

**2007 No. 511**

**HIGH COURT OF JUSTICIARY**

**SHERIFF COURT**

**DISTRICT COURTS**

**Act of Adjournal (Criminal Procedure Rules Amendment No. 6)  
(Criminal Proceedings etc. (Reform) (Scotland) Act 2007) 2007**

*Made* - - - - - *9th November 2007*

*Coming into force* - - - - - *10th 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 sections 148D(1)(a), 102A(8)(b) and 305 of the Criminal Procedure (Scotland) Act 1995(c), and of all other powers enabling them in that behalf do hereby enact and declare:

**Citation, commencement and interpretation**

**1.**—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment No. 6) (Criminal Proceedings etc. (Reform) (Scotland) Act 2007) 2007 and comes into force on 10th December 2007.

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

(3) Unless the context otherwise requires, in this Act of Adjournal—

- (a) a reference to a numbered rule or chapter is to the rule or chapter of that number in the Criminal Procedure Rules 1996(d); and
- (b) a reference to a numbered form is to the form of that number in the appendix to those Rules.

**Service of documents through solicitor etc.**

**2.**—(1) In rule 2.3A (service etc. on accused through a solicitor)(e)—

- (a) omit the words “in proceedings on indictment”; and
- (b) after “section 72G”(f) insert “or section 148D”.

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(a) Section 148D was inserted by section 21 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6).  
(b) Section 102A was inserted by section 32 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6).  
(c) 1995 c.46.  
(d) The Criminal Procedure Rules 1996 are contained in Schedule 2 to the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513, last amended by S.S.I. 2007/495).  
(e) Rule 2.3A was inserted by S.S.I. 2004/434.  
(f) Section 72G was inserted by section 12 of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

(2) In Form 2.3A(a) after “section 72G” in both places where it occurs insert “[or section 148D]”.

### **Power of court to excuse irregularities**

3.—(1) Before Chapter 4 (bail) insert—

#### “CHAPTER A4

#### EXCUSAL OF PROCEDURAL IRREGULARITIES

##### **Application to court to excuse procedural irregularity**

**A4.1.**—(1) An application made in writing under section 300A of the Act of 1995 (power of court to excuse procedural irregularities)(b) shall be in Form A4.1 and shall be served on the other parties to the proceedings.

(2) On an application referred to in paragraph (1) being made, the court may appoint a diet for a hearing and intimate the diet to the other parties.”.

(2) After Form 2.6-G(c) insert Form A4.1 set out in the Schedule to this Act of Adjournal.

### **Failure of accused to appear**

4.—(1) After Chapter 8A (engagement, dismissal and withdrawal of solicitors in solemn proceedings)(d) insert—

#### “CHAPTER 8B

#### FAILURE OF ACCUSED TO APPEAR

##### **Failure of accused to appear: form of warrant**

**8B.1.** A warrant for the apprehension of an accused under section 102A of the Act of 1995 (failure of accused to appear in solemn proceedings) shall be in Form 8B.1.”.

(2) After Form 8A.1-B(e) insert Form 8B.1 set out in the Schedule to this Act of Adjournal.

### **Electronic citation of witnesses**

5.—(1) After paragraph (2) of rule 16.6 (citation of witnesses)(f) insert—

“(2A) The form of electronic citation of a person to appear as a witness at a trial on summary complaint shall be in Form 16.6-D; and the witness shall complete and return Form 16.6-B to the procurator fiscal, or the accused or his solicitor as the case may be, by electronic mail or by post within 14 days after the date of citation.”.

(2) After Form 16.6-C insert Form 16.6-D set out in the Schedule to this Act of Adjournal.

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(a) Form 2.3A was inserted by S.S.I. 2004/434.  
(b) Section 300A was inserted by section 40 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6).  
(c) Form 2.6-G was inserted by S.S.I. 2005/44.  
(d) Chapter 8A was inserted by S.S.I. 2004/434.  
(e) Form 8A.1-B was inserted by S.S.I. 2004/434  
(f) Rule 16.6 was amended by S.I. 1996/2147.

## **Service of documents through a solicitor etc. - summary**

6.—(1) After Chapter 16 (complaints) insert—

### “CHAPTER 16A

#### ENGAGEMENT, DISMISSAL AND WITHDRAWAL OF SOLICITORS IN SUMMARY PROCEEDINGS

##### **Notification**

**16A.1.**—(1) The notification to the court in writing under section 148C(1) of the Act of 1995 (engagement, dismissal and withdrawal of solicitor representing accused)(a) that a solicitor has been engaged by the accused for the purposes of his defence at trial shall be in Form 16A.1–A.

(2) The notification to the court in writing under section 148C(3) of the Act of 1995 that a solicitor has been dismissed by the accused or has withdrawn from acting shall be in Form 16A.1–B.”.

(2) After Form 16.7 insert Forms 16A.1-A and 16A.1-B set out in the Schedule to this Act of Adjournal.

##### **Notice of defences**

7.—(1) After rule 17.1 (appeals against extension of period of detention) insert—

##### “**Notice of defences**

**17.2.**—(1) Notification to the prosecutor of a defence under section 149B of the Act of 1995 (notice of defences)(b) shall be in Form 17.2.

(2) At the same time as giving notification under paragraph (1) the accused shall serve a copy of the notification on any co-accused.”.

(2) After Form 17.1 insert Form 17.2 set out in the Schedule to this Act of Adjournal.

##### **Recovery of documents**

8.—(1) After Chapter 27 (routine evidence, sufficient evidence and proof of previous convictions) insert—

### “CHAPTER 27A

#### RECOVERY OF DOCUMENTS

##### **Appeal against decision of sheriff**

**27A.1.**—(1) An appeal under section 301A(5) of the Act of 1995(c) shall be lodged with the Clerk of Justiciary not later than 2 days after the date of the decision of the sheriff and shall be served on the other parties to the proceedings.

(2) Where the last day of the period referred to in paragraph (1) falls on a Saturday, Sunday or court holiday, such period shall extend to and include the next day which is not a Saturday, Sunday or court holiday.

(3) An appeal under paragraph (1) shall be in Form 27A.1.”.

(2) After Form 27.5 insert Form 27A.1 set out in the Schedule to this Act of Adjournal.

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(a) Section 148C was inserted by section 21 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6).

(b) Section 149B was inserted by section 19 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6).

(c) Section 301A was inserted by section 37 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6).

## Participation in identification procedures

9.—(1) After rule 28.1 (applications for identification parades) insert—

### “Order requiring accused to participate in identification parade

28.2.—(1) An application made in writing by the prosecutor under section 267B of the Act of 1995 (order requiring accused to participate in identification parade)(a) shall be in Form 28.2 and shall be served on the other parties.

(2) On an application referred to in paragraph (1) being made, the court may appoint a diet for a hearing of the application.

(3) Where the court appoints a hearing under paragraph (2) it shall order intimation of the diet to the other parties.”

(2) After Form 28.1-B insert Form 28.2 set out in the Schedule to this Act of Adjournal.

## Bail address

10.—(1) In Form 15.2-D(b) after paragraph 3 insert—

“4. That the address of the place that the petitioner is proposing would be his normal place of residence upon admission to bail pending determination of his appeal is [address].”

(2) Existing paragraph 4 of Form 15.2-D is re-numbered paragraph 5.

## Evidence on commission

11.—(1) In Form 16.1-B(c)—

- (a) after the word “defence” where it first appears insert “(including at any commissioner proceedings)”; and
- (b) after the words “defence at the trial” insert “(including at any related commissioner proceedings)”.

(2) In Form 16.1-BA(d) after the words “defence at trial” in paragraphs (1) and (2) insert “(including at any related commissioner proceedings)”.

(3) In Form 22.7(e)—

- (a) after the word “defence” in paragraph (1) insert “(including at any commissioner proceedings)”; and
- (b) after the words “Criminal Procedure (Scotland) Act 1995]” insert “(or at any related commissioner proceedings)”.

(4) In Form 22.8-A(f) after the word “trial” wherever it appears in paragraphs (2) and (3) and in subparagraph (b) of the crave insert “(or at any related commissioner proceedings)”.

(5) In Form 22.8-B(g)—

- (a) after the word “trial” wherever it appears insert “(or at any related commissioner proceedings)”; and
- (b) after the word “defence” wherever it appears insert “(including at any related commissioner proceedings)”.

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(a) Section 267B was inserted by section 34 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6).

(b) Form 15.2-D was amended by S.S.I. 2003/468.

(c) Form 16.1-B was amended by S.S.I. 2002/454.

(d) Form 16.1-BA was inserted by S.S.I. 2002/454.

(e) Form 22.7 was inserted by S.S.I. 2005/188 and amended by S.S.I. 2006/302.

(f) Form 22.8-A was inserted by S.S.I. 2005/188 and amended by S.S.I. 2006/302.

(g) Form 22.8-B was inserted by S.S.I. 2005/188 and amended by S.S.I. 2006/302.

**Summary appeal time limit**

12. In Form 19.4 for the words “(*name of judge*) is temporarily absent from duty” substitute “(*here specify reasons*)”.

Edinburgh  
9th November 2007

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

## SCHEDULE

Paragraphs 3(2), 4(2), 5(2),  
6(2), 7(2), 8(2) and 9(2)

### FORM A4.1

Rule A4.1

**Form of application to court to excuse procedural irregularities under section 300A of the  
Criminal Procedure (Scotland) Act 1995**

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE  
CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE SHERIFF OF (*name of sheriffdom*) AT (*place*)]

[*or* UNTO THE JUSTICES OF THE DISTRICT COURT OF (*name of district*) AT (*place*)]

#### APPLICATION

by

HER MAJESTY'S ADVOCATE [*or* THE PROCURATOR FISCAL, (*place*)]

[*or* [A.B.] (*address*) [*or* Prisoner in the Prison of (*place*)]]

HUMBLY SHEWETH:

1. That [A.B.] has been indicted at the instance of Her Majesty's Advocate in the High Court of Justiciary [*or* in the sheriff court] at (*place*) [*or* has been charged on a summary complaint at the instance of the Procurator Fiscal with the offence of (*specify*)].
2. That a procedural irregularity [*or* irregularities] has [*or* have] occurred. (*Here state grounds for application giving details and reasons for the procedural irregularities*).

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [*or* THE COURT]—

- (a) to excuse the procedural irregularity [*or* irregularities] (*here refer to specific irregularities*);
- (b) to do otherwise as to your Lordship[s] [*or* the Court] shall seem proper.

IN RESPECT WHEREOF

(*Signed*)

Prosecutor

[*or* Legal representative of [A.B.]

(*Name, address, email address and  
telephone number*)

(*Place and date*)

FORM 8B.1

Rule 8B.1

**Form of warrant for the apprehension of an accused under section 102A(2) of the Criminal Procedure (Scotland) Act 1995**

*(Place and date)*. The High Court of Justiciary [*or* Sheriff] at *(place)* grants a warrant under section 102A(2) of the Criminal Procedure (Scotland) Act 1995 in the case of Her Majesty's Advocate against [A.B] for the apprehension of [A.B.].

By virtue of section 102A(9) of that Act, this warrant implies warrant to officers of law—

- (a) to search for and apprehend [A.B.];
- (b) to bring [A.B.] before the court;
- (c) in the meantime, to detain [A.B.] in a police station, police cell or other convenient place; and
- (d) so far as necessary for the execution of the warrant, to break open shut and lockfast places.

*(Signed)*

Sheriff [*or*, in the High Court, Clerk of Court]

*(Name, address, email address and telephone number)*

**Note to officers of law: contact the clerk of court on apprehension of [A.B.].**

FORM 16.6-D

Rule 16.6(2A)

**Form of electronic citation of witness to appear in summary proceedings**

IN THE SHERIFF [*or* DISTRICT] COURT

AT (*place*)

CITATION

To: (*name and address of witness*)

Date of citation: (*date of sending citation*)

YOU ARE HEREBY CITED to appear on (*date*) at (*time*) in the Sheriff [*or* District] Court House at (*address*) to give evidence for the prosecution [*or* the accused person *or* the solicitor for the accused] in the complaint by the Procurator Fiscal against (*name of accused person*).

Please return the attached form to the Procurator Fiscal [*or* the accused person or the solicitor for the accused] to the following email address within 14 days after the date of citation stated at the top of this citation: [*insert email address*].

**IF YOU DO NOT ATTEND COURT WITHOUT A LAWFUL EXCUSE THE COURT MAY ORDER THAT YOU BE APPREHENDED AND PUNISHED.**

(*Signed*)

Prosecutor

[*or* Legal representative for accused]

FORM 16A.1-A

Rule 16A.1(1)

**Form of notification of engagement as solicitor in summary proceedings**

NOTIFICATION

of

ENGAGEMENT AS SOLICITOR BY THE ACCUSED

in the case

against

[A.B.] (*address*) [*or* Prisoner in the Prison of (*place*)]

Prosecutor's reference...(*specify, if known*)

My reference...(*specify*)

Date: (*date*)

TAKE NOTICE that I have been engaged by the accused (*name*), (*date of birth*) for the purposes of his [*or her*] defence (*where appropriate, specify part of proceedings for which engaged*).

[The current intention is that the accused will be represented by [*name of counsel, if known*] at the (*specify diet*) on (*date*) at (*place*)].

(*Signed*)

Solicitor

(*Name, address, e-mail address and telephone number*)

FORM 16A.1-B

Rule 16A.1(2)

**Form of notification of dismissal or withdrawal of solicitor for accused in summary proceedings**

NOTIFICATION

of

DISMISSAL OR WITHDRAWAL OF SOLICITOR

in the case

against

[A.B.] (*address*) [*or Prisoner in the Prison of (place)*]

Prosecutor's reference...(*specify, if known*)

My reference...(*specify*)

Date: (*date*)

TAKE NOTICE that with effect from (*date*) I have been dismissed by [*or have withdrawn from acting for*] (*name of accused*) (*date of birth*).

A trial diet [*or specify any hearing(s) fixed*] has [*or have*] been fixed for (*date(s)*).

[*Insert any of the following statements which apply:-*

The accused is charged with an offence to which section 288C of the Criminal Procedure (Scotland) Act 1995 (certain sexual offences) applies.

The proceedings are proceedings to which section 288E of the Criminal Procedure (Scotland) Act 1995 (certain proceedings involving child witnesses under the age of 12) applies.

The accused is prohibited from conducting his defence by virtue of an order under section 288F of the Criminal Procedure (Scotland) Act 1995 (prohibition of personal defence in other cases involving vulnerable witnesses).]

(*Signed*)

Solicitor

(*Name, address, e-mail address and telephone number*)

FORM 17.2

Rule 17.2

**Form of notification of defence under section 149B of the Criminal Procedure (Scotland) Act 1995**

NOTIFICATION

of

DEFENCE UNDER SECTION 149B OF THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1995

in the case

THE PROCURATOR FISCAL, (*place*)

against

[A.B.] (*address*) [*or Prisoner in the Prison of (place)*]

Prosecutor's reference...(*specify, if known*)

Date: (*date*)

TAKE NOTICE that [A.B.] intends to found on the following defence to the complaint:

(*Specify defence*)

(*Signed*)

Legal representative for [A.B.]

(*Name, address, e-mail address and telephone number*)

Rule 27A.1

**Form of appeal against decision of sheriff on application for an order for recovery of documents under section 301A of the Criminal Procedure (Scotland) Act 1995**

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

NOTE OF APPEAL

by

HER MAJESTY'S ADVOCATE [*or* THE PROCURATOR FISCAL (*place*)]

[*or* [A.B.], (*address*) [*or* Prisoner in the Prison of (*place*)]]

HUMBLY SHEWETH:

1. That [A.B.] has been indicted at the instance of Her Majesty's Advocate in the sheriff court at (*place*) [*or* has been charged on a summary complaint at the instance of the Procurator Fiscal, (*place*), with the offence of (*specify*)].
2. That [A.B.] [*or* Her Majesty's Advocate] [*or* the Procurator Fiscal, (*place*),] made an application under section 301A(1) for an order granting commission and diligence for the recovery of documents [*or* for an order for the production of documents]. A copy of that application is attached.
3. That the decision of the sheriff dated (*date*) was as follows:  
(*state decision of sheriff and attach a copy of the order*)
4. That [A.B.] [*or* Her Majesty's Advocate] [*or* the Procurator Fiscal, (*place*),] appeals against the decision of the sheriff on the following grounds:  
(*here specify grounds of appeal*)

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]–

- (a) (*here state order sought*);
- (b) to do otherwise as to your Lordship[s] shall seem proper.

IN RESPECT WHEREOF

(*Signed*)

[A.B.], [*or* Legal representative of  
[A.B.]]

[*or* Prosecutor]

FORM 28.2

Rule 28.2

**Form of application for order requiring accused to participate in identification parade  
under section 267B of the Criminal Procedure (Scotland) Act 1995**

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE  
CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE SHERIFF OF (*name of sheriffdom*) AT (*place*)]

[*or* UNTO THE JUSTICES IN THE DISTRICT COURT OF (*name of district*) AT (*place*)]

APPLICATION

by

HER MAJESTY'S ADVOCATE [*or* THE PROCURATOR FISCAL, (*place*)]

HUMBLY SHEWETH:

1. That [A.B.] has been indicted at the instance of Her Majesty's Advocate in the High Court of Justiciary [*or* in the sheriff court] at (*place*) [*or* has been charged on a summary complaint at the instance of the Procurator Fiscal, (*place*), with the offence of (*specify*)].

2. That the applicant seeks an order requiring [A.B.] to participate in an identity parade [*or specify the other identification procedure*]. (*Here state grounds for application*).

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [*or* THE COURT]—

- (a) to grant an order requiring [A.B.] to participate in an identity parade [*or specify other identification procedure*];
- (b) to do otherwise as to your Lordship[s] [*or* the Court] shall seem proper.

IN RESPECT WHEREOF

(*Signed*)

Prosecutor

(*Name, address, email address and  
telephone number*)

(*Place and date*)

## **EXPLANATORY NOTE**

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

This Act of Adjournal amends the Act of Adjournal (Criminal Procedure Rules) 1996 in consequence of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6).

Paragraph 2 amends rule 2.3A to include reference to summary proceedings.

Paragraph 3 inserts a new chapter A4 and a new rule A4.1 which provides a form of written application for the court to excuse a procedural irregularity. Such an application may also be made orally in court.

Paragraph 4 provides a form of warrant for the apprehension of an accused who has failed to appear in solemn proceedings.

Paragraph 5 amends rule 16.6 to allow for electronic citation of witnesses, providing a form of citation and form of reply to be returned by the witness.

Paragraph 6 inserts a new chapter 16A and a new rule 16A.1 which provides a form of written notification to the court that a solicitor has been engaged by an accused and a separate form for a solicitor to notify the court that he has been dismissed by, or has withdrawn from acting for, the accused. Such notification may also be given orally in court.

Paragraph 7 inserts a new rule 17.2 which provides a form for the notification to the prosecutor of a defence under section 149B and provides that a copy of the form should be served on any co-accused.

Paragraph 8 inserts a new chapter 27A and new rule 27A.1, which provides that an appeal from the decision of a sheriff on a petition for recovery of documents under section 301A of the 1995 Act must be lodged with the Clerk of Justiciary within 2 days of the sheriff's decision. It also provides a form of appeal.

Paragraph 9 inserts a new rule 28.2 which provides a form of written application by the prosecutor for an order requiring the accused to participate in an identification parade. It also provides that there may be a hearing. Such an application may also be made orally in court.

Paragraph 10 inserts a new paragraph into Form 15.1-D (form of petition to High Court of Justiciary for bail pending appeal) requiring the appellant to specify the address that would be his normal place of residence if bail were granted.

Paragraph 11 amends various forms in the appendix to the Rules by extending to commissioner proceedings the prohibition on the accused conducting his own defence in sexual offence proceedings.

Paragraph 12 amends Form 19.4 to reflect that a request for an extension of the time limit for a summary appeal under section 180 of the 1995 Act will be considered on cause shown.



**2007 No. 511**

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