

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

SCHEDULE 2

CRIMINAL PROCEDURE RULES 1996

PART VII Miscellaneous procedures

CHAPTER 36 CRIME (INTERNATIONAL CO-OPERATION ACT 2003)

Interpretation of this Chapter

36.1 In this Chapter-

"Act of 2003" means the Crime (International Co-operation) Act 2003;

"external court" means the court mentioned in section 30(1) or, as the case may be, section 31(1) of the Act of 2003; and

"nominated court" means a court nominated under section 15(3), section 30(3) or section 31(4) of the Act of 2003.

Effecting citation or service of documents outside the United Kingdom

36.2 (1) A notice under section 5(5)(b) of the Act of 2003 (notice to accompany citation being effected outside the United Kingdom) shall be in Form 36.2 and shall give the information specified in that form.

(2) Where citation is being effected outside the United Kingdom under section 5 or 6 of the Act of 2003, in the form of citation for-

"IF YOU DO NOT ATTEND COURT WITHOUT A LAWFUL EXCUSE THE COURT MAY ORDER THAT YOU BE APPREHENDED AND PUNISHED.",

or

"IF YOU FAIL TO ATTEND WITHOUT A LAWFUL EXCUSE THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.",

or

"A warrant may be issued for your arrest",

there shall be substituted the following:-

"As this citation is being effected outside the United Kingdom, no obligation under the law of Scotland to comply with the citation is imposed by virtue of its being so effected. Accordingly, failure to comply with the citation does not constitute contempt of court and is not a ground for issuing a warrant to secure your attendance or for imposing a penalty. But this citation may subsequently be effected against you in the United Kingdom, in which case, if you fail to attend without a lawful excuse, the court may issue a warrant for your arrest."

(3) Where a document is to be served on a person outside the United Kingdom under section 6 of the Act of 2003 (effecting citation etc. otherwise than by

post), it shall be sent by the Clerk of Justiciary, sheriff clerk or clerk of the justice of the peace court, as the case may be, to the Lord Advocate.

Proof of citation or service outside the United Kingdom

36.3 The service on any person of a citation or document under section 6 of the Act of 2003 (effecting citation etc. otherwise than by post) may be proved in any legal proceedings by a certificate given by or on behalf of the Lord Advocate.

Applications for requests for assistance

36.4 An application under section 7(1) of the Act of 2003 (application for request for assistance) shall-

- (a) be in Form 36.4-A;
- (b) be lodged with the Clerk of Justiciary or sheriff clerk, as the case may be;
- (c) state the particulars of the offence which it is alleged has been committed or the grounds on which it is suspected that an offence has been committed;
- (d) state whether proceedings in respect of the offence have been instituted or the offence is being investigated; and
- (e) include particulars of the assistance requested and a draft request in Form 36.4-B.

Hearing of applications for requests for assistance

36.5 (1) Where the prosecutor presents an application under section 7(1) of the Act of 2003 (application for request for assistance) before either the first appearance of the accused on petition or the service of a summary complaint, the High Court or the sheriff, as the case may be, shall, without requiring intimation to any other party, proceed to consider the application.

(2) Where any party presents such an application following the first appearance of the accused on petition or the service of a summary complaint, the High Court or sheriff, as the case may be, may-

- (a) before the lodging of an indictment, dispense on cause shown with intimation to any other party and proceed to consider the application; or
 - (b) fix a diet for hearing the application and order intimation of the diet and application to any other party.
- (3) The High Court or sheriff, as the case may be, after considering such application –
- (a) may allow summary adjustment of the statement of assistance required in the draft request;

(b) shall grant the application, with or without any modifications which it or he deems appropriate, or shall refuse it.

(4) On granting such application the High Court or sheriff, as the case may be, shall-

(a) approve and sign the draft request;

(b) if English is not an official language of the court or authority to which the request is addressed, specify a period within which a translation of the request and of any production is to be lodged.

Register of applications for requests for assistance

36.6 (1) A register shall be kept by the Clerk of Justiciary and by the sheriff clerk of applications under section 7(1) of the Act of 2003 (application for request for assistance).

(2) Save as authorised by the court, the register mentioned in paragraph (1) shall not be open to inspection by any person.

Notification of requests for assistance

36.7 Where a court sends a request for assistance under section 8 of the Act of 2003 other than on an application by or on behalf of the Lord Advocate, the Clerk of Justiciary or sheriff clerk, as the case may be, shall forthwith notify the Lord Advocate of this and send with the notification a copy of the letter of request.

Citation for proceedings before a nominated court

36.8 (1) The warrant to cite a person to proceedings before a nominated court shall be in Form 36.8-A.

(2) The form of postal citation of a person to proceedings before a nominated court shall be in Form 36.8-B; and the person shall complete and return Form 36.8-C to the procurator fiscal.

(3) The form of personal citation of a person to proceedings before a nominated court shall be in Form 36.8-D.

Proceedings before a nominated court

36.9 (1) In proceedings before a nominated court-

(a) the procurator fiscal or Crown counsel shall participate in any hearing;

(b) the prosecutor of the requesting country mentioned in the request under section 13(1) of the Act of 2003 (request for assistance from overseas authorities) may participate in any hearing;

(c) where the request under section 13(1) of the Act of 2003 originates from current criminal proceedings any party to or persons with an

interest in those proceedings may attend and, with the leave of the court, participate in any hearing;

(d) a judge or investigating magistrate in the current criminal proceedings may participate in any hearing;

(e) a lawyer or person with a right of audience from the requesting country who represents any party to the current criminal proceedings may participate in any hearing;

(f) a solicitor or counsel instructed by any party may participate in any hearing;

(g) any other person may, with the leave of the court, participate in any hearing;

(h) a shorthand writer may be present to record the proceedings; and

(i) the proceedings shall be in private.

(2) Where any person applies for leave to participate in any hearing the court shall, in determining such application, consider any relevant representations made by the court or authority making the request under section 13(1).

Time period for consideration of overseas freezing order

36.9A (1) This rule applies where the Lord Advocate has nominated a sheriff to give effect to an overseas freezing order under section 21(2) of the Act of 2003 (considering the overseas freezing order).

(2) Subject to paragraph (3), the sheriff shall consider the order no later than the day after receipt of the order.

(3) The sheriff may, exceptionally, consider the order later than the period prescribed in paragraph (2) but shall do so no later than 5 days after receipt of the order.

(4) Where the day mentioned in paragraph (2) or the last day of the period mentioned in paragraph (3) falls on a Saturday, Sunday or court holiday, such period shall extend to and include the next day which is not a Saturday, Sunday or court holiday.

(5) In calculating the period mentioned in paragraph (3), any Saturday, Sunday or court holiday that falls within that period shall be disregarded.

Form of warrant for seizure and retention of evidence

36.9B A warrant under section 22(1) of the Act of 2003 (giving effect to the overseas freezing order) shall be in Form 36.9B.

Application for release of evidence

36.9C An application under section 25(1) of the Act of 2003 (release of evidence held under overseas freezing order) shall be in Form 36.9C.

Provision of interpreters

36.10 (1) This rule applies where a court has been nominated under section 30(3) (nomination to facilitate the giving of evidence by live television link) or section 31(4) (nomination to facilitate the giving of evidence by telephone) of the Act of 2003.

(2) Where it appears to the Clerk of Justiciary or sheriff clerk, as the case may be, that the witness is likely to give evidence in a language other than English, he shall make arrangements for an interpreter to be present at the proceedings to translate what is said into English.

(3) Where it appears to the Clerk of Justiciary or sheriff clerk, as the case may be, that the witness is likely to give evidence in a language other than that in which the proceedings of the external court will be conducted, he shall make arrangements for an interpreter to translate what is said into the language in which the proceedings of the external court will be conducted.

(4) Where the evidence in proceedings before a nominated court is either given in a language other than English or is not translated into English by an interpreter, the High Court or, as the case may be, the sheriff, shall continue the proceedings until such time as a translator can be present to provide a translation into English.

Court record of proceedings before a nominated court

36.11 (1) Where a court receives evidence in proceedings by virtue of a nomination under section 15(3) (nomination to receive evidence), section 30(3) (nomination to facilitate the giving of evidence by live television link), or section 31(4) (nomination to facilitate the giving of evidence by telephone) of the Act of 2003, the Clerk of Justiciary or sheriff clerk, as the case may be, shall record in the minute of proceedings-

- (a) particulars of the proceedings; and
- (b) without prejudice to the generality of (a) above-
 - (i) which persons were present;
 - (ii) which of those persons was represented and by whom;and
 - (iii) whether any of those persons was denied the opportunity of cross-examining a witness as to any part of his testimony.

(2) Save as authorised by the Lord Advocate or, with the leave of the court, the minute of proceedings mentioned in paragraph (1) above shall not be open to inspection by any person.

(3) The Clerk of Justiciary or sheriff clerk, as the case may be, shall send to the Lord Advocate and to the external authority a certified copy of the minute of proceedings.

(4) Where the court has been nominated under section 15(3) of the Act of 2003 the Clerk of Justiciary or sheriff clerk, as the case may be, shall comply with paragraph 6 of Schedule 1 to the Act of 2003 with regard to the forwarding of evidence received by the court.