SCOTTISH STATUTORY INSTRUMENTS

2010 No. 184

HIGH COURT OF JUSTICIARY
SHERIFF COURT

Act of Adjournal (Criminal Procedure Rules Amendment) (Miscellaneous) 2010

Made - - - -	*7th May 2010*
Coming into force - -	*1st June 2010*

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(**1**) and section 27K(4) of the Civic Government (Scotland) Act 1982(**2**), and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation, commencement etc.

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment) (Miscellaneous) 2010 and comes into force on 1st June 2010.

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

(3) Unless the context requires otherwise, in this Act of Adjournal a reference to a numbered provision or form is to the provision or form of that number in the Criminal Procedure Rules 1996(**3**).

Summoning of jurors

2.—(1) In rule 13.1 (list of jurors)(**4**), in paragraph (1)(a), for "30" substitute "40".

(2) Paragraph (1) shall apply only to a list of jurors prepared on or after 1st June 2010.

Procedure at trial in solemn proceedings

3.—(1) In rule 14.1 (recording of not guilty plea) after "shall" insert ", subject to rule 14.1A,".

(2) After rule 14.1, insert—

(**1**) 1995 c.46.

(**2**) 1982 c.45; section 27K was inserted by section 58 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17).

(**3**) The Criminal Procedure Rules 1996 are contained in Schedule 2 to the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513, last amended by S.S.I. 2009/345).

(**4**) Rule 13.1 was substituted by S.S.I. 2005/44.

"**Minimum number of jurors for balloting jury**

14.1A.—(1) Notwithstanding section 88(1) of the Act of 1995 (plea of not guilty, balloting and swearing of jury, etc.), where there are fewer than 30 of those named on the list of jurors present in the court it shall not be competent to proceed to ballot the jury.

(2) Where it is not competent to proceed to ballot the jury the court shall make such order or orders as it thinks fit in the interests of justice."

(3) This paragraph shall apply only where the jury is to be balloted from a list of jurors prepared on or after 1st June 2010.

Lodging and intimation of transcripts

4.—(1) After rule 15.16 (presentation of solemn sentence appeal in writing)(**5**), insert—

"**Copying of transcripts to other parties**

15.16A.—(1) Where the prosecutor receives a transcript under section 94(2) of the Act of 1995, the prosecutor shall forthwith send a copy to the other parties and to the clerk of court.

(2) Where a person receives a transcript under section 94(2A) of the Act of 1995, that person shall forthwith send a copy to the other parties and to the clerk of court.".

(2) In rule 15.17 (lodging and intimation of transcripts)—

(a) in paragraph (2) for "send a copy to the other parties" insert "intimate to the other parties that the transcript or the relevant part thereof has been so lodged";

(b) in paragraph (4) for "21" substitute "28".

(3) Paragraph (2)(b) shall apply only in relation to cases where the date of the hearing concerned is on or after 29th June 2010.

Alteration by Clerk of Justiciary of place where case to be heard

5.—(1) Rule 19A.1 (power of Clerk of Justiciary to alter place where case to be heard)(**6**) is amended in accordance with subparagraphs (2) to (5).

(2) In paragraph (1)(a), for "under section 201 of the Act of 1995" substitute "following conviction".

(3) In paragraph (1)(b), for "under section 202 of the Act of 1995" substitute "following conviction".

(4) After paragraph (1)(b) insert—

"(c)   fixed any diet in respect of any of the following—

(i) a probation order made under section 228 of the Act of 1995;

(ii) a supervised release order made under section 209 of the Act of 1995;

(iii) a drug treatment and testing order made under section 234B of the Act of 1995;

(iv) a community service order made under section 238 of the Act of 1995;

(d) fixed any diet under section 52 or sections 52B to 59 of the Act of 1995,".

(5) The heading to Chapter 19A(**7**) becomes "ALTERATION BY CLERK OF JUSTICIARY OF PLACE WHERE CASE TO BE HEARD".

(**5**) Rule 15.16 was inserted by S.S.I. 2003/387 and amended by S.S.I. 2006/302.
(**6**) Rule 19A.1 was inserted by S.S.I. 2003/468.
(**7**) Chapter 19A.1 was inserted by S.S.I. 2003/468.

Recovery of documents: appeals against decision of sheriff

6.—(1) Rule 27A.1 (appeal against decision of sheriff: recovery of documents)(**8**) is amended in accordance with subparagraphs (2) and (3).

(2) In paragraph (1), for "proceedings" substitute "application".

(3) In Form 27A.1 (form of appeal against decision of sheriff on application for an order for recovery of documents)(**9**)—

(a) in the instance, after "[*or* Prisoner in the Prison of (*place*)]]" insert "[*or* [C.D.], (address)]";

(b) in paragraph 4, after "[*or* the Procurator Fiscal, (*place*),]" insert "[*or* [C.D.], haver of documents to which the order relates]".

Knife licensing: applications for recovery orders

7.—(1) After Chapter 54 (mutual recognition of criminal financial penalties)(**10**) insert—

"CHAPTER 55

RECOVERY ORDERS UNDER SECTION 27K(3) OF THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982

55.1. An application under section 27K(3) of the Civic Government (Scotland) Act 1982 (application for recovery order) shall be made by petition in Form 55.".

(2) In the appendix, at the end insert the form set out in the Schedule to this Act of Adjournal.

A.C. HAMILTON
Edinburgh   Lord Justice General
7th May 2010   I.P.D.

(**8**)   Rule 27A.1 was inserted by S.S.I. 2007/511.
(**9**)   Form 27A.1 was inserted by S.S.I. 2007/511.
(**10**) Chapter 54 was inserted by S.S.I. 2009/345.

SCHEDULE   Paragraph 7(2)

Form 55

Rule 55.1

Form of application for recovery order

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, THE LORD JUSTICE CLERK and LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*)]

AT (*place*)

PETITION

of

[A.B.] (*address*)

PETITIONER

HUMBLY SHEWETH:

1. That the petitioner is (*name*) and resides at (*address*).

2. That on (*date*) the court in the case (*Her Majesty's Advocate* [or *procurator fiscal*]) against (*name and address*), accused, made an order under section 27J(2) of the Civic Government (Scotland) Act 1982 forfeiting (*specify relevant article*).

3. That (*state facts relevant to application*).

MAY IT THEREFORE please your Lordship[s]:

(1)   to appoint intimation of this petition to be made to (*specify*).

(2)   to appoint parties to be heard at the earliest practicable date, and

(3)   thereafter, on being duly satisfied, to make an order under section 27K(3) of the Civic Government (Scotland) Act 1982; and to do further or otherwise as Your Lordship(s) shall deem proper.

ACCORDING TO JUSTICE, etc.

(*Signed*)
Petitioner
[*or*
[Solicitor for Petitioner]
(*address, e-mail address and telephone number of solicitor*)

EXPLANATORY NOTE

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

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

Paragraph 2 amends Rule 13.1 by increasing the minimum number of names that are to be on a jury list from 30 to 40.

Paragraph 3 amends Rule 14.1 and inserts new Rule 14.1A providing that the minimum number of jurors that must be present for the balloting of the jury to be 30.

Paragraph 4 inserts new Rule 15.16A making provision for the copying of transcripts to all relevant parties when they have been obtained in connection with appeals against conviction in solemn proceedings.

Paragraph 5 amends Rule 19.1A to extend the circumstances in which the Clerk of Justiciary can alter the place where the case is to be heard.

Paragraph 6 makes minor amendments to Rule 27A.1 and Form 27A (recovery of documents: appeals against decision of sheriff).

Paragraph 7 inserts Chapter 55 into the Rules making provision for applying for a recovery order under section 27K(3) of the Civic Government (Scotland) Act 1982.