
STATUTORY INSTRUMENTS

1988 No. 110

Act of Adjournal (Consolidation) 1988

CHAPTER 2

SUMMARY PROCEDURE

PART I

PROCEDURE PRIOR TO TRIAL

Citation of Defence Witnesses for Precognition

Application for warrant to cite

93.—(1) An application to the sheriff made by an accused under section 9(1) of the 1980 Act for warrant to cite any person to appear before the sheriff in chambers for precognition on oath by the accused or his solicitor shall be made—

- (a) to the sheriff in whose sheriffdom the proceedings in respect of which the accused seeks that person's precognition have been commenced;
 - (b) by way of petition in the form set out in Form 51 of Schedule 1.
- (2) On an application being made to the sheriff under paragraph (1), he shall—
- (a) order intimation of the application to be made to the procurator fiscal;
 - (b) fix a diet for a hearing of the application.

Order for taking precognition

94. If, after the hearing, the sheriff is satisfied that it is reasonable to require such precognition on oath in the circumstances, he shall—

- (a) order the precognition to be taken;
- (b) fix a diet for it to be taken;
- (c) grant warrant to cite the person from whom it is to be taken.

Citation

95.—(1) Citation of that person to attend the diet fixed for taking his precognition on oath shall be made by way of personal service on him by an officer of law acting on the instructions of the accused or his solicitor, and relative execution of service shall be produced at the diet fixed under rule 94.

(2) If that person fails to appear at that diet and the sheriff issues a warrant for his apprehension under section 9(2) of the 1980 Act, execution of that warrant—

- (a) shall be executed by an officer of law instructed by the accused or his solicitor;
- (b) may proceed on a copy of the petition and warrant duly certified by the sheriff clerk.

(3) The sheriff clerk shall immediately give notice of that person's failure to appear at the diet to the procurator fiscal.

Record of proceedings

96.—(1) Where that person appears before the sheriff to have his precognition taken on oath, the proceedings shall be recorded in shorthand by an official shorthand writer instructed by the accused or his solicitor.

(2) The shorthand writer shall extend his shorthand notes recording the proceedings, sign the transcript, and lodge it with the sheriff clerk.

(3) On the transcript being lodged, the sheriff clerk shall—

- (a) send a copy to the solicitor for the accused, or if he is not represented, to the accused;
- (b) fix a diet for the person whose precognition has been taken on oath to attend before the sheriff to sign the precognition.

Fees of shorthand writers

97.—(1) The solicitor for the accused, or if he is unrepresented the accused, shall be liable for payment of—

- (a) the fees of the shorthand writer;
- (b) the expenses of the person precognosced on oath,

and shall tender any such expenses in advance if required by that person to do so.

(2) If the accused is unrepresented, the sheriff may at the hearing of the application, or at any time before the precognition is taken, order the accused to consign in court such sum as he may be required to pay under paragraph (1) in respect of fees and expenses on or before such date as the sheriff may specify in the order.

(3) If the sheriff orders the accused to consign a sum in court under paragraph (2) and that sum is not consigned by the date specified in the order, the application shall be treated as abandoned.