

2006 No. 302

HIGH COURT OF JUSTICIARY

**Act of Adjournal (Criminal Procedure Rules Amendment No. 3)
(Risk Assessment Orders and Orders for Lifelong Restriction)
2006**

Made - - - - *31st May 2006*

Coming into force - - *20th June 2006*

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. 3) (Risk Assessment Orders and Orders for Lifelong Restriction) 2006 and shall come into force on 20th June 2006.

(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 14.10(3)(a) (issue of extract convictions following appeal) after “section 108 (Lord Advocate’s appeal against sentence)(c)” there shall be inserted “or section 210F(3) (prosecutor’s appeal against refusal to make an order for lifelong restriction)(d)”.

(3) In rule 15.1 (register and list of appeals)(e)—

(a) in paragraph (1) for “or section 108 (Lord Advocate’s appeal against sentence)” there shall be substituted “, section 108 (Lord Advocate’s appeal against sentence) or section 210F(3) (prosecutor’s appeal against refusal to make an order for lifelong restriction)”; and

(b) in paragraph (5) for “or 108(1)” there shall be substituted “, 108(1) or 210F(3)”.

(4) In rule 15.16(1) (presentation of solemn sentence appeal in writing)(f) for “or 108(1)” there shall be substituted “, 108(1) or 210F(3)”.

(a) 1995 c.46.

(b) S.I. 1996/513, last amended by S.S.I. 2006/205.

(c) Section 108 was amended by the Crime and Punishment (Scotland) Act 1997 (c.48), section 21; the Crime and Disorder Act 1998 (c.37), section 94 and Schedule 6, paragraph 6; and by the Proceeds of Crime Act 2002 (c.29), section 115.

(d) Section 210F was inserted by the Criminal Justice (Scotland) Act 2003 (asp 7).

(e) Rule 15.1 was amended by S.S.I. 2003/387.

(f) Rule 15.16 was inserted by S.S.I. 2003/387.

(5) After Chapter 19B (cases referred by the Scottish Criminal Cases Review Commission under section 194B of the Criminal Procedure (Scotland) Act of 1995)(a) there shall be inserted the following:–

**“CHAPTER 19C
RISK ASSESSMENT**

Risk assessment orders

19C.1.—(1) A notice of intention to make a motion for a risk assessment order under section 210B(2) of the Act of 1995(b) shall be in Form 19C.1–A.

(2) A risk assessment order under section 210B(2) of the Act of 1995 shall be in Form 19C.1–B.

(3) An application under section 210B(5) of the Act of 1995 (application for extension of period of adjournment following order) shall be made by letter to the Clerk of Justiciary.

(4) On receipt of a letter under paragraph (3), the Clerk of Justiciary shall–

- (a) send a copy of that letter to the prosecutor, the convicted person and the assessor; and
- (b) fix a date and time for hearing the application which date and time shall be notified by the Clerk of Justiciary to the prosecutor; the convicted person and the governor of any institution in which the convicted person is detained.

(5) The Clerk of Justiciary shall notify the governor of any institution in which the convicted person is detained of any extension (or further extension) under section 210B(5) of the Act of 1995, of the period mentioned in section 210B(4) of the Act of 1995 (adjournment following risk assessment order).

Reports

19C.2. A report under section 210C or 210D of the Act of 1995(c) shall be in Form 19C.2.

Objections to reports

19C.3.—(1) A convicted person shall intimate any objection under section 210C(7) of Act of 1995 by lodging with the Clerk of Justiciary and serving on the prosecutor a notice of objection in Form 19C.3 within 14 days after receiving a copy of the report.

(2) On receipt of a notice of objection under paragraph (1), the Clerk of Justiciary shall fix a date and time for hearing the objection and shall intimate that date and time to the convicted person, the prosecutor and the governor if any institution in which the convicted person is detained.

(3) The convicted person and the prosecutor shall, not less than 7 days before the hearing mentioned in paragraph (2), lodge and serve on the other party lists of any witnesses and productions on which they propose to rely at the hearing.”.

(6) After rule 20.20 (antisocial behaviour orders)(d) there shall be inserted the following:–

“Orders for lifelong restriction

20.21. An order for lifelong restriction under section 210F(1) of the Act of 1995(a) shall be in Form 20.21.”.

(a) Chapter 19B was inserted by S.S.I. 2003/468 and amended by S.S.I. 2004/346.
(b) By virtue of rule 1.2 of S.I. 1996/513, “the Act of 1995” means the Criminal Procedure (Scotland) Act 1995 (c.46). Section 210B of that Act was inserted by section 1 of the Criminal Justice (Scotland) Act 2003 (asp 7).
(c) Sections 210C and 210D were inserted by section 1 of the Criminal Justice (Scotland) Act 2003 (asp 7).
(d) Rule 20.20 was inserted by S.S.I. 2004/481.

(7) In the appendix–

- (a) at the end of Form 8.3 (notice of previous convictions) there shall be inserted the following:–

“[To be inserted only where the notice is to include any details which the prosecutor proposes to provide under section 101(3A) of the Criminal Procedure (Scotland) Act 1995 (risk assessment order: details regarding offences): In the event of your being convicted of the charge(s) in the indictment to which this notice is attached, it is intended to place before the court the following details regarding the offences in question: (specify)

(Signed)

Prosecutor]”;

- (b) after Form 19.18**(b)** there shall be inserted the forms set out in Part 1 of the Schedule to this Act of Adjournal;
- (c) after Form 20.20 (form of antisocial behaviour order)**(c)** there shall be inserted the form set out in Part 2 of the Schedule to this Act of Adjournal;
- (d) in Form 21.5 (form of application under section 275(1) of the Criminal Procedure (Scotland) Act 1995)**(d)** in paragraph 3 “at the trial” shall be omitted;
- (e) in Form 22.1 (child witness notice)**(e)**–
- (i) after paragraph 1 there shall be inserted the following:– “*[or, where the child witness notice is lodged for the purposes of proceedings under section 210C(7) of the Criminal Procedure (Scotland) Act 1995 (objection to risk assessment report etc.): 1. That on (date) the High Court of Justiciary sitting at (place) made a risk assessment order [or an interim compulsion order] in respect of [A.B.].]*”;
- (ii) after paragraph 2 there shall be inserted the following:–
- “[or, where the child witness notice is lodged for the purposes proceedings under section 210C(7) of the Criminal Procedure (Scotland) Act 1995 (objection to risk assessment report etc.): 2. That [A.B.] was convicted of (specify), which is an offence to which section 288C [or section 288E] of the Criminal Procedure (Scotland) Act 1995 applies [or and an order has been made under section 288F(2) of the Criminal Procedure (Scotland) Act 1995]”;*
and
- (iii) at the end of paragraph 3 there shall be inserted “*[or, proceedings under section 210C(7) of the Criminal Procedure (Scotland) Act 1995]*”.
- (f) in Form 22.4 (application for review of arrangements for vulnerable witness)–
- (i) after paragraph 1 there shall be inserted the following:–
- “[or, 1. That [A.B.] was convicted of (specify) on (date)].”;*
- (ii) in paragraph 2 after “trial” there shall be inserted the following:–
- “[or, proceedings under section 210C(7) of the Criminal Procedure (Scotland) Act 1995]”;*
- (g) in Form 22.7 (notice of prohibition of personal conduct of defence in certain cases involving child witnesses)–
- (i) after “charged with” there shall be inserted “*[or convicted of]*”;
- (ii) after “trial” where it first appears there shall be inserted “*or other proceedings before the Court*”;
- (iii) after “tried for the offence” there shall be inserted “*or there are proceedings under section 210C(7) of the Criminal Procedure (Scotland) Act 1995*”; and

(a) Section 210F was inserted by section 1 of the Criminal Justice (Scotland) Act 2003 (asp 7).

(b) Form 19.18 was inserted by S.I. 1996/2747.

(c) Form 20.20 was inserted by S.S.I. 2004/481.

(d) Form 21.5 was inserted by S.S.I. 2002/454.

(e) Form 22.1 (child witness notice) was substituted by S.S.I. 2005/188.

- (iv) in paragraph 3 after “the trial” there shall be inserted “[or proceedings under section 210C(7) of the Criminal Procedure (Scotland) Act 1995].
- (h) in Form 22.8-A (minute seeking prohibition of the personal conduct of defence)
 - (i) after paragraph 1 there shall be inserted the following:–
 - “[Or: 1. That on (*date*) the High Court of Justiciary sitting at (*place*) made a risk assessment order [or an interim compulsion order] in respect of [A.B.].]”;
 - (ii) in paragraph 2 after “trial” there shall be inserted the following:–
 - “[or, in any proceedings under section 210C(7) of the Criminal Procedure (Scotland) Act 1995]”;
 - (iii) in paragraph 3 after “trial” in both places it appears there shall be inserted the following:–
 - “[or, in any proceedings under section 210C(7) of the Criminal Procedure (Scotland) Act 1995]”; and
 - (iv) at the end of paragraph (b) there shall be inserted “[or, any proceedings under section 210C(7) of the Criminal Procedure (Scotland) Act 1995].
- (i) in Form 22.8-B (form of notice to accused subject to a prohibition on personal conduct of defence)–
 - (i) after the first paragraph there shall be inserted the following:–
 - “[Or: You have intimated under section 210C(7) of the Criminal Procedure (Scotland) Act 1995 your objection to a report as to the risk your being at liberty presents to the safety of the public at large where a witness is [or you are] a vulnerable witness under section 271(1) of that Act]”;
 - (ii) at the end of the second paragraph there shall be inserted the following:–
 - “[or in those proceedings.]”;
 - (iii) in paragraph (1) after “if you are tried for the offence” there shall be inserted “[or if there are proceedings under section 210C(7) of that Act]”; and
 - (iv) in paragraph (3) after “the trial” there shall be inserted “or proceedings under section 210C(7) of the Criminal Procedure (Scotland) Act 1995”.

BRIAN GILL
Lord Justice Clerk
I.P.D.

Edinburgh
31st May 2006

SCHEDULE

Paragraph 2(7)(b)

PART 1

Form 19C.1-A

Rule 19C.1(1)

Form of notice of intention to apply for a risk assessment order under section 210B of the Criminal Procedure (Scotland) Act 1995

Prosecution reference.....

Court reference.....

IMPORTANT NOTICE

The prosecutor in the case against you in the High Court of Justiciary intends to make a motion for a **RISK ASSESSMENT ORDER** within the meaning of section 210B of the Criminal Procedure (Scotland) Act 1995.

A risk assessment order is an order—

- (a) for you to be taken to a place specified in the order, so that there may be prepared there—
 - (i) by a person accredited for the purposes of section 210B of the Criminal Procedure (Scotland) Act 1995 by the Risk Management Authority; and
 - (i) in such manner as may be so accredited,a risk assessment report (that is to say, a report as to what risk your being at liberty presents to the safety of the public at large); and
- (b) providing for you to be remanded in custody there for so long as is necessary for those purposes and thereafter there or elsewhere until such diet as is fixed for sentence.

(Signed)

Prosecutor

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

(Place and date)

Form of risk assessment order under section 210B of the Criminal Procedure (Scotland) Act 1995

Prosecution reference.....

Court reference.....

RISK ASSESSMENT ORDER

under section 210B of the Criminal Procedure (Scotland) Act 1995

HIGH COURT OF JUSTICIARY sitting at [*place*]

DATE:

OFFENDER:

Address:

Date of birth:

THE COURT having convicted the offender of (*specify offence or offences*), being an offence [*or offences*] to which section 210B(1) of the Criminal Procedure (Scotland) Act 1995 applies:

AND considering that the risk criteria set out in section 210E of that Act may be met;

ORDERS–

- 1. That the offender be taken to [*place*] so that there may be prepared there–
 - (a) by a person accredited for the purposes of section 210B of that Act; and
 - (b) in such manner as may be so accredited;

a risk assessment report (that is to say, a report as to what risk his being at liberty presents to the safety of the public at large); and

- 2. That the offender be remanded in custody there for so long as is necessary for those purposes and thereafter there or elsewhere until such date as is fixed for sentence; and

ADJOURNS the case against the offender until (*specify date not exceeding 90 days after date of order*) or such earlier date as may be fixed for the offender to be brought before the court following receipt of the risk assessment order.

(Signed)

Clerk of Court

Form of risk assessment report under section 210C of the Criminal Procedure (Scotland) Act 1995

RISK ASSESSMENT REPORT

under section 210C of the Criminal Procedure (Scotland) Act 1995

Prosecution reference.....

Court reference.....

CONVICTED PERSON: *(name)*

DATE OF BIRTH: *(place)*

REMANDED AT: *(place)*

CASE ADJOURNED TO: *(date)*

HIGH COURT OF JUSTICIARY SITTING AT: *(place)*

REPORT INSTRUCTED BY: *(name and designation)*

Under section 210C [*or* 210D] of the Criminal Procedure (Scotland) Act 1995, I, *(name)* report to the High Court of Justiciary as follows:–

[here state terms of report]

IN WITNESS WHEREOF

(Signed)

Assessor

(Name, qualifications (including details of accreditation by the Risk Management Authority, address, e-mail address and telephone number)

(Place and date)

Form of notice of objection to risk assessment report under section 210C(7) of the Criminal Procedure (Scotland) Act 1995

NOTICE OF OBJECTION

by

[A.B.], (address)

[or, Prisoner in the Prison of (*place*) [or Patient at (*specify hospital*)]]

Prosecution reference.....

Court reference.....

I, [A.B.] object to the content or findings of the risk assessment report dated (*date*) by (*name of assessor*).

The grounds of my objection are as follows:-

(Here state the grounds of objection in numbered paragraphs)

[Legal representative of] [A.B.]

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

(Place and date)

PART 2

Paragraph 2(7)(c)

Form 20.21

Rule 20.21

Form of order for lifelong restriction under section 210F of the Criminal Procedure (Scotland) Act 1995

ORDER FOR LIFELONG RESTRICTION

Prosecution reference.....

Court reference.....

HIGH COURT OF JUSTICIARY sitting at [*place*]

DATE:

OFFENDER:

Address:

Date of birth:

THE COURT, being satisfied that the risk criteria were met, makes this ORDER FOR LIFELONG RESTRICTION under section 210F of the Criminal Procedure (Scotland) Act 1995.

[ORDAINS the accused to be conveyed to and detained in the Prison of (*place*) [*or (specify hospital)*]]; and

GRANTS warrant to officers of law to convey the accused from the Bar to said prison [*or hospital*], therein to be detained.

(*Signed*)

Clerk of Court

EXPLANATORY NOTE

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

This Act of Adjournal amends the Criminal Procedure Rules 1996 (S.I. 1996/513) (“the 1996 Rules”) to make provision consequent upon the commencement of section 1 of the Criminal Justice (Scotland) Act 2003. That section amends the Criminal Procedure (Scotland) Act 1995 by providing for risk assessment orders and orders for lifelong restriction in respect of persons convicted of certain offences in the High Court of Justiciary.

Paragraph 2(2) to (4) makes consequential amendments to Chapter 15 of the 1996 Rules which makes provision in respect of appeals.

Paragraph 2(5) inserts into the 1996 Rules a new Chapter 19C which makes provision in respect of risk assessment orders.

Paragraph 2(6) provides for a form of order for lifelong restriction.

Paragraph 2(7) inserts new forms relating to risk assessment orders and orders for lifelong restriction into the appendix to the 1996 Rules.

2006 No. 302

HIGH COURT OF JUSTICIARY

Act of Adjournal (Criminal Procedure Rules Amendment No. 3)
(Risk Assessment Orders and Orders for Lifelong Restriction)
2006

£3.00

© Crown Copyright 2006