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STATUTORY INSTRUMENTS

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**1999 No. 1282 (S.99)**

**HIGH COURT OF JUSTICIARY, SCOTLAND  
SHERIFF COURT, SCOTLAND  
SUMMARY JURISDICTION, SCOTLAND**

**Act of Adjournal (Criminal Procedure  
Rules Amendment No. 2) 1999**

*Made* - - - - - *28th April 1999*

*Coming into force* - - - - - *1st May 1999*

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<sup>(1)</sup> and of all other powers enabling them in that behalf, do hereby enact and declare:

**Citation and commencement**

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment No. 2) 1999 and shall come into force on 1st May 1999.

(2) This Act of Adjournal shall be inserted in the Books of Adjournal.

**Amendment of the Criminal Procedure Rules 1996**

2.—(1) Schedule 2 to the Act of Adjournal (Criminal Procedure Rules) 1996 (criminal procedure) <sup>(2)</sup> shall be amended in accordance with this paragraph.

(2) In rule 31.1(1) (which defines certain expressions for the purposes of Chapter 31), in the definition of “question”, for “177” substitute “234”.

(3) In rule 31.5 (preparation of case for reference)—

(a) in paragraph (2)—

(i) in sub-paragraph (a), at the beginning insert “except in so far as the court may otherwise direct,”; and

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(1) 1995 c. 46.  
(2) S.I.1996/513.

(ii) in sub-paragraph (b), for the words from “be”, where it first occurs, to the end substitute “if necessary, be further adjusted to take account of any adjustments required by the court”; and

(b) after paragraph (2) there shall be added–

“(3) In preparing a reference, the parties shall have regard to the guidance set out in the annex to these Rules.”.

(4) In the appendix, for Form 31.5 there shall be substituted the form set out in Schedule 1 to this Act of Adjournal.

(5) After the appendix there shall be added the Annex set out in Schedule 2 to this Act of Adjournal.

### **Saving**

**3.** Nothing in this Act of Adjournal affects any reference made before the coming into force of this Act of Adjournal.

Edinburgh,  
28 April 1999.

*Rodger of Earlsferry*  
Lord Justice General I.P.D.

**SCHEDULE 1**

Paragraph 2(4).

**REFERENCES TO THE EUROPEAN COURT: FORM**

**“FORM 31.5**

**Form of reference to the European Court**

THE HIGH COURT OF JUSTICIARY

[*or* SHERIFF [*or* DISTRICT] COURT] IN SCOTLAND

HER MAJESTY'S ADVOCATE [*or* THE PROCURATOR FISCAL]

against

[C.D.] (*address*)

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

*[Here set out a clear and succinct statement of the case giving rise to the request for the ruling of the European Court in order to enable the European Court to consider and understand the issues of Community law raised and to enable governments of Member States and other interested parties to submit observations. The statement of the case should include:*

- (a) *particulars of the parties;*
- (b) *the history of the dispute between the parties;*
- (c) *the history of the proceedings;*
- (d) *the relevant facts as agreed by the parties or found by the court or, failing such agreement or finding, the contentions of the parties on such facts;*
- (e) *the nature of the issues of law and fact between the parties;*
- (f) *the Scots law, so far as is relevant;*
- (g) *the Treaty provisions or other acts, instruments or rules of Community law concerned; and*
- (h) *an explanation of why the reference is being made.]*

The preliminary ruling of the Court of Justice of the European Communities is accordingly requested on the following questions:

1, 2, etc. [*Here set out the questions on which the ruling is sought, identifying the Treaty provisions or other acts, instruments or rules of Community law concerned.*]

Dated the            day            of 19            .”.

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## SCHEDULE 2

Paragraph 2(5).

### REFERENCES TO THE EUROPEAN COURT: GUIDANCE

#### “ANNEX

#### NOTES FOR COMPLETION OF FORM 31.5

##### **Guidance of the Court of Justice of the European Communities**

The development of the Community legal order is largely the result of co-operation between the Court of Justice of the European Communities and national courts and tribunals through the preliminary ruling procedure under Article 177 of the EC Treaty and the corresponding provisions of the ECSC and Euratom Treaties.<sup>1</sup>

In order to make this co-operation more effective, and so enable the Court of Justice better to meet the requirements of national courts by providing helpful answers to preliminary questions, this Note for Guidance is addressed to all interested parties, in particular to all national courts and tribunals.

It must be emphasised that the Note is for information only and has no binding or interpretative effect in relation to the provisions governing the preliminary ruling procedure. It merely contains practical information which, in the light of experience in applying the preliminary ruling procedure, may help to prevent the kind of difficulties which the Court has sometimes encountered.

1. Any court or tribunal of a Member State may ask the Court of Justice to interpret a rule of Community law, whether contained in the Treaties or in acts of secondary law, if it considers that this is necessary for it to give judgment in a case pending before it.

Courts or tribunals against whose decisions there is no judicial remedy under national law must refer questions of interpretation arising before them to the Court of Justice, unless the Court has already ruled on the point or unless the correct application of the rule of Community law is obvious.<sup>2</sup>

2. The Court of Justice has jurisdiction to rule on the validity of acts of the Community institutions. National courts or tribunals may reject a plea challenging the validity of such an act. But where a national court (even one whose decision is still subject to appeal) intends to question the validity of a Community act, it must refer that question to the Court of Justice.<sup>3</sup>

Where, however, a national court or tribunal has serious doubts about the validity of a Community act on which a national measure is based, it may, in exceptional cases, temporarily suspend application of the latter measure or grant other interim relief with respect to it. It must then refer the question of validity to the Court of Justice, stating the reasons for which it considers that the Community act is not valid.<sup>4</sup>

3. Questions referred for a preliminary ruling must be limited to the interpretation or validity of a provision of Community law, since the Court of Justice does not have jurisdiction to interpret national law or assess its validity. It is for the referring court or tribunal to apply the relevant rule of Community law in the specific case pending before it.

4. The order of the national court or tribunal referring a question to the Court of Justice for a preliminary ruling may be in any form allowed by national procedural law. Reference of a question or questions to the Court of Justice generally involves stay of the national proceedings until the Court has given its ruling, but the decision to stay proceedings is one which it is for the national court alone to take in accordance with its own national law.

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5. The order for reference containing the question or questions referred to the Court will have to be translated by the Court's translators into the other official languages of the Community. Questions concerning the interpretation or validity of Community law are frequently of general interest and the Member States and Community institutions are entitled to submit observations. It is therefore desirable that the reference should be drafted as clearly and precisely as possible.

6. The order for reference should contain a statement of reasons which is succinct but sufficiently complete to give the Court, and those to whom it must be notified (the Member States, the Commission and in certain cases the Council and the European Parliament), a clear understanding of the factual and legal context of the main proceedings.<sup>5</sup>

In particular, it should include a statement of the facts which are essential to a full understanding of the legal significance of the main proceedings, an exposition of the national law which may be applicable, a statement of the reasons which have prompted the national court to refer the question or questions to the Court of Justice and, where appropriate, a summary of the arguments of the parties. The aim should be to put the Court of Justice in a position to give the national court an answer which will be of assistance to it.

The order for reference should also be accompanied by copies of any documents needed for a proper understanding of the case, especially the text of the applicable national provisions. However, as the case-file or documents annexed to the order for reference are not always translated in full into the other official languages of the Community, the national court should ensure that the order for reference itself includes all the relevant information.

7. A national court or tribunal may refer a question to the Court of Justice as soon as it finds that a ruling on the point or points of interpretation or validity is necessary to enable it to give judgment. It must be stressed, however, that it is not for the Court of Justice to decide issues of fact or to resolve disputes as to the interpretation or application of rules of national law. It is therefore desirable that a decision to refer should not be taken until the national proceedings have reached a stage where the national court is able to define, if only as a working hypothesis, the factual and legal context of the question; on any view, the administration of justice is likely to be best served if the reference is not made until both sides have been heard.<sup>6</sup>

8. The order for reference and the relevant documents should be sent by the national court directly to the Court of Justice, by registered post (addressed to the Registry of the Court of Justice of the European Communities, L-2925 Luxembourg, telephone (352) 43031). The Court Registry will remain in contact with the national court until judgment is given, and will send copies of the various documents (written observations, Report for the Hearing, Opinion of the Advocate General). The Court will also send its judgment to the national court. The Court would appreciate being informed about the application of its judgment in the national proceedings and being sent a copy of the national court's final decision.

9. Proceedings for a preliminary ruling before the Court of Justice are free of charge. The Court does not rule on costs."

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## **EXPLANATORY NOTE**

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

This Act of Adjournal adds a new paragraph (3) to rule 31.5 of the Criminal Procedure Rules 1996 (which relates to references to the Court of Justice of the European Communities) requiring parties to have regard, in drafting references in Form 31.5, to guidance notes set out in the Notes Appendix (which is also added to the Rules by this Act). In addition, a new, more detailed version of Form 31.5 is substituted for the existing form.