SCOTTISH STATUTORY INSTRUMENTS

2002 No. 454

HIGH COURT OF JUSTICIARY

Act of Adjournal (Criminal Procedure Rules Amendment No. 3) (Sexual Offences (Procedure and Evidence) (Scotland) Act 2002) 2002

Made - - - -	*7th October 2002*
Coming into force - -	*1st November 2002*

The Lord Justice General, the Lord Justice Clerk and the Lords Commissioners of Justiciary, under and by virtue of the powers conferred upon 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 No. 3) (Sexual Offences (Procedure and Evidence)(Scotland) Act 2002) 2002 and shall come into force on 1st November 2002.

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

Amendment of the Criminal Procedure Rules 1996

2.—(1) The Act of Adjournal (Criminal Procedure Rules) 1996(**2**) shall be amended in accordance with this paragraph.

(2) In rule 8.2(2) (form of notice to accused to appear), after "8.2-B" there shall be inserted "or, where the charge is of committing a sexual offence to which section 288C of the Act of 1995 applies, Form 8.2-BA.".

(3) After rule 9.4 (order for preliminary diet) there shall be inserted—

"**Order for preliminary diet under section 72(2A) of the Act of 1995**

9.4A.—(1) Where the court makes an order for a preliminary diet under section 72(2A) of the Act of 1995 for the purpose of considering an application for the purposes of section 275(1) of that Act, the court shall specify the date and time of the diet and the period (if any) for which the trial diet is postponed under section 72(4) of that Act.

(**1**) 1995 c. 46.
(**2**) S.I. 1996/513.

(2) An order mentioned in paragraph (1) shall not be invalid by reason only of having been made in the absence of the parties or of any person acting on their behalf.

(3) Any such order may signed by the Clerk of Court and shall be attached to the record copy of the indictment.

Orders for diets under sections 71A and 148A of the Act of 1995

9.4B.—(1) An order for–

(a) a further pre-trial diet in terms of section 71A(2);

(b) a diet in terms of section 148A(1); or

(c) a further diet in terms of section 148A(9),

of the Act of 1995 may be signed by the Clerk of Court.

(2) Intimation of the terms of an order–

(a) mentioned in paragraph (1); or

(b) for a diet under section 71(5A) of the Act of 1995,

shall be given by the Clerk of Court to all parties and to the governor of any institution in which any accused is detained.".

(4) In rule 9.5 (intimation of order for preliminary diet), after "9.4(1)" there shall be inserted "or 9.4A(1)".

(5) In rule 9.6 (order for preliminary diet to be warrant for citation) after "9.4(1)" there shall be inserted "or 9.4A(1)".

(6) In rule 9.8 (warrant for conveyance and transmission), after "9.4(1)" there shall be inserted "or 9.4A(1)".

(7) After rule 9.10 (procedure at first diet or preliminary diet) there shall be inserted—

"**Request to dispense with further pre-trial diet and pre-trial diet**

9.10A.—(1) Where a solicitor in writing requests that a further pre-trial diet be dispensed with under section 71A(7) of the Act of 1995 (power of court to dispense with further pre-trial diet), the solicitor shall intimate the request to—

(a) all other parties; and

(b) the sheriff clerk,

no less than two days before the date of the further pre-trial diet.

(2) Where a solicitor requests in writing that a pre-trial diet be dispensed with under section 72A(7) of the Act of 1995 (power of court to dispense with pre-trial diet), the solicitor shall intimate the request to—

(a) all other parties; and

(b) the Clerk of Justiciary,

no less than two days before the date of the pre-trial diet.

Procedure at further pre-trial diet and pre-trial diet

9.10B.—(1) A further pre-trial diet in the sheriff court or pre-trial diet in the High Court, shall commence on the diet being called.

(2) For the purposes of the application of section 93 of the Act of 1995 (record of trial) to a further pre-trial diet or pre-trial diet, the whole proceedings at the pre-trial diet shall be proceedings at the trial for the purposes of that section.

(3) A record of those proceedings, including any continuation or adjournment shall be kept in accordance with existing law and practice.

(4) At any time after the commencement of the further pre-trial diet or pre-trial diet, the judge may make an order continuing or adjourning the diet to another time or place; but the judge shall not require to make an order continuing the diet to the trial diet.

(5) A copy of an order continuing or adjourning the further pre-trial diet or pre-trial diet under paragraph (4) certified by the Clerk of Court shall be warrant for the conveyance to the continued or adjourned diet of any accused who may be in custody.

(6) In this rule "further pre-trial diet" means a diet under section 71A of the Act of 1995 and "pre-trial diet" means a diet under section 72A of that Act.

Application of rules 9.6 and 9.7 to order at pre-trial diet to postpone trial diet

9.10C. Rules 9.6 (order for preliminary diet to be warrant for citation) and 9.7 (calling postponed diet) apply to an order at a pre-trial diet to postpone the trial diet under section 72A(6) of the Act of 1995 as they apply to an order for a preliminary diet specifying the period for which the trial diet is postponed.".

(8) In rule 16.1 (form of complaints and related notices and forms)—

(a) in paragraph (2), after "140(2)" there shall be inserted "and (2A)"; and

(b) after paragraph (3), there shall be inserted—

"(3A) The form of notice referred to in section 146(3A) of the Act of 1995 shall be in Form 16.1-BA.".

(9) After rule 21.4 (authentication of certain prior statements of witnesses) there shall be inserted —

"**Form of application to introduce evidence relating to sexual offences**

21.5. An application under section 275(1) of the Act of 1995 (exception to restrictions on evidence relating to sexual offences) shall be in Form 21.5.".

(10) In rule 33.3 (discontinuance of entitlement to legal aid)—

(a) in paragraph (1) for "Where" there shall be substituted "Subject to paragraph (1A) below, where"; and

(b) after paragraph (1), there shall be inserted—

"(1A) Where the solicitor acting for the assisted person was appointed by the court under section 288D of the Act of 1995 (appointment of solicitors by court in proceedings in respect of sexual offence), paragraph (1) shall not apply.".

(11) After rule 33.5 (intimation of determination of the High Court) there shall be inserted—

"**Intimation of appointment of solicitor by court in proceedings in respect of sexual offence**

33.6. The clerk of court shall intimate to the Scottish Legal Aid Board any decision of the court to appoint a solicitor under section 288D(2) of the Act of 1995 (appointment of solicitors by court in proceedings in respect of sexual offence).".

(12) In the appendix—

(a) in Form 8.2-B, for the words beginning "Served" to the end, there shall be substituted—

"(Signed)

For Her Majesty's Advocate

or Procurator Fiscal Depute";

(b) after Form 8.2-B, there shall be inserted the form set out in Schedule 1 to this Act of Adjournal;

(c) in Form 16.1-B, before "WHAT WILL HAPPEN IF I DO NOTHING" there shall be inserted—

"WHAT IF I AM CHARGED WITH A SEXUAL OFFENCE?

If you are tried for a sexual offence, your defence may be conducted only by a lawyer. It is therefore in your interests, if you have not already done so, to get the professional assistance of a solicitor. If you do not engage a solicitor for the purposes of your defence at the trial, the court will do so.";

(d) after Form 16.1-B there shall be inserted the Form set out in Schedule 2 to this Act of Sederunt;

(e) in Form 16.4-C (form of minutes in minute of proceedings), before the paragraph beginning "*Trial*" there shall be inserted—

"Application to introduce evidence relating to sexual offences.—

The application was heard by (Name of judge), Sheriff [or District Judge], at [place] on [date]: (narrate terms of application)

Finding.—The court decided : (narrate decision and reasons)

Conditions and directions.—the court imposed the following conditions and directions: (narrate conditions and directions).

(Signed)

Clerk of Court"; and

(f) after Form 21.4, there shall be inserted the form set out in Schedule 3 to this Act of Adjournal.

Edinburgh
7th October 2002

W. Douglas Cullen
Lord Justice-General I.P.D