

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

SCHEDULE 2

CRIMINAL PROCEDURE RULES 1996

PART III Solemn proceedings

CHAPTER 9 FIRST DIETS (SHERIFF COURT)

Minute giving notice of preliminary pleas or preliminary issues

9.1 (1) Any notice given under section 71(2) of the Act of 1995 (notice of preliminary pleas or preliminary issues before first diet) shall be by minute in Form 9.1.

(2) That minute shall be lodged with the sheriff clerk and served on every other party by the minuter.

Procedure on lodging minute

9.2 On the lodging of a minute under rule 9.1 (minute giving notice of preliminary pleas or preliminary issues) with a certificate of execution of service, the sheriff clerk shall endorse on the minute the time and date on which it was received.

Orders for further diets under section 71 of the Act of 1995

9.3 (1) An order for a further diet under section 71(2ZA) of the Act of 1995 (further diet to consider objection to the admissibility of evidence) may be signed by the sheriff clerk.

(2) Intimation of the terms of an order-

(a) mentioned in paragraph (1); or

(b) or an adjourned diet under section 71(5A) of the Act of 1995 (adjournment of first diet),

shall be given by the sheriff clerk to the governor of any institution in which the accused is detained.

Procedure at first diet

9.4 (1) A first diet shall commence on the diet being called.

(2) A record of the proceedings at the first diet, including-

(a) a note of the decision made by the court in respect of any notice placed before it;

(b) any adjournment, and

(c) the plea stated under section 71(6) of the Act of 1995 (plea at first diet),

shall be kept in accordance with existing law and practice.

Applications for leave to appeal

9.5 (1) An application for leave to appeal to the High Court under section 74(1) of the Act of 1995 (appeal against a decision of the sheriff at a first diet) shall be made by motion to the sheriff at that diet immediately following the making of the decision in question, and shall be granted or refused at that time.

(2) A decision under this rule shall be recorded in the minute of proceedings.

Note of appeal

9.6 (1) An appeal under section 74(1) of the Act of 1995 against a decision of the sheriff at a first diet shall be made by lodging a note of appeal in Form 9.6.

(2) The note of appeal shall be lodged with the sheriff clerk not later than two days after the making of the decision in question.

Procedure on lodging note of appeal

9.7 (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) As soon as possible after the lodging of a note of appeal with the sheriff clerk, he shall-

(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 other relevant document.

Report of sheriff

9.8 (1) The sheriff, on receiving a request for a report under rule 9.7(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

9.9 (1) Where, in relation to an appeal under section 74(1) of the Act of 1995 (appeal in connection with first diet) in a case set down for trial in the sheriff court, the High Court makes an order under section 74(3) of that Act (postponement of 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) If, in relation to any case a trial diet has been postponed by virtue of an order mentioned in paragraph (1), any requirement to call that diet shall have effect only in relation to the date to which the diet has been postponed.

Orders of appeal court

9.10 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.

Abandonment of appeal

9.11 (1) An appellant who has taken an appeal under section 74(1) of the Act of 1995 (appeal in connections with first diet) 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 in Form 9.11 with the Clerk of Justiciary.

(3) The Clerk of Justiciary, on receiving such a minute of abandonment, 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.