
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 125

**HIGH COURT OF JUSTICIARY
SHERIFF COURT**

**Act of Adjournal (Criminal Procedure
Rules Amendment) (Miscellaneous) 2012**

<i>Made</i>	- - - -	<i>24th April 2012</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>26th April 2012</i>
<i>Coming into force</i>	- -	<i>4th June 2012</i>

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), section 210 of the Extradition Act 2003(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) 2012.

(2) It comes into force on 4th June 2012.

(3) A certified copy of this Act of Adjournal is to be inserted in the Books of Adjournal.

(4) The Criminal Procedure Rules 1996(3) are amended in accordance with the following paragraphs.

Appeals in relation to extension of time for trial

2. After rule 8.1(5) (appeals in relation to extension of time for trial)(4) insert—

“(6) Where the judge’s or sheriff’s report is not included in the documents mentioned in paragraph (5) the Clerk of Justiciary shall request the report from the clerk of the court against the decision of which the appeal is taken.”

(1) 1995 c.46.

(2) 2003 c.41.

(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. 2011/387).

(4) Rule 8.1, last amended by S.S.I. 2005/44.

Appeals in connection with preliminary diets

3. In rule 9.6(2) (note of appeal)(5) for “two” substitute “seven”.

Appeals against extension of period of detention

4. After rule 17.1(4) (appeals against extension of period of detention) insert—

“(4A) Where the sheriff’s report is not included in the documents mentioned in paragraph (4) the Clerk of Justiciary shall request the report from the clerk of the court against the decision of which the appeal is taken.”.

Appeals relating to preliminary pleas

5. In rule 19.1(5) (appeals relating to preliminary pleas) for “two” substitute “seven”.

Extradition

6. After rule 34.2 (arrest under provisional warrant)(6) insert—

“Procedural hearing

34.2A.—(1) This rule applies where the sheriff of Lothian and Borders has fixed a date on which an extradition hearing is to begin in terms of section 8(1), section 75(1) or section 76(2) of the Act of 2003.

(2) The sheriff may fix a procedural hearing for the purposes of determining whether parties are ready to proceed to the extradition hearing.

(3) Where the extradition hearing is subsequently fixed for a later date the sheriff may discharge the procedural hearing and fix a new procedural hearing for a later date or, if the later date for the extradition hearing is fixed at or following the procedural hearing, fix a further procedural hearing.

(4) Where the extradition hearing has been adjourned the sheriff may fix a further procedural hearing.

(5) On fixing a procedural hearing under paragraph (2) the sheriff shall—

- (a) grant warrant for the citation of witnesses and the lodging of productions by the parties;
- (b) specify the last date for lodging witness lists and productions;
- (c) specify the last date for the relevant person to lodge a case and argument.

(6) A case and argument must be lodged by the relevant person and—

- (a) set out, for each ground of opposition to the extradition, a succinct and articulate statement of the facts founded upon and the propositions of law being advanced;
- (b) be accompanied by all authorities, or a copy thereof, listed in the case and argument;
- (c) be signed by counsel or the solicitor instructed to represent the relevant person at the extradition hearing, or by the relevant person where he or she intends to conduct the extradition hearing himself or herself.

(7) The Lord Advocate —

(5) Chapter 9 was substituted by [S.S.I. 2005/44](#).

(6) Rule 34.2 was substituted by [S.S.I. 2004/346](#).

- (a) must, if the sheriff, considering that the circumstances of the case require it, orders him to do so;
 - (b) may, if he considers it appropriate to do so, lodge a case and argument in response to the relevant person's case and argument.
- (8) At the same time as lodging a case and argument, witness lists and productions, the party lodging them shall intimate copies to the other party.
- (9) In this rule, "relevant person" means the person to whom the extradition proceedings relate.
- (10) Paragraphs (3) and (4) may apply more than once.
- (11) The sheriff may vary or dispense with any of the requirements mentioned in or made under this rule."

Edinburgh
24th April 2012

A. C. HAMILTON
Lord Justice General
I.P.D.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

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

This Act of Adjournal amends the Criminal Procedure Rules 1996.

Paragraph 2 amends rule 8.1 (appeals in relation to extension of time) in solemn proceedings to provide that where the judge's or sheriff's report is not included in the papers sent to the Clerk of Justiciary, the Clerk of Justiciary shall request the report from the clerk of the court against the decision of which the appeal is taken.

Paragraph 3 amends rule 9.6(2) (note of appeal) in consequence of the amendment of section 74 of the Criminal Procedure (Scotland) Act 1995 by section 72 of the Criminal Justice and Licensing (Scotland) Act 2010.

Paragraph 4 amends rule 17.1 (appeals against extension of period of detention) in summary proceedings to provide that where the sheriff's report is not included in the papers sent to the Clerk of Justiciary, the Clerk of Justiciary shall request the report from the clerk of court against the decision of which the appeal is taken.

Paragraph 5 amends rule 19.1(5) (appeals relating to preliminary pleas) in consequence of the amendment of section 174 of the Criminal Procedure (Scotland) Act 1995 by section 72 of the Criminal Justice and Licensing (Scotland) Act 2010.

Paragraph 6 inserts new rule 34.2A into Chapter 34 (extradition) to provide that the sheriff (of Lothian and Borders) may fix a procedural hearing for the purposes of determining whether parties are ready to proceed to the extradition hearing.