

2004 No. 434

HIGH COURT OF JUSTICIARY

SHERIFF COURT

**Act of Adjournal (Criminal Procedure Rules Amendment No. 4)
(Criminal Procedure (Amendment) (Scotland) Act 2004) 2004**

Made - - - - - *30th September 2004*

Coming into force - - - - - *4th October 2004*

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(a), and of all other powers enabling them in that behalf, with the consent of the Scottish Ministers, 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. 4) (Criminal Procedure (Amendment) (Scotland) Act 2004) 2004 and shall come into force on 4th October 2004.

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

Amendment of the Act of Adjournal (Criminal Procedure Rules) 1996

2.—(1) The Act of Adjournal (Criminal Procedure Rules) 1996(b) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 2.3(1) (general provisions for service) after “this rule” there shall be inserted “and to rule 2.3A”.

(3) After rule 2.3 (general provisions for service) there shall be inserted the following:—

“Service etc. on accused through a solicitor

2.3A. Where in proceedings on indictment anything is to be served on, given, notified or intimated to a solicitor under section 72G of the Act of 1995(c) it shall be—

(a) delivered to the solicitor personally;

(b) left for the solicitor with an employee or partner of the solicitor at the solicitor’s place of business; or

(a) 1995 c.46.

(b) S.I. 1996/513, last amended by S.S.I. 2004/346.

(c) Section 72G was inserted by section 12 of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

(c) posted to the solicitor's place of business by the first class recorded delivery service, with a notice in Form 2.3A.”.

(4) In rule 2.5(1) (service by post) after “Act of 1995” there shall be inserted “or of these Rules”.

(5) After Chapter 8 (the indictment) there shall be inserted the following:–

“CHAPTER 8A

ENGAGEMENT, DISMISSAL AND WITHDRAWAL OF SOLICITORS IN SOLEMN PROCEEDINGS

Notification

8A.1.—(1) The notification to the court in writing under section 72F(1) of the Act of 1995(a) that a solicitor has been engaged by the accused for the purposes of his defence in any part of proceedings on indictment shall be in Form 8A.1–A.

(2) The notification to the court in writing under section 72F(2) of the Act of 1995 that a solicitor has been dismissed by the accused or has withdrawn from acting shall be in Form 8A.1–B.

Further pre–trial diet

8A.2.—(1) An order for a further pre–trial diet under section 72F(3) of the Act of 1995 may be signed by the clerk of court.

(2) An order mentioned in paragraph (1) shall be intimated by the clerk of court to all parties and to the governor of any institution in which the accused is detained.”.

(6) After Chapter 13 (summoning of jurors) there shall be inserted the following:–

“CHAPTER 13A

WITNESSES

Citation of witnesses for precognition

13A.1. The form of citation of a witness for precognition under section 267A of this Act of 1995(b) shall be in Form 13A.1.”.

(7) In the appendix–

- (a) at the beginning there shall be inserted the form set out in Part 1 of the Schedule to this Act of Adjournal;
- (b) after Form 8.3 there shall be inserted the forms set out in Part 2 of the Schedule to this Act of Adjournal;
- (c) after Form 13.2-B there shall be inserted the form set out in Part 3 of the Schedule to this Act of Adjournal; and
- (d) in Form 20.12A-A (restriction of liberty order)(c) before “(Signed)” there shall be inserted the following:–

“[ORDERS that the offender shall continuously [or (*specify*)] wear or carry a device for the purposes of enabling the remote monitoring of his compliance with this order to be carried out.]

(a) Section 72F was inserted by section 8 of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

(b) Section 267A was inserted by section 22 of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

(c) Form 20.12A was inserted by S.I. 1998/1842 and amended by S.S.I. 2003/468.

[ORDERS that the offender shall not tamper with or intentionally damage the device or knowingly allow it to be tampered with or intentionally damaged.]”.

Edinburgh
30th September 2004

Cullen of Whitekirk
Lord Justice General
I.P.D.

SCHEDULE

Paragraph 2(7)

PART 1

Rule 2.3A

FORM 2.3A

Form of notice to accompany anything being served on, given, notified or intimated to a solicitor under section 72G of the Criminal Procedure (Scotland) Act 1995

Prosecutor's reference...*(specify, if known)*

Your reference...*(specify, if known)*

TAKE NOTICE that the attached *(specify)* is served on [*or given to or intimated to*] you *(name of solicitor)*, the solicitor for [A.B.] *(address)* [*or Prisoner at the Prison of (address)*] under section 72G of the Criminal Procedure (Scotland) Act 1995.

Date: *(date)*

(Signed)

Prosecutor

[or Officer of Law or Clerk of Court or as the case may be]

(Name, address, e-mail address and telephone number)

PART 2

FORM 8A.1-A

Rule 8A.1(1)

Form of notification of engagement as solicitor in solemn proceedings

NOTIFICATION

of

ENGAGEMENT AS SOLICITOR BY THE ACCUSED

in the case

against

[A.B.] (*address*)

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

Prosecutor's reference...(*specify, if known*)

My reference...(*specify*)

Date: (*date*)

TAKE NOTICE that I have been engaged by the accused, (*name*), (*date of birth*) for the purposes of his [*or her*] defence [*where appropriate, specify part of proceedings for which engaged*].

[The current intention is that the accused will be represented by [*name of counsel, if known*] at the (*specify diet*) on (*date*) at (*place*).]

(*Signed*)

Solicitor

(*Name, address, e-mail address and telephone number*)

FORM 8A.1-B

Rule 8A.1(2)

Form of notification of dismissal or withdrawal of solicitor for accused in solemn proceedings

NOTIFICATION

of

DISMISSAL OR WITHDRAWAL OF SOLICITOR

in the case

against

[A.B.] (*address*)

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

Prosecutor's reference...(*specify, if known*)

My reference...(*specify*)

Date: (*date*)

TAKE NOTICE that with effect from (*date*) I have been dismissed by [*or* have withdrawn from acting for] (*name of accused*) (*date of birth*).

A trial diet [*or specify any hearing(s) fixed*] has [*or have*] been fixed for (*date(s)*).

[*Insert any of the following statements which applies:-*

The accused is charged with an offence to which section 288C of the Criminal Procedure (Scotland) Act 1995 (certain sexual offences) applies.

The proceedings are proceedings to which section 288E of the Criminal Procedure (Scotland) Act 1995 (certain proceedings involving child witnesses under the age of 12) applies.

The accused is prohibited from conducting his defence by virtue of an order under section 288F of the Criminal Procedure (Scotland) Act 1995 (prohibition of personal defence in other cases involving vulnerable witnesses).]

(*Signed*)

Solicitor

(*Name, address, e-mail address and telephone number*)

PART 3

FORM 13A.1-A

Rule 13A.1

**Form of citation of witness for precognition under section 267A of the Criminal Procedure
(Scotland) Act 1995**

IMPORTANT NOTICE

(CITATION)

Prosecutor's reference...*(specify)*

TO: *(name)*, *(date of birth)*, *(address)*

DATE: *(date)*

You are a potential witness in a criminal case. The prosecutor requires to take a statement from you.

YOU MUST APPEAR at *(place)* at *(time)* so that the prosecutor can take a statement from you.

IT IS A CRIMINAL OFFENCE TO FAIL TO ATTEND AT THE PLACE AND TIME SET OUT ABOVE WITHOUT A REASONABLE EXCUSE

(Signed)

Prosecutor

(Name, address, e-mail address and telephone number)

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 (S.I. 1996/513) as a consequence of the commencement of certain provisions of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5) (“the 2004 Act”). It prescribes the form and manner in which documents may be served on an accused through his solicitor under section 72G of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) (section 72G was inserted by section 12 of the 2004 Act). It sets out the forms for notification of engagement, dismissal and withdrawal of a solicitor in proceedings on indictment under section 72F of the 1995 Act (section 72F was inserted by section 8 of the 2004 Act). It also provides a form of citation of a witness for precognition under section 267A of the 1995 Act (section 267A was inserted by section 22 of the 2004 Act). Some minor amendments are made to the form of restricted liberty order to make provision for orders under section 245C of the 1995 Act (remote monitoring) (as amended by paragraph 36 of the schedule to the 2004 Act).

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