

SCHEDULE 2

CRIMINAL PROCEDURE RULES 1996

*PART VII*

*Miscellaneous procedures*

**CHAPTER 29**

**PRECOGNITION ON OATH OF DEFENCE WITNESSES**

**Applications for warrant to cite for precognition**

**29.1.**—(1) An application to the sheriff made by an accused under section 291(1) of the Act of 1995 (warrant to cite any person to appear for precognition on oath) shall be made—

- (a) to the sheriff in whose sheriffdom the proceedings, in respect of which the accused seeks the precognition of that person, have been commenced;
- (b) by petition—
  - (i) where the accused has appeared on petition under Part IV of the Act of 1995 (petition procedure) but an indictment has not been served on him, in Form 29.1-A; or
  - (ii) where an indictment or a complaint has been served on the accused, in Form 29.1-B.

(2) On a petition referred to in paragraph (1) being lodged, the sheriff shall—

- (a) order intimation of the application to be made to the procurator fiscal; and
- (b) fix a diet for a hearing of the application.

**Orders for taking precognition**

**29.2.** Where, after the hearing fixed under rule 29.1(2), the sheriff is satisfied that it is reasonable to require such precognition on oath in the circumstances, he shall—

- (a) order the precognition to be taken;
- (b) fix a diet for it to be taken; and
- (c) grant warrant to cite the person from whom it is to be taken.

**Citation to attend for precognition**

**29.3.**—(1) Citation of a person to attend the diet fixed for taking his precognition on oath shall be in Form 29.3; and an execution of service shall be produced at the diet fixed under rule 29.1(2).

(2) Where a person fails to appear at a diet fixed for taking his precognition and the sheriff issues a warrant for his apprehension under section 291(2) of the Act of 1995, execution of that warrant—

- (a) shall be made by an officer of law instructed by the accused or his solicitor; and
- (b) may proceed on a copy of the petition and warrant duly certified by the sheriff clerk.

(3) The sheriff clerk shall immediately give notice of that person's failure to appear at the diet to the procurator fiscal.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

### **Record of proceedings**

**29.4.**—(1) Where a person appears before the sheriff to have his precognition taken on oath, the proceedings shall be recorded in shorthand by an official shorthand writer instructed by the accused or his solicitor.

(2) The shorthand writer shall extend his shorthand notes recording the proceedings, sign the transcript, and lodge it with the sheriff clerk.

(3) On the transcript being lodged, the sheriff clerk shall—

- (a) send a copy to the solicitor for the accused or, if he is not represented, to the accused; and
- (b) fix a diet for the person whose precognition has been taken on oath to attend before the sheriff to sign the precognition.

### **Fees of shorthand writer**

**29.5.**—(1) The solicitor for the accused or, if he is not represented, the accused shall be liable for payment of—

- (a) the fees of the shorthand writer, and
- (b) the reasonable expenses of the person precognosed on oath;

and shall tender any such expenses in advance if required by that person to do so.

(2) Where the accused is not represented, the sheriff may, at the hearing of the application or at any time before the precognition is taken, order the accused to consign into court such sum as he may be required to pay under paragraph (1) in respect of fees and expenses on or before such date as the sheriff may specify in the order.

(3) If the sheriff orders the accused to consign a sum into court under paragraph (2) and that sum is not consigned by the date specified in the order, the petition shall be treated as abandoned.