

SCHEDULE 2

CRIMINAL PROCEDURE RULES 1996

PART VII

Miscellaneous procedures

CHAPTER 31

REFERENCES TO THE EUROPEAN COURT OF JUSTICE

Interpretation of this Chapter

31.1.—(1) In this Chapter, unless the context otherwise requires—

“the European Court” means the Court of Justice of the European Communities;

“question” means a question or issue under Article 177 of the E.E.C. Treaty, Article 150 of the Euratom Treaty or Article 41 of the E.C.S.C. Treaty;

“reference” means a request to the European Court for a preliminary ruling on a question.

(2) The expressions “E.E.C. Treaty”, “Euratom Treaty”, and “E.C.S.C. Treaty” have the meanings assigned respectively in Schedule 1 to the European Communities Act 1972⁽¹⁾.

Notice of references in solemn proceedings

31.2.—(1) Where a question is to be raised in any proceedings on indictment (other than proceedings on appeal), notice of intention to do so shall be given to the court before which the trial is to take place and to the other parties not later than 14 days after service of the indictment.

(2) Where such a notice is given, a record of the notice shall be made on the record copy of the indictment or in the record of proceedings, as the case may be; and the court, in chambers, shall reserve consideration of the question to the trial diet.

(3) The court may order that witnesses and jurors are not cited to attend at the trial diet.

(4) At the trial diet, the court, after hearing the parties, may determine the question or may decide that a preliminary ruling should be sought.

(5) Where the court determines the question, the accused shall then (if appropriate) be called on to plead to the indictment; and, without prejudice to any other power available to it, the court—

(a) may prorogate the time for lodging any special defence;

(b) may continue the diet to a specified time and place; and

(c) in a case where witnesses and jurors have not been cited to attend at the trial diet, shall continue the diet and order the citation of witnesses and jurors to attend the continued diet.

(6) No period during which the diet is continued under paragraph (5) shall—

(a) subject to paragraph (7), be longer than 21 days; or

(b) be taken into account for the purposes of determining whether any time limit has expired.

(7) The court may, on the application of the prosecutor or defence, extend any period during which the diet is continued for such longer period than 21 days as it thinks fit on special cause shown.

(1) 1972 c. 68.

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

Notice of references in summary proceedings

31.3.—(1) Where a question is to be raised in any summary proceedings (other than proceedings on appeal), notice of intention to do so shall be given before the accused is called on to plead to the complaint.

(2) Where such notice is given, a record of the notice shall be entered in the minute of proceedings and the court shall not then call on the accused to plead to the complaint.

(3) The court may hear parties on the question forthwith or may adjourn the case to a specified date for such hearing.

(4) After hearing parties, the court may determine the question or may decide that a preliminary ruling should be sought.

(5) Where the court determines the question, the accused shall then (where appropriate) be called on to plead to the complaint.

Proceedings on appeal etc.

31.4.—(1) Where a question is raised in the High Court in any proceedings on appeal or on a petition for the exercise of the *nobile officium*, the court shall proceed to make a reference.

(2) In paragraph (1), the reference to proceedings on appeal is a reference to proceedings on appeal under the Act of 1995 or on appeal by bill of suspension, bill of advocation or otherwise.

Preparation of case for reference

31.5.—(1) Where the court decides that a preliminary ruling should be sought, the court shall—

(a) give its reasons and cause those reasons to be recorded in the record or minute of proceedings, as the case may be; and

(b) continue the proceedings from time to time as necessary for the purposes of the reference.

(2) The reference—

(a) shall be drafted in Form 31.5 and the court may give directions to the parties as to the manner in which and by whom the case is to be drafted and adjusted;

(b) shall thereafter be adjusted at the sight of the court in such manner as may be so directed; and

(c) after approval and the making of an appropriate order by the court, shall (after the expiry of the period for appeal) be transmitted by the clerk of court to the Registrar of the European Court with a certified copy of the record or minute of proceedings, as the case may be, and, where applicable, a certified copy of the relevant indictment or complaint.

Procedure on receipt of preliminary ruling

31.6.—(1) Where a preliminary ruling has been given by the European Court on a question referred to it and the ruling has been received by the clerk of the court which made the reference, the ruling shall be laid by the clerk before the court.

(2) On the ruling being laid before the court, the court shall then give directions as to further procedure, which directions shall be intimated by the clerk, with a copy of the ruling, to each of the parties to the proceedings.

Appeals against references

31.7.—(1) Subject to paragraph (2), where an order making a reference is made under rule 31.4 (proceedings on appeal etc.), any party to the proceedings who is aggrieved by the order may, within

14 days after the date of the order, appeal against the order to the High Court sitting as a court of appeal.

(2) Paragraph (1) shall not apply to such an order made in proceedings in the High Court sitting as a court of appeal or in proceedings on petition to that court for the exercise of its *nobile officium*.

(3) Any appeal under this rule shall be taken by lodging with the clerk of the court which made the order a note of appeal in Form 31.7 and signed by the appellant or his solicitor; and a copy of the note shall be served by the appellant on every other party to the proceedings.

(4) The clerk of court shall record the lodging of the note in the record or minute of proceedings, as the case may be, and shall forthwith transmit the note to the Clerk of Justiciary with the record or minute of proceedings and a certified copy of the relevant indictment or complaint.

(5) In disposing of an appeal under this rule, the High Court (sitting as a court of appeal) may—

- (a) sustain or dismiss the appeal, and in either case remit the proceedings to the court of first instance with instructions to proceed as accords; and
- (b) give such directions for other procedure as it thinks fit.

(6) Unless the court making the order otherwise directs, a reference shall not be transmitted to the Registrar of the European Court before the time allowed by this rule for appealing against the order has expired or before the appeal has been disposed of or abandoned.