

2007 No. 495

HIGH COURT OF JUSTICIARY

SHERIFF COURT

**Act of Adjournal (Criminal Procedure Rules Amendment No. 5)
(Miscellaneous) 2007**

Made - - - - - *1st November 2007*

Coming into force - - - - - *1st December 2007*

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 23C of the Criminal Law (Consolidation) (Scotland) Act 1995(a) and section 305 of the Criminal Procedure (Scotland) Act 1995(b), and of 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 (Criminal Procedure Rules Amendment No. 5) (Miscellaneous) 2007 and shall come into force on 1st December 2007.

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

Amendment of the Act of Adjournal (Criminal Procedure Rules) 1996

2.—(1) The Act of Adjournal (Criminal Procedure Rules) 1996(c) are amended in accordance with subparagraphs (2) to (4).

(2) After rule 15.16 (presentation of solemn sentence appeal in writing) insert—

“Lodging and intimation of transcripts

15.17.—(1) This rule applies where a party intends to rely upon a transcript of a record made under section 93(1) of the Act of 1995 (record of trial) in any appeal under section 106 or 108 of that Act.

(2) The party shall lodge 4 copies of the transcript or any relevant part thereof with the Clerk of Justiciary in accordance with paragraphs (3) and (4) and shall at the same time send a copy to the other parties.

(3) Where a procedural hearing has been fixed the party shall lodge the copies not later than 7 days before the date of that hearing.

(4) Where no procedural hearing has been fixed the party shall lodge the copies not later than 21 days before the date of the hearing at which he intends to rely upon the transcript.

(a) 1995 c.39; section 23C was inserted by paragraph 3 of Schedule 23 to the Finance Act 2007 c.11.
(b) 1995 c.46.
(c) S.I. 1996/513, last amended by S.S.I 2007/361.

(5) Where a party has not complied with the requirements of paragraphs (3) and (4) he shall not, except by leave of the court on cause shown, be permitted to refer to such transcript in the course of any hearing.”.

(3) After Chapter 51 (animal health and welfare)(a) insert—

“CHAPTER 52

INVESTIGATION OF REVENUE AND CUSTOMS OFFENCES

Interpretation

52.1. In this Chapter—

“the 1995 Act” means the Criminal Law (Consolidation) (Scotland) Act 1995(b);

“authorised officer” shall have the same meaning as in section 26B(1) of the 1995 Act(c).

Production orders

52.2.—(1) An application by an authorised officer for a production order under section 23B(1) of the 1995 Act(d) shall be by petition in Form 52.2.

(2) A production order shall specify the period within which—

(a) the haver must fulfil the requirements of the production order; and

(b) the production order must be served on the haver by the authorised officer.

Revenue and Customs warrants

52.3. An application by an authorised officer for a Revenue and Customs warrant under section 23E(1) of the 1995 Act shall be by petition in Form 52.3.

Applications for variation, discharge or failure to comply with sections 23F or 23G

52.4.—(1) An application under section 23C(2) of the 1995 Act for an order to vary or discharge a production order shall be by minute in Form 52.4-A.

(2) An application under section 23H(2) of the 1995 Act for an order that there has been a failure to comply with requirements of sections 23F or 23G shall be by minute in Form 52.4-B.

(3) A minute under paragraph (1) or (2) shall be lodged with the clerk of court.

(4) On receipt of a minute under paragraph (1) or (2) the court shall make an order endorsed on the minute—

(a) fixing a diet for the hearing of the minute; and

(b) for service of the minute with the date of the diet on all relevant persons.

(5) For the purpose of paragraph (4)(b), the relevant persons are—

(a) in the case of an application under paragraph (1), every other person who is entitled, by virtue of that section, to apply for variation or discharge of the order;

(b) in the case of an application under paragraph (2)—

(i) the officer in respect of whose alleged failure the order is sought; and

(ii) every other person who is entitled by virtue of section 23H(3) to apply for an order under section 23H(4) in respect of the alleged failure in question.

(a) Chapter 51 was inserted by S.S.I. 2007/238.

(b) 1995 c.39.

(c) Section 26B was inserted by paragraph 7 of Schedule 23 to the Finance Act 2007 c.11.

(d) Sections 23B, 23C, 23D, 23F, 23G and 23H were inserted by paragraph 3 of Schedule 23 to the Finance Act 2007 c.11.

(6) Where an order mentioned in paragraph (1) or (2) is made at a hearing fixed under paragraph (4) it shall be intimated by the clerk of court to all parties unless the party was present at the hearing at which the order was made.”.

(4) In the appendix–

(a) in Form 22.1A (vulnerable witness application)(a)–

(i) after paragraph 1 insert–

“*[or, where the vulnerable witness application is lodged for the purposes of proceedings under section 210C(7) of the Criminal Procedure (Scotland) Act 1995(b) (objection to risk assessment report etc.)* 1. That on (*date*) the High Court of Justiciary sitting at (*place*) made a risk assessment order [*or an interim compulsion order*] in respect of [A.B.].”;

(ii) after paragraph 2 insert–

“*[or, where the vulnerable witness application is lodged for the purposes of proceedings under section 210C(7) of the Criminal Procedure (Scotland) Act 1995 (objection to risk assessment report etc.)* 2. That [A.B.] was convicted of (*specify*), which is an offence to which section 288C of the Criminal Procedure (Scotland) Act 1995 applies [*or and an order has been made under section 288F(2) of the Criminal Procedure (Scotland) Act 1995*]”;

(iii) at the end of paragraph 3 insert–

“*[or, proceedings under section 210C(7) of the Criminal Procedure (Scotland) Act 1995]*”;

(b) after Form 51.6 (termination or variation of disqualification order)(c) insert the forms set out in the Schedule to this Act of Adjournal.

A C HAMILTON
Lord Justice General,
I.P.D.

Edinburgh
1st November 2007

(a) Form 22.1A was inserted by S.S.I. 2006/76.

(b) Section 210C was inserted by section 1 of the Criminal Justice (Scotland) Act 2003 (asp 7).

(c) Form 51.6 was inserted by S.S.I. 2007/238.

SCHEDULE

Paragraph 2(4)(b)

Form 52.2

Rule 52.2

Form of petition for a production order under section 23B(1) of the Criminal Law (Consolidation) (Scotland) Act 1995

UNTO THE HONOURABLE THE SHERIFF OF *(name of sheriffdom)*

AT *(place)*

PETITION

of

[A.B.] authorised officer of the Commissioners for Her Majesty's Revenue and Customs *(place)*

PETITIONER

HUMBLY SHEWETH:—

1. That the petitioner has reasonable grounds to suspect that a Revenue and Customs offence of *(specify offence)* has been [*or is being*] committed by [C.D.] *(address)* and those reasonable grounds are *(specify grounds)*.

2. That [E.F.] *(address)* is a person that has possession or control of [a] document[s] which may be required as evidence for the purposes of any proceedings in respect of such an offence and that this [*or these*] document[s] are *(specify documents)*.

3. That the petitioner seeks an order that [E.F.] shall deliver the said document[s] to the petitioner [*or give the petitioner access to the document[s]*] and permit the petitioner to make copies of or remove the document[s] within a period of *(specify period within which petitioner seeks fulfilment of the production order)*.

MAY IT THEREFORE PLEASE YOUR LORDSHIP:—

- (a) to grant the production order to *(specify)* within *(specify)*;
- (b) to do otherwise as your Lordship shall seem proper; and
- (c) to require service of the order to [E.F.] within *(specify)*.

ACCORDING TO JUSTICE, etc.

(Signed)

Authorised officer of the
Commissioners for Her Majesty's
Revenue and Customs.

Form 52.3

Rule 52.3

Form of petition for a Revenue and Customs warrant under section 23E(1) of the Criminal Law (Consolidation) (Scotland) Act 1995

UNTO THE HONOURABLE THE SHERIFF OF *(name of sheriffdom)*

AT *(place)*

PETITION

of

[A.B.] authorised officer of the Commissioners for Her Majesty's Revenue and Customs *(place)*

PETITIONER

HUMBLY SHEWETH:—

1. That the petitioner has reasonable grounds to suspect that a Revenue and Customs offence of *(specify offence)* has been [*or is being*] committed by [C.D.] *(address)* and those reasonable grounds are *(specify grounds)*.
2. That evidence of that offence is to be found in or on premises *(specify premises)*.
3. That the petitioner seeks a Revenue and Customs warrant authorising the petitioner to enter, if necessary by force, the premises specified and search those premises.

MAY IT THEREFORE PLEASE YOUR LORDSHIP:—

- (a) to grant a Revenue and Customs warrant; and
- (b) to do otherwise as your Lordship shall seem proper.

ACCORDING TO JUSTICE, etc.

(Signed)

Authorised officer of the
Commissioners for Her Majesty's
Revenue and Customs.

Form 52.4-A

Rule 52.4(1)

Form of minute to vary or discharge a production order under section 23C(2) of the
Criminal Law (Consolidation) (Scotland) Act 1995

UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)

AT (*place*)

MINUTE

of

[A.B.] (*address*)

[*or* [C.D.] authorised officer of the Commissioners for Her Majesty's Revenue and Customs
(*place*)

MINUTER

HUMBLY SHEWETH:—

1. That there is annexed to this minute a copy of a production order made by the sheriff at (*place*) on (*date*).
2. That the minuter seeks to vary or discharge the production order for the following reasons:— (*here state reasons*).
- [3. The minuter seeks to vary the production order as follows:— (*here state variation sought*).]

MAY IT THEREFORE PLEASE YOUR LORDSHIP:—

to order that there be a diet and to assign a date for that diet.

IN RESPECT WHEREOF

(*Signed*)

Minuter

[*or* Solicitor for Minuter]

[*or* Authorised officer of the
Commissioners for Her Majesty's
Revenue and Customs].

Form 52.4-B

Rule 52.4(2)

Form of minute of application under section 23H(2) of the Criminal Law (Consolidation)
(Scotland) Act 1995

UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)

AT (*place*)

MINUTE

of

[A.B.] (*address*)

MINUTER

HUMBLY SHEWETH:—

1. That there is annexed to this minute a copy of a production order made [*or* A Revenue and Customs warrant was granted] by the sheriff at (*place*) on (*date*).
2. That the minuter is (*specify capacity in which the minuter makes this application*).
3. That a document [*or* thing] was [*or* documents were] removed under the production order [*or* Revenue and Customs warrant].
4. That the officer who removed the document[s] [*or* thing] failed to comply with the requirements of section 23F(2) [*or* (4)] of the Criminal Law (Consolidation) (Scotland) Act 1995 when requested to do so by the minuter [*or* That the officer in overall charge of the investigation to which the production order [*or* Revenue and Customs warrant] relates failed to comply with the requirements of section 23G(4) of the Criminal Law (Consolidation) (Scotland) Act 1995 when an application had been made to him by the minuter.]
5. That the minuter seeks (*specify terms of the order sought*).

MAY IT THEREFORE PLEASE YOUR LORDSHIP:—

to order that there be a diet and to assign a date for that diet.

IN RESPECT WHEREOF

(*Signed*)

Minuter

[*or* Solicitor for Minuter]

EXPLANATORY NOTE

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

This Act of Adjournal makes miscellaneous amendments to the Criminal Procedure Rules 1996 (S.I. 1996/513) (“the Rules”).

Paragraph 2(2) inserts a new rule 15.17 requiring parties to lodge copies of any part of a transcript of proceedings upon which they are relying in any appeal under section 106 or 108 of the Criminal Procedure (Scotland) Act 1995 and to intimate copies to the other parties. Copies should be lodged 7 days before any procedural hearing and 21 days before the date of the hearing at which the party intends to rely upon the transcript.

Paragraph 2(3) inserts a new Chapter prescribing procedure for applications in the investigation of Revenue and Customs offences. The applications are for production orders or to vary or discharge such orders, for Revenue and Customs warrants, or for an order in relation to the failure of officers to provide a record of, access to, or copies of documents or things removed under a production order or Revenue and Customs warrant within a reasonable time. These amendments are in consequence of new sections inserted into the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) by the Finance Act 2007 (c.11). There are also new forms of petition and minutes for the various applications under the new Chapter inserted into the appendix: see paragraph 2(4)(b).

Paragraph 2(4)(a) amends the vulnerable witness application form (Form 22.1A) to allow it to apply in circumstances where the adult vulnerable witness is to give evidence at or for the purposes of proceedings under section 210C of the Criminal Procedure (Scotland) Act 1995 on an objection to a risk assessment report.

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