

## SCHEDULE 2

### CRIMINAL PROCEDURE RULES 1996

#### *PART III*

#### *Solemn proceedings*

#### **CHAPTER 8**

#### **THE INDICTMENT**

##### **Appeals in relation to extension of time for trial**

**8.1.**—(1) A note of appeal under section 65(8) of the Act of 1995 (appeal to High Court against grant or refusal of extension of time) in respect of an appeal from a decision under section 65(3) of that Act (extension of 12 months period for commencement of trial on indictment) shall be in Form 8.1-A.

(2) A note of appeal under section 65(8) of the Act of 1995 in respect of an appeal from a decision under section 65(5) or (7) of that Act (extension of 80 or 110 days period of committal) shall be in Form 8.1-B.

(3) A note of appeal mentioned in paragraph (1) or (2) shall be served by the appellant on—

- (a) the respondent;
- (b) any co-accused; and
- (c) the clerk of the court against the decision of which the appeal is taken.

(4) The appellant shall lodge with the Clerk of Justiciary—

- (a) the note of appeal; and
- (b) the execution of service in respect of the persons mentioned in paragraph (3).

(5) The clerk of the court against the decision of which the appeal is taken shall, as soon as practicable after being served with the note of appeal, transmit to the Clerk of Justiciary the original application and all the relative documents; and the Clerk of Justiciary shall, on receiving them, assign the appeal to the roll and intimate the date of the diet to the appellant and the respondent.

##### **Citation of accused and witnesses**

**8.2.**—(1) The warrant to cite a person accused on indictment and any witnesses to a diet of trial, under section 66(1) of the Act of 1995 (warrant to cite accused and witnesses), shall be in Form 8.2-A.

(2) The notice for the purposes of section 66(6) of the Act of 1995 (notice to accused to appear) to be served on a person accused on indictment shall be in Form 8.2-B.

(3) The form of postal citation of a witness on a warrant issued under section 66(1) of the Act of 1995 shall be in Form 8.2-C; and the witness shall complete and return Form 8.2-D to the procurator fiscal, or the accused person or his solicitor, as the case may be, in the pre-paid envelope provided within 14 days after the date of citation.

(4) The form of personal citation of a witness on a warrant issued under section 66(1) of the Act of 1995 shall be in Form 8.2-E.

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### **Notice of previous convictions**

**8.3.** Any notice to be served on an accused under section 69(2) of the Act of 1995 (notice of previous convictions) shall be in Form 8.3.

## **CHAPTER 9**

### **FIRST DIETS AND PRELIMINARY DIETS**

#### **Minute giving written notice**

**9.1.—**(1) Any notice given under section 71(2) (notice of preliminary matter), or section 72(1) (preliminary diet: notice), of the Act of 1995 shall be by minute in Form 9.1.

(2) Any such minute that relates to a case set down for trial in the High Court at a sitting outside Edinburgh shall specify any productions required for the preliminary diet.

(3) That minute shall be lodged—

- (a) if it relates to a case set down for trial in the High Court, with the Clerk of Justiciary, or
- (b) if it relates to a case set down for trial in the sheriff court, with the sheriff clerk.

#### **Intimation of minute**

**9.2.—**(1) A formal execution of prior intimation of the minute to all other parties shall be lodged at the same time as the minute.

(2) If an execution mentioned in paragraph (1) is not presented with the minute, the Clerk of Justiciary or the sheriff clerk, as the case may be, shall refuse to accept the minute for lodging.

#### **Procedure on lodging minute**

**9.3.** On the lodging of the minute, the Clerk of Justiciary or the sheriff clerk, as the case may be, shall—

- (a) endorse on it the time and date on which it was received; and
- (b) as soon as possible, place the minute before a judge.

#### **Order for preliminary diet**

**9.4.—**(1) On considering the minute in the absence of the parties or of any person acting on their behalf, or otherwise as he thinks fit, the judge—

- (a) if the minute raises a matter mentioned in paragraph (a) of subsection (1) of section 72 of the Act of 1995 (competency and relevancy, etc.), shall make an order for a preliminary diet specifying the date and time of the diet and the period (if any) for which the trial diet is postponed in terms of subsection (4) of that section; or
- (b) if the minute raises a matter mentioned in paragraph (b), (c) or (d) of subsection (1) of that section, may make or refuse to make such an order.

(2) An order made under paragraph (1) shall not be invalid by reason only of having been made in the absence of the parties or of any person acting on their behalf.

(3) Any such order shall be—

- (a) endorsed on the minute;
- (b) signed by the judge; and
- (c) attached with the minute to the record copy of the indictment.

### **Intimation of order for preliminary diet**

**9.5.** The Clerk of Justiciary shall, as soon as possible after the making of any order under rule 9.4(1) (order for preliminary diet), intimate its terms to all parties and to the governor of any institution in which any accused is detained.

### **Order for preliminary diet to be warrant for citation**

**9.6.** Any order made under rule 9.4(1) (order for preliminary diet) specifying the period for which the trial diet is postponed, and any order made under section 72(5) of the Act of 1995 (extension by High Court of period of postponement of trial diet), extending that period shall, for the purposes of section 66 of the Act of 1995 (service and lodging of indictment, etc.), be treated as being a warrant issued by the Clerk of Justiciary to officers of law to cite accused persons, witnesses and jurors for the date to which the trial diet has by virtue of that order been postponed; and any such order shall have effect for those purposes.

### **Calling postponed diet**

**9.7.** If, in relation to any case a trial diet has been postponed by virtue of an order mentioned in rule 9.6 (order for preliminary diet to be warrant for citation), any requirement to call that diet at any sitting of the court shall have effect only in relation to a sitting on the date to which the diet has been postponed.

### **Warrant for conveyance and transmission**

**9.8.** A copy of any order for a preliminary diet under rule 9.4(1) certified by the Clerk of Justiciary shall be warrant:—

- (a) for the conveyance to the preliminary diet of any accused who is in custody; and
- (b) in a case set down for trial by the High Court at a sitting outside Edinburgh in respect of which the preliminary diet has been ordered to be heard in Edinburgh, for the transmission to the Clerk of Justiciary of any productions specified in the minute.

### **Abandonment of matter to be raised**

**9.9.—(1)** Where a diet has been fixed for a preliminary diet under section 72 of the Act of 1995 and the party raising the matter decides not to proceed with it, he shall give written notice of abandonment.

(2) The notice of abandonment shall be in Form 9.9.

(3) The notice shall be intimated forthwith to the clerk of court and to all other parties and to the governor of any institution in which the accused is detained.

(4) On such intimation, it shall not be necessary to convene the court for the preliminary diet unless another minute giving written notice under section 72(1) of the Act of 1995 has been lodged after the lodging of the first notice and before the notice of abandonment.

### **Procedure at first diet or preliminary diet**

**9.10.—(1)** A first diet or preliminary diet shall commence on the diet being called.

(2) For the purposes of the application of section 93 of the Act of 1995 (record of trial) to a first diet or preliminary diet, the whole proceedings at the preliminary diet shall be proceedings at the trial for the purposes of that section.

(3) A record of those proceedings, including—

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- (a) a note of the decision made by the court in respect of any notice placed before it,
- (b) any continuation or adjournment, and
- (c) the plea stated under section 71(6) or 73(1) of the Act of 1995 (accused to state how he pleads),

shall be kept in accordance with existing law and practice.

(4) At any time after the commencement of the first diet or preliminary diet, the judge may make an order continuing or adjourning the diet to another time or place; but the judge shall not require to make an order continuing that diet to the trial diet.

(5) A copy of an order continuing or adjourning the first diet or preliminary diet under paragraph (4) certified by the Clerk of Justiciary shall be warrant—

- (a) for the conveyance to the continued or adjourned diet of any accused who may be in custody; and
- (b) for the citation to that diet of any witnesses.

(6) In this rule, “first diet” means a first diet to which section 71(2) of the Act of 1995 (notice of preliminary matter) applies.

### **Applications for leave to appeal**

**9.11.**—(1) An application for leave to appeal to the High Court under section 74(1) of the Act of 1995 (appeals in connection with first diets or preliminary diets) shall be made by motion to the judge at that diet immediately following the making of the decision in question, and shall be granted or refused at that time.

(2) Where leave to appeal is granted, the judge shall consider whether or not to postpone the diet of trial; and, if the judge decides that it is necessary or desirable to do so, he may discharge the trial diet and fix a new diet under section 80 of the Act of 1995 (alteration and postponement of trial diet).

(3) Rule 9.15 (intimation of order postponing trial diet) shall apply to an order postponing a trial diet under this rule as it applies to an order postponing a trial diet under that rule.

(4) An order made under this rule shall be recorded in the record of proceedings.

### **Note of appeal**

**9.12.**—(1) An appeal under section 74(1) of the Act of 1995 (appeals in connection with first diets or preliminary diets) shall be made in Form 9.12.

(2) The note of appeal shall be lodged—

- (a) in a case set down for trial in the High Court, with the Clerk of Justiciary, or
- (b) in a case set down for trial in the sheriff court, with the sheriff clerk,

not later than two days after the making of the decision in question.

### **Procedure on lodging note of appeal**

**9.13.**—(1) On the lodging of a note of appeal with the sheriff clerk, he shall endorse on it a certificate that leave to appeal has been granted and the date and time of lodging.

(2) On the lodging of a note of appeal against a decision of a sheriff, the sheriff clerk shall, as soon as possible—

- (a) send a copy of the note of appeal to the other parties or their solicitors;
- (b) request a report on the circumstances relating to the decision from the sheriff; and
- (c) transmit the note of appeal to the Clerk of Justiciary with a certified copy of—

- (i) the indictment;
- (ii) the record of proceedings; and
- (iii) any relevant document.

### **Report of sheriff**

**9.14.**—(1) The sheriff, on receiving a request for a report under rule 9.13(2)(b) (report on circumstances relating to decision), shall, as soon as possible, send his report to the Clerk of Justiciary.

- (2) The Clerk of Justiciary shall, on receiving the report of the sheriff—
  - (a) send a copy of the report to the parties or their solicitors;
  - (b) arrange for a hearing of the appeal as soon as possible; and
  - (c) cause to be copied any documents necessary for the appeal.

### **Intimation of order postponing trial diet**

**9.15.**—(1) Where, in relation to an appeal under section 74(1) of the Act of 1995 (appeals in connection with first diets or preliminary diets) in a case set down for hearing in the sheriff court, the High Court makes an order under section 74(3) of that Act postponing the trial diet, the Clerk of Justiciary shall send a copy of the order to—

- (a) the sheriff clerk;
- (b) all parties to the proceedings; and
- (c) the governor of any institution in which any accused is detained.

(2) Rule 9.6 (order for preliminary diet to be warrant for citation) and rule 9.7 (calling postponed diet) shall apply to an order mentioned in paragraph (1) of this rule as they apply to an order mentioned in rule 9.6.

### **Orders of appeal court**

**9.16.**—(1) The Clerk of Justiciary shall intimate to the sheriff clerk the decision of the High Court disposing of an appeal under section 74(1) of the Act of 1995 in relation to a first diet.

(2) Where the High Court in disposing of an appeal under section 74(1) of the Act of 1995 reverses a decision that dismisses the case against the accused, and makes a direction to the court of first instance that it fix a trial diet, that direction shall be authority to the Clerk of Justiciary or the sheriff clerk, as the case may be, to issue a fresh warrant for citation under section 66 of that Act (service and lodging of indictment, etc.).

### **Abandonment of appeal**

**9.17.**—(1) An appellant who has taken an appeal under section 74(1) of the Act of 1995 (appeals in connection with first diets or preliminary diets) may abandon the appeal at any time before the hearing of the appeal.

(2) An abandonment of such an appeal shall be made by lodging a minute of abandonment with the Clerk of Justiciary in Form 9.17.

(3) The Clerk of Justiciary, on receiving such a minute of abandonment of an appeal in a case set down for trial in the sheriff court, shall inform the sheriff clerk and the other parties or their solicitors.

(4) The sheriff, on the sheriff clerk being so informed, may proceed as accords with the case.

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## **CHAPTER 10**

### **PLEA OF GUILTY**

#### **Procedure for plea of guilty**

**10.1.**—(1) A notice to appear at a diet of the appropriate court served on an accused under section 76(1) of the Act of 1995 (procedure where accused desires to plead guilty) shall—

- (a) if an indictment has not already been served, be in Form 10.1-A;
- (b) if an indictment has already been served, be in Form 10.1-B.

(2) In any case set down for trial in the High Court, any diet fixed by virtue of section 76(1) of the Act of 1995 may be called before the High Court sitting in Edinburgh whether or not—

- (a) the case has already been set down for trial at any sitting elsewhere, or
- (b) any notice has already been served on the accused under section 66(6) of that Act (notice of first and trial diet).

(3) In the application of subsection (3) of section 76 of the Act of 1995, the court may postpone the trial diet under that section if, but only if—

- (a) all the accused have been served with a notice in accordance with subsection (1) of that section;
- (b) all the accused are present at the diet called by virtue of subsection (1) of that section; and
- (c) a motion to postpone the trial diet is made to the court at that diet.

(4) Where the court grants that motion, the order granting it shall—

- (a) be endorsed on the record copy of the indictment;
- (b) be signed by the presiding judge;
- (c) be entered in the record of proceedings; and
- (d) have effect, for the purposes of subsections (1) to (3) of section 66 of the Act of 1995 (service and lodging of indictment, etc.), as a warrant of citation issued under that section by the Clerk of Justiciary or sheriff clerk, as the case may be, for the date to which the trial diet has, by virtue of that order, been postponed.

(5) A copy of the order shall be sent by the clerk of court to the governor of any institution in which any accused is detained.

(6) Any requirement to call the diet in any case where such an order has been made shall have effect only in relation to the postponed trial diet.

## **CHAPTER 11**

### **NOTICES BY ACCUSED IN RELATION TO DEFENCE**

#### **Notices of special defence etc.**

**11.1.** Where a notice under section 78(1) of the Act of 1995 (plea of special defence etc.) is to be served on a co-accused, that notice may be served on his solicitor.

#### **Notices by accused of witnesses and productions**

**11.2.** Any notice given by an accused under section 78(4) of the Act of 1995 (notice of witnesses and productions) shall be served on any co-accused.

## CHAPTER 12

### ALTERATION AND POSTPONEMENT OF SOLEMN TRIAL DIET

#### Alteration of trial diet

**12.1.**—(1) Where circumstances arise in which the court may adjourn the trial diet to a subsequent sitting under section 80(1) of the Act of 1995 (alteration and postponement of trial diet), and the prosecutor proposes such an adjournment, he may for that purpose require the trial diet to be called at the sitting for which it was originally fixed at such time as he thinks appropriate.

(2) If, on the trial being so called, the prosecutor—

(a) informs the court that a warrant for an appropriate subsequent sitting of the court has been issued, and

(b) moves the court to adjourn the trial diet to that subsequent sitting,

the court shall grant his motion.

(3) The presence of the accused in court when the trial diet was so called and adjourned shall be sufficient intimation to him of the adjourned diet.

(4) If the trial diet was so called and adjourned in the absence of the accused, the prosecutor shall immediately serve on the accused an intimation of adjournment in Form 12.1.

(5) The calling and the adjournment of the trial diet including a record as to the presence or absence of the accused, as the case may be, shall be endorsed by the clerk of court on the record copy indictment and entered in the record of proceedings in accordance with existing law and practice.

(6) A copy of the order of the court adjourning the trial diet to a subsequent sitting under section 80(1) of the Act of 1995 shall be sent by the Clerk of Justiciary or sheriff clerk, as the case may be, to the governor of any institution in which the accused is detained.

#### Applications for postponement of trial diet

**12.2.**—(1) Subject to paragraph (2), an application under section 80(2) of the Act of 1995 (application for postponement of trial diet) shall be made by minute in Form 12.2-A.

(2) Where all the parties join in the application, the application shall be made by joint minute in Form 12.2-B.

(3) A minute under this rule shall be lodged—

(a) in a case set down for trial in the High Court, with the Clerk of Justiciary, or

(b) in a case set down for trial in the sheriff court, with the appropriate sheriff clerk.

#### Orders fixing diet for hearing of application to postpone trial diet

**12.3.** Where a minute referred to in rule 12.2 (applications for postponement of trial diet) has been lodged, the court shall, or, in a case in which all parties join in the application, may, make an order endorsed on the minute—

(a) fixing a diet for a hearing of the application; and

(b) for service of the minute with the date of the diet on all parties.

#### Calling of diet for hearing application

**12.4.**—(1) A diet fixed under rule 12.3 (orders fixing diet for hearing application to postpone trial diet) shall be held in open court in the presence of all parties (unless the court permits the

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hearing to proceed in the absence of the accused under section 80(5) of the Act of 1995, and shall be commenced by the calling of the diet.

- (2) On the calling of the diet, the prosecutor shall inform the court—
  - (a) whether any other cases have been set down for trial at the sitting in respect of which the application for postponement of the trial diet is made; and
  - (b) whether a warrant has been issued under section 66(1) of the Act of 1995 (warrant to cite accused and witnesses for trial) for a subsequent sitting of the court.

### **Orders relating to postponed trial diet**

**12.5.**—(1) Where the court is informed by the prosecutor that no other cases have been set down for trial at the sitting in respect of which the application for postponement of the trial diet is made and has granted the application under section 80(2) of the Act of 1995 (application for postponement of trial diet), the court shall make an order authorising—

- (a) if citations have been issued to jurors for the original trial diet, the issue to those jurors of intimation that they are not required to attend at the original diet but are required to attend at the new diet; and
- (b) if such citations have not been issued, the issue to the jurors shown on the original list of jurors of citations requiring them to attend at the new trial diet.

(2) Where the court is informed by the prosecutor that other cases have been set down for trial at that sitting and the court has granted the application under section 80(2) of the Act of 1995, the court shall, in fixing a new trial diet, have regard to the time required to issue citations to jurors who have not been summoned under section 84(3) of that Act (sitting of High Court at town in which it does not usually sit) for the sitting in which the new diet is being fixed.

- (3) Where—
  - (a) the court is of opinion that the original trial diet should not proceed, and
  - (b) the court has been informed that a warrant has been issued under section 66(1) of the Act of 1995 (warrant to cite accused and witnesses for trial diet) for a subsequent sitting of the court within the period mentioned in relation to that court in section 80(1) of that Act (alteration and postponement of trial diet),

the court may, without prejudice to the powers under section 80(3) of that Act (power to discharge trial diet and fix, or give leave to prosecutor to serve notice fixing, new trial diet), make an order postponing the trial diet to that subsequent sitting; and that order shall have effect as if it had been made under section 80(1) of that Act.

### **Notice fixing new trial diet**

**12.6.**—(1) Where the court gives leave to the prosecutor to serve a notice fixing a new trial diet under section 80(3) of the Act of 1995, the prosecutor shall consult with the Clerk of Justiciary or sheriff clerk, as the case may be, as to an appropriate date before fixing that diet.

- (2) A notice mentioned in paragraph (1) shall be in Form 12.6, and—
  - (a) shall be served by the prosecutor on all parties and on the governor of any institution in which the accused is detained; and
  - (b) a copy of the notice and certificate of execution of service shall be lodged by the prosecutor as soon as possible with the clerk of court.

(3) A notice served under paragraph (2) shall, for the purpose of section 66(1) of the Act of 1995 (warrant to cite accused and witnesses for trial diet), be treated as being a warrant issued by the Clerk of Justiciary or sheriff clerk, as the case may be, to officers of law to cite accused persons,

witnesses and jurors for the date specified in the notice for the new trial diet, and shall have effect for those purposes.

(4) The clerk of court shall, on receiving a copy of such a notice, attach it to the record copy of the indictment.

### **Record of proceedings under this Chapter**

**12.7.** The clerk of court shall record by endorsement on the record copy of the indictment—

- (a) the calling of the diet of the hearing of an application under section 80(2) of the Act of 1995 (application for postponement of trial diet),
- (b) the proceedings at the hearing, and
- (c) the decision of the court;

and that record shall be signed by the judge, and entered in the record of proceedings.

### **Joint applications without hearing**

**12.8.—**(1) Where, in the case of a joint application under subsection (2) of section 80 of the Act of 1995 (application for postponement of trial diet), the court proposes to proceed without hearing the parties by virtue of subsection (4) of that section (joint application for postponement of trial diet), the Clerk of Justiciary or sheriff clerk, as the case may be, shall on the lodging of the minute attach it to the record copy of the indictment and place it before a judge in chambers.

(2) The order made by the judge in chambers in respect of the joint application shall be—

- (a) recorded by endorsement on the record copy of the indictment;
- (b) signed by the clerk of court;
- (c) entered in the record of proceedings; and
- (d) intimated by the clerk of court to the applicants or their solicitors.

(3) The clerk of court shall send to the governor of any institution in which any accused is detained a copy of the following orders of the court:—

- (a) an order under rule 12.3 (order fixing diet for hearing of application to postpone trial diet);
- (b) an order under section 80(3) of the Act of 1995 discharging a trial diet and fixing a new trial diet; and
- (c) an order under rule 12.5(3) adjourning a trial diet to a subsequent sitting.

### **Calling of adjourned diet**

**12.9.** If, in relation to any case, a trial diet has been discharged or adjourned under this Chapter, any requirement to call that diet at any sitting of the court shall have effect only in relation to the sitting at which the new trial diet has been fixed.

### **Form of notice of diet where trial does not take place**

**12.10.** A notice referred to in section 81(1) of the Act of 1995 (procedure where trial does not take place) shall be in Form 8.2-B and signed by the prosecutor.

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## **CHAPTER 13**

### **SUMMONING OF JURORS**

#### **List of jurors**

**13.1.** The clerk of the court before which the trial is to take place, in preparing a list of jurors for the trial diet for the purposes of section 84(1) of the Act of 1995, shall have regard, in determining the number of jurors to be listed, to the powers of postponing or adjourning any trial diet exercisable by the court under the following provisions of the Act of 1995:—

- section 73(5) (postponement of trial diet at preliminary diet),
- section 74(3) (postponement of trial diet in appeals in connection with first diets or preliminary diets),
- section 76(3) (postponement of trial diet where not guilty plea not accepted),
- section 80 (alteration and postponement of trial diet).

#### **Citation of jurors**

**13.2.—(1)** The citation under section 85(4) of the Act of 1995 of a person summoned to serve as a juror shall be served on that person in Form 13.2-A.

(2) The execution of citation under section 85(4) of the Act of 1995 of persons summoned to serve as jurors shall be in Form 13.2-B.

## **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.

(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

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(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.

## **CHAPTER 15**

### **APPEALS FROM SOLEMN PROCEEDINGS**

#### **Register and lists of appeals**

**15.1.**—(1) The Clerk of Justiciary shall keep a register, in such form as he thinks fit, of all cases in which he receives intimation of intention to appeal or, in the case of an appeal under section 106 (right of appeal) or section 108 (Lord Advocate’s appeal against sentence) of the Act of 1995, a note of appeal under section 110 of that Act.

(2) The register kept under paragraph (1) shall be open for public inspection at such place and at such hours as the Clerk of Justiciary, subject to the approval of the Lord Justice General, considers convenient.

(3) The Clerk of Justiciary shall—

- (a) prepare from time to time, a list of appeals to be dealt with by the High Court; and
- (b) cause such list to be published in such manner as, subject to the approval of the Lord Justice General, he considers convenient for giving due notice to persons having an interest in the hearing of such appeals by the High Court.

#### **Forms of appeal**

**15.2.**—(1) Any intimation under section 109(1) of the Act of 1995 (written intimation of intention to appeal) shall be in Form 15.2-A.

(2) A note under section 110(1) of the Act of 1995 (written note of appeal) shall be in Form 15.2-B.

(3) An application under section 111(2) of the Act of 1995 (application to extend time) shall be made in Form 15.2-C.

(4) An application under section 112(1) of the Act of 1995 (application of appellant for bail) shall be made in Form 15.2-D.

(5) The following documents shall be signed by the appellant or by his counsel or solicitor:—

- (a) an intimation of intention to appeal under section 109(1) of the Act of 1995 except where the appellant is the Lord Advocate;
- (b) an application under section 111(2) of the Act of 1995 (application to extend time); or
- (c) a note of appeal.

(6) An appeal under section 19 of the Prisoners and Criminal Proceedings (Scotland) Act 1993<sup>(1)</sup> (appeals in respect of decisions relating to supervised release orders) shall be in Form 15.2-B.

### **Appeals against refusal of applications heard by single judge**

**15.3.**—(1) Where an application has been dealt with by a single judge of the High Court by virtue of section 103(5) of the Act of 1995 (powers exercisable by single judge), the Clerk of Justiciary shall notify the decision to the applicant in Form 15.3-A.

(2) In the event of such judge refusing any such application, the Clerk of Justiciary on notifying such refusal to the applicant shall forward to him a form in Form 15.3-B to complete and return forthwith if he desires to have his application determined by the High Court as constituted for the hearing of appeals under Part VIII of the Act of 1995 (appeals from solemn proceedings).

### **Extension of time by Clerk of Justiciary**

**15.4.** Where, under section 110(2) of the Act of 1995, the Clerk of Justiciary extends the period for lodging a note of appeal, the period of any such extension shall be recorded on the completed form of intimation of intention to appeal.

### **Intimation of appeal against sentence of death**

**15.5.** The Clerk of Justiciary shall intimate an appeal against a conviction in respect of which sentence of death has been pronounced, and the determination in any such appeal, immediately on such intimation or determination, as the case may be, to—

- (a) the Secretary of State for Scotland; and
- (b) the governor of the prison in which the appellant is detained.

### **Abandonment of appeals**

**15.6.** A notice of abandonment under section 116(1) of the Act of 1995 (abandonment of appeal) shall be in Form 15.6.

### **Note of proceedings at trial**

**15.7.** In an appeal under section 106(1) of the Act of 1995 (right of appeal), the High Court may require the judge who presided at the trial to produce any notes taken by him of the proceedings at the trial.

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(1) 1993 c. 9.

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

### **Clerk to give notice of date of hearing**

**15.8.**—(1) Where the High Court fixes the date for the hearing of an appeal or of an application under section 111(2) of the Act of 1995 (application to extend time), the Clerk of Justiciary shall give notice to the Crown Agent and to the solicitor of the convicted person, or to the convicted person himself if he has no known solicitor; and the appellant or applicant shall, within seven days before the hearing, lodge three copies (typed or printed) of the appeal or application for the use of the court.

(2) Where the powers of the court are to be exercised by a single judge under section 103(5) of the Act of 1995 (powers exercisable by single judge), a copy of the application to be determined shall be lodged for the use of the judge.

(3) A notice by the Clerk of Justiciary to the Secretary of State for the purposes of section 117(4) of the Act of 1995 (notice that appellant or applicant be present at a diet) shall be in Form 15.8.

### **Continuation of hearings**

**15.9.**—(1) The High Court, or any single judge exercising the powers of the High Court under section 103(5) of the Act of 1995 (powers exercisable by single judge), may continue the hearing of any appeal or application to a date, fixed or not fixed.

(2) Any judge of the High Court, or the person appointed by the court to take additional evidence, may fix any diet or proof necessary for that purpose.

### **Note to be kept of appeal**

**15.10.**—(1) The Clerk of Justiciary shall, in all cases of appeal from a conviction obtained or sentence pronounced in the High Court, note on the margin of the record of the trial the fact of an appeal having been taken and the result of the appeal.

(2) In the case of an appeal taken against any conviction obtained or sentence pronounced in the sheriff court on indictment, the Clerk of Justiciary shall notify the clerk of that court of the result of the appeal; and it shall be the duty of the clerk of that court to enter on the margin of the record of the trial a note of such result.

### **Suspension of disqualification from driving pending appeal**

**15.11.**—(1) Where a person who has been disqualified from holding or obtaining a driving licence following a conviction on indictment appeals against that disqualification to the High Court, any application to suspend that disqualification pending the hearing of the appeal shall be made—

- (a) if the sentencing court was the sheriff, by application to the sheriff; or
- (b) if the sentencing court was the High Court, or if an application to the sheriff under subparagraph (a) has been refused, by petition to the High Court.

(2) An application to the sheriff under paragraph (1)(a) shall be—

- (a) in Form 15.11-A, and
- (b) lodged with the sheriff clerk with a copy of the note of appeal endorsed with the receipt of the Clerk of Justiciary;

and the sheriff clerk shall record the order made by the sheriff on the application in the minute of proceedings.

(3) A petition to the High Court under paragraph (1)(b) shall be—

- (a) in Form 15.11-B; and
- (b) lodged with the Clerk of Justiciary.

### **Provisions supplemental to rule 15.11(3)**

**15.12.**—(1) The petitioner or his solicitor shall, on lodging a petition under rule 15.11(3), send a copy of it to—

- (a) the Crown Agent; and
- (b) if the sentencing court was the sheriff, the clerk of that court.

(2) The High Court may order such further intimation (including intimation to the Lord Advocate) as it thinks fit, and may dispose of the application in open court or in chambers.

(3) An order made by a single judge under paragraph (2) shall not be subject to review.

(4) On an order being made on a petition under rule 15.11(3), the Clerk of Justiciary shall, if the sentencing court was the sheriff, send a certified copy of the order to the clerk of that court.

(5) Where the order referred to in paragraph (4) suspends a disqualification from driving, the Clerk of Justiciary shall also send a certified copy of the order to the Secretary of State with such further information as the Secretary of State may require.

(6) The Clerk of Justiciary shall, on determination of the appeal against a disqualification from driving—

- (a) if the sentencing court was the sheriff, send the clerk of that court a certified copy of the order determining the appeal and the clerk of that court shall, if appropriate, make the appropriate endorsement on the appellant's driving licence and intimate the disqualification to the persons concerned; or
- (b) if the appeal against the disqualification is refused, make the appropriate endorsement on the appellant's driving licence and intimate the disqualification to the persons concerned.

(7) Where leave to appeal has been refused under section 107 of the Act of 1995, "determination" in paragraph (6) of this rule means—

- (a) the fifteenth day after the date of intimation to the appellant or his solicitor of refusal of leave under subsection (1)(b) of that section, unless the appellant applies to the High Court for leave to appeal; or
- (b) the day two days after the date of intimation to the appellant or his solicitor of the refusal of leave by the High Court under subsection (5)(b) of that section.

### **Suspension of disqualification etc. under section 121 of the Act of 1995**

**15.13.** In the application of section 121 of the Act of 1995 (suspension of disqualification, forfeiture, etc.) to a case in which leave to appeal has been refused under section 107 of the Act of 1995, the word "determined" in subsections (1) and (2) of section 121 of that Act shall be construed as meaning—

- (a) the fifteenth day after the date of intimation to the appellant or his solicitor of refusal of leave under subsection (1)(b) of section 107 of that Act, unless the appellant applies to the High Court for leave to appeal; or
- (b) the day two days after the date of intimation to the appellant or his solicitor of the refusal of leave by the High Court under subsection (5)(b) of section 107 of that Act.