

2017 No. 144

HIGH COURT OF JUSTICIARY

SHERIFF COURT

**Act of Adjournal (Criminal Procedure Rules 1996 Amendment)
(Miscellaneous) 2017**

Made - - - - - *8th May 2017*

Laid before the Scottish Parliament *10th May 2017*

Coming into force in accordance with paragraph 1

The High Court of Justiciary makes this Act of Adjournal under the powers conferred by sections 71C(4) and 305 of the Criminal Procedure (Scotland) Act 1995(a) and section 36(3)(a) of the Criminal Justice (Scotland) Act 2016(b) 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) (Miscellaneous) 2017.

(2) Subject to paragraph (3), this Act of Adjournal comes into force on 29th May 2017.

(3) Paragraph 2(4) and (8)(h) come into force on 28th August 2017.

(4) 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(c) are amended in accordance with this paragraph.

(2) In Chapter 5 (judicial examination)—

(a) in rule 5.1 (procedure in examination) for “section 35 to 39” substitute “sections 35 and 39”; and

(b) omit rules 5.3 (verbatim record) to 5.10 (alteration of time limits by High Court).

(3) In Chapter 9 (first diets (sheriff court))(d)—

(a) after rule 9.3 (orders for further diets under section 71 of the Act of 1995) insert—

(a) 1995 c.46. Section 71C was inserted by section 80(3) of the Criminal Justice (Scotland) Act 2016 (2016 asp 1) (“the 2016 Act”). Section 305 was amended by the 2016 Act, section 111(1) and S.S.I. 2015/338.

(b) The 2016 Act.

(c) The Criminal Procedure Rules 1996 are in schedule 2 of the Act of Adjournal (Criminal Procedure) 1996 (S.I. 1996/513, last amended by S.S.I. 2016/300).

(d) Chapter 9 was substituted by S.S.I. 2005/44.

“Written record of state of preparation

9.3A.—(1) A written record referred to in section 71C of the Act of 1995 (written record of state of preparation: sheriff court)(a) shall be in Form 9.3A.

(2) A written record under paragraph (1) must be lodged no later than two court days before the first diet and may be lodged by electronic means.”;

(b) in rule 9.4 (procedure at first diet)—

(i) in paragraph (2)(b) omit “, and”; and

(ii) at the end of paragraph (2)(c) insert—

“; and

(d) the date appointed for the trial diet.”; and

(c) in rule 9.7(1) (procedure on lodging note of appeal) after “he shall” insert “, in those cases where leave to appeal is required.”.

(4) In Chapter 12 (adjournment and alteration of diets in solemn proceedings)(b), in rule 12.7 (floating diets in the High Court of Justiciary)—

(a) in the cross-heading after “**Justiciary**” insert “**and continued diets in the sheriff court**”;

(b) after paragraph (1) insert—

“(1A) A minute referred to in section 83B of the Act of 1995 (continuation of trial diet in the sheriff court)(c) shall be in Form 12.7.”; and

(c) in paragraph (2) after “floating diet” insert “in the High Court or continued diet in the sheriff court”.

(5) In Chapter 15 (appeals from solemn proceedings), in rule 15.8(1) (clerk to give notice of date of hearing) for “or of an application under section 111(2) of the Act of 1995 (application to extend time)” substitute “, or fixes the date for a hearing in chambers of an application under section 111(2) of the Act of 1995 (application to extend time) and makes a direction under section 111(4) of the Act of 1995 (parties to be present)(d)”.

(6) In Chapter 19B (Scottish Criminal Cases Review Commission)(e), in rule 19B.1 (references) omit paragraph (3)(a).

(7) In Chapter 20 (sentencing), in rule 20.23(2) (supervision default orders)(f) for “256AC(1)(a)” substitute “256AC(4)(c)”.

(8) In the Appendix—

(a) in Form 5.2 (form of record of proceedings at judicial examination)—

(i) omit from “*The accused intimated he did not desire to emit a declaration” to “was terminated at (*time*).”; and

(ii) omit “*Delete whichever is not appropriate”;

(b) omit Forms 5.6-A to 5.8 (judicial examination);

(c) in Forms 8.2-A, 8.2-B and 8.2-C (forms of citation and notice to appear)(g), before “**IF YOU DO NOT ATTEND THE COURT A WARRANT MAY BE ISSUED FOR YOUR ARREST**” insert “**IF YOU DO NOT ATTEND THE COURT THE FIRST DIET MAY PROCEED IN YOUR ABSENCE.**”;

(a) Section 71C was inserted by section 80(3) of the Criminal Justice (Scotland) Act 2016 (2016 asp 1).

(b) Chapter 12 was substituted by S.S.I. 2005/44.

(c) Section 83B was inserted by section 81(6) of the Criminal Justice (Scotland) Act 2016 (2016 asp 1).

(d) Section 111(4) was inserted by section 90(6) of the Criminal Justice (Scotland) Act 2016 (2016 asp 1).

(e) Chapter 19B was inserted by S.S.I. 2003/468 and substituted by S.S.I. 2010/418.

(f) Rule 20.23(2) was inserted by S.S.I. 2016/300.

(g) Forms 8.2-A and 8.2-B were substituted by S.S.I. 2005/44. Form 8.2-C was substituted by S.S.I. 2005/188.

- (d) in Forms 8.2-A, 8.2-B, 8.2-C, 8.2-G and 8.2-H (forms of citation and notice to appear)(a), omit “**and on (date) at (time) for a trial diet**”;
- (e) in Form 9.1 (form of minute of notice under section 71(2) of the Criminal Procedure (Scotland) Act 1995)(b), in paragraph 1—
 - (i) omit “for trial”; and
 - (ii) where it first occurs, omit “on (date)”;
- (f) after Form 9.1 insert Form 9.3A (joint written record of state of preparation) in the schedule of this Act of Adjournal;
- (g) in Forms 9.6 and 9A.7 (forms of note of appeal)(c), for paragraph 5 substitute—

“[5. That the court granted leave to appeal to the High Court of Justiciary against that decision.] *(delete if not applicable)*”;
- (h) in the heading of Form 12.7 (form of minute of continuation of a floating trial diet in the High Court of Justiciary)(d) after “*Justiciary*” insert “*or a continued diet in the sheriff court*”;
- (i) in Form 15.2-C (form of application for extension of time under section 111(2) of the Criminal Procedure (Scotland) Act 1995)(e) after “*as the case may be*” insert “**OR fully state the reasons for the expected failure to lodge timeously the intimation of intention to appeal or note of appeal as the case may be**”; and
- (j) in Form 20.10A (form of non-harassment order made under section 234A of the Criminal Procedure (Scotland) Act 1995)(f)—
 - (i) for “OFFENDER” substitute “PERSON AGAINST WHOM THE ORDER IS SOUGHT”;
 - (ii) after “THE COURT,” insert “[”;
 - (iii) for “offender” where it occurs substitute “person against whom the order is sought”; and
 - (iv) after “person;” insert “**OR** having acquitted the person against whom the order is sought of such an offence by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995; **OR** having found the person against whom the order is sought to be unfit for trial in respect of such an offence under section 53F of the Criminal Procedure (Scotland) Act 1995 and having determined that the person has done the act or made the omission constituting the offence;]”.

CJM SUTHERLAND
Lord Justice General
I.P.D.

Edinburgh
8th May 2017

(a) Form 8.2-G was amended by S.S.I. 2011/194. Form 8.2-H was substituted by S.S.I. 2005/44 and amended by S.S.I. 2011/194.
 (b) Form 9.1 was substituted by S.S.I. 2005/44.
 (c) Form 9.6 was substituted by S.S.I. 2005/44. Form 9A.7 was inserted by S.S.I. 2005/44.
 (d) Form 12.7 was substituted by S.S.I. 2005/44.
 (e) Form 15.2-C was amended by S.S.I. 2010/418.
 (f) Form 20.10A was substituted by S.S.I. 2011/290.

SCHEDULE

Paragraph 2(8)(f)

FORM 9.3A

Rule 9.3A

JOINT WRITTEN RECORD OF STATE OF PREPARATION

in the case of

HER MAJESTY’S ADVOCATE

against

[A.B.]

Date of first diet:

PF Reference number:

Police Reference number:

Part 1 (Crown)

Plea

1. Has a plea of guilty been accepted?
If yes, the following questions are not applicable.

Yes/No

Communication with the defence

2. When and by what means did the Crown and defence communicate prior to the first diet?

Preliminary issues

3. Has notice been given by the Crown of a preliminary issue?
If yes, attach a copy of each notice.

Yes/No

Objections to admissibility of evidence

4. Do you wish to raise any objection to the admissibility of any evidence despite not having given notice of a preliminary issue?

Yes/No

If yes, specify each objection and provide the reasons for not giving notice:-

<p>Other applications/notices</p> <p>5. Have any of the following been lodged?</p> <ul style="list-style-type: none"> • A child witness notice; • A vulnerable witness application; • An application to admit evidence relating to the character and conduct of complainer; • An application for an order prohibiting the accused from conducting his defence in person; • An application for a witness anonymity order; <p>If yes, attach a copy of each application or notice.</p>	<p>Yes/No</p>
<p>Other matters</p> <p>6. Are there any other matters which might be disposed of with advantage before the trial (e.g. compatibility minutes, section 67 notices or applications for recovery of document)?</p> <p>If yes, specify each matter.</p>	<p>Yes/No</p>
<p>Agreements and admissions of evidence</p> <p>7. Have any facts or documents been the subject of a minute of admission, a minute of agreement or a draft minute of agreement?</p> <p>If yes, attach a copy of each minute or draft joint minute.</p> <p>If no, specify the reason.</p>	<p>Yes/No</p>
<p>Duty to seek agreement of evidence</p> <p>8. What steps have been taken to seek agreement of evidence?</p> <p>If “none”, specify the reason.</p>	
<p>Uncontroversial evidence</p> <p>9. Has either party served a statement of uncontroversial evidence?</p> <p>If yes,</p> <ul style="list-style-type: none"> (i) attach a copy of each statement; (ii) specify any matters which are deemed to have been conclusively proved; (iii) attach a copy of any notice of challenge; and (iv) attach a copy of any application for direction to disregard. <p>If no, specify reason.</p>	<p>Yes/No</p>

<p>Witnesses</p> <p>10. Specify:-</p> <ul style="list-style-type: none"> • by number which witnesses are required; • any dates on which any of the required witnesses are not available and state the reason (if known). <p><i>[Indicate which, if any, of these witnesses is a child witness: (“CW”) or vulnerable witness (“VW”).]</i></p>	
<p>Preparation for trial</p> <p>11. Are you ready to proceed to trial?</p> <p>If no, specify the reason and the date by which you anticipate you will be ready.</p> <p>State any response to the defence position in Part II, question 14.</p>	<p>Yes/No</p>
<p>Estimated length of trial</p> <p>12. How long do you estimate that the trial will last?</p>	
<p>Disclosure</p> <p>13. Has the Crown complied with:</p> <ul style="list-style-type: none"> • the provisions of the Code of Practice: Disclosure of Evidence in Criminal Proceedings? • its obligation to review all relevant information in the light of the defence statement? <p>If no, specify the reason.</p>	<p>Yes/No</p>
<p>Equipment</p> <p>14(a) Are any of the following required at the trial?</p> <ul style="list-style-type: none"> • Equipment for display of a DVD; • Equipment for display of a video tape; • Equipment for display of other moveable digital media requiring a laptop (party is to provide its own laptop); • Equipment for playback of an audio tape; • Equipment for playback of an audio CD; • A document camera; 	<p>Yes/No</p>

<ul style="list-style-type: none"> • Screens; • Equipment for giving evidence by live television link; • Other equipment (<i>specify</i>). <p>14(b) Have you considered the nature of any digital evidence and its compatibility with the equipment available in court?</p>	Yes/No
<p>Interpreters</p> <p>15. Will an interpreter be required for the trial?</p> <p>If yes, please provide details:-</p> <p>Name of Responsible Person</p> <p>Procurator Fiscal Depute</p> <p>For the Crown</p>	Yes/No

<p>Part 2 (Defence)</p> <p>Plea</p> <p>1. Has the Crown accepted a plea of guilty?</p> <p>If yes, the following questions are not applicable.</p>	<p>Yes/No</p>
<p>Section 196 of the Criminal Procedure (Scotland) Act 1995</p> <p>2. Is the accused aware of the potential discount of sentence in the event of a plea of guilty?</p>	<p>Yes/No</p>
<p>Preliminary Issues</p> <p>3 Has notice been given of a preliminary plea?</p> <p>If yes, attach a copy of each notice.</p>	<p>Yes/No</p>
<p>Communication with the Crown</p> <p>4. When and by what means did the Crown and defence communicate prior to the first diet?</p>	
<p>Preliminary Issues</p> <p>5. Has notice been given on behalf of the accused of a preliminary issue?</p> <p>If yes, attach a copy of each notice.</p>	<p>Yes/No</p>
<p>Objections to admissibility of evidence</p> <p>6. Do you wish to raise any objection to the admissibility of any evidence despite not having given notice?</p> <p>If yes, specify each objection and prove the reason for not giving notice.</p>	<p>Yes/No</p>
<p>Other applications/notices</p> <p>7. Has any of the following been lodged with the court on behalf of the accused?</p> <ul style="list-style-type: none"> • A child witness notice; • A vulnerable witness application; • An application to admit evidence relating to the character and conduct of complainer; 	<p>Yes/No</p>

<ul style="list-style-type: none"> • An application for an order prohibiting the accused from conducting his defence in person at trial; • An application for a witness anonymity order. <p>If yes, attach a copy of each application or notice.</p>	
<p>Defence</p> <p>8. Have any of the following been lodged?</p> <ul style="list-style-type: none"> • A plea of special defence or notice of intention to incriminate a co-accused; • Notice of witnesses or productions; • Defence statement. <p>If yes, attach a copy of each plea and notice.</p> <p>If no defence statement has been lodged, explain why.</p>	<p>Yes/No</p>
<p>Other matters</p> <p>9(a) Are there any other matters which might be disposed of with advantage before the trial (eg compatibility minutes, section 67 notices or applications for recovery of documents)?</p> <p>If yes, specify each matter.</p> <p>9(b) Do any special arrangements need to be made for the accused (for example, hearing loop, regular breaks, an appropriate adult)?</p>	<p>Yes/No</p> <p>Yes/No</p>
<p>Agreements and admissions of evidence</p> <p>10. Have any facts and documents been the subject of a minute of admission, minute of agreement or a draft minute of agreement?</p> <p>If yes, attach a copy of each minute or draft minute.</p> <p>If no, specify the reason.</p>	<p>Yes/No</p>
<p>Duty to seek agreement of evidence</p> <p>11. Specify any steps which have been taken to seek agreement of evidence.</p> <p>If “none”, specify the reason.</p>	

<p>Uncontroversial evidence</p> <p>12. Has either party served a statement of uncontroversial evidence?</p> <p>If yes,</p> <ul style="list-style-type: none"> • Attach a copy of each statement; • Specify any matters which are deemed to have been conclusively proved; • Attach a copy of any notice of challenge; and • Attach a copy of any application for a direction to disregard. <p>If no, specify the reason.</p>	<p>Yes/No</p>
<p>Witnesses</p> <p>13. Specify:-</p> <ul style="list-style-type: none"> • by number which witnesses are required; • any dates on which any of the required witnesses are not available and state the reason (if known). <p><i>[Indicate which, if any, of these witnesses is a child witness (“CW”) or vulnerable witness (“VW”).]</i></p>	
<p>Preparation for trial</p> <p>14. Are you ready to proceed to trial?</p> <p>If no, specify the reason and the date by which you anticipate you will be ready.</p> <p>Specify:-</p> <ul style="list-style-type: none"> • The date on which agents were instructed to act on behalf of the accused; • If the case is legally aided, the date on which legal aid was granted; • Under reference to the witnesses and productions on the lists attached to the indictment the dates on which disclosed material was downloaded or collected; • A brief description of the steps taken by way of preparation including, where relevant the taking of precognitions, the investigation of the defence and the instruction of expert opinion or reports. Give details of the dates on which these steps were taken. 	<p>Yes/No</p>

EXPLANATORY NOTE

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

This Act of Adjournal amends the Criminal Procedure Rules 1996 (“the 1996 Rules”) to make changes further to the commencement of Parts 3 and 5 of the Criminal Justice (Scotland) Act 2016 (“the 2016 Act”).

Paragraph 2(2) removes references to judicial examination from the 1996 Rules as this procedure is abolished by the 2016 Act.

Paragraph 2(3)(a) provides for the lodging of a written record of the state of preparation by both the Crown and defence in sheriff court solemn cases. This is similar to existing practice in High Court cases.

Paragraph 2(3)(b) makes textual changes to rule 9.4 to reflect the fact the trial diet will now be appointed at the first diet.

Paragraph 2(4) amends rule 12.7 to reflect a change to the procedure for continuing a sheriff and jury trial from one day to the next up to a maximum of four days and makes provision for the relevant form to be used for this purpose.

Paragraph 2(5) amends rule 15.8 to reflect the fact that applications to extend certain time limits for appeals will be heard in chambers without the applicant being present unless the court directs otherwise.

Paragraph 2(6) amends rule 19B.1 to reflect the fact that the High Court no longer has power to reject a reference from the Scottish Criminal Cases Review Commission on the basis that it is not in the interests of justice to hear the appeal.

Paragraph 2(7) corrects a cross-referencing error in rule 20.23(2).

Paragraph 2(8)(a) to (i) amends various forms in the Appendix to the 1996 Rules to reflect the foregoing rule changes.

Paragraph 2(8)(j) amends Form 20.10A (form of non-harassment order) to reflect the fact that such an order can now be made even if an accused person is acquitted by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) or is found to be unfit for trial under section 53F of the 1995 Act.

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