

SCHEDULE 2

CRIMINAL PROCEDURE RULES 1996

PART VII

Miscellaneous procedures

CHAPTER 34

EXTRADITION

Interpretation of this Chapter

34.1. In this Chapter—

“the Act of 1989” means the Extradition Act 1989(1);

“court of committal” has the meaning assigned in section 9(1) of the Act of 1989.

Procedure in applications for stated case

34.2.—(1) Where—

- (a) the court of committal refuses to make an order under section 9 of the Act of 1989 (proceedings for committal) in relation to a person in respect of the offence or, as the case may be, any of the offences to which the authority to proceed relates,
- (b) the state, country or colony seeking the surrender of that person immediately informs the court that it intends to make an application to the court to state a case for the opinion of the High Court, and
- (c) the court of committal makes an order under section 10(2) of the Act of 1989 (detention or bail where refusal of extradition order challenged) releasing that person on bail,

the sheriff clerk shall forthwith send a copy of that order to the Crown Agent.

(2) Where—

- (a) the court of committal refuses to make an order under section 9 of the Act of 1989 in relation to a person in respect of the offence or, as the case may be, any of the offences to which the authority to proceed relates, and
- (b) the state, country or colony seeking his surrender wishes to apply to that court to state a case for the opinion of the High Court under section 10(1) of the Act of 1989,

such an application shall be made to the court of committal within 21 days after the date on which that court refuses to make the order under section 9 of the Act of 1989 unless the sheriff grants a longer period within which the application is to be made.

(3) Such an application shall be made in writing and shall identify the question or questions of law on which the opinion of the High Court is sought.

(4) Within 21 days after receipt of an application to state a case under section 10(1) of the Act of 1989, the clerk of the court of committal shall send a draft stated case prepared by the sheriff to the solicitor for the state, country or colony and to the person whose surrender is sought or his solicitor; and the court of committal shall allow each party 21 days from the date of the sending of the draft stated case within which to lodge and intimate proposed adjustments.

(1) 1989 c. 33.

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(5) Within seven days after the latest date on which such adjustments may be lodged, the sheriff shall, on the motion of either party, or may of his own accord, hear parties on any such adjustments.

(6) Within 14 days after the latest date on which such hearing on adjustments may take place (or, if there are no such adjustments, within 14 days after the latest date by which such adjustments could have been lodged), the sheriff shall, after considering any such proposed adjustments and representations, state and sign the case; and the sheriff clerk shall—

- (a) forthwith transmit the case, with the application for the case and all other documents in the case to the Clerk of Justiciary; and
- (b) send a duplicate of the case to the solicitor for the state, country or colony and to the person whose surrender is sought or his solicitor.

(7) If any period of time specified in paragraph (4), (5) or (6) expires on a Saturday, Sunday or court holiday prescribed for the court of committal, the period shall be extended to expire on the next day which is not a Saturday, Sunday or such court holiday.

(8) Where the sheriff referred to in paragraph (4), (5) or (6) becomes temporarily absent from duty for any cause, the sheriff principal of the sheriffdom of Lothian and Borders may extend any period of time specified in that paragraph for such period as he considers reasonable.

(9) Where the sheriff referred to in paragraph (4), (5) or (6) dies before signing the stated case, the applicant for the stated case may present a bill of suspension to the High Court and bring under the review of that court any matter which might have been brought under review by stated case.

Power of High Court to extend period of time

34.3.—(1) Without prejudice to any other power which the High Court may have, where it appears to that court, on an application made in accordance with the following provisions of this rule, that a party has failed to comply with any of the requirements of paragraph (2) or (4) of rule 34.2 (procedure in applications for stated case), the High Court may direct that such further period of time as it considers reasonable be afforded to such party to comply with any requirements of paragraph (2) or (4) of rule 34.2.

(2) An application for a direction under paragraph (1) shall be made in writing to the Clerk of Justiciary and shall state the grounds for the application; and notification of the application shall be made by the applicant to the sheriff clerk of the court of committal; and the sheriff clerk shall forthwith transmit one certified copy of all documents in the case to the Clerk of Justiciary.

(3) The High Court shall dispose of any application under paragraph (1) in the same manner as an appeal in respect of bail under section 32 of the Act of 1995 and, when the High Court has disposed of the application, the Clerk of Justiciary shall inform the clerk of the court of committal of the result.

Applications to High Court for order for stated case

34.4. An application to the High Court for an order under section 10(4) of the Act of 1989 (order requiring court of committal to state a case) shall be made in writing to the Clerk of Justiciary and shall state the grounds for the application, and notification of application shall be made by the applicant to the sheriff clerk of the court of committal; and the sheriff clerk shall forthwith transmit one certified copy of all documents in the case to the Clerk of Justiciary.

Notices of waiver of rights and consent

34.5.—(1) A notice given under section 14 of, or paragraph 9 of Schedule 1 to, the Act of 1989 (which relate to waiver of rights) shall be in Form 34.5.

(2) Such a notice shall be signed in the presence of a sheriff, sheriff clerk, justice of the peace or solicitor.

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(3) Any such notice given by a person in custody shall be delivered to the governor of the prison in whose custody he is.

(4) Where a person on bail gives such notice he shall deliver it, or send it by post in a registered letter or by the first class recorded delivery service addressed, to the Crown Agent.