
STATUTORY INSTRUMENTS

1991 No.19 (S.1)

**HIGH COURT OF JUSTICIARY, SCOTLAND
SUMMARY JURISDICTION, SCOTLAND**

**Act of Adjournal (Consolidation Amendment)
(Extradition Rules and Backing of Irish Warrants) 1991**

Made - - - - *9th January 1991*
Coming into force - - *4th February 1991*

The Lord Justice General, the Lord Justice Clerk and Lords Commissioners of Justiciary, under and by virtue of the powers conferred on them by sections 2A and 8 of the Backing of Warrants (Republic of Ireland) Act 1965(1) and sections 282 and 457 of the Criminal Procedure (Scotland) Act 1975(2) and sections 10(3) and 14(3) of, and paragraph 9(3) of Schedule 1 to, the Extradition Act 1989(3), and all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Consolidation Amendment) (Extradition Rules and Backing of Irish Warrants) 1991 and shall come into force on 4th February 1991.

(2) This Act of Adjournal shall be inserted in the Books of Adjournal.

Amendment of Act of Adjournal (Consolidation) 1988

2.—(1) Act of Adjournal (Consolidation) 1988(4) shall be amended in accordance with the following sub-paragraphs.

(2) After rule 149 (form of endorsement in proceedings for execution of Irish Warrants), insert the following rules:—

(1) 1965 c. 45; section 2A was inserted by paragraph 5 of Schedule 1 to the Criminal Justice Act 1988 (c. 33) which continues to have effect by virtue of section 37(5) of the Extradition Act 1989 (c. 33).
(2) 1975 c. 21.
(3) 1989 c. 33.
(4) S.I.1988/110.

“Procedure in applications for stated case under section 2A of the Act of 1965

149A.—(1) The sheriff clerk of a court which refused to order a person to be delivered under section 2 of the Act of 1965 but made an order in accordance with section 2A(2) of the Act of 1965 releasing that person on bail shall, upon the procurator fiscal immediately informing the court that he intends to make an application to the court to state a case for the opinion of the High Court, forthwith send a copy of that order to the Crown Agent, Crown Office, Edinburgh.

(2) Where a court refuses to make an order in relation to a person under section 2 of the Act of 1965, any application to the court under section 2A(1) of the Act of 1965 to state a case for the opinion of the High Court on any question of law arising in the proceedings shall be made to the court by the procurator fiscal within the period of three weeks following the day on which the order was refused, unless the court 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 three weeks after receipt of an application to state a case under section 2A(1) of the Act of 1965, the sheriff clerk shall send a draft stated case to the procurator fiscal and to the person to whom the warrant relates or his solicitor and the sheriff shall allow each party three weeks from the date of the sending of the draft stated case within which to lodge and intimate proposed adjustments.

(5) Within one week after the latest date on which 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 two weeks after the latest day on which such hearing on adjustments may take place (or, if there are no such adjustments, within two weeks 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 which the sheriff clerk shall—

- (a) forthwith transmit, along 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 procurator fiscal and to the person to whom the warrant relates or his solicitor.

(7) If any period of time specified in paragraphs (4), (5) or (6) expires on a Saturday, Sunday or court holiday prescribed for the sheriff court involved, 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 who refuses to make an order as referred to in paragraph (4) becomes temporarily absent from duty for any cause, the sheriff principal of the sheriffdom in which the court is situated 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

149B.—(1) Without prejudice to any other power of relief 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 paragraphs (2), (4), (5) and (6) of rule 149A, 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 the aforesaid provisions.

(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 and the sheriff clerk shall thereupon transmit certified copies of the complaint, documentary productions and any other proceedings in the case to the Clerk of Justiciary.

(3) The High Court shall dispose of any application under paragraph (1) above in like manner as an appeal in respect of bail under section 300 of the 1975 Act; and when the High Court has disposed of the application the Clerk of Justiciary shall inform the sheriff clerk of the result.”.

(3) After rule 156 (warrants to search premises under the Drug Trafficking Act 1986(5)), insert the following rules:—

“Extradition Rules

Interpretation

156A. In rules 156B to 156E—

“the Act of 1989” means the Extradition Act 1989;

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

Procedure in applications for stated case

156B.—(1) 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;
- (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 in accordance with section 10(2) of the Act of 1989 releasing that person on bail,

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

(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 application shall be made to the court of committal within the period of three weeks following the day 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 three weeks after receipt of an application to state a case under section 10(1) of the Act of 1989, the sheriff 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 three weeks from the date of the sending of the draft stated case within which to lodge and intimate proposed adjustments.

(5) Within one week 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 two weeks after the latest day on which such hearing on adjustments may take place (or, if there are no such adjustments, within two weeks 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 which the sheriff clerk shall—

- (a) forthwith transmit, along 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) above 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) above 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

156C.—(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 paragraphs (2) and (4), (5) or (6) of rule 156B above, 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 the aforesaid provisions.

(2) An application for a direction under paragraph (1) above 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 thereupon transmit certified copies of all documents in the case to the Clerk of Justiciary.

(3) The High Court shall dispose of any application under paragraph (1) above in like manner as an appeal in respect of bail under section 300 of the 1975 Act⁽⁶⁾ 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.

(6) 1975 c. 21, as amended by the Criminal Justice (Scotland) Act 1987 c. 41, s.62(4).

Application to High Court for order for stated case

156D. An application to the High Court for an order under section 10(4) of the Act of 1989 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 thereupon transmit certified copies of all documents in the case to the Clerk of Justiciary.

Notice of waiver of rights and consent under section 14 of the Act of 1989

156E.—(1) A notice given under section 14 of, or paragraph 9 of Schedule 1 to, the Act of 1989 shall be in Form 88 in Schedule 1 to these Rules.

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

(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) If a person on bail gives such notice he shall deliver it to, or send it by post in a registered letter or by recorded delivery service addressed to the Crown Agent, Crown Office, Edinburgh.”.

(4) In Schedule 1, insert Form 88 in the Schedule to this Act of Adjournal.

Edinburgh
9th January 1991

J.A.D. Hope
Lord Justice General, IPD

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

SCHEDULE

Paragraph 2(4)

Rule 156E(1)

FORM 88

Notice of Waiver and Consent under The Extradition Act 1989, section 14 or Schedule 1, paragraph 9

Whereas on the ... day of ... 19 ..., the Sheriff of Lothian and Borders sitting at ... ordered that I, ... (name), be committed to await the Secretary of State's decision as to my return to ... (name of foreign state, Commonwealth country or United Kingdom dependency) which has requested my extradition:

And whereas I understand that I have the right-

- (a) to apply for a review of the order of committal; and
(b) not to be returned in any case until the expiry of the period of 15 days beginning with the date on which the order was made and, if I apply for a review of the order of committal, for so long as proceedings on that application are pending:

Now, therefore, I give notice:-

- 1. That I waive my right to make an application for a review of the order of committal.
*2. That I consent to my earlier return before the said period of 15 days has expired.

(Signed)
This form was signed by the above-named person in my presence on the ... day of ... 19 ...
(Signed)
Sheriff [or sheriff clerk, justice of the peace or solicitor as the case may be]

*Delete if consent if not given

EXPLANATORY NOTE

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

This Act of Adjournal amends the Act of Adjournal (Consolidation) 1988 to provide rules in relation to (a) applications for a stated case under section 2A of the Backing of Warrants (Republic of Ireland) Act 1965 (inserted by paragraph 5 of Schedule 1 to the Criminal Justice Act 1988 (c. 33) and which continues to have effect by virtue of section 37(5) of the Extradition Act 1989 (c. 33)) and (b) extradition proceedings under the Extradition Act 1989 (which consolidates Part I of the Criminal Justice Act 1988, the Extradition Act 1870 (as amended by the 1988 Act) and the Fugitive Offenders Act 1967 (as so amended)).

Document Generated: 2023-07-01

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