

# ACT OF ADJOURNAL (CRIMINAL PROCEDURE RULES) 1996 SI 1996/513

## SCHEDULE 2

### CRIMINAL PROCEDURE RULES 1996

#### ***PART II General***

#### **CHAPTER 5 JUDICIAL EXAMINATION**

##### **Procedure in examination**

5.1 Subject to the following provisions of this Chapter, the procedure to be followed in relation to examination of the accused under sections 35 to 39 of the Act of 1995 (which relate to judicial examination) on any charge shall be in accordance with existing law and practice.

##### **Record of examination**

5.2 (1) The record of all proceedings under the sections of the Act of 1995 mentioned in rule 5.1 (procedure in examination) shall be kept by the sheriff clerk in Form 5.2, and shall be kept by him with the petition containing the charge or charges in respect of which the accused is brought before the sheriff for examination.

(2) The sheriff clerk shall transmit to the prosecutor a certified copy of the petition under section 34 of the Act of 1995 (petition for warrant) and the record of proceedings—

(a) in relation to proceedings at which the accused is liberated in due course of law, on the conclusion of those proceedings; and

(b) in relation to any further examination, on the conclusion of that examination.

##### **Verbatim record**

5.3 (1) Where the prosecutor provides a shorthand writer for the purposes of section 37(1) of the Act of 1995 (verbatim record of proceedings), the shorthand writer shall be—

(a) a person recognised by a court as a shorthand writer for the purposes of section 93 of the Act of 1995 (record of trial) or rule 29.18 of Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (recording of evidence); or

(b) a person, other than a person mentioned in sub-paragraph (a) of this paragraph, who is skilled in the writing of shorthand (whether or not in the service of the prosecutor).

(2) In proceedings where a verbatim record is made by a person mentioned in paragraph (1)(b), a tape-recorded record of the proceedings shall also be made by the sheriff clerk in accordance with rule 5.4(1) and (2)(use of tape recorders).

(3) The name and address of the shorthand writer or the person recording the questions, answers and declarations by mechanical means shall be recorded in the record of proceedings.

(4) The shorthand writer shall record the whole proceedings relating to—

(a) the emitting by the accused of a declaration under section 35(4) of the Act of 1995; and

(b) any questions the accused is asked and any answers given including his declining to answer, under section 35(5) (accused brought before sheriff for further examination), or section 36 (judicial examination: questioning by prosecutor), of the Act of 1995.

(5) The shorthand writer shall not include in the transcript he makes of the proceedings any questions disallowed by the sheriff and any answers to such questions.

(6) The shorthand writer shall, in addition to the transcript of proceedings he makes under paragraph (4), also make such further transcript of the record made by him as either the judge at a first diet or, as the case may be, preliminary diet, or the High Court of Justiciary on an appeal, may direct for the purposes of considering an application under section 278(2) of the Act of 1995 (application that record of judicial examination not be read or be held inadmissible).

(7) The shorthand writer shall, as soon as possible after the conclusion of the proceedings, deliver to the prosecutor the transcript signed and certified by him in accordance with section 37(4)(b) of the Act of 1995.

### **Use of tape recorders**

5.4 (1) Any tape-recorded record of the proceedings made under rule 5.3(2), shall be made on two separate tapes simultaneously which shall be marked (and in this rule referred to as) "tape A" and "tape B" respectively.

(2) The sheriff clerk shall record on both tapes any proceedings mentioned in rule 5.3(5) (questions disallowed by sheriff), and for the purposes of maintaining a continuous record of the proceedings on both tapes, the proceedings may be interrupted at the instance of the sheriff clerk for such reasonable period as he may require.

(3) The sheriff clerk shall note in the record of proceedings the time of commencement and the time of termination of the tape-recording.

(4) On the conclusion of the proceedings in question, the sheriff clerk shall—

(a) cause tape A to be sealed in an envelope or other similar container on which the following information shall be endorsed:—

- (i) the name of the accused;
  - (ii) the date of examination;
  - (iii) the name of the presiding sheriff;
  - (iv) the name of the shorthand writer;
  - (v) the time of commencement and of termination of the tape; and
  - (vi) the time and date of sealing of the tape; and
- (b) deliver tape B to the prosecutor.

(5) The sheriff clerk shall retain tape A until he is informed in writing by the prosecutor that the proceedings against the accused in respect of the charge or charges in relation to which he was examined have come to an end.

(6) The sheriff clerk shall not permit the seal on the container of tape A to be broken while he retains it except on being authorised to do so by a judge.

(7) On being so authorised the sheriff clerk shall only permit such access to tape A for such period as may be required for the purposes of the authorisation and, on the expiry of that period, shall again comply with the requirements of paragraphs (4)(a) and (5).

(8) The sheriff clerk shall, on being informed in writing by the prosecutor that the proceedings mentioned in paragraph (5) have come to an end, return tape A to the prosecutor.

(9) For the purposes of paragraph (8), the circumstances in which the proceedings have come to an end include—

- (a) a decision by the prosecutor to take no further action against the accused in respect of the charge in question;
- (b) following conviction and sentence of the accused in respect of the charge in question, the expiry of any statutory period of appeal without an appeal being taken; and
- (c) the final disposal of any appeal which has been taken.

### **Questions by prosecutor**

5.5 (1) The sheriff before whom the accused is brought for examination shall, if the prosecutor proposes to ask the accused questions regarding the alleged making by the accused of an extrajudicial confession to which section 36(3) of the Act of 1995 (confession in the hearing of constable) applies, be provided by the prosecutor before the commencement of the examination with a copy of the written record of the confession allegedly made.

(2) If the sheriff has not been provided with the written record required under paragraph (1), the prosecutor shall not ask the accused any such questions.

(3) The accused shall not be put on oath in the course of any proceedings on examination.

(4) The judge presiding at the trial of an accused who has declined to answer any question under section 36(1) of the Act of 1995 (prosecutor's questions as to matters in the charge or as to confession or declaration) may, in determining whether his having so declined may be commented upon by virtue of section 36(8) of the Act of 1995 (comments at trial), have regard to the terms of the charge to which the question related.

(5) The petition containing the terms of the charge to which the question referred to in paragraph (4) related, or a copy of the petition certified by the sheriff clerk as such, shall be sufficient evidence of the terms of that charge for the purposes of that paragraph; but the petition or a certified copy of the petition need not be included in any list of productions made available at the trial.

(6) The prosecutor shall, if the presiding judge proposes to have regard to the terms of that charge for the purposes of paragraph (4), provide the presiding judge with the petition or certified copy of the petition referred to in paragraph (5).

### **Rectification of errors in transcript**

5.6 (1) A notice served under section 38(1)(a) of the Act of 1995 (notice of error or incompleteness in transcript) shall be in Form 5.6-A.

(2) The prosecutor shall, on serving or receiving such a notice, immediately lodge with the sheriff clerk the transcript certified in accordance with section 37(4)(b) of the Act of 1995.

(3) An application to the sheriff under section 38(1)(b) of the Act of 1995 (rectification of error or incompleteness) shall be in Form 5.6-B.

(4) The application referred to in paragraph (3) shall be lodged with the sheriff clerk with—

- (a) a copy of the notice served under section 38(1)(a) of the Act of 1995; and
- (b) an execution of service of that notice.

(5) Where the person on whom notice is served under section 38(1)(a) of the Act of 1995 agrees with the opinion to which that notice relates—

- (a) he may intimate his agreement in Form 5.6-C to the person serving notice; and
- (b) he shall, at the same time as intimating his agreement, send a copy of that form to the sheriff clerk.

(6) On the lodging of an application under paragraph (3), the sheriff shall, unless he dispenses with a hearing, by an order endorsed on the application—

- (a) fix a date for a hearing; and
- (b) order intimation of the date of the hearing to be made by the sheriff clerk to the prosecutor and to the accused person to whose examination the transcript relates.

(7) Where the sheriff authorises rectification of the transcript, he shall by an order endorsed on the application and signed by him specify the rectification authorised.

(8) The sheriff clerk shall give effect to any authorised rectification by amending the signed and certified transcript in accordance with the terms of the order of the sheriff and by initialling any amendment.

(9) On making any such amendment, the sheriff clerk shall—

(a) attach to the rectified transcript a copy of the order of the sheriff certified by the sheriff clerk;

(b) return the rectified transcript to the prosecutor;

(c) retain the application for rectification and the order of the sheriff made in respect of the application; and

(d) attach the documents mentioned in sub-paragraph (c) of this paragraph to the record of proceedings mentioned in rule 5.2 (record of examination).

### **Alteration of time limits by sheriff**

5.7 Any direction made by the sheriff under section 37(7)(a) of the Act of 1995 (modifications as to time limits) shall be entered in the record of proceedings mentioned in rule 5.2 (record of examination) and authenticated by the sheriff subscribing his signature.

### **Postponement of trial diet by sheriff**

5.8 (1) The sheriff shall not make an order under section 37(7)(b) of the Act of 1995 (postponement of trial diet) in respect of a case set down for trial in the High Court.

(2) Any order by a sheriff under section 37(7)(b) of the Act of 1995 in a case not set down for trial in the High Court shall be—

(a) endorsed on the record copy of the indictment;

(b) authenticated by the signature of the sheriff; and

(c) intimated—

(i) by the prosecutor to any co-accused by serving on him an intimation of postponement in Form 5.8; and

(ii) by the sheriff clerk to the governor of any institution in which any co-accused is detained.

### **Postponement of trial diet by High Court**

5.9 (1) If the sheriff considers that it may be appropriate to make an order under section 37(7)(b) of the Act of 1995 (postponement of trial diet) in respect of a

case set down for trial in the High Court, he shall report the circumstances (including the making of any direction under section 37(7)(a) (modifications as to time limits)) to the Clerk of Justiciary.

(2) The Clerk of Justiciary, on receiving the report of the sheriff, shall—

(a) fix a diet (to which the trial diet shall be treated as being postponed) for the determination by a single judge of the High Court of the diet to which the trial shall be postponed; and

(b) intimate that diet to the prosecutor, the accused and the governor of any institution in which any accused is detained.

(3) The single judge of the High Court, in determining the diet to which the trial shall be postponed, shall have regard to the terms of the report of the sheriff.

### **Alteration of time limits by High Court**

5.10 (1) An application to the High Court for a direction to extend a time limit referred to in section 37(9) of the Act of 1995 shall be made by petition.

(2) A petition under paragraph (1) shall be intimated to the other party and lodged with a certificate of intimation with the sheriff clerk.

(3) The sheriff clerk shall, on the lodging of a petition, transmit it to the Clerk of Justiciary with a certified copy of the relative petition and record of proceedings.

(4) A petition under paragraph (1) may be disposed of by a single judge of the High Court.

(5) The Clerk of Justiciary shall, as soon as possible after he receives the petition—

(a) fix a diet for the hearing; and

(b) intimate the diet to the prosecutor and the accused.

(6) The Clerk of Justiciary shall, on the disposal of the petition by the High Court, transmit a certified copy of the order of the High Court to the sheriff clerk.

(7) The sheriff clerk shall, on receiving the certified copy of the order, attach it to the record of proceedings.