
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 72

**HIGH COURT OF JUSTICIARY
SHERIFF COURT
JUSTICE OF THE PEACE COURT**

**Act of Adjournal (Criminal Procedure
Rules Amendment) (Miscellaneous) 2013**

Made - - - - - *26th February 2013*
Laid before the Scottish
Parliament - - - - - *28th February 2013*
Coming into force - - - - - *22nd April 2013*

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, commencement etc.

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment) (Miscellaneous) 2013.

(2) It comes into force on 22nd April 2013.

(3) A certified copy of this Act of Adjournal is to be inserted in the Books of Adjournal.

(4) The Criminal Procedure Rules 1996(2) are amended in accordance with the following paragraphs.

Written record of state of preparation

2. In the appendix, for Form 9A.4(3) substitute Form 9A.4 set out in Part 1 of the Schedule to this Act of Adjournal.

(1) 1995 c.46.

(2) The Criminal Procedure Rules 1996 are contained in Schedule 2 to the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513), last amended by S.S.I. 2012/300.

(3) Form 9A.4 was inserted by S.S.I. 2005/44.

Television link evidence

3.—(1) In rule 23A.1(1) (application for television link evidence from abroad)(4), after “section 273(2)” insert “or section 273A(2)”(5).

(2) In the appendix, for Form 23A.1-A, substitute Form 23A.1-A set out in Part 2 of the Schedule to this Act of Adjournal.

(3) In the heading to Chapter 23A and rule 23A, omit “from abroad”.

Compatibility issues and devolution issues

4.—(1) For Chapter 40 (devolution issues)(6) substitute—

“CHAPTER 40

COMPATIBILITY ISSUES AND DEVOLUTION ISSUES

Interpretation

40.1. In this Chapter—

“Advocate General” means the Advocate General for Scotland;

“compatibility issue” means a compatibility issue within the meaning of section 288ZA(2) of the Act of 1995;

“devolution issue” means a devolution issue within the meaning of paragraph 1 of Schedule 6 to the Scotland Act 1998;

“Schedule 6” means Schedule 6 to the Scotland Act 1998;

“the 2010 Act” means the Criminal Justice and Licensing (Scotland) Act 2010.

Raising compatibility issues and devolution issues: solemn proceedings

40.2.—(1) This rule applies to solemn proceedings.

(2) In proceedings at first instance, where a party proposes to raise a compatibility issue or devolution issue he shall give written notice of his intention to do so by minute in Form 40.2.

(3) The minute must be lodged with the clerk of court and served on the other parties no later than 14 clear days before the preliminary hearing or, as the case may be, first diet.

(4) In proceedings on appeal (where the issue is being raised for the first time), where a party proposes to raise a compatibility issue or devolution issue he shall, subject to section 107 of the Act of 1995, do so in the note of appeal.

Raising compatibility issues and devolution issues: summary proceedings

40.3.—(1) This rule applies to summary proceedings.

(2) In proceedings at first instance, where a party proposes to raise a compatibility issue or devolution issue he shall give written notice of his intention to do so by minute in Form 40.3.

(3) The minute must be lodged with the clerk of court and served on the other parties—

(a) where an intermediate diet is to be held, before the first such diet; or

(4) Rule 23A was inserted by [S.S.I. 2004/195](#).

(5) Section 273A was inserted by Section 91(3) of the Criminal Justice and Licensing (Scotland) Act 2010 ([asp 13](#)).

(6) Chapter 40 was inserted by [S.S.I. 1999/1346](#), last amended by [S.S.I. 2009/322](#).

(b) where such a diet is not to be held, no later than 14 clear days before the trial diet.

(4) In proceedings on appeal (where the issue is being raised for the first time), where a party proposes to raise a compatibility issue he shall, subject to section 176 of the Act of 1995, do so in the application for a stated case.

Raising compatibility issues and devolution issues: other proceedings

40.4.—(1) This rule applies to criminal proceedings which are not proceedings on indictment or summary proceedings, including bills of advocacy and bills of suspension.

(2) Where a party to proceedings proposes to raise a compatibility issue or devolution issue he shall raise such an issue as a point of law in the pleadings.

Specification of compatibility issue or devolution issue

40.5. Where a compatibility issue or devolution issue is raised in accordance with rule 40.2, rule 40.3 or rule 40.4 the facts and circumstances and contentions of law on the basis of which it is alleged that a compatibility issue or devolution issue arises in the proceedings shall be specified in sufficient detail to enable the court to determine whether such an issue arises.

Time for raising compatibility issue or devolution issue

40.6.—(1) No party to criminal proceedings shall raise a compatibility issue or devolution issue in those proceedings except as in accordance with rule 40.2, 40.3 or 40.4, unless the court, on cause shown, otherwise directs.

(2) Where the court determines that a devolution issue may be raised as mentioned in paragraph (1), it shall order that intimation of the devolution issue is given in writing to the Advocate General.

Intimation of compatibility issues and devolution issues to the Advocate General

40.7.—(1) Where a party raises a devolution issue in accordance with rule 40.2, rule 40.3 or rule 40.4 a copy of the document in which it is raised shall be served on the Advocate General.

(2) A copy document served on the Advocate General under paragraph (1) shall be treated as intimation of the devolution issue arising in the proceedings as mentioned in paragraph 5 of Schedule 6.

Participation of Advocate General in proceedings

40.8. Where the Advocate General intends to take part in the proceedings as mentioned in paragraph 6 of Schedule 6 or, as the case may be, section 288ZA(1) of the Act of 1995, he shall give written notice of his intention to do so to the clerk of court and the other parties.

Appeals to the Supreme Court

40.9.—(1) An application to the High Court under section 288AA(5) of the Act of 1995 (appeals to the Supreme Court: compatibility issues) or paragraph 13 of Schedule 6 (appeals to the Supreme Court: devolution issues) shall be in Form 40.9.

(2) Where the Advocate General is not already a party to the proceeding, the applicant shall, at the same time as lodging the application, intimate a copy to the Advocate General.

Reference of compatibility issues and devolution issues to the High Court

40.10.—(1) This rule applies where a court, other than a court consisting of two or more judges of the High Court of Justiciary decides or, as the case may be, is required to refer—

- (a) a compatibility issue to the High Court of Justiciary under section 288ZB(1) or (2) of the Act of 1995;
 - (b) a devolution issue to the High Court of Justiciary under paragraph 9 of Schedule 6.
- (2) The court shall—
- (a) pronounce an order giving directions to the parties about the manner and time in which the reference is to be drafted;
 - (b) give its reasons for making the reference and cause those reasons to be recorded in the record or minutes of proceedings, as the case may be;
 - (c) give written notice of the reference to the Advocate General where the reference relates to a devolution issue and the Advocate General is not already a party to the proceedings;
 - (d) continue the proceedings from time to time as necessary for the purposes of the reference.
- (3) The reference shall—
- (a) be adjusted at the sight of the court in such manner as the court may direct;
 - (b) after approval and the making of an appropriate order by the court (after the expiry of any period for appeal) be transmitted by the clerk of court to the Clerk of Justiciary with a certified copy of the record or minutes of proceedings, as the case may be, and, where applicable a certified copy of the relevant indictment or complaint.

Reference of compatibility issues and devolution issues to the Supreme Court

40.11.—(1) This rule applies where a court consisting of two or more judges of the High Court of Justiciary decides or, as the case may be, is required to refer—

- (a) a compatibility issue to the Supreme Court under section 288ZB(3), (4) or (5) of the Act of 1995;
 - (b) a devolution issue to the Supreme Court under paragraph 11 or 33 of Schedule 6.
- (2) The court shall—
- (a) pronounce an order giving directions about the manner and time in which the reference is to be drafted (including such matters as may be required by Supreme Court Practice Direction 10);
 - (b) give its reasons for making the reference and cause those reasons to be recorded in the record or minutes of proceedings, as the case may be;
 - (c) give written notice of the reference to the Advocate General where the Advocate General is not already a party to the proceedings;
 - (d) continue the proceedings from time to time as necessary for the purposes of the reference.
- (3) The reference shall—
- (a) be adjusted at the sight of the court in such manner as the court may direct;
 - (b) after approval and the making of an appropriate order by the court, shall be transmitted by the clerk of court to the Registrar of the Supreme Court with a certified copy of the record or minutes of proceedings, as the case may be, and, where applicable, a certified copy of the relevant indictment or complaint.

Orders pending determination of compatibility issues or devolution issues

40.12.—(1) Where a court makes a reference mentioned in rule 40.10 or rule 40.11 it may make such orders as it considers just and equitable in the circumstances pending the determination of the compatibility issue or devolution issue, including—

- (a) postponing any diet, including a trial diet, fixed in the case;
- (b) making such orders as it considers appropriate in relation to bail;
- (c) subject to paragraph (2), extending the period within which any step requires to be taken or event to have occurred.

(2) An order under paragraph (1)(c) extending a period which may be extended under section 65 or section 147 of the Act of 1995 may be made only by a court which has power to do so under that section, and for the purposes of that section, the fact that a devolution issue has been raised by the prosecutor shall not, without more, be treated as fault on the part of the prosecutor.

Procedure on receipt of determination of compatibility issue or devolution issue

40.13.—(1) This rule applies where—

- (a) the High Court has determined a reference mentioned in rule 40.10;
- (b) the Supreme Court has determined a reference mentioned in rule 40.11 and remitted the proceedings to the High Court in accordance with section 288ZB(7) of the Act of 1995.

(2) The determination shall be laid before the court that made the reference.

(3) The court shall then give directions as to further procedure which shall be intimated by the clerk of court with a copy of the determination to each of the parties to the proceedings.

Procedure following determination of an appeal by the Supreme Court

40.14.—(1) This rule applies where the Supreme Court has—

- (a) determined a compatibility issue on appeal and remitted the proceedings to the High Court in accordance with section 288AA(3) of the Act of 1995;
- (b) determined a devolution issue on appeal under paragraph 13(a) of Schedule 6.

(2) The High Court of Justiciary shall then give direction as to further procedure which shall be intimated by the Clerk of Justiciary to each of the parties to the proceedings.

Orders mitigating the effect of certain decisions

40.15. Where the court is considering making an order under section 102 of the Scotland Act 1998 (power of court to vary or suspend the effect of certain decisions) the court shall order intimation of the fact to be made by the clerk of court, in writing, to every person to whom intimation is required to be given by that section.”.

(2) In the appendix, for Forms 40.2A, 40.2A-A, 40.2B, 40.3A, 40.3A-A, 40.3B, 40.4A, 40.4A-A, 40.4B, 40.7 and 40.12 substitute Forms 40.2, 40.3 and 40.9 set out in Part 3 of the Schedule to this Act of Adjournal.

Transitional provisions

5.—(1) Paragraph 2 of this Act of Adjournal shall apply only to solemn proceedings in which a preliminary hearing, in terms of section 72 of the Criminal Procedure (Scotland) Act 1995, was fixed after the date on which this Act of Adjournal comes into force.

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(2) For the purposes of paragraph 4 of this Act of Adjournal, where a court is considering any procedural matter in consequence of the coming into force of Part 4 of the Scotland Act 2012(7) or this Act of Adjournal it may, subject to the provisions of the Scotland Act 2012 (Transitional and Consequential Provisions) Order 2013(8), make such orders as it thinks just and equitable in the circumstances in order to determine the compatibility issue or devolution issue.

Edinburgh
26th February 2013

BRIAN GILL
Lord Justice General
I.P.D.

(7) c.11, Part 4 was commenced by [S.I. 2013/6](#) (c.1).

(8) [S.I. 2013/7](#) (s.1).

SCHEDULE

Paragraph 2

PART 1

Form 9A.

Rule 9A.4(1)

Form of written record of st

IN THE HIGH COURT OF

AT (*place*)

WRITTEN RECORD OF STATE

in the case of

HER MAJESTY'S AD

against

[A.B.] (*addre*)

[*or* Prisoner in the Priso

Preliminary hearing: (*date*)

Prosecutor

Name: (*name*)

Address: (*address*)

SCHEDULE 1 (Prosecutor)

In this Schedule, unless otherwise stated, references to sections of the Criminal Procedure (Scotland) Act 1995 are to the sections of that Act as amended by the Criminal Procedure (Scotland) Act 2009.

Plea

1. Has a plea of guilty been accepted on behalf of the Advocate?

If the answer to the question is yes, the following provisions are applicable.

Communication with the defence

2. Did the advocate depute and defence counsel or advocate communicate prior to the preliminary hearing, and if so, when and by what means did communication take place?

Preliminary issues

Other applications/notices

- 5.** Has any of the following been lodged with the Her Majesty's Advocate?
- A child witness notice under section 271A(2)
 - A vulnerable witness application under section 271B(2)
 - An application under section 275(1) (application for disclosure of evidence relating to the character and conduct of the accused)
 - An application under section 288F(2) (application for an order prohibiting the accused from conducting a trial)
 - An application under section 271P(1) (application for an anonymity order)

If the answer to the question is yes, attach a copy of the notice.

Other matters

Agreements and admissions of evidence

- 7.** Have any facts and documents been the subject of a minute of admission or agreement under section 256(2) (minute of admission or agreement)?

If the answer to the question is yes, attach a copy of each minute of admission or agreement.

Duty to seek agreement of evidence

- 8.** Specify any steps which have been taken under section 256(2) (duty to seek agreement of evidence):—

Uncontroversial evidence

Witnesses

- 10.** Specify which of the witnesses included in paragraph 9 above would not be available to give evidence. Indicate the reason (if known):—

[indicate which, if any, of these witnesses is a child or a vulnerable witness: (“VW”)]

Availability of witnesses

- 11.** Specify any dates on which any of the witnesses included in paragraph 9 above would not be available to give evidence. Indicate the reason (if known):—

*In addition, if your answer to the question is no, or
defence to question 15 of schedule 2 is no, provide
information:—*

1. The date on which the accused appeared on p
2. Disclosure: under reference to the expla
question 15 of schedule 2 of the need for f
carried out, details of the dates on which
statements mentioned there were disclosed a
why disclosure was made at that stage.
3. In a legally aided case the date on which the
Board were informed that the case was likely
the High Court.

Estimated length of trial

13. Specify how long you estimate that the trial, i

Name of advocate depute

Equipment

15. Will any of the following be required at the trial?

- screens
- display of video-tape evidence
- playback of police interview audio-tape
- document camera
- CD/DVD evidence in computer format (e.g. laptop PC or other means of display)
- equipment for giving evidence by closed circuit television
- other equipment

If yes, specify:

SCHEDULE 2 (Legal Representative of [

*In this Schedule, unless otherwise stated, references
sections of the Criminal Procedure (Scotland*

Plea

1. Has the prosecutor accepted a plea of guilty?

If the answer to the question is yes, the following
applicable.

Section 196

2. Is the accused aware of the terms of section 1

Preliminary pleas

3. Has notice been given on behalf of the accu
plea within the meaning of section 79(2)(a)?

If the answer to the question is yes, attach a copy of each

Objections to admissibility of evidence

6. Is there any objection to the admissibility of evidence that you wish to raise on behalf of the accused in relation to the given notice of a preliminary issue with respect to the evidence under section 79(2)(b)?

If the answer to the question is yes, specify each objection to the admissibility of evidence and summarise the reasons for each objection given notice under section 79(2)(b):—

Other applications/notices

7. Has any of the following been lodged with the court on behalf of the accused?

Defence

- 8.** Has any of the following been lodged with the accused?
- a plea of special defence or notice of intent calculated to exculpate the accused by incrimination under section 78(1)
 - notice of witnesses or productions under section 70
 - a defence statement under section 70A with details set down in that section

If the answer to the question is yes, attach a copy of the notice.

Other matters

- 9.** Are there any other matters which might be disposed of with advantage before the trial? For instance, are there any matters of compatibility or devolution minutes, section 70 applications for recovery of documents?

If the answer to the question is yes, specify each matter and how it is disposed of with advantage before the trial:—

Duty to seek agreement of evidence

- 11.** Specify any steps which have been taken under section 10 (duty to seek agreement of evidence):—

Uncontroversial evidence

- 12.** Has either party served a statement under section 11 (statement of uncontroversial evidence) on the other party?

Witnesses

- 13.** Specify which of the witnesses included in paragraph 9 above would not be available to give evidence. Indicate the reason (if known):—

[indicate which, if any, of these witnesses is a child or a vulnerable witness: (“VW”)]

Availability of witnesses

- 14.** Specify any dates on which any of the witnesses included in paragraph 9 above would not be available to give evidence. Indicate the reason (if known):—

In addition, provide the following information:—

1. The date on which agents were instructed to accused.
2. If the case is legally aided, the date on which sanction was granted.
3. Under reference to the witnesses and procedure attached to the indictment the dates on which evidence was downloaded.
4. If the case is legally aided, the date on which the court was advised that sanction was granted for the instruction.
5. The date on which counsel was instructed.
6. The date on which consultation with counsel was taken.
7. A brief description of the steps taken by the prosecution, including, where relevant, the taking of statements, the investigation of the defence and the instructions given to witnesses or reports. Give details of the dates on which these steps were taken.

Equipment

18. Will any of the following be required at the trial?

- screens
- display of video-tape evidence
- playback of police interview audio-tape
- document camera
- CD/DVD evidence in computer format (e.g. laptop PC or other means of display)
- equipment for giving evidence by closed circuit television
- other equipment

If yes, specify:

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Paragraph 3(2)

PART 2

Form 23A.1-

Rule 23A.1

**Form of petition for issue of letter of request under
the Criminal Procedure (Scotland) Act 1975**

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE CLERK AND LORDS COMMISSIONERS OF HIS MAJESTY'S HIGH COURT OF JUSTICE

[*or* UNTO THE HONOURABLE THE SHEPHERD OF HIS MAJESTY'S HIGH COURT OF JUSTICE

AT (*place*)]

PETITION

of

HER MAJESTY'S ADVOCATE

[*or* [A.B.] (*address*)]

[*or* Prisoner in the prison of

PETITIONER

5. That (*name of court*) is a court or tribunal exercising jurisdiction over the territory of (*specify*) being a country or territory outside the United Kingdom and (*name of court*) is a court or tribunal in (*specify country or territory*) in Scotland but within the United Kingdom.]
6. That English is [not] the official language or one of the official languages of the country or territory.
7. That the law of the said country or territory provides for the use of a live television link [in accordance with the following provisions]
- [8. That there would be no unfairness to the accused if the evidence were given by a live television link.]

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]

- (1) to appoint intimation of this petition and schedule of proceedings to be made to the said witness
- (2) to appoint parties to be heard thereupon on the said petition
- (3) thereafter, on being duly satisfied in terms of section 10 of the Criminal Procedure (Scotland) Act 1995, to issue a warrant for the witness to appear at a *tribunal within whose jurisdiction the witness resides* for the giving of evidence by the said witness or by a person appointed in that behalf otherwise as to your Lordship[s] shall seem proper

Paragraph 4(2)

PART 3

Form 40.2

Rule 40.2(2)

Form of minute of notice of intention
issue or devolution

UNTO THE RIGHT HONOURABLE THE LORD J
CLERK AND LORDS COMMISSIONERS OF JUST
THE SHERIFF OF (*name of*

AT (*place*)

MINUTE

by

[P.C.] (*address*

[*or Prisoner in the Prison*

HUMBLY SHEWETH, that:

Form 40.3

Rule 40.3(2)

Form of minute of notice of intention
issue or devolution

UNTO THE HONOURABLE THE SHER

AT (*place*)

[or UNTO THE JUSTICES in the JUSTICE OF THE

AT (*place*)

MINUTE

by

[C.S.] (*address*)

[or Prisoner in the Prison

Form 40.9

Rule 40.9(1)

Form of application under section 288AA(5) of
Act 1995 or paragraph 13 of Schedule

UNTO THE RIGHT HONOURABLE THE LORD J
CLERK AND LORDS COMMISSION

APPLICATION FOR PERMISSION TO APPE

under section 288AA(5) of the Criminal Procedure (S
Schedule 6 to the Scotlan

by

(specify)

(address)

APPLICANT

HUMBLY SHEWETH, that:

EXPLANATORY NOTE

(This note is not part of the Act of Adjournal)

This Act of Adjournal amends the Criminal Procedure Rules 1996.

Paragraph 2 amends Form 9A.4 (Form of written record of state of preparation) by way of substitution.

Paragraph 3 amends Chapter 23A and related 23A.1-A to extend the application of that Chapter to evidence given by television link from within the United Kingdom.

Paragraph 4 amends, by way of substitution, Chapter 40 in consequence of the coming into force of Part 4 of the Scotland Act 2012.

Paragraph 5 makes transitional provision in respect of paragraphs 2 and 4.