
SCOTTISH STATUTORY INSTRUMENTS

2020 No. 27

**HIGH COURT OF JUSTICIARY
SHERIFF APPEAL COURT
SHERIFF COURT
JUSTICE OF THE PEACE COURT**

Act of Adjournal (Criminal Procedure Rules
1996 Amendment) (Miscellaneous) 2020

Made - - - - 12th February 2020
*Laid before the Scottish
Parliament* - - - - 14th February 2020
Coming into force - - 2nd March 2020

The High Court of Justiciary makes this Act of Adjournal under the powers conferred by section 305 of the Criminal Procedure (Scotland) Act 1995(1) 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) 2020.

(2) It comes into force on 2nd March 2020.

(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(2) are amended in accordance with this paragraph.

(2) In Chapter 22 (evidence of vulnerable witnesses)(3)—

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- (1) 1995 c.46. Section 305 was amended by section 111(1) of the Criminal Justice (Scotland) Act 2016 ([asp 1](#)) and by [S.S.I. 2015/338](#), and was extended by section 386(3)(a) of the Proceeds of Crime Act 2002 ([c.29](#)), section 36A(4) of the Serious Crime Act 2007 ([c.27](#)), and section 32(5) of the Psychoactive Substances Act 2016 ([c.2](#)).
- (2) The Criminal Procedure Rules 1996 are in schedule 2 of the Act of Adjournal (Criminal Procedure Rules) 1996 ([S.I. 1996/513](#)), last amended by [S.S.I. 2019/330](#).
- (3) Chapter 22 was substituted by [S.S.I. 2005/188](#) and last amended by [S.S.I. 2015/443](#).

- (a) in rule 22.4 (review of arrangements for vulnerable witnesses)(4), in paragraph (2) omit “and served on every other party by the minuter”;
- (b) for rule 22.5 (procedure for review) substitute—

“Procedure for review

22.5. On receipt of a minute under rule 22.4(1)(b) (minute for review of arrangements for vulnerable witnesses) or on a review on the court’s own motion, the court, after giving the parties an opportunity to be heard by making written submissions within such period as specified by the court, may—

- (a) consider and determine the review without a hearing; or
- (b) make an order, endorsed on the minute or recorded in the minute of proceedings, fixing a diet for a hearing of the application and for intimation by the clerk of court of the date of the diet to all parties.”;
- (c) in rule 22.6 (intimation of the order)—
 - (i) omit “at a hearing fixed”;
 - (ii) for “the hearing” substitute “a hearing”;
- (d) omit rule 22.10 (evidence in chief in form of prior statement).
- (3) In Chapter 56 (reporting restrictions)(5)—
 - (a) in rule 56.2 (interim orders: notification to interested persons)—
 - (i) for the heading substitute “**Interim orders**”;
 - (ii) in paragraph (1) for “may” substitute “must first”;
 - (iii) in paragraph (2) omit “Where the court makes an interim order,”;
 - (b) in rule 56.3 (interim orders: representations)(6)—
 - (i) for the heading substitute “**Representations**”;
 - (ii) omit paragraph (1).
- (4) In the appendix—
 - (a) in Form 22.4 (form of application for review of arrangements for taking evidence under section 271D of the Criminal Procedure (Scotland) Act 1995)(7)—
 - (i) omit paragraph 7;
 - (ii) for paragraph (a) substitute—
 - “(a) to order intimation of this application to all parties and to invite parties to make submissions in writing within such period as to the court seems fit, and thereafter, either to determine this application without a hearing or, as the case may be, to fix a diet for hearing this application and to order intimation of the diet to all parties;”;
 - (iii) in paragraph (b) omit “, after hearing all the parties,”;
 - (b) for Form 40.2 (form of minute of notice of intention to raise a compatibility issue or devolution issue)(8) and Form 40.3 (form of minute of notice of intention to raise a compatibility issue or devolution issue) substitute Form 40.2 and Form 40.3 set out in the schedule of this Act of Adjournal.

(4) Rules 22.4 to 22.6 were substituted by [S.S.I. 2005/188](#).

(5) Chapter 56 was inserted by [S.S.I. 2011/194](#) and substituted by [S.S.I. 2015/84](#).

(6) Rule 56.3 was amended by [S.S.I. 2015/245](#).

(7) Form 22.4 was inserted by [S.S.I. 2005/188](#) and last amended by [S.S.I. 2015/443](#).

(8) Forms 40.2 and 40.3 were inserted by [S.S.I. 2013/72](#). They replaced Forms 40.2A and 40.3A (inserted by [S.S.I. 1999/1346](#)).

Edinburgh
12th February 2020

CJM SUTHERLAND
Lord Justice General
I.P.D.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Paragraph 2(4)(b)

Rule 40.2(2)

FORM 40.2

Form of minute of notice of intention to raise a compatibility issue or devolution issue – Solemn Proceedings

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*)]

MINUTE

by

[A.B.] (*address*)

[or Prisoner in the Prison of (*place*)]

HUMBLY SHEWETH, that:

1. [*Name of the accused*], the minuter, has been indicted at the instance of Her Majesty's Advocate with a preliminary hearing in the High Court of Justiciary (sitting at (*place*) on (*date*)) [or a first diet in the Sheriff Court at (*place*) on (*date*)].
2. The minuter intends to raise a compatibility issue within the meaning of section 288ZA(2) of the Act of 1995 [or a devolution issue within the meaning of schedule 6 of the Scotland Act 1998] on the following grounds: (*here set out the following*):
 - (a) *a brief description of the facts and circumstances on the basis of which it is alleged that the issue arises;*
 - (b) *a concise summary of the submissions to be developed, including a numbered list of points which the party wishes to make;*
 - (c) *where a party intends to refer to any document in support of a point, identification of the relevant passage in the document;*
 - (d) *a brief description of the relevant authorities upon which the party raising the issue intends to rely and the legal propositions which they demonstrate (more than one authority should not normally be cited in support of a proposition, and where cited, identification of the relevant passages in the authority);*

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- (e) where the issue arises in relation to an Act of the Scottish Parliament, a provision within such an Act or in subordinate legislation, a reference to, and a description of, the provision which the party alleges is incompatible;
 - (f) specification of the remedy sought).
3. A copy of this minute has been duly intimated to Her Majesty's Advocate [and to *(name(s) of co-accused)*] [and, in relation to a devolution issue, to the Advocate General for Scotland] conform to execution[s] attached to this minute.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:

to determine the compatibility issue [*or devolution issue*] at the preliminary hearing.

IN RESPECT WHEREOF

[Solicitor for minuter]

(Address and telephone number of solicitor)

(Place and date)

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Rule 40.3(2)

FORM 40.3

Form of minute of notice of intention to raise a compatibility issue or devolution issue – Summary Proceedings

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

[or UNTO THE JUSTICES in the JUSTICE OF THE PEACE COURT OF *(name of district)*]

AT *(place)*

MINUTE

by

[C.S.] *(address)*

[or Prisoner in the Prison of *(place)*]

HUMBLY SHEWETH, that:

1. [*Name of the accused*], the minuter, has been charged at the instance of [P.F.] procurator fiscal at *(place)* with the crime [or offence] of *(specify)* and an intermediate diet [or trial diet] is fixed for *(specify date)*.
2. The minuter intends to raise a compatibility issue within the meaning of section 288ZA(2) of the Act of 1995 [or a devolution issue within the meaning of schedule 6 of the Scotland Act 1998] on the following grounds: *(here set out the following:*
 - (a) a brief description of the facts and circumstances on the basis of which it is alleged that the issue arises;*
 - (b) a concise summary of the submissions to be developed, including a numbered list of points which the party wishes to make;*
 - (c) where a party intends to refer to any document in support of a point, identification of the relevant passage in the document;*
 - (d) a brief description of the relevant authorities upon which the party raising the issue intends to rely and the legal propositions which they demonstrate (more than one authority should not normally be cited in support of a proposition, and where cited, identification of the relevant passages in the authority);*

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- (e) where the issue arises in relation to an Act of the Scottish Parliament, a provision within such an Act or in subordinate legislation, a reference to, and a description of, the provision which the party alleges is incompatible;
 - (f) specification of the remedy sought).
3. A copy of this minute has been duly intimated to said [P.F.], procurator fiscal [and to (name(s) of co-accused)] [and, in relation to a devolution issue, to the Advocate General for Scotland] conform to execution[s] attached to this minute.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:

to determine the compatibility issue [or devolution issue] at the intermediate diet [or before the trial diet has commenced].

IN RESPECT WHEREOF

[Solicitor for minuter]

(Address and telephone number of solicitor)

(Place and date)

EXPLANATORY NOTE

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

This Act of Adjournal makes a number of amendments to the Criminal Procedure Rules 1996.

Chapter 22 is amended so that applications for review of arrangements for vulnerable witnesses may be determined with, or without, a hearing. Form 22.4 is amended to reflect that change. In addition, rule 22.10 is omitted with the result that it will no longer be necessary for a witness who is to give evidence in chief in the form of a prior statement to be called before the evidence is given.

The amendments to Chapter 56 have the effect of requiring that where the judge or court, as the case may be, is considering making a reporting restriction order then an interim order must always be made first.

Forms 40.2 and 40.3 are substituted so that the minuter is required to provide detailed information in a structured format when seeking to raise a compatibility issue or a devolution issue.