SCOTTISH STATUTORY INSTRUMENTS

2000 No. 315

HIGH COURT OF JUSTICIARY

Act of Adjournal (Criminal Procedure Rules Amendment No. 2) (Human Rights Act 1998) 2000

Made - - - - 7th September 2000

Coming into force - - 2nd October 2000

The Lord Justice General, the Lord Justice Clerk and the Lords Commissioners of Justiciary in exercise of the powers conferred upon them by section 305 of the Criminal Procedure (Scotland) Act 1995(**1**) and sections 2 and 5 of the Human Rights Act 1998(**2**) and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1. This Act of Adjournal–

(a) may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment No. 2) (Human Rights Act 1998) 2000;

(b) shall come into force on 2nd October 2000; and

(c) shall be inserted in the Books of Adjournal.

Procedure in matters arising out of the Human Rights Act 1998

2. After Chapter 40 of the Criminal Procedure Rules 1996(**3**) there is inserted–

"CHAPTER 41

HUMAN RIGHTS ACT 1998

Application and interpretation

41.1.—(1) This Chapter deals with various matters relating to the Human Rights Act 1998.

(**1**) 1995 c. 46.
(**2**) 1998 c. 42.
(**3**) S.I.1996/513 as amended.

(2) In this Chapter–

"the 1998 Act" means the Human Rights Act 1998;

"declaration of incompatibility" has the meaning given by section 4 of the 1998 Act.

Evidence of judgments etc

41.2.—(1) Evidence of any judgment, decision, declaration or opinion of which account has to be taken by the court under section 2 of the 1998 Act shall be given by reference to any authoritative and complete report of the said judgment, decision, declaration or opinion and may be given in any manner.

(2) Evidence given in accordance with paragraph (1) shall be sufficient evidence of that judgment, decision, declaration or opinion.

Declaration of incompatibility

41.3.—(1) Where in any proceedings the court is considering whether to make a declaration of incompatibility it shall give notice of this in Form 41.3—A to such persons as the Lord Justice General may from time to time direct.

(2) Where any–

(a) Minister of the Crown (or person nominated by him);

(b) member of the Scottish Executive;

(c) Northern Ireland Minister;

(d) Northern Ireland department,

wishes to be joined as a party to proceedings in relation to which the Crown is entitled to receive notice under section 5 of the 1998 Act he or, as the case may be, it shall serve notice in Form 41.3—B to that effect on the Deputy Principal Clerk of Justiciary and shall serve a copy of the notice on all other parties to the proceedings.

41.4. Within 14 days after the date of service of the notice under rule 41.3(2), the person serving the notice shall lodge a minute in the proceedings in Form 41.4 and shall serve a copy of that minute on all other parties to the proceedings.

41.5. The court may fix a diet for a hearing on the question of incompatibility as a separate hearing from any other hearing in the proceedings and may sist the proceedings if it considers it necessary to do so while the question of incompatibility is being determined.".

3. After Form 40.12 there is inserted–

"FORM 41.3—AForm of notice to Crown under section 5(1) of the 1998 Act

IN THE HIGH COURT OF JUSTICIARY

AT (*place*)

IN

HER MAJESTY'S ADVOCATE

against

[C.D.] (*address* or *Prisoner in the Prison of {place}*)

Date: (*date of posting or other method of service*)

To: (*specify Minister or other person on whom notice is to be served*)

TAKE NOTICE

That the court is considering whether or not to make a declaration under section (*specify section 4(2), in relation to primary legislation or section 4(4) in relation to subordinate legislation*) of the Human Rights Act 1998 that (*specify the primary or subordinate legislation which is the subject of the proposed declaration*) is incompatible with (*specify the Convention right*) for the following reasons:

(*set out the reasons in summary*).

You may apply to become a party to the proceedings. If you wish to do so you should notify the Deputy Principal Clerk of Justiciary in Form 41.3—B.

(Signed)
Deputy Principal Clerk of Justiciary

FORM 41.3—BForm of notice to court under section 5(2) of the 1998 Act