

SCHEDULE 2

CRIMINAL PROCEDURE RULES 1996

PART VI

Evidence

CHAPTER 23

LETTERS OF REQUEST

Applications for letters of request

23.1.—(1) An application to the court by the prosecutor or the defence under section 272(1)(a) of the Act of 1995 (evidence by letter of request) for the issue of a letter of request shall be made by petition—

- (a) 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 23.1-A presented to the High Court; or
- (b) where an indictment or a complaint has been served on the accused, in Form 23.1-B presented to the appropriate court.

(2) A petition referred to in paragraph (1) shall—

- (a) where it relates to proceedings in the High Court or to proceedings in respect of which the court where the trial is to take place is not yet known, be lodged with the Clerk of Justiciary, or
- (b) where it relates to proceedings in the sheriff court, be lodged with the sheriff clerk,

and shall be accompanied by a proposed letter of request in Form 23.1-C.

(3) An application to the court by the prosecutor or the defence under section 273(2) of the Act of 1995 (television link evidence from abroad) for the issue of a letter of request shall be in Form 23.1-D and shall be accompanied by a letter of request in Form 23.1-E.

(4) Such an application made to the High Court may be disposed of by a single judge of that court.

(5) The High Court or the sheriff, as the case may be, shall—

- (a) order intimation on the other party or parties to the proceedings;
- (b) subject to paragraph (6), allow such time for lodging answers as appears appropriate; and
- (c) fix a diet for hearing the petition and answers (if any).

(6) The High Court or the sheriff, as the case may be, may dispense with answers to the petition on cause shown.

Powers of court in applications

23.2.—(1) The High Court or the sheriff, as the case may be, may, after considering the petition for the issue of a letter of request and any answers to it, grant the petition with or without modification or refuse it.

(2) On granting the petition, the High Court or the sheriff, as the case may be, shall—

- (a) in relation to an application under section 272(1)(a) of the Act of 1995 (evidence by letter of request), allow interrogatories to be adjusted summarily;
- (b) pronounce an order approving the terms—

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- (i) of the letter of request to be sent;
- (ii) of any interrogatories and cross-interrogatories to be sent; and
- (c) 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 each of the letter, any interrogatories and cross-interrogatories, and any productions, are to be lodged.

Expenses

23.3.—(1) The solicitor for the petitioner or, if he is unrepresented, the petitioner shall be liable for the expenses of the petition for the issue of a letter of request.

(2) The High Court or the sheriff, as the case may be, may order the solicitor for the petitioner, or the petitioner, to consign into court such sum in respect of those expenses as may be specified, and on or before such date as may be specified, in the order.

(3) In the event of the sum so specified not being consigned into court on or before the date so specified, the petition shall be treated as having been abandoned.

Transmission of letters of request

23.4.—(1) On—

- (a) the High Court or the sheriff, as the case may be, pronouncing an order under rule 23.2(2), or
- (b) in a case where a translation requires to be lodged, on the lodging of the translation,

the Clerk of Justiciary or the sheriff clerk, as the case may be, shall send the letter of request and any documents to the Secretary of State for Foreign and Commonwealth Affairs for onward transmission to the body to which the letter of request is addressed.

(2) On sending the letter of request and any documents to the Secretary of State, the Clerk of Justiciary or sheriff clerk, as the case may be, shall note, on the petition, record copy of the indictment or in the minute of proceedings—

- (a) the documents sent;
- (b) to whom the documents were sent; and
- (c) the date on which the documents were sent.

(3) On the relative documents being returned to him, the Clerk of Justiciary or sheriff clerk, as the case may be, shall—

- (a) note—
 - (i) the documents returned,
 - (ii) by whom they were returned, and
 - (iii) the date on which they were returned,

on the application, the record copy of the indictment or in the minute of proceedings; and

- (b) intimate what he has noted to all parties concerned.

Custody of documents

23.5.—(1) The Clerk of Justiciary or sheriff clerk, as the case may be, shall, subject to paragraph (2), keep the documents referred to in rule 23.4(3) in his custody.

(2) Where the petition for the issue of a letter of request was made to the High Court on the ground that the court in which the trial was to take place was not then known, the prosecutor shall, as soon as that court is known, inform the Clerk of Justiciary of that fact; and if that court is the sheriff

court, the Clerk of Justiciary shall, as soon as is practicable, send to the sheriff clerk of that sheriff court the record of the evidence of the witness obtained by a letter of request under section 272(1)(a) of the Act of 1995.

(3) Where the record of the evidence of a witness is in the custody of the Clerk of Justiciary or a sheriff clerk under this rule and where intimation has been given to that effect under rule 23.4(3) to all the parties concerned in the proceedings, the name and address of that witness and the record of his evidence shall be treated as being within the knowledge of those parties; and no party shall be required, notwithstanding any enactment to the contrary—

- (a) to include the name of that witness in any list of witnesses; or
- (b) to include the record of his evidence in any list of productions.

Prohibition of reference to evidence without leave

23.6.—(1) No reference shall be made either directly or indirectly in any proceedings to the evidence, or any part of the evidence, of a witness whose evidence has been taken by virtue of a letter of request under section 272(1)(a) of the Act of 1995 unless the party seeking to make such reference has made a motion to the court to that effect and that motion has been granted.

(2) The terms of any motion made under paragraph (1) and the grant or refusal of that motion by the court shall be noted by the clerk of court in the record or minute of proceedings.

(3) On any such motion in solemn proceedings being granted—

- (a) the judge may direct copies of the evidence, to which he has granted leave for reference to be made, to be provided to the jury by the party making the motion; and
- (b) the clerk of court shall read the record of that evidence to the jury and shall then record that he has done so in the record of proceedings.