SCOTTISH STATUTORY INSTRUMENTS

2004 No. 195

HIGH COURT OF JUSTICIARY
SHERIFF COURT
DISTRICT COURT

Act of Adjournal (Criminal Procedure Rules Amendment) (Miscellaneous) 2004

Made - - - -	*22nd April 2004*
Coming into force - -	*26th April 2004*

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, 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) (Miscellaneous) 2004 and shall come into force on 26th April 2004.

(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) The Act of Adjournal (Criminal Procedure Rules) 1996(**2**) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 23.1 (applications for letters of request) paragraph (3) (applications under section 273(2) of the Act of 1995) shall be omitted.

(3) After Chapter 23 there shall be inserted the following:–

(**1**) 1995 c. 46.
(**2**) S.I. 1996/513, last amended by S.S.I. 2003/468.

"CHAPTER 23A

TELEVISION LINK EVIDENCE FROM ABROAD

Application for television link evidence from abroad

23A.1.—(1) An application to the court by the prosecutor or the defence under section 273(2) of the Act of 1995 shall be by petition in Form 23A.1–A and shall be accompanied by a letter of request in Form 23A.1–B.

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

(3) 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 (4), allow such time for lodging answers as appears appropriate; and

(c) fix a diet for hearing the petition and answers (if any).

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

Powers of the court in applications

23A.2.—(1) The High Court or the sheriff, as the case may be, may, after considering the petition 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) pronounce an order approving the terms of the letter of request to be sent; and

(b) if English is not an official language of the body to which the letter is addressed, specify a period within which a translation of the letter is to be lodged.

Expenses

23A.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

23A.4.—(1) On–

(a) the High Court or the sheriff, as the case may be, pronouncing an order under rule 23A.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 to the Lord Advocate for transmission to the body to which the letter of request is addressed.

(2) 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, the date on which the letter of request was sent to the Lord Advocate for transmission and shall intimate that date to all parties concerned.

Procedural diet

23A.5.—(1) On receipt of confirmation that the court, tribunal or other authority to which a letter of request was transmitted will provide assistance in facilitating the giving of evidence through a live television link, the Clerk of Justiciary or sheriff clerk, as the case may be, shall fix a procedural diet in accordance with paragraph (2) and shall intimate that diet to all parties concerned.

(2) The procedural diet shall be fixed for a date which is before the date on which the evidence is to be given by television link.

(3) The accused shall not require to be present at the procedural diet.

(4) At the procedural diet, the judge or sheriff, as the case may be, shall make inquiries as to whether or not arrangements are in place to facilitate the giving of evidence through a live television link.".

(4) For Chapter 36 (Criminal Justice (International Co-operation) Act 1990(**3**)) there shall be substituted the following:–

"CHAPTER 36

CRIME (INTERNATIONAL CO-OPERATION ACT 2003

Interpretation of this Chapter

36.1. In this Chapter–

"Act of 2003" means the Crime (International Co-operation) Act 2003(**4**);

"external court" means the court mentioned in section 30(1) or, as the case may be, section 31(1) of the Act of 2003; and

"nominated court" means a court nominated under section 15(3), section 30(3) or section 31(4) of the Act of 2003.

Effecting citation or service of documents outside the United Kingdom

36.2.—(1) A notice under section 5(5)(b) of the Act of 2003 (notice to accompany citation being effected outside the United Kingdom) shall be in Form 36.2 and shall give the information specified in that form.

(2) Where citation is being effected outside the United Kingdom under section 5 or 6 of the Act of 2003, in the form of citation for–

"**IF YOU DO NOT ATTEND COURT WITHOUT A LAWFUL EXCUSE THE COURT MAY ORDER THAT YOU BE APPREHENDED AND PUNISHED.",**

or

"**IF YOU FAIL TO ATTEND WITHOUT A LAWFUL EXCUSE THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.",**

or

"A warrant may be issued for your arrest",

there shall be substituted the following:–

"As this citation is being effected outside the United Kingdom, no obligation under the law of Scotland to comply with the citation is imposed by virtue of its being so effected. Accordingly, failure to comply with the citation does not constitute contempt of court and

(**3**) 1990 c. 5.
(**4**) 2003 c. 32.

is not a ground for issuing a warrant to secure your attendance or for imposing a penalty. But this citation may subsequently be effected against you in the United Kingdom, in which case, if you fail to attend without a lawful excuse, the court may issue a warrant for your arrest.".

(3) Where a document is to be served on a person outside the United Kingdom under section 6 of the Act of 2003 (effecting citation etc. otherwise than by post), it shall be sent by the Clerk of Justiciary, sheriff clerk or clerk of the district court, as the case may be, to the Lord Advocate.

Proof of citation or service outside the United Kingdom

36.3. The service on any person of a citation or document under section 6 of the Act of 2003 (effecting citation etc. otherwise than by post) may be proved in any legal proceedings by a certificate given by or on behalf of the Lord Advocate.

Applications for requests for assistance

36.4. An application under section 7(1) of the Act of 2003 (application for request for assistance) shall–

(a) be in Form 36.4–A;

(b) be lodged with the Clerk of Justiciary or sheriff clerk, as the case may be;

(c) state the particulars of the offence which it is alleged has been committed or the grounds on which it is suspected that an offence has been committed;

(d) state whether proceedings in respect of the offence have been instituted or the offence is being investigated; and

(e) include particulars of the assistance requested and a draft request in Form 36.4–B.

Hearing of applications for requests for assistance

36.5.—(1) Where the prosecutor presents an application under section 7(1) of the Act of 2003 (application for request for assistance) before either the first appearance of the accused on petition or the service of a summary complaint, the High Court or the sheriff, as the case may be, shall, without requiring intimation to any other party, proceed to consider the application.

(2) Where any party presents such an application following the first appearance of the accused on petition or the service of a summary complaint, the High Court or sheriff, as the case may be, may–

(a) before the lodging of an indictment, dispense on cause shown with intimation to any other party and proceed to consider the application; or

(b) fix a diet for hearing the application and order intimation of the diet and application to any other party.

(3) The High Court or sheriff, as the case may be, after considering such application—

(a) may allow summary adjustment of the statement of assistance required in the draft request;

(b) shall grant the application, with or without any modifications which it or he deems appropriate, or shall refuse it.

(4) On granting such application the High Court or sheriff, as the case may be, shall–

(a) approve and sign the draft request;

(b) if English is not an official language of the court or authority to which the request is addressed, specify a period within which a translation of the request and of any production is to be lodged.

Register of applications for requests for assistance

36.6.—(1) A register shall be kept by the Clerk of Justiciary and by the sheriff clerk of applications under section 7(1) of the Act of 2003 (application for request for assistance).

(2) Save as authorised by the court, the register mentioned in paragraph (1) shall not be open to inspection by any person.

Notification of requests for assistance

36.7. Where a court sends a request for assistance under section 8 of the Act of 2003 other than on an application by or on behalf of the Lord Advocate, the Clerk of Justiciary or sheriff clerk, as the case may be, shall forthwith notify the Lord Advocate of this and send with the notification a copy of the letter of request.

Citation for proceedings before a nominated court

36.8.—(1) The warrant to cite a person to proceedings before a nominated court shall be in Form 36.8–A.

(2) The form of postal citation of a person to proceedings before a nominated court shall be in Form 36.8–B; and the person shall complete and return Form 36.8–C to the procurator fiscal.

(3) The form of personal citation of a person to proceedings before a nominated court shall be in Form 36.8–D.

Proceedings before a nominated court

36.9.—(1) In proceedings before a nominated court–

(a) the procurator fiscal or Crown counsel shall participate in any hearing;

(b) the prosecutor of the requesting country mentioned in the request under section 13(1) of the Act of 2003 (request for assistance from overseas authorities) may participate in any hearing;

(c) where the request under section 13(1) of the Act of 2003 originates from current criminal proceedings any party to or persons with an interest in those proceedings may attend and, with the leave of the court, participate in any hearing;

(d) a judge or investigating magistrate in the current criminal proceedings may participate in any hearing;

(e) a lawyer or person with a right of audience from the requesting country who represents any party to the current criminal proceedings may participate in any hearing;

(f) a solicitor or counsel instructed by any party may participate in any hearing;

(g) any other person may, with the leave of the court, participate in any hearing;

(h) a shorthand writer may be present to record the proceedings; and

(i) the proceedings shall be in private.

(2) Where any person applies for leave to participate in any hearing the court shall, in determining such application, consider any relevant representations made by the court or authority making the request under section 13(1).