the hearing, allow the appeal to be dropped from the roll or may dismiss the appeal.

Duty of solicitor in bill of suspension

19.13. A solicitor who requests a first deliverance in a bill of suspension shall comply with the requirements of rule 19.12(1) and (2) (printing of stated case) whether or not he is the nominated solicitor for the purposes of legal aid.

List of appeals

19.14.—(1) The Clerk of Justiciary shall, after consultation with the Lord Justice General or Lord Justice-Clerk, issue a list of appeals with the respective dates of hearing on the Justiciary Roll.

(2) The Clerk of Justiciary shall give the respective solicitors representing parties to an appeal so listed at least 14 days notice of the date fixed for the hearing of the appeal.

Diet for interim suspension

19.15. Where a bill of suspension contains a prayer for interim suspension of any order or for interim liberation—

- (a) the judge before whom the bill is laid for a first deliverance shall assign a diet at which counsel for each party may be heard on the crave for the interim order; and
- (b) the Clerk of Justiciary shall forthwith give notice of that diet to the parties.

Intimation of determination of appeal

19.16.—(1) The Clerk of Justiciary shall send to the clerk of the sentencing court a certified copy of the order made on determination of the appeal from summary proceedings.

(2) Where the appeal against a disqualification from driving is refused or abandoned, the clerk of the sentencing court shall—

- (a) make the appropriate endorsement on the driving licence of the appellant; and
- (b) intimate the disqualification to the appropriate driving licence and police authorities.

(3) In this rule, “appeal” includes any appeal whether by stated case, note of appeal, bill of suspension or advocacy.

Suspension of disqualification etc. under section 193 of the Act of 1995

19.17. In the application of section 193 of the Act of 1995 (suspension of disqualification, forfeiture, etc.) to a case in which leave to appeal has been refused under section 180 or 187 of the Act of 1995, the word“determination” in subsection (1) of section 193 of that Act shall be construed as meaning—

- (a) the fifteenth day after the date of intimation to the appellant or his solicitor of refusal of leave under subsection (1)(b) of section 180 or 187 of that Act, as the case may be, unless the appellant applies to the High Court for leave to appeal; or
- (b) the day two days after the date of intimation to the appellant or his solicitor of the refusal of leave by the High Court under subsection (5)(b) of section 180 or subsection (4)(b) of section 187 of that Act, as the case may be.