
STATUTORY INSTRUMENTS

1992 No. 1489 (S.143)

HIGH COURT OF JUSTICIARY, SCOTLAND SUMMARY JURISDICTION, SCOTLAND

Act of Adjournal (Consolidation Amendment) (Criminal Justice International Co-operation Act 1990) 1992

Made - - - - - *19th June 1992*

Coming into force - - - *13th July 1992*

The Lord Justice General, the Lord Justice Clerk and the Lords Commissioners of Justiciary under and by virtue of the powers conferred on them by sections 282 and 457 of the Criminal Procedure (Scotland) Act 1975((1)), section 10 of the Criminal Justice International Co-operation Act 1990((2)), and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Consolidation Amendment) (Criminal Justice International Co-operation Act 1990) 1992 and shall come into force on 13th July 1992.

(2) This Act of Adjournal shall be inserted in the Books of Adjournal.

Amendment of Act of Adjournal (Consolidation) 1988

2.—(1) The Act of Adjournal (Consolidation) 1988((3)) shall be amended in accordance with the following sub-paragraphs.

(2) For rule 168, substitute the following rule:—

“Criminal Justice (International Co-operation) Act 1990

Interpretation

168. In rules 168 to 176—

-
- (1) 1975 c. 21; section 282 was amended by paragraph 47 of, and section 457 by paragraph 72 of, Schedule 7 to the Criminal Justice (Scotland) Act 1980 (c. 62).
(2) 1990 c. 5.
(3) S.I. 1988/110, to which there are amendments not relevant to this Act of Adjournal.

“the Act of 1990((4))” means the Criminal Justice (International Co-operation) Act 1990; and

“document” means a document to which section 2 of the Act of 1990 (service of United Kingdom process overseas) applies.”

(3) After rule 168 insert the following rules:—

“Service of order outside the United Kingdom

169. Where a document is to be served on a person outside the United Kingdom, it shall be sent by the Clerk of Justiciary or sheriff clerk to the Crown Agent with a view to its being served in accordance with arrangements made by the Secretary of State.

Proof of service outside the United Kingdom

170. The service on any person of a document may be proved in any legal proceedings by a certificate given by or on behalf of the Secretary of State, and such a certificate shall be sufficient evidence of the facts stated therein.

Notice of applications for letters of request

171. An application under section 3(1) of the Act of 1990 (which relates to letters of request)—

- (a) shall be made in Form 89;
- (b) shall be lodged with the Clerk of Justiciary or sheriff clerk; and
- (c) shall—
 - (i) be made in writing;
 - (ii) state the particulars of the offence which it is alleged has been committed or the grounds upon which it is suspected that an offence has been committed;
 - (iii) state whether proceedings in respect of the offence have been instituted or the offence is being investigated; and
 - (iv) include particulars of the assistance requested in a draft letter of request which may be in Form 90.

Hearing of applications for letters of request

172.—(1) Where the prosecutor presents an application under section 3(1) of the Act of 1990, before either the first appearance of the accused on petition or the service of a summary complaint the High Court or sheriff shall, without requiring intimation to the other party or parties, proceed to consider the application.

(2) Where any party presents such application following the first appearance of the accused on petition or the service of a summary complaint the High Court or sheriff may—

- (a) before the lodging of an indictment, dispense on cause shown with intimation to the other party or parties and proceed to consider the application; or
- (b) fix a diet for hearing such application and order intimation of the diet and application to the other party or parties.

(3) The High Court or sheriff, after considering any such application—

- (a) may allow summary adjustment of the statement of assistance required in the letter of 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 shall—
- (a) approve and sign the letter of request;
 - (b) if English is not an official language of the body to whom the letter of request is addressed, specify a period within which a translation of the letter of request and of any production is to be lodged.

Court register of applications for letters of request

- 173.**—(1) A register shall be kept by the Clerk of Justiciary and by the sheriff clerk of applications under section 3(1) of the Act of 1990.
- (2) Save as authorised by the court, the register relating to applications mentioned in paragraph (1) above shall not be open to inspection by any person.

Letters of request in urgent cases

- 174.** Where, in a case of urgency, the court sends a letter of request direct to any court or tribunal in accordance with section 3(5) of the Act of 1990, the Clerk of Justiciary or sheriff clerk shall forthwith notify the Crown Agent and Secretary of State of this and send with the notification a copy of the letter of request.

Proceedings before a nominated court

- 175.**—(1) In proceedings before a court nominated under section 4(2) of the Act of 1990 (court for the giving of evidence for use overseas)—
- (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 4(1) of the Act of 1990 may participate in any hearing;
 - (c) where the request under section 4(1) of the Act of 1990 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 party making the request under section 4(1) of the Act of 1990.

Court record of proceedings before a nominated court

176.—(1) Where a court receives evidence in proceedings by virtue of a notice under section 4(2) of the Act of 1990, the sheriff clerk or Clerk of Justiciary shall note 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 were represented and by whom; and
 - (iii) whether any of those persons were 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 or proceedings mentioned in paragraph (1) above shall not be open to inspection by any person.

(3) When so requested by the Lord Advocate, the sheriff clerk shall send to him a certified copy of the minute of proceedings as it relates to any proceedings mentioned in paragraph (1) above.

(4) The sheriff clerk or Clerk of Justiciary shall comply with paragraph 5 of Schedule 1 to the Act of 1990 with regard to the transmission of evidence received by the court.

Revocation

177. The Acts of Adjournal specified in Schedule 2 are revoked.”

(4) In the Appendix, after Form 88, insert Forms 89 and 90 in the Schedule to this Act of Adjournal.

Edinburgh,
19th June 1992

J.A.D. Hope
Lord Justice General, IPD

SCHEDULE

Paragraph 2(3)

FORM 89Form of Application for Letter of Request under Criminal Justice (International Co-operation) Act 1990, s. 3

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

Rule 171(a)

High Court of Justiciary
[or Sheriff Court of at]

PETITION

of

The Right Honourable
[A.B.], The Lord Advocate
or [C.D.] Procurator
Fiscal of Court for the
Public Interest or [E.F.]
Accused Person.

HUMBLY SHEWETH

1. That [E.F.] born on (*specify accused's date of birth*) was on (*date*) in Sheriff Court fully committed upon a petition at the instance of the petitioner charging the said [E.F.] with (*specify the nomen juris of the charge*) as more particularly specified in the copy petition hereunto annexed. (*Insert the following if it is known in which court the case will be indicted: It is expected that in due course the trial of the said [E.F.] will take place in the High Court of Justiciary [or, the Sheriff Court of] at*

OR

That there are reasonable grounds for suspecting that an offence has been committed, namely (*here specify the nomen juris of or otherwise describe the offence or specify the statute and section contravened*) in respect that on (*here specify the date of the offence*) at (*here specify the locus of the offence*) it is alleged that (*here specify the modus of the offence*). Police Officers [*or Officers of Customs and Excise*] acting on the instructions of the petitioner are investigating the alleged offence.

2. That in order that justice may be done in the case against said [E.F.] [*or, in order that the investigation may be completed*], it is necessary that evidence be obtained from (*here specify country to which the request is being sent and the precise evidence required*).

3. That the Criminal Justice (International Co-operation) Act 1990 section 3(1) and (2) provides that where on an application made by a prosecuting authority or, where proceedings have been instituted, by the person charged in those proceedings, it appears to a sheriff or a judge (a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed and (b) that proceedings in respect of the offence have been instituted or that the offence is being investigated, he may issue a letter of request requesting assistance in obtaining outside the United Kingdom such evidence as is specified in the letter for use in the proceedings or investigation.

MAY IT THEREFORE please your Lordship to issue a Letter of Request to (*specify the court tribunal or authority to whom it is desired to have the Request addressed*) to obtain the evidence specified herein and to do further or otherwise in the premises as to your Lordship shall seem proper.

According to Justice &c

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

FORM 90 LETTER OF REQUEST UNDER SECTION 3 OF THE CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT 1990

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

Rule 171(c)(iv)

HIGH COURT OF JUSTICIARY
[or SHERIFF COURT OF AT]

LETTER OF REQUEST

in the Indictment [or
Petition or Complaint]

at the Instance of
The Right Honourable
[A.B.], Her Majesty's
Advocate [or [C.D.],
Procurator Fiscal] for the
Public Interest

against
[E.F.] (design)

LETTER OF REQUEST

In the Investigation into

(*Here specify the crime
under investigation
eg. Murder of [G.H.]*)

The Honourable Lord [I.J.], one of the Lords Commissioners of Justiciary [or [K.L.], Sheriff of [] at [] presents his compliments to (*here specify the court, tribunal or authority to which the request is addressed*) and has the honour of informing it of the following facts:

1. The High Court of Justiciary, of which the Honourable [I.J.] is one of the judges, is the supreme criminal court in Scotland and exercises a jurisdiction as a trial court.

OR

1. The sheriff court of which Sheriff [K.L.] is one of the judges, is a criminal court in Scotland which exercises jurisdiction as a trial court and in pre-trial procedures in all prosecutions for crime.

2. (*Specify briefly the applicant's part in the proceedings including, where appropriate, his relationship with the investigating agency.*)

3. Criminal proceedings have been instituted before the High Court of Justiciary at the instance of the Right Honourable [A.B.], Her Majesty's Advocate, [or, before the sheriff court of [] at [], at the instance of [C.D.], Procurator Fiscal,] against [E.F.] (*here specify the nationality of the accused*) who is presently charged that (*here narrate the charge on the indictment, petition or complaint*). [*In a case where the accused has appeared on petition but has not yet been indicted, insert the following if it is known in which court the case will be indicted:-*]

It is expected that in due course the trial of [E.F.] will take place in the High Court of Justiciary [or, the sheriff court of [] at [].]

OR

3. There are reasonable grounds for suspecting that an offence has been committed, namely (*specify the nomen juris of or otherwise describe the offence or specify the statute and section contravened*) in respect that on (*specify the date of the offence*) at (*specify the locus of the offence*) it is alleged that (*specify the modus of the offence*). Police Officers [or Officers of Customs and Excise] acting on the instructions of the Procurator Fiscal are investigating this alleged offence.

4. The crime of (*specify the nomen juris of the crime charged or under investigation*) is a criminal offence at common law in Scotland and is not contained in any statute. It consists of (*summarise the essential elements of the crime*) [or is a criminal offence under (*narrate statutory provision and its terms and add any explanation beyond the bare words of the statute thought necessary in order to enable the foreign court, tribunal or authority to understand clearly the elements of the crime*)]. The penalties for conviction are (*specify*).

[Where relevant, insert:- A person may be convicted of an attempt at crime where he has taken an overt step in pursuance of his criminal intention and has passed from the stage of preparation to the stage of perpetration but has not completed the crime. Section 63(1) of the Criminal Procedure (Scotland) Act 1975 provides:- “Attempt to commit any indictable crime shall itself be an indictable crime and under an indictment which charges a completed crime the accused may be lawfully convicted of an attempt to commit such crime; and under an indictment charging an attempt the accused may be convicted of such attempt although the evidence be sufficient to prove the completion of the crime said to have been attempted.” or Section 312(0) of the Criminal Procedure (Scotland) Act 1975 provides- “attempt to commit any offence punishable on complaint shall itself be an offence punishable on complaint, and under a complaint which charges a completed offence the accused may be lawfully convicted of an attempt to commit such offence; and under a complaint charging an attempt, the accused may be convicted to such attempt although the evidence be sufficient to prove the completion of the offence said to have been attempted; and under a complaint charging an offence which imports personal injury inflicted by the accused, resulting in death or serious injury to the person, the accused may be lawfully convicted of the assault or other injurious act, and may also be lawfully convicted of the aggravation that such assault or other injurious act was committed with intent to commit such offence.”]

[Where relevant, insert:- The law of Scotland makes no distinction between commission and accession and by the common law of Scotland anyone who gives assistance to or otherwise acts in previous concert with the principal or who is guilty of concert, assistance or participation in the crime is liable to be convicted of the crime.]

5. It has been shown to the Honourable [I.J.] upon application by Her Majesty's Advocate, [or [E.F.]] [or, It has been shown to the sheriff of _____ at _____] upon application by the Procurator Fiscal, or [E.F.]], a copy of which is annexed, that in order that justice may be done in the proceedings [or, in order that the investigation may be completed] it is necessary that evidence be obtained from (*specify country to which the request is being sent*).

6. The circumstances giving rise to this request are as follows:- (*narrate fully such evidence as is known which has relevance to the request so that the foreign court, tribunal or authority will have a clear understanding of the subject matter of the case and the need for the evidence they are requested to obtain*).

7. The Criminal Justice (International Co-operation) Act 1990 empowers the High Court of Justiciary [or the sheriff court] to seek from and to give to courts, tribunals and other authorities exercising criminal jurisdiction in countries or territories outside the United Kingdom reciprocal assistance in the obtaining of evidence and it is requested in the present case that (*specify the court, tribunal or authority to whom the request is addressed*) give assistance in the obtaining of the evidence herein specified. In particular, it is requested that (*specify the assistance requested, whether that is by the interview of witnesses, recovery of documents or other articles, search of premises, issue of extracts or otherwise. If witnesses are to be interviewed, identify them clearly and state nationality if known. If relevant, state any privilege which the witness might be able to claim and provide for the witness to claim that privilege under interview but to be required to answer the question nevertheless, leaving the application of that privilege and the admissibility of the answers given for the determination of the trial court. Specify the subject matter of the questions to be put or formulate questions as appropriate; also specify any special procedures desired to be followed (for example, It is desired that, where competent, a witness be interviewed on oath). Where it is sought to recover documents or other articles specify precisely what is sought and identify the holder of the documents and other articles. State any request for parties or their agents or counsel to be present at the execution of the request and state any other request made. Schedules may be used.*)

8. (*Here narrate any time limit to which the case is subject and, if appropriate, insert: In view of the foregoing it is respectfully requested that this request be treated as urgent.*)

9. Any evidence provided in response to this Letter of Request will not, without the consent of the appropriate authority in (*name the country*), be used for any purpose other than the said proceedings [or, the said investigation and any criminal proceedings arising out of it].

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

10. In thanking (*specify the court, tribunal or authority to which the request is addressed*) in advance for its co-operation in this case, the Honourable Lord [I.J.] [or Sheriff [K.L.]] avails himself of this opportunity to renew the assurance of his high consideration.

Dated this _____ day of _____ 19 ____.

Lord Commissioner of Justiciary
[or Sheriff of _____] at _____

EXPLANATORY NOTE

(This note is not part of the Act of Adjournal)

This Act of Adjournal amends the Act of Adjournal (Consolidation) 1988 (S.I. 1988/110) by—

- (a) prescribing procedure for the service outside the United Kingdom of a document or order under section 2 of the Criminal Justice (International Co-operation) Act 1990 ("the Act of 1990"), (paragraphs 2(2) and (3));
 - (b) prescribing procedure for the obtaining of letters of request under section 3 of the Act of 1990 together with the form of application and form of draft letter of request, (paragraphs 2(3) and (4) and Schedule);
 - (c) providing rules in relation to proceedings before a nominated court under section 4 of the Act of 1990, (paragraph 2(3)).