

SCHEDULE 2

CRIMINAL PROCEDURE RULES 1996

*PART III*

*Solemn proceedings*

**CHAPTER 14**

**PROCEDURE AT TRIAL IN SOLEMN PROCEEDINGS**

**Recording of not guilty plea**

**14.1.** Where the accused pleads not guilty, the clerk of court shall make an entry in the record of proceedings for the purposes of section 88(1) of the Act of 1995 (recording plea of not guilty and balloting jury) that, in respect that the accused pleaded not guilty, the accused was remitted to an assize and that the jurors were balloted for and duly sworn to try the libel.

**Balloting of jurors**

**14.2.—**(1) The clerk of court shall cause the name and address of each juror to be written on a separate piece of paper, all the pieces being of the same size, and shall cause the pieces to be folded up, as nearly as may be in the same shape, and to be put into a box or glass and mixed, and the clerk shall draw out the pieces of paper one by one from the box or glass.

(2) Where any of the persons whose names shall be so drawn does not appear, or is challenged (with or without cause assigned) and is set aside or, before any evidence is led, is excused, then such further names shall be drawn until the number required for the trial is completed.

**Form of oath or affirmation to jurors**

**14.3.—**(1) Where the clerk of court administers the oath to the jury in terms of section 88(6) of the Act of 1995 (administration of oath in common form), he shall do so in accordance with the form in Form 14.3-A.

(2) In the case of any juror who elects to affirm, the clerk of court shall administer the affirmation in accordance with the form in Form 14.3-B.

(3) The oath or the affirmation administered in accordance with paragraph (1) or (2), as the case may be, shall be treated as having been administered for the purposes of section 88(6) of the Act of 1995.

**Jurors chosen for one trial may continue to serve**

**14.4.—**(1) Where the conditions in section 88(4) of the Act of 1995 (circumstances in which jurors for one trial may serve on another) are met, and subject to paragraph (2) of this rule, the clerk of court shall at the commencement of the first trial engross the names and addresses of the jurors in the record of proceedings; and in the record of proceedings of the subsequent trial it shall be sufficient to mention—

- (a) that the jurors who served on the preceding trial also served on the assize of the accused then under trial; and
- (b) that no objection was made to the contrary.

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(2) The jurors referred to in paragraph (1) shall be sworn together in the presence of the accused in the subsequent trial.

#### **Form of oath or affirmation to witnesses**

**14.5.**—(1) Where the judge administers the oath to a witness, he shall do so in accordance with the form in Form 14.5-A.

(2) In the case of any witness who elects to affirm, the judge shall administer the affirmation in accordance with the form in Form 14.5-B.

(3) The oath or affirmation administered in accordance with paragraph (1) or (2), as the case may be, shall be treated as having been administered in common form.

#### **Sheriff's notes of evidence**

**14.6.** The sheriff who has presided at a trial on solemn procedure shall duly authenticate and preserve the notes of the evidence taken by him in the trial and, if called upon to do so by the High Court, shall produce them, or a certified copy of them, to the High Court.

#### **Form of record of proceedings**

**14.7.** Where the proceedings at a trial are recorded, the entry in the record of proceedings shall be signed by the clerk of court and shall be in the form in Form 14.7.

#### **Interruption of trial for other proceedings**

**14.8.**—(1) Where a trial is interrupted under section 102 of the Act of 1995 (interruption of trial for other proceedings), a minute of continuation of the diet of the interrupted trial shall be entered in the record of proceedings.

(2) Where a trial is interrupted under section 102 of the Act of 1995, the trial shall be continued to a time later on the same day or to such other time as may be specified in the minute of proceedings.

#### **Interruption of proceedings for conviction or sentence**

**14.9.**—(1) On conviction of an accused in solemn proceedings, the presiding judge may, without adjourning those proceedings, interrupt them by—

- (a) considering a conviction against that accused in other proceedings pending before that court for which he has not been sentenced; or
- (b) passing sentence on that accused in respect of the conviction in those other proceedings.

(2) Where the judge has interrupted any proceedings under paragraph (1), he may, in passing sentence on an accused person in respect of a conviction in those proceedings, at the same time pass sentence on that person in respect of any other conviction he has considered.

(3) No interruption of any proceedings under paragraph (1) shall cause the instance to fall in respect of any person accused in those proceedings or shall otherwise affect the validity of those proceedings.

#### **Issue of extract convictions**

**14.10.**—(1) Subject to the following paragraphs, no extract of a conviction shall be issued during the period of four weeks after the day on which the conviction took place.

(2) An extract of a conviction may be issued at any time where it is required as a warrant for the detention of the person convicted under any sentence which shall have been pronounced against him.

(3) In the event of—

- (a) an appeal under section 108 (Lord Advocate's appeal against sentence),
- (b) an intimation of intention to appeal under section 109(1), or
- (c) a note of appeal under section 110 in respect of an appeal under section 106(1)(b) (appeal against sentence passed on conviction),

of the Act of 1995 being lodged, no extract of a conviction shall be issued until such appeal, if it is proceeded with, is determined.

(4) Where an accused is convicted on indictment in the sheriff court of any crime or offence and an extract of that conviction is subsequently required in evidence, such extract shall be issued at any time by the clerk of the court having the custody of the record copy of the indictment although the plea of the accused may have been taken and the sentence on him pronounced in another court.