

2016 No. 201

HIGH COURT OF JUSTICIARY

**Act of Adjournal (Criminal Procedure Rules 1996 Amendment)
(No. 3) (Instruction of Representation in the High Court) 2016**

<i>Made</i> - - - -	<i>15th June 2016</i>
<i>Laid before the Scottish Parliament</i>	<i>17th June 2016</i>
<i>Coming into force</i> - -	<i>3rd October 2016</i>

The High Court of Justiciary makes this Act of Adjournal under the powers conferred by section 305 of the Criminal Procedure (Scotland) Act 1995(a), and all other powers enabling it to do so.

Citation and commencement, etc.

- 1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 3) (Instruction of Representation in the High Court) 2016.
- (2) It comes into force on 3rd October 2016.
- (3) A certified copy is to be inserted in the Books of Adjournal.

Amendment of the Criminal Procedure Rules 1996

- 2.—(1) The Criminal Procedure Rules 1996(b) are amended in accordance with this paragraph.
- (2) In Chapter 9A (Preliminary Hearings (High Court of Justiciary))(c), after Rule 9A.3 (Notice to appear where preliminary hearing deserted) insert—

“Instruction of representation

- 9A.3A.**—(1) This rule applies where—
- (a) the accused has been cited to answer an indictment at a preliminary hearing in the High Court; and
- (b) a solicitor has given notification under section 72F(1) of the Act of 1995 of having been engaged by the accused.
- (2) Where the accused is charged with murder, before the preliminary hearing the accused’s solicitor must,—
- (a) take reasonable steps to identify a selection of Queen’s Counsel who appear to be available to accept instructions to represent the accused;

(a) 1995 c.46.
(b) The Criminal Procedure Rules 1996 are in Schedule 2 to the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513, last amended by S.S.I. 2016/137).
(c) Chapter 9A was inserted by S.S.I. 2005/44.

- (b) inform the accused of the accused's right to be represented by Queen's Counsel;
 - (c) give the accused a copy of Form 9A.3A-A; and
 - (d) give the accused a summary of the selection referred to in subparagraph (a).
- (3) In any other case, before the preliminary hearing the accused's solicitor must—
- (a) take reasonable steps to identify a selection of counsel who appear to be available to accept instructions to represent the accused;
 - (b) give the accused a copy of Form 9A.3A-B; and
 - (c) give the accused a summary of the selection referred to in subparagraph (a).
- (4) In this rule "Queen's Counsel" means counsel holding the rank of Queen's Counsel or Queen's Counsel, Solicitor Advocate."

(3) In the Appendix—

- (a) after Form 9A.2 (Form of application for dispensing with a preliminary hearing)(a) insert Form 9A.3A-A (Form of information regarding right to representation by Queen's Counsel) and Form 9A.3A-B (Form of information regarding counsel) set out in the Schedule to this Act of Adjournal;
- (b) In Schedule 2 to Form 9A.4 (Form of written record of state of preparation)(b), after paragraph (2) (Section 196) insert a new paragraph 2A as follows—

"Information for accused

(2A) Has the accused been given the information and form described in rule 9A.3A(2) or (3)? Yes/No."

CJM SUTHERLAND
Lord Justice General
I.P.D.

Edinburgh
15th June 2016

(a) Form 9A.2 was inserted by S.S.I. 2005/44
(b) Form 9A.4 was inserted by S.S.I. 2005/44, substituted by S.S.I. 2013/72 and last amended by S.S.I. 2013/198.

SCHEDULE

Paragraph 2(3)(a)

Form 9A.3A-A

Rule 9A.3A(2)(c)

Form of information regarding right to representation by Queen's Counsel

An accused who is charged with murder is entitled to be represented by a Queen's Counsel (QC). QCs are persons who have been recognised by the court as having a distinction in advocacy to a standard that marks them out as leaders of their profession. A QC may be a member of the Faculty of Advocates (known as an advocate) or a solicitor advocate (a solicitor with extended rights of audience in the High Court). An accused is to be informed which QCs are available to conduct the defence.

An accused may decide that the defence will not be conducted by a QC but rather by an advocate without that status or a solicitor advocate without that status.

Advocates are specialist pleaders in court. In addition to their legal training, they have undergone specialist training in advocacy skills over several months prior to becoming advocates. Solicitor advocates have also had specialist training in such skills prior to being granted extended rights of audience. This training is of shorter duration to that given to advocates. The skills and experience of advocates and solicitor advocates are variable. The status of advocate does not mean that he or she will be more highly skilled than a solicitor advocate.

Form 9A.3A-B

Rule 9A.3A(3)(b)

Form of information regarding counsel

An accused charged on indictment in the High Court must be represented either by an advocate or a solicitor advocate (a solicitor with extended rights of audience in the High Court). Advocates are specialist pleaders in court. In addition to their legal training, they have undergone specialist training in advocacy skills over several months prior to becoming advocates. Solicitor advocates have also had specialist training in such skills prior to being granted extended rights of audience. This training is of shorter duration than that given to advocates. The skills and experience of both advocates and solicitor advocates are variable. The status of advocate does not mean that he or she will be more highly skilled than a solicitor advocate.

EXPLANATORY NOTE

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

This Act of Adjournal sets out the steps which solicitors are to take in order that they can confirm to the court that an accused has been informed of his or her options regarding representation in the High Court of Justiciary.

Paragraph 2(2) inserts a new rule 9A.3A into the Criminal Procedure Rules 1996. Rule 9A.3A(2) provides that persons prosecuted for murder are to be informed by their solicitor that they are entitled to be represented by a Queen's Counsel and to be informed of a selection of Queen's Counsel who are available to represent them. Rule 9A.3A(2) applies where an accused is charged on indictment, other than for murder. It sets out the steps to be taken by an accused person's solicitor to identify a selection of advocates or solicitor advocates who are available to represent the accused.

Paragraph 2(3) inserts new forms which set out the information to be provided to the accused in each of these situations and inserts a new paragraph 2A into Form 9.2A (Form of written record of state of preparation) to ensure the court is informed that the required information has been provided to the accused.

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