

2014 No. 242

HIGH COURT OF JUSTICIARY

SHERIFF COURT

JUSTICE OF THE PEACE COURT

**Act of Adjournal (Amendment of the Criminal Procedure
(Scotland) Act 1995 and Criminal Procedure Rules 1996)
(Miscellaneous) 2014**

Made - - - - - *9th September 2014*

Laid before the Scottish Parliament *11th September 2014*

Coming into force - - - *10th October 2014*

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 305 of the Criminal Procedure (Scotland) Act 1995(a), section 210 of the Extradition Act 2003(b), and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation, commencement etc.

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Amendment of the Criminal Procedure (Scotland) Act 1995 and Criminal Procedure Rules 1996) (Miscellaneous) 2014.

(2) It comes into force on 10th October 2014.

(3) A certified copy of this Act of Adjournal is to be inserted in the Books of Adjournal.

Amendment of the Criminal Procedure (Scotland) Act 1995: excusal from intermediate diet

2.—(1) The Criminal Procedure (Scotland) Act 1995(c) is amended in accordance with subparagraph (2).

(2) For section 148(5)(b) (intermediate diet)(d) substitute—

“(b) the court considers that, on cause shown, he need not attend.”.

(a) 1995 c.46.

(b) 2003 c. 41.

(c) 1995 c.46.

(d) Section 148 was amended by the Criminal Procedure (Intermediate Diets) (Scotland) Act 1998 (c.10), section 1, the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), section 8(5)(a) and (b), the Vulnerable Witnesses (Scotland) Act 2004 (asp 3) section 2(5), the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), section 18 and the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 90.

Amendment of the Criminal Procedure Rules 1996: European arrest warrant proceedings

3.—(1) The Criminal Procedure Rules 1996(a) are amended in accordance with subparagraph (2).

(2) After Chapter 34 (Extradition)(b) insert—

“CHAPTER 34A

INTERPRETATION AND TRANSLATION IN EUROPEAN ARREST WARRANT PROCEEDINGS

Interpretation and application

34A.1.—(1) In this Chapter—

“the Act of 2003” means the Extradition Act 2003;

“the Directive” means Directive 2010/64/EU of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings(c);

“interpretation assistance” means—

(a) in relation to a person who does not speak or understand English, an oral translation of—

(i) the proceedings into the person’s native language or any other language which the person speaks or understands; and

(ii) any communication by the person into English; or

(b) in relation to a person who has a hearing or speech impediment, such appropriate assistance as the person requires to be able to understand the proceedings and communicate effectively;

“Part 1 proceedings” means court proceedings relating to the execution of a Part 1 warrant;

“Part 1 warrant” is to be construed in accordance with section 2(2) of the Act of 2003.

(2) This Chapter applies to Part 1 proceedings.

Right to interpretation assistance

34A.2.—(1) The court must take all reasonable steps to determine whether the person who is subject to the Part 1 proceedings requires interpretation assistance because the person—

(a) does not speak English;

(b) does not understand English;

(c) has a hearing impediment; or

(d) has a speech impediment.

(2) Where the court determines that the person requires interpretation assistance, it must ensure that arrangements are made for the person to be provided with that assistance—

(a) at every diet in the Part 1 proceedings at which the person is due to appear;

(b) for the purpose of safeguarding the fairness of proceedings in accordance with the Directive.

(a) 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. 2014/162).

(b) Chapter 34 was substituted by S.S.I. 2004/346 and last amended by S.S.I. 2012/125.

(c) OJ L 280, 26.10.2010, p.1.

(3) The court must ensure that interpretation assistance provided under this paragraph is of a quality sufficient to safeguard the fairness of proceedings.

Right to translation of Part 1 warrant

34A.3.—(1) The court must take all reasonable steps to determine whether the person who is subject to the Part 1 proceedings understands the language in which the Part 1 warrant is drawn up or into which it has been translated.

(2) Where the court determines that the person does not understand the language in which the Part 1 warrant is drawn up or into which it has been translated, it must ensure that arrangements have been or are made to provide the person with a written translation of that document.

(3) Despite paragraph (2), the person may be provided with an oral translation or oral summary of the Part 1 warrant, instead of a written translation, unless this would prejudice the fairness of proceedings.

(4) A person entitled under this rule to be provided with a translation of a Part 1 warrant may waive that right.

(5) A waiver under paragraph (4) must be—

- (a) voluntary and unequivocal; and
- (b) informed by legal advice, unless the person otherwise fully understands the consequences of waiving the right.

(6) The court must ensure that any translation provided under this paragraph is of a quality sufficient to safeguard the fairness of proceedings.

Application for review of a determination about rights to interpretation or translation

34A.4.—(1) Paragraph (2) applies where a court has determined—

- (a) under rule 34A.2 that a person does not require any interpretation assistance; or
- (b) under rule 34A.3 that a person does not require a translation of a Part 1 warrant.

(2) The person may, on one occasion only, apply to the court which made the determination for a review of its determination.

(3) If, on reviewing its determination, the court determines that the person requires interpretation assistance or a translation of the Part 1 warrant, it must give such direction as it considers necessary to safeguard the fairness of the proceedings.

(4) Nothing in this rule affects any right of appeal in relation to the determination being reviewed.

Application for a direction relating to interpretation or translation

34A.5.—(1) A person entitled under this Chapter to be provided with interpretation assistance, or a translation of a Part 1 warrant, may apply to the court to give a direction if, as the case may be—

- (a) the person is not provided with interpretation assistance;
- (b) the person considers that the interpretation assistance is of insufficient quality to safeguard the fairness of the proceedings;
- (c) the person is not provided with a written translation, an oral translation or an oral summary of a Part 1 warrant; or
- (d) the person considers that any written translation, oral translation or oral summary provided is of insufficient quality to safeguard the fairness of the proceedings.

(2) On determining an application under paragraph (1), the court must give such direction as it considers necessary to safeguard the fairness of the proceedings.

Applications under rule 34A.4 and 34A.5

34A.6.—(1) An application under rule 34A.4(2) or 34A.5(1)—

- (a) is to be made orally; and
- (b) must be made as soon as reasonably practicable.

(2) Before determining an application made under rule 34A.4(2) or 34A.5(1), the court must give the prosecutor an opportunity to make representations.

Information to be recorded by the clerk of court

34A.7. The clerk of court must make a record of any of the following which apply—

- (a) the fact that interpretation assistance is provided under this Chapter;
- (b) the fact that an oral translation or oral summary of the Part 1 warrant is provided;
- (c) the fact that a waiver is given to the court under rule 34A.3(4).

Provision of interpretation assistance and translation free of charge

34A.8. Any interpretation assistance, translation or oral summary provided to a person under this Chapter must be provided free of charge.”

BRIAN GILL
Lord Justice General
I.P.D.

Edinburgh
9th September 2014

EXPLANATORY NOTE

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

This Act of Adjournal amends the Criminal Procedure (Scotland) Act 1995 and the Criminal Procedure Rules 1996.

Paragraph 2(2) amends section 148(5)(b) of the Criminal Procedure (Scotland) Act 1995 to provide that the accused may be excused attendance at an intermediate diet on cause shown.

Paragraph 3(2) amends the Criminal Procedure Rules 1996 so as to give effect, in part, to Directive 2010/64/EU of the European Parliament and of the Council of 20th October 2010 on the right to interpretation and translation in criminal proceedings. The Act of Adjournal implements the Directive insofar as it relates to proceedings for the execution of a European arrest warrant.

The instrument inserts a new chapter 34A into the 1996 Rules. This requires provision, in certain circumstances, of interpretation and translation assistance for persons who are the subject of proceedings for the execution of a European arrest warrant.

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