SCOTTISH STATUTORY INSTRUMENTS

2005 No. 44

HIGH COURT OF JUSTICIARY
SHERIFF COURT

Act of Adjournal (Criminal Procedure Rules Amendment) (Criminal Procedure (Amendment) (Scotland) Act 2004) 2005

Made - - - -	*28th January 2005*
Coming into force - -	*1st February 2005*

The Lord Justice General, the Lord Justice Clerk and the Lords Commissioners of Justiciary, under and by virtue of the powers conferred on them by section 305 of the Criminal Procedure (Scotland) Act 1995(**1**), and of all other powers enabling them in that behalf, with the consent of the Scottish Ministers, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment) (Criminal Procedure (Amendment) (Scotland) Act 2004) 2005 and shall come into force on 1st February 2005.

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

Amendment of the Act of Adjournal (Criminal Procedure Rules) 1996

2.—(1) Subject to sub-paragraphs (2) to (4), the Act of Adjournal (Criminal Procedure Rules) 1996(**2**) shall be amended in accordance with sub-paragraphs (5) to (18).

(2) Nothing in this Act of Adjournal shall affect proceedings in which–

(a) the accused is cited on or before 1st March 2005 to a diet in the High Court or the sheriff court which commences before 1st April 2005; or

(b) the period mentioned in subsections (1) or (4) of section 65 of the Act of 1995 as so continued (taking into account any extension under subsections (3), (5) or (7)) expires before 1st April 2005.

(3) In sub-paragraph (2), the reference to citation to a diet which commences before 1st April 2005 includes–

(**1**) 1995 c. 46.
(**2**) S.I. 1996/513, last amended by S.S.I. 2004/481.

(a) any further, adjourned, postponed or altered diet which commences before that date;

(b) re-indictment to any diet which commences before that date; and

(c) a first diet in the sheriff court which commences before that date and any subsequent trial diet in the sheriff court, provided the trial diet also commences before that date.

(4) For the purposes of sub-paragraphs (2) and (3)–

(a) a diet other than a trial diet shall be taken to commence when it is called; and

(b) a trial diet shall be taken to commence when the jury is sworn.

(5) After rule 2.2 (citation in solemn proceedings)(**3**), there shall be inserted the following:–

"**Citation in solemn proceedings by service on solicitor**

2.2A. Where the documents mentioned in section 66(6C) of the Act of 1995 (citation by service on solicitor)(**4**) are to be served on a solicitor under that section, they shall be–

(a) delivered to the solicitor personally at the solicitor's place of business;

(b) left for the solicitor with an employee or partner of the solicitor at the solicitor's place of business; or

(c) posted to the solicitor's place of business by the first class recorded delivery service,

with a notice in Form 2.2A.".

(6) At the end of rule 2.6 (forms of execution of service)(**5**) there shall be inserted the following:–

"(7) The execution of service of documents under rule 2.2A (citation in solemn proceedings by service on solicitor) or rule 2.3A (service etc. on accused through a solicitor)(**6**) shall be in Form 2.6–G.".

(7) At the end of rule 4.1 (application to alter address in bail order) there shall be inserted the following:–

"(6) Where–

(a) the application is made by a witness who has been granted bail under section 90B(1)(b) of the Act of 1995(**7**); and

(b) the warrant to apprehend the witness under section 90A(1) of the Act of 1995(**8**) was issued on the application of a party other than the prosecutor,

paragraphs (1) to (5) shall also apply to that party as they apply to the prosecutor.".

(8) In rule 8.1 (appeals in relation to extension of time for trial)–

(a) in paragraph (1) for "(extension of 12 months period for commencement of trial on indictment)" there shall be substituted "(extension of periods for commencement of preliminary hearing or trial diet)";

(b) in paragraph (2) "or (7)" shall be omitted and for "(extension of 80 or 110 days period of committal)" there shall be substituted "(extension of 80, 110 or 140 days period of committal)".

(**3**) Rule 2.2 was amended by S.S.I. 2003/468.
(**4**) Section 66(6C) was inserted by section 7 of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp5).
(**5**) Rule 2.6 was amended by S.S.I. 2003/468.
(**6**) Rule 2.3A was inserted by S.S.I. 2004/434.
(**7**) Section 90B was inserted by section 11 of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).
(**8**) Section 90A was inserted by section 11 of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

(9) Rule 8.1A (further provision as respects extension of twelve months period for commencement of trial on indictment) and rule 8.1B (fresh indictment as alternative to serving notice fixing new trial diet)(**9**) shall be omitted.

(10) For rule 8.2 (citation of accused and witnesses) there shall be substituted the following:–

"**Citation of accused and witnesses**

8.2.—(1) Subject to paragraph (5), the notice to be affixed to the door of the relevant premises for the purposes of section 66(4)(b) of the Act of 1995(**10**) shall be in Form 8.2–A.

(2) Subject to paragraph (5), the notice for the purposes of section 66(6) of the Act of 1995 to be served on a person accused on indictment shall be in Form 8.2–B or, where the charge is of committing a sexual offence to which section 288C of that Act(**11**) applies, Form 8.2–C.

(3) The form of postal citation of a witness under section 66(1) of the Act of 1995(**12**) shall be in Form 8.2–D; and the witness shall return Form 8.2–E to the procurator fiscal, or the accused person or his solicitor, as the case may be, in the pre-paid envelope provided, within 14 days after the date of citation.

(4) The form of personal citation of a witness under section 66(1) of the Act of 1995 shall be in Form 8.2–F.

(5) Where the accused is a body corporate,

(a) the notice to be affixed to the door of the relevant premises for the purposes of section 66(4)(b) of the Act of 1995 shall be in Form 8.2–G;

(b) the notice for the purposes of section 66(6) of the Act of 1995 shall be in Form 8.2–H.".

(11) For Chapter 9 (first diets and preliminary diets) there shall be substituted the following:–

"CHAPTER 9

FIRST DIETS (SHERIFF COURT)

Minute giving notice of preliminary pleas or preliminary issues

9.1.—(1) Any notice given under section 71(2) of the Act of 1995 (notice of preliminary pleas or preliminary issues before first diet)(**13**) shall be by minute in Form 9.1.

(2) That minute shall be lodged with the sheriff clerk and served on every other party by the minuter.

Procedure on lodging minute

9.2. On the lodging of a minute under rule 9.1 (minute giving notice of preliminary pleas or preliminary issues) with a certificate of execution of service, the sheriff clerk shall endorse on the minute the time and date on which it was received.

(**9**) Rules 8.1A and 8.1B were inserted by S.S.I. 1999/78.
(**10**) Section 66(4)(b) was inserted by section 61 of the Criminal Justice (Scotland) Act 2003 (asp 7) and amended by section 7 of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).
(**11**) Section 288C was inserted by section 1 of the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), amended by section 15 of the Criminal Justice (Scotland) Act 2003 (asp 7) and further amended by section 4(1) of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).
(**12**) Section 66(1) was amended by section 7 of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).
(**13**) Section 71 was amended by paragraph 20 of the schedule to the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

Orders for further diets under section 71 of the Act of 1995

9.3.—(1) An order for a further diet under section 71(2ZA) of the Act of 1995 (further diet to consider objection to the admissibility of evidence)(**14**) may be signed by the sheriff clerk.

(2) Intimation of the terms of an order–

(a) mentioned in paragraph (1); or

(b) for an adjourned diet under section 71(5A) of the Act of 1995 (adjournment of first diet)(**15**),

shall be given by the sheriff clerk to the governor of any institution in which the accused is detained.

Procedure at first diet

9.4.—(1) A first diet shall commence on the diet being called.

(2) A record of the proceedings at the first diet, including–

(a) a note of the decision made by the court in respect of any notice placed before it;

(b) any adjournment, and

(c) the plea stated under section 71(6) of the Act of 1995 (plea at first diet),

shall be kept in accordance with existing law and practice.

Applications for leave to appeal

9.5.—(1) An application for leave to appeal to the High Court under section 74(1) of the Act of 1995 (appeal against a decision of the sheriff at a first diet)(**16**) shall be made by motion to the sheriff at that diet immediately following the making of the decision in question, and shall be granted or refused at that time.

(2) A decision under this rule shall be recorded in the minute of proceedings.

Note of appeal

9.6.—(1) An appeal under section 74(1) of the Act of 1995 against a decision of the sheriff at a first diet shall be made by lodging a note of appeal in Form 9.6.

(2) The note of appeal shall be lodged with the sheriff clerk not later than two days after the making of the decision in question.

Procedure on lodging note of appeal

9.7.—(1) On the lodging of a note of appeal with the sheriff clerk, he shall endorse on it a certificate that leave to appeal has been granted and the date and time of lodging.

(2) As soon as possible after the lodging of a note of appeal with the sheriff clerk, he shall–

(a) send a copy of the note of appeal to the other parties or their solicitors;

(b) request a report on the circumstances relating to the decision from the sheriff; and

(c) transmit the note of appeal to the Clerk of Justiciary with a certified copy of–

(i) the indictment;

(**14**) Section 71(2ZA) was inserted by section 14 of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).
(**15**) Section 71(5A) was inserted by paragraph 5 of schedule 1 to the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9).
(**16**) Section 74(1) was amended by section 3(2) of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

(ii) the record of proceedings; and

(iii) any other relevant document.

Report of sheriff

9.8.—(1) The sheriff, on receiving a request for a report under rule 9.7(2)(b) (report on circumstances relating to decision) shall, as soon as possible, send his report to the Clerk of Justiciary.

(2) The Clerk of Justiciary shall, on receiving the report of the sheriff–

(a) send a copy of the report to the parties or their solicitors;

(b) arrange for a hearing of the appeal as soon as possible; and

(c) cause to be copied any documents necessary for the appeal.

Intimation of order postponing trial diet

9.9.—(1) Where, in relation to an appeal under section 74(1) of the Act of 1995 (appeal in connection with first diet) in a case set down for trial in the sheriff court, the High Court makes an order under section 74(3) of that Act (postponement of trial diet)(**17**), the Clerk of Justiciary shall send a copy of the order to–

(a) the sheriff clerk;

(b) all parties to the proceedings; and

(c) the governor of any institution in which any accused is detained.

(2) If, in relation to any case a trial diet has been postponed by virtue of an order mentioned in paragraph (1), any requirement to call that diet shall have effect only in relation to the date to which the diet has been postponed.

Orders of appeal court

9.10. The Clerk of Justiciary shall intimate to the sheriff clerk the decision of the High Court disposing of an appeal under section 74(1) of the Act of 1995 in relation to a first diet.

Abandonment of appeal

9.11.—(1) An appellant who has taken an appeal under section 74(1) of the Act of 1995 (appeal in connections with first diet) may abandon the appeal at any time before the hearing of the appeal.

(2) An abandonment of such an appeal shall be made by lodging a minute of abandonment in Form 9.11 with the Clerk of Justiciary.

(3) The Clerk of Justiciary, on receiving such a minute of abandonment, shall inform the sheriff clerk and the other parties or their solicitors.

(4) The sheriff, on the sheriff clerk being so informed, may proceed as accords with the case.

(**17**) Section 74(3) was amended by section 3(4) of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).