CHAPTER 7 - SUMMARY PROCEDURE

7.01 CHOICE OF COURT

The general rule is that cases which may be competently taken in the District Court should be taken there. If a case is competent to be taken in the District Court it should be prosecuted there unless there is some good reason for prosecuting it in the Sheriff Court. In such a case the reason for prosecuting in the Sheriff Court should be noted on the papers. Section 249(8)(b) of the 1995 Act limits the amount of compensation order which a District Justice can award (now £2,500) and the Procurator Fiscal must bear this in mind when deciding in which court to prosecute a case.

7.02 JURISDICTION OF DISTRICT COURTS

Section 7 of the 1995 Act sets out the jurisdiction and powers of the District Court. The penalties which may be imposed by the district court on convicting of a common law offence are to be found in section 7(6) of the 1995 Act. Section 225 of the 1995 Act now contains the "standard scale" which sets out the various levels of fines which are available. Level 4, currently £2,500 is the appropriate upper limit available to a justice in the District Court for both common law and statutory offences unless the statute provides otherwise.

7.03 DISTRICT COURT ROAD TRAFFIC OFFENCES

The District Court, in terms of Section 10 of the Road Traffic Offenders Act 1988, may deal with endorsable road traffic offences for which a fixed penalty may be offered (subject to the District Court penalty limit of level 4 on the standard scale. These are specified in Schedules 3 and 5 to the 1988 Act. Prosecutions, therefore, following upon failure to accept a fixed penalty offer should be taken by Procurators Fiscal in the District Courts. Justices are not empowered to disqualify for road traffic offences except under the "totting up" procedure (see Section 50 of the 1988 Act and Section 19 of the Transport Act 1981).

7.04 JURISDICTION AND POWERS OF STIPENDIARY MAGISTRATES

In terms of section 7(5) of the Criminal Procedure (Scotland) Act 1995, a District Court when constituted by a Stipendiary Magistrate shall have the criminal jurisdiction and powers of a Sheriff.

7.05 JURISDICTION AND POWERS OF SHERIFF SUMMARY COURT

The Sheriff has summary jurisdiction in all common law offences except murder, treason, rape and breach of duty by magistrates (section 3(6) of the 1995 Act). The Sheriff's sentencing powers in relation to common law offences are provided by section 5 of the 1995 Act (three months imprisonment or six months in the case of a second or subsequent offences of dishonesty or personal violence) or a fine not exceeding the prescribed sum (currently £5.000).

7.06 MODE OF TRIAL OF CERTAIN OFFENCES

Section 5(1) of the 1995 Act provides that the Sheriff, sitting as a court of summary jurisdiction, shall continue to have all the jurisdiction and powers exercisable by him at the commencement of the Act. The mode of trial of a statutory offence should be specified in the statute creating the offence. Section 292 of the 1995 Act provides for the mode of trial of certain offences. Statutory offences are triable

either summarily, on indictment, or both on indictment or summarily. All offences created after 1977 should have the mode of trial specified in the statute. For those statutory offences created before the coming into effect of the Criminal Law Act 1977 (ie 29 July 1977) where the mode of trial was not specified, the offence will be triable summarily only if the maximum penalty in force before 29 July 1977 did not include a fine exceeding £400 or imprisonment for a period exceeding 3 months or a fine exceeding £50 in respect of a specified quantity or number of things or a specified period in the case of continuing offences (section 292 of the 1995 Act).

Section 292(6) of 1995 Act provides that an offence which may be tried only summarily may nevertheless be libelled in an indictment as an additional or alternative charge. The penalty which may be imposed for the "summary" offence is restricted to that which could be imposed on summary conviction. This, however, does not mean that all summary charges outstanding against an accused will be libelled as additional charges to the main charge on the indictment, and the Procurator Fiscal must exercise his discretion as to which of the outstanding summary charges he considers are suitable for such inclusion. When reporting a case by precognition, the Procurator Fiscal will draw the attention of Crown Counsel to such outstanding charges along with a recommendation as to their inclusion in, or omission from any indictment.

Procurators Fiscal should refer to paragraph 7.17 in relation to time limits in summary procedures as now governed by Section 136 of the 1995 Act.

7.07 RATIONALISATION OF PENALTIES

Section 3 (and Schedules 1 and 2) of the Criminal Procedure (Consequential Provisions)(Scotland) Act 1995 consolidates the provisions in the 1975 Act which altered penalties in respect of certain offences and converted specified sums of money into levels on the standard scale.

7.08 COMPLAINT

Although the police or other agency will submit draft charges, it is the duty of the Procurator Fiscal to ensure that the charges are properly drafted and relevant to the evidence submitted. He will also ensure that there is a sufficiency of evidence to justify every charge libelled. As the procedure is summary, every endeavour should be made to issue a complaint as soon as possible. If previous convictions are libelled, a schedule disclosing them must be served with the complaint.

7.09

When drafting common law offences, the Procurator Fiscal should follow the styles laid down in the book of styles issued by Crown Office.

7.10

When drafting statutory charges the words of the statute should be followed as closely as possible referring to the section and subsection of the Act. If the Act has been amended this should be stated, quoting the amending legislation.

7.11

Where there is a choice between a common law or statutory charge the Procurator Fiscal will require to apply his mind as to which charge he should libel. He may not libel both. Normally the statutory offence is libelled but there may be circumstances where the common law is more appropriate. Care should also be taken to ensure that when a statutory

offence is being libelled it contains words which will enable the court to find the accused guilty of a common law offence if the statutory offence fails to prove. (See section 138(4) schedule 3, paragraph 14, of the Criminal Procedure (Scotland) Act 1995. In making his choice the Procurator Fiscal should also keep in mind the maximum penalty competent under each method of prosecuting, eg a second conviction in a summary court for vandalism carries a higher penalty under the statutory offence than at common law. (See section 52 of the Criminal Law (Consolidation) (Scotland) Act 1995.)

7.12

A charge which shows that an accused has a previous conviction, eg driving while disqualified or in relation to being a known thief should always be libelled on a separate complaint.

7.13 FOOTBALL HOOLIGANS AND CONTROL OF ALCOHOL AT SPORTING EVENTS

Persons arrested on charges relating to football hooliganism may be dealt with in the Sheriff or District Courts and Procurators Fiscal should exercise their discretion as to which is more appropriate. This instruction refers to offences both inside and outside the football grounds at any time before, during or after a football match, but does not include offences under Part II of the Criminal Law (Consolidation) Act 1995 which deals with the control of alcohol at sporting events. These cases should be taken at the District Court unless they are included with other offences which merit prosecution in the Sheriff Court. It will normally be easy to identify accused persons as football fans and to relate their presence at the locus of the offence to a particular match taking place at or near the time of the offence. The term "hooliganism" is to be interpreted broadly and is to include assault, breach of the peace, vandalism, malicious mischief and theft, together with any other alleged offences which a Procurator Fiscal considers might properly qualify for that description according to the circumstances of the case. As large numbers of arrests are often made, Procurators Fiscal should arrange to receive early warning from the Police in order that suitable court arrangements may be made with the Sheriff Clerk or the Clerk to the District Court.

7.14 FOOTBALL SPECTATORS ACT 1989

The Act provides among other things for the making by Courts of orders preventing certain persons from attending designated football matches. The purpose of these orders is to help prevent violence or disorder at such matches.

Although the Act received the Royal Assent on 16 November 1989, many of its provisions did not come into effect until relatively recently. While in general the Act applies only to England & Wales, Section 22 gives Magistrates Courts the power to impose an order (a 'restriction order') on a person normally resident in England or Wales who has been convicted of a football related offence in a country outside England or Wales if that offence is specified in an Order in Council as corresponding to any offence in Schedule 1 of the Act. Such an Order - SI 993 -The Football (Corresponding offences in Scotland) Order 1990 - came into force on 1 June 1990. A copy of that Order which sets out the corresponding offences in Scotland for which restriction orders can be made can be found in Annex 6.

The effect of a restriction order (whether made by a Court in England or Wales following a conviction there, or in a country whose corresponding offences have been

defined by Order in Council) will be to prohibit the accused from travelling to certain football matches outside England & Wales. The restriction order makes the accused liable to report to a police station in England & Wales when such football matches take place. Football matches in Scotland can be designated under this arrangement.

A restriction order will apply for either two or five years depending on the seriousness of the offence giving rise to it. Local police stations in England & Wales will handle the registration and reporting of accused subject to restriction orders. In all other respects, the administration of the restriction order scheme will be carried out by the Football Spectators Restrictions orders Authority (ROA), which will co-ordinate information on accused persons with football related convictions.

Although most of the work in administering the scheme in Scotland will be undertaken by the police, Crown Office is responsible for providing the ROA with details of relevant football related convictions which occur in Scotland.

PROCEDURES FOR REPORTING CONVICTIONS IN SCOTLAND FOR FOOTBALL-RELATED OFFENCES

1. Where the police arrest an accused person who is normally resident in England & Wales and consider that he has committed a football-related offence, an additional copy of the arrest (or summoning) report will be prepared for submission to the Procurator Fiscal. The additional copy will be clearly endorsed by the reporting officer **'FOR THE INFORMATION OF THE RESTRICTION ORDERS AUTHORITY IF CONVICTED'.** If more than one such accused is the subject of the same report, an additional endorsed copy of the report will be submitted for each accused.

2. Both copies of the police report will be submitted by the police to the Procurator Fiscal in the normal way. Attention will therefore be focused on the more serious summary cases and those taken on indictment. A full extract of any conviction will require to be obtained by the Procurator Fiscal from the Sheriff Clerk and on the expiry of the relevant period of appeal, it should be sent with the endorsed police report to Crown Office.

3. Both the endorsed police report and the extract conviction will be conveyed by Crown Office to the ROA as supplementary information to the Certificate described above. The Certificate will be the only document admissible for consideration by Magistrates Courts in England & Wales and consists of a certified statement that the accused was convicted of a football-related offence in Scotland as well as narrating the disposal following conviction.

7.15 CHARGES AGAINST AN ACCUSED IN SEVERAL DISTRICTS

In accordance with the decision in *Kesson v Heatly 1964 JC 40*, except in certain limited and exceptional circumstances all known outstanding charges against an accused should be dealt with at one time. This applies even if charges arise in several districts. (See section 9(4) of the 1995 Act.) In practice this may be difficult to achieve but the Procurator Fiscal involved should consult to this end particularly in custody cases. If a Procurator Fiscal is aware that an accused

in custody in his district has committed an offence elsewhere, he will communicate with the Procurator Fiscal of the other district and request that the police information be sent to him immediately. In custody cases, the Procurator Fiscal who has brought the accused before the court will normally be the one who takes the other cases. In cited cases the norm will be to take cases individually but there may be reasons indicating that charges should be conjoined. If they are conjoined the Procurator Fiscal of the district in which the accused lives should generally be the one who takes the cases. There may be exceptions to this rule eg if the majority of witnesses live elsewhere. The Procurator Fiscal must exercise great care to avoid duplication of charges ie the same or basically the same charges arising out of the same course of conduct being taken in more than one court because separate police reports have been submitted, eg where an accused has driven a car in several districts on the same day without insurance.

The terms of section 138(4) Schedule 3 para 8(2)-8(5) of the 1995 Act in relation to conviction on alternative crimes committed outwith the jurisdiction are relevant.

7.16 COMMENCEMENT OF PROCEEDINGS BY SUMMARY WARRANT

The Procurator Fiscal should normally in the first instance cite the accused to attend court, but where citation cannot be effected, or in the circumstances detailed below, the Procurator Fiscal may initiate proceedings by means of a summary warrant.

The Procurator Fiscal will not seek a summary warrant unless the information submitted to him contains evidence which *prima facie* would lead to a conviction as charged. Further, the Procurator Fiscal should satisfy himself that the information received from the police is sufficient to substantiate his decision to apply for a warrant.

7.17 EXECUTION OF WARRANTS WITHOUT UNDUE DELAY

In terms of Section 136(1) and (2) of the 1995 Act proceedings in relation to statutory contraventions, which are triable only summarily, must be commenced within 6 months of the contravention of the statutory provision, or in the case of a continuous contravention, within 6 months of the last date of such contravention unless the enactment fixes a different time limit. Proceedings are deemed to be commenced in terms of Section 136(3) on the date on which a Warrant to apprehend or to cite the accused is granted, if the Warrant is executed without undue delay. What constitutes "undue delay" remains a question of fact in each case.

Procurators Fiscal should, so far as it is within their power, ensure that such Warrants are issued to the police for execution as soon as they are received by the Procurator Fiscal. Efforts should be made to ensure that there is no delay on the part of the Clerk of Court in handing over the Warrant to the Procurator Fiscal. Procurators Fiscal should, so far as it is within their power, ensure that such Warrants, once issued to the police, are executed as soon as is physically possible.

Procurators Fiscal are reminded that there are statutory offences triable only summarily in respect of which proceedings must still be commenced within a specific time limit. There are also "either way" offences in respect of which a time limit applies to any summary proceedings. For example, section 25 of the Misuse of Drugs Act 1971 provides that summary proceedings for an offence under the Act

may be commenced at any time within 12 months from the time when the offence was committed. Section 136 of the 1995 Act does not affect this requirement, and summary proceedings must therefore be commenced within 12 months of the date of the offence. The time limits in sections 34(1) and 34(3) of the Health and Safety at Work Act 1974 are other examples of periods within which summary proceedings for an offence to which these subsections apply must be commenced. It should be noted, however, that the scope of these subsections is limited and most offences under the 1974 Act and regulations will benefit from the exception to the general time bar provision in section 136 for offences which are triable "either way".

Although section 136 of the 1995 Act does not impose a 6 month time limit for "either way" offences Procurators Fiscal should set a target of 6 months within which summary proceedings should normally be taken.

7.18 EXECUTION OF INITIAL WARRANTS

(1) The Procurator Fiscal may decide not to issue a warrant to the police but may write to the accused advising him that a warrant has been obtained and requiring attendance at court at a particular diet. Where a warrant has been granted and not issued by the Procurator Fiscal, the police will not be involved in the procedure.

(2) The Procurator Fiscal may issue a warrant to the police with a request that they co-operate in achieving a voluntary attendance at a court diet (which will normally be specified). Such a request is not a mandatory instruction to the police who should exercise their discretion as to whether or not voluntary attendance is appropriate in the circumstances of the case. This procedure will only be used by the Procurator Fiscal in exceptional cases and not as a general rule If there is no need to have the offender at the police station, then, subject to local arrangements, the police can tell the alleged offender to report directly to an officer at the court. In either instance, an arrest report or its equivalent should be forwarded to the Procurator Fiscal along with the warrant.

(3) The Procurator Fiscal may issue a warrant to the police for enforcement without comment. In this situation, it is recognised that the police have a discretion whether, in the particular circumstances of the case, the warrant should be executed formally or whether any voluntary arrangement can be entered into in accordance with the provisions of paragraph 2. If the officer who executed the warrant is not the officer who reported the offence in the first place and has no knowledge of the background of the case he should in cases of doubt communicate if possible with that reporting officer. Should there, thereafter, still be doubt as to whether or not the warrant should be executed formally, the Procurator Fiscal or his deputes will be available for consultation.

(4) The warrant handed to the police for execution should be the initial warrant itself or an extract obtained from the sheriff clerk and a copy of the petition or complaint should be provided. No police officer should arrest a person without direct knowledge that the warrant exists and that it is held by the police.

(5) Once an arrest has been effected or a voluntary attendance arranged, the warrant or the extract should be returned to the Procurator Fiscal along with an arrest report or its equivalent. Persons appearing on warrants should be dealt with in the same way as custody cases whether or not they have been detained. Immediately after the accused person has appeared at court, the Procurator Fiscal will advise the police in order that they may arrange to have the accused's name removed from the Police National Computer.

7.19 CITATION OF ACCUSED IN SCOTLAND

The 1995 authority to cite an accused to an ordinary sitting of the Court or to any special diet is to be found in section 140 of the 1995 Act. Citation will usually be by means of recorded delivery. If the complaint is returned by the Post Office to the Procurator Fiscal the Procurator Fiscal should issue the complaint to the police for personal service. If the complaint is not returned by the Post Office to the Procurator Fiscal and the accused fails to answer the citation, the Procurator Fiscal should send intimation of the new diet to the accused by recorded delivery. If the accused fails to answer the citation the Procurator Fiscal should initiate the proceedings afresh by personal citation on the accused. If the accused, after personal service, fails to appear in court or respond by letter a warrant may be taken for his apprehension.

7.20 METHOD OF CITATION

The manner of citation is set out in section 141 of the 1995 Act.

7.21 CITATION OF ACCUSED RESIDENT IN ENGLAND, WALES OR NORTHERN IRELAND TO A SCOTTISH COURT

Section 39(3) of the Criminal Law Act 1977 gives authority to serve Scottish citations on accused persons resident in England and Wales and Northern Ireland in the same manner as such citations are served in Scotland. The persons authorised to effect such a citation shall include, in England and Wales and Northern Ireland, Constables and Prison Officers serving in those parts of the United Kingdom. The Act of Adjournal (Criminal Procedure Rules) 1996 2.7 provides that where a citation of an accused person is served in England, Wales and Northern Ireland such service may be proved either by the oath in Court of the Officer effecting the service or by production of his written execution of service of citation signed by him.

7.22

Where a Procurator Fiscal wishes a complaint served personally on a person resident in Northern Ireland it requires the co-operation of the Northern Ireland Police. The following procedure is required to be followed by Procurators Fiscal and their staff:-

(1) An enquiry should be made by telephone to one of the Divisional Royal Ulster Constabulary Headquarters.

(2) The complaint/citation should then be forwarded to the Divisional RUC Headquarters (or any particular local RUC Station directed as a result of the telephone enquiry) with details of the service requirements.

(3) If served, the execution of citation will be returned to await further instructions from the Procurator Fiscal, if any.

(4) If not served, the citation will be

returned to await further instructions from the Procurator Fiscal, if any.

7.23 CITATION OF ACCUSED RESIDENT OUTWITH UNITED KINGDOM

Procurators Fiscal should refer to Chapter 14 on Specialities of Jurisdiction at 14.33 in this regard.

7.24 ASSIGNED DIETS

This procedure must be used if, without it, a case would become time barred. (See section 139(1) of the 1995 Act. Where the Court assigns a diet the complaint should be issued without undue delay to the police for personal service. (See also paragraph 7.17). They in turn should be instructed by the Procurator Fiscal to serve the complaint without undue delay. *(See Smith v Peter Walker & Son (Edinburgh) Ltd CO Circular A32/77)*. Where delay in service does occur the Procurator Fiscal must be prepared to justify this delay to the Court and if necessary to lead evidence. The manner of proof of service by an officer of law is in terms of section 141(7) and (297(2) of the 1995 Act. In the case of accused in England postal citation may be used.

7.25 CITATION OF ACCUSED IN SCOTLAND TO COURTS OUTSIDE SCOTLAND

Section 39(1) and (2) of the Criminal Law Act 1977 provide that a summons requiring an accused to appear before a Court in England, Wales or Northern Ireland may be served on him in Scotland in such manner as may be prescribed by Rules of Court.

7.26 ENGLAND AND WALES

Rules of Court brought into force on 12 May 1980 permit English and Welsh summonses to be served in Scotland by post or an Officer of Law. Proof of citation is in terms of section 297(2) of the 1995 Act.

7.27 NORTHERN IRELAND AND CHANNEL ISLANDS

All Northern Ireland summonses sent to Scotland must be served personally on an accused in accordance with the Magistrates' Courts (Amendment) Rules (Northern Ireland) 1980, Rule 11(a). Arrangements have been made whereby the Northern Ireland Police will liaise directly with the appropriate Scottish Police Force to execute service, and Procurators Fiscal are not involved.

7.28 SERVICE OF COMPLAINT ON COMPANIES ETC

Service may be effected in terms of section 141(2)(b)(1) of the 1975 Act by leaving the citation at the accused's ordinary place of business with a partner, director, secretary or other official or by posting it by recorded delivery to the place of business of the accused. (See section 141(2)(b)(i) of the 1995 Act in terms of section 150(5) of the 1995 Act), if an accused company fails to appear at any diet to which it has been cited the Court may on the motion of the Prosecutor and upon proof that the accused has been duly cited proceed to hear and dispose of the case in the absence of any representative of the accused as imprisonment is incompetent. If in summary proceedings the Procurator Fiscal considers that for any reason proceedings against a company etc should not be taken against it in its corporate capacity, he may proceed against an individual representative of the company in terms of section 143(3) whereby the offence shall be deemed to be that of the company etc.

In respect of such proceedings it is incompetent to libel against the representative any previous convictions

obtained against any former representative of the company *(Campbell v MacPherson 1910 6 Adam 394)*.
Certain statutes impose a liability upon an individual as an officer, member, etc of a company for offences committed by the company eg where the individual has knowingly and wilfully authorised or permitted the offence (section 440 of the Companies Act 1948) or has consented to or connived at the offence or where it has been committed because of his neglect (section 29 of the Trades Descriptions Act 1968 and section 169 of the Consumer Credit Act 1974).

The development should be noted of the concept of "knowledge" on the part of a body corporate and its importance in considering proceedings against such a body *(See Tesco Supermarket Ltd v Nattrass 1972 AC 153, the Readers Digest Association Ltd v Pirie 1973 SLT 170 and Dean v John Menzies Holdings Ltd CO Circular A21/80.*)

7.29 NON APPEARANCE WARRANTS

Where an accused has been personally cited to a diet of Court and fails to appear the Procurator Fiscal should move the Court to grant a warrant for his apprehension. The Fiscal should be prepared if necessary to lead evidence of citation by producing the execution of citation signed by the Serving Officer or by asking the Court for an adjournment to produce the Serving Officer who can depone on oath that the complaint was served. In the case of an accused's failure to attend for trial or at an adjourned diet the Procurator Fiscal should first enquire of the Sheriff Clerk whether the accused has been informed of the trial diet before asking the court for a warrant.

Section 150 of the 1995 Act provides that an accused who without reasonable excuse fails to attend at any diet of which he has been given due notice is guilty of an offence, and, where appropriate, this new offence should be charged. An offence under section 150 is liable to time bar and should be commenced by way of summary warrant to prevent prescription.

7.30 ADDRESS FOR CITATION

Under section 25(1)(b) of the 1995 Act the order granting bail handed to an accused contains an address within the United Kingdom which shall be the accused's domicile of citation. Previously the domicile of citation of a person released on bail had to be restricted to an address in Scotland. However section 39 of the Criminal Law Act 1977 makes it possible to operate the provision of section 2 by permitting an address for citation anywhere in the United Kingdom.

7.31 EXECUTION OF NON-APPEARANCE WARRANTS

(1) The Procurator Fiscal should not seek a warrant in respect of the non-appearance of an accused at any court diet (before conviction) unless he has a clear indication that the accused had knowledge of that court diet (eg by personal service or through some acknowledgement by the accused).

(2) On obtaining such a warrant, the Procurator Fiscal may:-

(a) unless he has good reason to believe that the accused will not attend, retain the warrant and write to the accused person to arrange a suitable date for him to appear. The police should not be involved in this procedure;

(b) issue the warrant to the

police and seek their co-operation in securing his voluntary attendance at a specified diet of the court. The police should exercise their discretion as to whether or not voluntary attendance is appropriate. This procedure will only be used by the Procurator Fiscal in exceptional cases and not as a general rule; or

(c) issue the warrant without comment. As with initial warrants, the police have a discretion as to whether or not a non-appearance warrant should be executed formally or by allowing the accused to attend voluntarily. In cases of doubt or difficulty, the Procurator Fiscal or his deputes should be available for consultation. In this instance, if the extract is not clear, the Procurator Fiscal should ensure that the police are aware that the warrant has been granted in respect of the non-appearance of the accused at a court diet.

(3) Procurators Fiscal are requested to regularly review all outstanding Warrants which have been issued to the police for execution. This will involve asking the police to make enquiries to ascertain whether or not an accused is in custody or is serving a sentence of imprisonment imposed elsewhere. It is expected that, whenever possible, all outstanding matters against an accused person will be dealt with at the same time. Accused persons should be brought to court speedily in respect of additional matters in order that the judge has the choice of imposing a concurrent or consecutive sentence, whichever is in the interest of justice.

Procurators Fiscal should bear in mind the guidance of the execution of warrants contained in paragraph 6.19 as the principles therein apply equally to summary proceedings.

7.32 EXECUTION OF WARRANTS OUTSIDE SCOTLAND

A warrant issued in Scotland for the arrest of a person charged with an offence may be executed in England or Wales by any Constable acting within his police area (section 38 Criminal Law Act 1977). Such warrants should be sent by the Procurator Fiscal to the local police force who will transmit them to the appropriate English force.

7.33

Similar provisions are in force for warrants issued in Scotland in respect of accused persons living in Northern Ireland (section 38 Criminal Law Act 1977). These warrants should also be sent by the Procurator Fiscal to his local Police Force for transmission to the appropriate Division of the Royal Ulster Constabulary.

7.34

Under section 4 of the Indictable Offences Amendment Act 1868 a warrant issued in Scotland for an accused in the Channel Islands may be enforced by the Local Police Force there if it is endorsed in the manner specified in Schedule K of the Indictable Offences Act 1848.

7.35

Section 5(4) of the Isle of Man Act 1979

provides for the execution of a warrant in the Isle of Man which has been issued in any part of the British Isles.

7.36 WARRANTS OF ARREST ISSUED OUTSIDE SCOTLAND

A warrant issued in England, Wales or Northern Ireland for the arrest of a person charged with an offence, may be executed in Scotland by any constable in like manner as any such warrant issued in Scotland (section 38(2) Criminal Law Act 1977).

A warrant issued in the Channel Islands for the arrest of a person charged with an offence may be executed in Scotland by any Constable provided it is endorsed in the manner specified in Schedule K of the Indictable Offences Act 1848.

7.37 FIXING OF TRIAL DIETS AND PREVENTION OF DELAYS

Section 147 of the 1995 Act makes provision to prevent delay in bringing custody cases to trial in summary proceedings. This section places a 40 day limit on the time spent in custody between the date of first appearance on the summary complaint and the commencement of the trial, which for these purposes is when the first witness is sworn. If this time limit is not observed the accused will be liberated forthwith and free for all time from prosecution for that offence. However this definition of the time when a trial is deemed to have commenced is for the purposes of this section only.

Where an application under section 147(2) is necessary, the application, which should be in the form of the style shown in Annex 2 to this Chapter, will be prepared by the Procurator Fiscal and made to the appropriate Sheriff. If time permits, Procurators Fiscal will report the matter for the instructions of Crown Counsel before making such an application. If time does not so permit (where, for example, the application is necessary because of postponement of the trial granted by the court at the request of the accused), the matter must be reported as soon as possible thereafter.

In summary cases, prison governors and warders will make a particular check of committal warrants to ensure that the date set for trial is within the 40 day limit and where it is not, a report will be made to Crown Office.

Although the Procurator Fiscal can exercise no formal control over the fixing of diets he must make very effort to ensure the co-operation of the court in fixing diets in such a manner as to achieve the most expeditious disposal of his case load. In cases where bail is refused trials must be fixed for a date no later than 40 days after the first appearance. When consideration is being given to the fixing of trial diets the Procurator Fiscal should keep in mind the availability of witnesses especially police witnesses for the date being considered.

7.38

Any diet may be discharged and an earlier or later one fixed by the court either on a joint application in writing in terms of section 137(1) of the 1995 Act or on the application of one of the parties in terms of Section 137(4) or (5) of the 1995 Act. Procurators Fiscal are encouraged to use these provisions as often as possible when a trial has been fixed and advance notice of a plea of guilty is given to him thus enabling the case to be disposed of more quickly, productions returned at an earlier date and another trial fixed in lieu thereof. (*See Skeen v Evans CO Appeal Circular A11/79.*)

7.39 INTERMEDIATE DIETS

Section 148 of the Criminal Procedure (Scotland) Act 1995 provides that the court may fix an intermediate diet for the purpose of ascertaining, so far as is reasonably practicable, whether the case is likely to proceed to trial and -

(a) the state of preparation of the prosecutor and of the accused with respect to their cases;

(b) whether the accused intends to adhere to the plea of not guilty; and

(c) the extent to which the prosecutor and the accused have complied with the duty under section 257(1) of the Act (duty to seek agreement of evidence).

By virtue of sub-section (4) the court may ask the prosecutor and the accused any question for the purpose of ascertaining any of the above matters.

The accused is obliged to attend an intermediate diet of which he has received intimation or to which he has been cited unless he is legally represented and the court considers that there are exceptional circumstances justifying him not attending.

Although sub-section (1) is permissory only, with the court having a discretion as to whether to fix an intermediate diet, sub-section (7) provides that the Secretary of State may prescribe the courts in which an intermediate diet must be fixed unless there is (1) a joint application by the prosecutor and the accused and (2) the court considers it inappropriate to have such a diet. In other words, an intermediate diet must be fixed unless all the parties, including the court, agree that it would be inappropriate to do so.

Where at an intermediate diet the court concludes that the case is unlikely to proceed to trial, the court is obliged to postpone the trial diet unless the court considers it inappropriate to do so. When postponing the trial diet, the court has a discretion as to whether a further intermediate diet should be fixed. this is discretionary whether or not the court has been prescribed by the Secretary of State. Where the court concludes that the case in unlikely to proceed to trial, the court may, in the first instance, adjourn the intermediate diet rather than postpone the trial diet.

Best Practice Relative to Conduct of Intermediate Diets

1. Ideally, the intermediate diet should be held shortly before the trial diet. This should ensure that the defence has completed its enquiries into the case, and that the prosecution is fully prepared for the trial. A short period between the intermediate and trial diet should also reduce the incentive to delay submitting a plea of guilty. On the other hand, the period should be sufficient to enable witnesses to be countermanded with reasonable notice being given to them. Experience suggests that intermediate diets should normally take place about two weeks before the trial diet, and if the intermediate diet is held at least 14 clear days before the trial diet that would enable certificates or reports (under section 280 of the 1995 Act) to be personally served on the accused where it has not proved possible to do so prior to the diet.

2. Depending on the number of intermediate diets, and the availability of both deputes and courts, it is recommended that, wherever possible, intermediate diets should be held in a court to which no other business has been

allocated. It is also recommended that no more than 50 cases should be allocated to one court.

3. One of the commonest reasons for adjournments is that essential witnesses are unavailable. To help identify this difficulty so that a motion for an adjournment can be made at the intermediate diet, early citation is essential and the police should be instructed to serve citations as quickly as possible and to return the executions of witness citations prior to the intermediate diet court. It should be stressed to them that this is in their own interests in saving the time of police witnesses.

4. Wherever possible the Procurator Fiscal should take steps prior to the intermediate diet to agree evidence. In this connection it is suggested the Procurator Fiscal should send to the accused and/or his representative a letter indicating, in very general terms, the areas upon which the Procurator Fiscal will be seeking agreement. (See also Chapter 6 at paragraphs 6.3 to 6.5 dealing with the identification of facts unlikely to be disputed securing the agreement of other parties.)

5. An intermediate diet 'check list' should be kept with the case papers (see Annex 5). The depute reading the case papers in preparation for the intermediate diet must assess whether there is a sufficiency of evidence, whether extra witnesses have to be cited, or whether unnecessary witnesses should be cancelled; whether all the witnesses have been cited or whether it will be necessary to adjourn the trial diet; what would be the minimum acceptable plea; and whether there is any evidence which might be agreed by a joint minute or whether a statement of facts should be served on the accused.

6. Failure by the accused to attend at the intermediate diet should, unless exceptional circumstances exist, result in a warrant being sought and quickly enforced. The Procurator Fiscal should advise local agents that warrants will be enforced and that, unless there are exceptional circumstances which are brought immediately to the attention of the Procurator Fiscal, no letter of invitation to attend will be sent. In addition, proceedings for a contravention of either section 150 or section 27(1)(a) of the Act should be taken.

7.40 INTERMEDIATE DIET MAY NOT BE FIXED WHEN COURT FIRST ADJOURNS

The circumstances in which an intermediate diet may not be fixed when the court first adjourns the case for trial in terms of section 146(3) are specified in subsection (1A) of section 148 which provides

> "if, on a joint application by the prosecutor and the accused made at any time before the commencement of the intermediate diet, the court considers it inappropriate to have such a diet, the duty under subsection (1) above shall not apply and the court shall discharge any such diet already fixed".

Subsection (1B) provides

> "the court may consider an application under subsection (1A) above without hearing the parties".

Accordingly, in every case where a trial diet is fixed or adjourned, an intermediate diet should be fixed unless the provisions of Section 148(1A) are complied with. Procurators Fiscal should ensure that, in any cases where an intermediate diet is not so fixed, the Clerk of Court properly records in the minutes of proceedings that no such intermediate diet was fixed in terms of Section 148(1A) and the Procurator Fiscal should minute his own papers accordingly.

In the case of Kerr v Carnegie, Crown Office Appeal Circular A8/98, the High Court of Justiciary held that it was not fatal to proceedings if an intermediate diet was not held before the (first) diet of trial. Procurators Fiscal should bear in mind, however, the intention of Parliament in passing the legislation. In the course of the debate in the House of Lords on 6 February 1995, when discussing the clause which ultimately amended S337A of the 1975 Act, Lord Fraser of Carmyllie said that the Government's intention in introducing the clause was "to ensure that better use is made of court time, with fewer trials being cancelled at the last minute and fewer victims, witnesses and jurors being inconvenienced". The Lord Advocate considers that an intermediate diet should be held between the pleading diet and the trial diet **unless** the provisions of Section 148(1A) are invoked.

7.41 INTERMEDIATE DIETS (SCOTLAND) ACT 1998

The attention of Procurators Fiscal is drawn to the Criminal Procedure (Intermediate Diets) (Scotland) Act 1998 which has received Royal Assent and which came into force on 9 April 1998.

A number of matters arise:

1. Section 148(1) of the 1998 Act, as now amended, permits the fixing of an intermediate diet, inter alia, when a trial is adjourned. Procurators Fiscal should, however, discourage courts from fixing a further intermediate diet routinely in such circumstances. The purposes of intermediate diets are set out in Section 148(1), and a further intermediate diet should be fixed only if it is considered that one of these purposes may be achieved.

2. Procurators Fiscal should bear in mind too that the amended Section 148(1) provides inter alia that the intermediate diet should be fixed **when** the case is adjourned for trial under Section 146(3) of the Act. Notwithstanding the decision of the court in Kerr (see 7.40), Procurators Fiscal should ensure that an intermediate diet is fixed at the time when the case is adjourned for trial under that section. If the provisions of Section 148(1A) are invoked, that fact should be clearly minuted and Procurators Fiscal should check with clerks of court to ensure that this is done. Despite the terms of Kerr, Procurators Fiscal will appreciate that there may exist factors in individual cases which may, if the provisions are not followed, result in the possibility (however remote) that prejudice has been caused.

3. As the 1998 Act makes the amended provision retrospective in effect, no further cases should be affected directly by the decisions in Mackay and Milligan. If problems do arise, these should be reported to Crown Counsel immediately for instruction.

4. Procurators Fiscal should also report, with a view to consideration

by Crown Counsel of a Bill of Advocation, any case where proceedings have been held to be incompetent but where a complaint has not been and cannot be re-raised, and where the Procurator Fiscal considers that further proceedings would be appropriate.

5. Reports in terms of paragraphs 3 and 4 should include a copy of the complaint, police report and original minutes of proceedings and should be marked in the first instance for the attention of the Head of the Appeals Unit.

7.42 REFERENCES TO THE EUROPEAN COURT

A lower court is entitled to seek a preliminary ruling from the European Court of Justice if the lower court considers that a decision on the question raised before it is necessary to enable the court to give judgement (Wither v Cowie 1991 SLT 401 at 405F). Procedure in relation to this is governed by paragraphs 31.1 to 31.7 of the Act of Adjournal (Criminal Procedure Rules) 1996. Where a party wishes to raise in summary proceedings a question of European Law (other than proceedings on appeal) his notice of intention to do so shall be given before the accused is called on to plead to the complaint (31.3(1)). When such notice is given a record of the notice should be entered in the minute of proceedings and the court will not then call on the accused to plead to the complaint. The court may hear parties on the question as soon as the question is raised and may adjourn the case to a specified date for a hearing. In summary proceedings it is advisable for Procurators Fiscal to move for a continuation of the case to a later date rather than have the question considered at the pleading diet. Where the court determines the question the accused will then, where appropriate, be called on to plead to the complaint. In all cases in which notice of a question is received Procurators Fiscal should immediately contact Crown Office in order that the situation may be considered and instructions given about dealing with the question at the later diet. Reference should be made to the Appeals Unit in the first instance.

7.43 PRODUCTIONS - INCIDENTAL PROCEDURES

Productions will be produced by the Procurator Fiscal in the course of the trial and remain in his custody until introduced in evidence when they become the responsibility of the Sheriff Clerk until the trial is concluded. If a production is likely to be forfeited at first calling it should be available for production then. Productions should be released and returned in accordance with law as soon as possible after expiry of the appeal induciae (for release of productions generally see Chapter 5).

7.44

Care should be taken in respect of the rights of pawn-brokers under sections 114 to 122 of the Consumer Credit Act 1974 in respect of articles taken in pawn under a regulated consumer credit agreement. Similar rights were formerly contained in section 30 of the Pawn Brokers Act 1872 which has now been repealed.

7.45

7.46

Copy productions will not normally be required in summary cases but if they are the Procurator Fiscal will exercise his discretion with due regard to economy.

7.47 CITATION OF WITNESSES

Section 140 of the 1995 Act is the authority for citing witnesses in Scotland. Section 141 specifies the manner of citation. A reasonable sum to defray expenses may be tendered to a witness if asked or if financial difficulty appears likely to prevent attendance. (See the Finance Manual paragraph 7.5 to 7.86 on Advance Payment of Witness Expenses). In relation to the citing of witnesses outside Scotland see section 4(3) of the Summary Jurisdiction (Process) Act 1881.

7.48 CITATION OF DEFENCE WITNESSES OUTWITH SCOTLAND

Problems have been experienced by defence agents in the past in citing defence witnesses living in England to attend at courts in Scotland. The statutory provisions dealing with the matter are contained, in relation to solemn proceedings, in the Writ of Subpoena Act 1805 and, in relation to summary proceedings, in the Summary Jurisdiction (Process) Act 1881. If however defence agents are unable to achieve the citation of a witness who resides outwith Scotland, the Procurator Fiscal should give assistance in citing the witness.

7.49 WITNESS INFORMATION LEAFLET

When citing witnesses for the prosecution the Procurator Fiscal should attach Form F17 entitled "Being a Witness" to each citation. All witnesses should receive this leaflet with their citation.

The aim of the leaflet is to provide clear general information in comprehensive form to all witnesses and in addition to provide useful local information.

Supplies of appropriate leaflets will be given to offices to cover the situation where High Courts are held in places other than their own jurisdiction. These leaflets will provide information about how to obtain access to the High Court in the town where it is held, but the contact point and the name on the leaflet will relate to the Procurator Fiscal's Office from which the case originated.

It is important to keep Form F17 up to date. If Procurators Fiscal form the view that there is a need for a change to this form they should advise Crown Office immediately so that fresh supplies may be produced. An example of Form F17 is contained at Annex 3 to this Chapter.

EXPLANATORY LEAFLET FOR WITNESSES WITH LEARNING DISABILITIES

If prosecution witnesses are known to have learning difficulties Procurators Fiscal should attach to their citations the leaflet entitled "A Visit to Court". This is a leaflet designed for and aimed at witnesses with learning disabilities and not for those witnesses who are mentally ill. The leaflet should also be attached to the citation of the "appropriate adult". Further copies of the leaflet may be obtained on request from the Crown Office Library.

7.50 ABSCONDING WITNESSES

The court, if satisfied by evidence on oath that a witness is not likely to attend to give evidence without being compelled to do so, may issue a warrant on his apprehension in the first instance (ie before being duly cited) (section 156 of the 1995 Act). This warrant implies warrant to officers of law to detain the witness in a police station etc, but not a prison until the date fixed for the hearing of the case unless sufficient security be found to the amount fixed in the warrant for the appearance of such witness at all diets of court (section 156(3) of the 1995 Act).

This procedure should, however, only be

used in exceptional circumstances.

7.51

A witness who goes into hiding to avoid giving evidence even before he is cited may be prosecuted for attempt to defeat the ends of justice *(HMA v Mannion 1961 JC 69*).

7.52 WITNESSES FAILING TO APPEAR AFTER CITATION

If a witness wilfully fails to attend after being duly cited and no just excuse is offered on his behalf the court may issue a warrant for his apprehension (sections 156 of the 1995 Act) and may summarily punish him forthwith for contempt of court (section 155(1)(a)). Where such summary punishment is not imposed the Procurator Fiscal may proceed against the witness by way of formal complaint for contempt of court (section 155(1)(a) and (3)).

Where a witness does not attend and it is not immediately known whether his failure to attend is wilful the Procurator Fiscal should not move for a warrant to apprehend the witness but should forthwith attempt to ascertain the reason for the failure to appear. If he is unable to obtain this information within the time available and the witness is essential he should move for an adjournment or desertion of the trial diet; if the witness is not essential the Procurator Fiscal should proceed to trial leaving any further action against the witness to be decided in the light of the subsequent enquiries.

7.53 PROOF OF CITATION

When moving the court for a warrant to apprehend a witness the appropriate execution of proof of citation should be produced to the court (section 297(2) of the 1995 Act).

7.54 CONVENIENCE OF WITNESSES

Willingness of the public to give evidence in criminal trials is fundamental to the administration of criminal justice in our system. Procurators Fiscal should do all that is possible to avoid unnecessary attendance of and inconvenience to witnesses. This can arise in a number of ways; for example, because the attendance of the witness is unnecessary for the proof of the case; where the trial does not proceed; or because attendance entails some particular hardship for the witness which might have been avoided by, for instance, fixing a more convenient date for the trial. It is appreciated that some instances of inconvenience to witnesses are unavoidable and that in other cases the fault may lie with the accused or his legal representative.

7.55 CITATION AND COUNTERMANDING OF WITNESSES

(i) Procurators Fiscal should, wherever possible, issue witness citations to the police at least 4 weeks before the trial date. It is appreciated that this will not be possible in every case. Where, for instance, the accused is remanded in custody, a trial date may be fixed for a date less than 4 weeks after his appearance in court. In such cases Procurators Fiscal should issue witness citations as early as possible.

(ii) Where Procurators Fiscal are informed by the police that service of a witness citation cannot be effected, an immediate decision should be made as to what steps are appropriate. This may include countermanding other witnesses, approaching the defence for a joint minute in terms of section 137 of the 1995 Act, citing a substitute witness, or instructing the police to

attempt to trace the witness. Each case will depend on its own facts and circumstances and Procurators Fiscal will have to decide on the most appropriate action to be taken in the light of those. However, it should be borne in mind that all such action is to ensure that, if witnesses do attend court, their time will not be wasted.

(iii) Where, for any reason, witnesses have to be countermanded, immediate action should be taken to ensure that such countermanding is effectual and that witnesses will not attend at court unnecessarily.

Procurators Fiscal should, at a local level, liaise with the police and the courts in order to ensure that local arrangements work satisfactorily in respect of the citation, attendance at court, and countermanding of witnesses. Every effort should be made to ensure that the unnecessary attendance of witnesses at court is kept to a minimum.

Procurators Fiscal are referred to Annex 4 to this Chapter which contains the guidelines issued by the Lord Advocate to Chief Constables in relation to the citation of witnesses, issued in February 1983.

7.56 DISCUSSION OF EVIDENCE WITH DEFENCE SOLICITORS

Consultation between the defence and the prosecution is to be encouraged in an endeavour to accelerate pleas of guilty in whole or in part and thus avoid the attendance of witnesses. Such consultation may also be fruitful in producing Minutes of Agreement in respect of non-contentious evidence.

7.57 DISCLOSURE OF PRECOGNITIONS AND POLICE STATEMENTS

Savings of time and expense may be achieved when selected precognitions dealing with formal evidence are made available to the defence. In addition, in complicated cases where the defence indicate they have not had time to prepare, Procurators Fiscal may in their discretion disclose precognitions and statements to the defence. In such cases efforts should be made to secure Minutes of Agreement where appropriate as a result of such disclosure. (See also paragraphs 16.72 and 16.79 in respect of the statements/precognitions of children.)

7.58 MINUTES OF ADMISSION AND AGREEMENT

As much use as possible should be made of Minutes of Admission and Agreement in terms of section 256 of the 1995 Act. Where appropriate, Procurators Fiscal should approach defence agents in respect of formal or non-contentious evidence in an attempt to obtain a Minute of Agreement.

Procurators Fiscal should bear in mind the duty on both parties to seek agreement of evidence (section 257) and are encouraged to use the procedure available under section 258 to serve statements of uncontroversial evidence upon the accused. Reference should be made to paragraphs 6.3 and 6.5 which contain principles equally applicable to summary cases.

7.59 APPROACHES BY THE DEFENCE FOR ADJOURNMENTS

Requests by the defence for an adjournment of a trial diet should not be opposed as a matter of course. Each case should be considered on its merits. In particular, whether witnesses have been cited, or, if cited, can be timeously countermanded is a very important factor. In deciding whether or not to agree to such

a request, it should be borne in mind that the witnesses' attendance at court will be wasted if, when the case is called on the trial date, the motion by the defence to adjourn is granted despite Crown opposition. If Procurators Fiscal are willing to agree to an adjournment, then a joint application should be made in terms of section 137 of the 1995 Act.

7.60 NON-AVAILABLE DATES OF WITNESSES

When fixing diets of trial, Procurators Fiscal should take care to avoid dates when it is known that witnesses will not be available. In some force areas the police provide details of when police witnesses will not be available. These should be consulted, where they are made available, to ensure that the trial date does not fall within a leave period. Similar considerations apply to civilian witnesses where the relevant information is available. Procurators Fiscal should endeavour to secure that such information is gathered as a matter of course. When they are taking precognitions, this should be done and arrangements for the police obtaining such information should be discussed with them locally. It should be borne in mind that some classes of workers, for example, oil rig workers, may suffer considerable financial hardship if required to attend during a work period, and every effort should thus be made to fix a trial date for a convenient time in such circumstances.

7.61 CITATION OF UNNECESSARY WITNESSES

Procurators Fiscal should take steps to ensure that no more witnesses are cited than are necessary to prove a particular case. Procurators Fiscal are therefore urged to examine carefully the question of who should be cited to attend in a particular case, with the aim of ensuring that unnecessary witnesses are not cited.

Police witnesses speaking only to a non-reply to caution and charge or to forms raised by the Police in terms of the detention provisions of section 14 of the Criminal Procedure (Scotland) Act 1995 are unlikely to be necessary witnesses. In summary cases Procurators Fiscal should therefore rely where appropriate on the presumption offered by section 280(A) of the Criminal Procedure (Scotland) Act 1995 and should take steps to ensure that such witnesses are not normally cited (or, where they have been cited, countermand them once the position becomes clear).

Where there is ample other evidence consideration should also be given to the need to cite both Police witnesses speaking to an incriminating reply by an accused. For the avoidance of doubt two Police witnesses will of course be required to speak to 'special knowledge' replies.

Procurators Fiscal should amend the standard letters used by most offices for issue to defence solicitors with lists of witnesses to reflect the above and to indicate that these witnesses will not normally be cited and that it is the responsibility of the defence to ensure their attendance if required.

7.62 WITNESSES WITH MANY OTHER COMMITMENTS

Every facility should be extended to witnesses with many other commitments such as doctors and forensic scientists to minimise any inconvenience to themselves and others occasioned by their attendance at court. When such witnesses arrive at court their evidence should be taken as early as possible and permission sought for their release from court at the conclusion of their evidence.

7.63 DISCHARGE OF TRIAL DIETS

Full use should be made of the provisions

contained in section 137 of the 1995 Act in relation to discharge of diets. If before the trial date it becomes apparent that a trial cannot proceed, whether due to the absence of a witness or for some other reason, Procurators Fiscal should approach defence agents or, where appropriate, accused with a view to a joint application being made to the court to discharge the diet and fix in lieu thereof an earlier or later diet as may be appropriate. Where the defence refuse to participate in such an approach and where time permits, Procurators Fiscal should take advantage of the provisions contained in section 137(4) and make an incidental application under section 134 of the 1995 Act.

7.64 PART HEARD TRIALS

Where some witnesses are in attendance, and it is apparent that the trial cannot proceed to a conclusion because of the absence of a particular witness, consideration should be given to hearing the evidence that is available and adjourning the trial to a later date for the remainder of the evidence. It is appreciated that this will not be practical or convenient in some cases. However, it should be borne in mind that to adopt such a course will result in the least inconvenience to those witnesses who have attended. The court should be informed of the position and pressed to adopt this course when this seems appropriate.

7.65 WITNESSES WHO HAVE TO TRAVEL CONSIDERABLE DISTANCES

Where witnesses have to travel a considerable distance to attend court, consideration should be given in the first instance as to whether their evidence is essential. Where appropriate, efforts should be made to agree their evidence by joint minute of agreement. If the witness is cited, then every effort should be made to ensure that the case is in a position to proceed and that the attendance of the witness is not wasted. Such cases should be given a priority and the witness released as early as possible in the day.

7.66 RELEASE OF WITNESSES

After witnesses have completed their evidence, permission should be sought to secure their release. Some witnesses may wish to wait until the conclusion of the trial but they should not be compelled to do so unless the presiding judge so directs. Where an accused fails to appear or pleads guilty in an acceptable form, the court officer should be instructed to release the witnesses as soon as possible after the case has been called and an order of court made.

7.67 INFORMATION FOR WITNESSES IN COURT

In the case of Crown witnesses who are actually waiting in the court building to give evidence, the Procurator Fiscal should keep the clerk of court informed of developments as the day progresses, so that he in turn can keep the witnesses informed.

Complaints have been made by members of the public about attending court only to be sent away again without giving evidence. Where possible the Procurator Fiscal should take the opportunity of having a personal word with witnesses who are being sent away. Some sheriffs occasionally invite the witnesses into court after a case has been disposed of (for example after a last minute plea of guilty) and explain to them why their evidence is not required. These are both practices which the Law Officers encourage.

Once witnesses have been cited to a court and are in the precincts of the building, responsibility for their general well-being

rests with the clerk of court. It is recognised that it is a matter for the Fiscal, however, to exercise some control over the witnesses and he has authority to release them from their citation if they have not been called, with agreement from the bench or the defence as necessary. In the event of a last minute plea of guilty at the trial diet, the Fiscal's authority is required before the witnesses can be released. Normally, the court officer is the person who actually tells the witnesses that they are free to go, although sometimes the sheriff clerk may take on this duty in the absence of a court officer.

Forms which the Fiscal in court can pass to the court officer when witnesses are being sent away, one for the situation where the accused pleads guilty and one for all other reasons are available. The style may be adapted, but the approach should not be altered. In each witness room, a list of the cases to be heard that day will be displayed on a notice board. If the witnesses are being sent away, the court officer will take the note completed by the Fiscal and in releasing the witnesses, tell them why their attendance is no longer required. He will read the notice to the witnesses and then delete the case from the list and pin the notice on to the board.

7.68 FAILURE OF ACCUSED TO APPEAR

The attendance of witnesses is pointless when accused do not themselves appear. On occasion when accused persons have been at liberty pending a trial, they have been subsequently remanded in custody in respect of another charge, and this has not been noticed in the Procurator Fiscal's Office. This is very wasteful of witnesses' time, and Procurators Fiscal should make such arrangements as are necessary to ensure that these situations do not occur. Where appropriate, Procurators Fiscal should also prosecute accused who fail to appear for trial for either contraventions of section 27(1)(a) or section 130(8) of the 1995 Act, and when so doing advise the court that the failure of the accused to appear resulted in considerable expense to the Crown and inconvenience to witnesses.

7.69 MEETINGS WITH POLICE

Procurators Fiscal should meet regularly with members of the local police to discuss arrangements for the citation, countermanding and attendance of witnesses at court. The aim of such meetings should be to ensure that arrangements have been made at a local level to minimise the unnecessary attendance of police and other witnesses at court. Such arrangements should be viewed regularly to ensure that they are working efficiently and effectively at a local level, and that witnesses' time is not being wasted.

7.70 ADMINISTRATIVE ARRANGEMENTS WITHIN PROCURATOR FISCALS OFFICES

Procurators Fiscal should review the procedures currently employed within their office to ensure that procedures are adequate to deal promptly and efficiently with all aspects of office work relating to witnesses. In reviewing such procedures, Procurators Fiscal should consider which members of staff should be made responsible for particular areas of work relating to witnesses, and ensure that decision-making is delegated at an appropriately experienced and responsible level.

7.71 AMENDMENT OF A COMPLAINT OR PREVIOUS CONVICTIONS

This is competent at any time prior to the determination of a summary prosecution unless the court sees just cause to the contrary so as to cure any error or defect

therein or meet any objection thereto or to cure any discrepancy or variance between the complaint and the evidence (section 159(1) of the 1995 Act). An amendment which charges the character of the offence is incompetent (section 159(2)). If the court shall be of the opinion that the accused may in any way be prejudiced in his defence on the merits of the case by any amendment allowed it shall grant him such remedy by adjournment or otherwise as it shall think just (section 159(2)). An amendment shall be sufficiently authenticated by the initials of the Clerk of Court (section 159(3)). In respect of further consideration relative to amendment of the complaint, see paragraph 6.117 on amendment of indictment. (In this connection see also the cases of *McCoull v Skeen 1974 SLT (Notes) 48, Campbell v McLeod 1975 SLT (Notes) 6 and Cochrane v The West Calder Co-operative Society 1978 SLT (Notes) 22).*

7.72 PROOF - EVIDENCE BY CERTIFICATE

In the conduct of trials every effort must be made by Procurators Fiscal to achieve expedition, economy of expenditure and minimum inconvenience to witnesses. Statutory provisions are helpful towards these ends and should be used wherever possible. In particular full use should be made of the following provisions of the 1995 Act, namely:

Proof of Exceptions etc, (section 138(4) schedule 3 paragraph 16)

Offence Committed in Special Capacity (sections 138(4) and 255)

Proof of Official Documents (section 154)
Minutes of Admission or Agreement (section 256)

Extract Convictions and Manner of Proof (section 285(2))

Proof of Previous Convictions by Fingerprints (section 285(1) to (5))

Requirements as to Medical Evidence for Hospital Orders (section 61)

Examples of certificate evidence admissible under section 280 and Schedule 9:

(a) Road Traffic Regulation Act 1984 (accuracy of speed measuring apparatus).

(b) Misuse of Drugs Act 1971 (classification and analysis of drugs).

(c) Social Security Administration Act 1992 (benefits paid).

(d) Wireless Telegraphy Act 1949 (whether TV licence recorded as being in force).

(e) Criminal Procedure (Scotland) Act 1995 section 150(8) (that specified person given notice of time and place of diet).

(f) Immigration Act 1971 (arrival in UK and conditions imposed).

Procurators Fiscal should consult schedule 9 for a full statement of those enactments in respect of which certificate evidence is available.

Section 280(4) of the 1995 Act provides that, for the purposes of any summary criminal proceedings, a report signed by two authorised forensic scientists is to be sufficient evidence of any fact or conclusion as to the fact contained in the report and of the authority of the person signing the report. The Secretary of State for Scotland

has approved the division of forensic science into the following six categories:-

(1) Forensic Chemistry

(2) Forensic Biology

(3) Fingerprints, Palmprints and Other Prints

(4) Ballistics

(5) Document Examination

(6) Physical Examinations

The Secretary of State has also authorised a number of forensic scientists for these individual categories. Each of the forensic scientists concerned will have received an individual authorisation which can be produced in court should the occasion arise. A list of forensic scientists authorised by the Secretary of State has been issued and will be amended from time to time in the light of changes of authorised personnel. This is contained in Crown Office Circular No 23/1998 (Forensic Science No 1).

7.73 CITATION OF WITNESSES SPEAKING TO ROUTINE EVIDENCE

Procurators Fiscal should be especially mindful of their duty to avoid causing unnecessary inconvenience to witnesses whose evidence is routine and formal in the following cases:

1. British Telecom Witnesses

BT Networks and Systems provide evidence of an uncontroversial nature for use of prosecutions in Scotland. This evidence relates to telephone numbers, names and addresses, installation dates and itemised telephone bills all extracted from BT records. Experience has indicated that where BT witnesses are called in this regard they are very seldom challenged. BT have intimated that there is now a long-standing and increasing problem of providing statements and witnesses on the matters mentioned for the whole of Scotland. At this proportion a demand is now being made on the BT witnesses.

2. Land Register Witnesses

Members of staff of the Registers of Scotland Land Register are often cited to appear as Crown witnesses, to speak to the authenticity of office copies. These citations cause problems for the agency in terms of staff resources. The definition of an office copy is contained in section 6(5) of the Land Registration (Scotland) Act 1979 which reads:

> "the keeper shall issue, to any person applying, a copy, authenticated as the keeper thinks fit, or any title sheet, part thereof, or of any document referred to in a title sheet; and such copy, which shall be known as an office copy, shall be accepted for all purposes as sufficient evidence of the contents of the original".

Procurators Fiscal are reminded of the duty to try to obtain agreement of evidence in terms of section 257 of the Criminal Procedure (Scotland) Act 1995. Furthermore the evidence now being produced by BT witnesses or by the Land Register witnesses referred to may include documentary evidence of a nature covered by schedule 8 to the 1995 Act and the provisions of that schedule should be used where possible. Procurators Fiscal are referred to Chapter 4 of the Book of Regulations and the section on proof of documentary productions in the precognoscers handbook.

7.74 CRIMINAL PROCEDURE (SCOTLAND) ACT 1995 SECTION 280

SCHEDULE 9
CERTIFICATES AS TO PROOF OF CERTAIN ROUTINE MATTERS UNDER THE FIREARMS ACT 1968

Procurators Fiscal will be aware that section 280 of and schedule 9 to the 1995 Act provide for certificates as to proof of certain routine matters. In particular, in regard to the Firearms Act 1968 there are two matters that may be the subject of the statutory concession of proof by certificate.

First, a constable or a person employed by a police authority, may purport to sign certificates where the constable or person is authorised to do so by the chief constable of the police force maintained for the authorities area. Such a constable or person may certify in relation to a person identified in the certificate that, on a date specified therein, that person held, or as the case may be did not hold, a firearms certificate within the meaning of the Firearms Act 1968.

Secondly, an officer authorised to do so by the Secretary of State, may purpose to sign certificates. Such an officer may certify in relation to a person identified in the certificate that, on a date specified therein, that person possessed, or as the case may be did not possess, an authority (which as regards a possessed authority, shall be described in the certificate) given under Section 5 of the Firearms Act 1968 by the Secretary of State.

In relation to the second category of authorised person, Procurators Fiscal will recall that in HM Advocate v Copeland 1987 SCCR 232 it was held that the power conformed on the Secretary of State could be exercised on his behalf by officials acting in his name under their general powers, even if the Secretary of State had no personal concern with the decision.

Procurators Fiscal are instructed to examine closely each certificate issued to them to ensure that the signatory to the certificate is entitled in terms of the Criminal Procedure (Scotland) Act 1995 to certify the matters contained within the certificate.

7.75

Provisions regarding proof of official documents issuing from the office or in the custody of any of the departments of state or government in the United Kingdom and orders in respect of national and local government etc, (in summary procedure only) are to be found in the 1995 Act, section 154 and the Local Government (Scotland) Act 1973, Schedule 7, paragraph 7.

7.76

In terms of section 104 of the Children and Young Persons (Scotland) Act 1937 in respect of proceedings thereunder a copy of an entry in an employers wages book or, if no wages book be kept, a written statement signed by the employer or any responsible person in his employment is evidence that the wages therein entered or stated have in fact been paid.

7.77

A copy of or any extract from any document kept and registered at any office of the Registrar of Companies in England or Scotland and certified to be a true copy under the hand of the Registrar is in all legal proceedings admissible in evidence as of equal validity with the original (section 709(3) of the Companies Act 1985 as inserted by the Companies Act 1989 section 126.

7.78

Sections 153 and 154 of the Customs and Excise Management Act 1979 and section 39 of the Finance Act 1972 refer to proof of

certain documents, onus of proof of averments etc and evidence by certificate in respect of offences under these Acts.

In respect of vehicles excise prosecutions and back duty proofs see the Vehicles Excise and Registration Act 1994, section 52 which provides for simplified proof of records.

7.79

In respect of printout certificates from the Driver and Vehicles Licensing Centre, Swansea, it appears that the clerical assistants who are engaged in authenticating these certificates are permitted to use a rubber stamp signature for this purpose. Steps have been taken to ensure that the person using this stamp is the person whose facsimile signature it bears. *See Cardle v Wilkinson and Another (A3/82)* as regards the admissibility of such a document.

The person authenticating the documents is merely certifying that it is genuine and not speaking to its contents.

7.80

Section 19 of the Road Traffic Offenders Act 1988 provides that in any proceedings for an offence under section 103(1)(b) of the Road Traffic Act 1988 an extract conviction will be sufficient evidence that the conditions specified in this subsection are satisfied, and unless the accused serves notice on the prosecutor not less than 6 days before the trial denying that the disqualification applies to him. The court has no discretion to reduce this 6 day period. In summary proceedings the Procurator Fiscal should not obtain the extract conviction from the Sheriff Clerk until the accused has pled not guilty and a trial has been fixed. Further guidance on this subject is contained in the section on road traffic offences in the Precognoscer's Handbook (Chapter 4).

7.81 PREVIOUS CONVICTIONS

When an accused has admitted or been found guilty of a charge any previous convictions which have been libelled and served on him along with the complaint are placed before the court and the accused is asked by the court if he admits them. If he does not the Procurator Fiscal must either withdraw them or prove them then or at any adjourned diet. (Section 166(5) of the Act). If the Procurator Fiscal realises at this stage that the notice of previous convictions has any error or any defect in it, it is his duty to move the court to amend to cure the defect. (Authorities contained in section 159 of the Act).

If, however, a plea of guilty is tendered in writing, any previous conviction libelled will be held to the admitted unless the accused expressly denies it at the same time as he intimates his plea. (Section 166(4)(a)).

7.82 EXTRACT CONVICTIONS

Difficulties have arisen in a few cases in which Sheriff Clerks have failed to provide extract convictions requested by Procurators Fiscal. In requesting extract convictions, Procurators Fiscal should ensure that the request is made as early as possible and that the fullest possible details are given of the name of the accused, his address, his date of birth and the date of sentence (if known). The Procurators Fiscal's reference number will also be required.

7.83

Appearances before a Children's Hearing are not previous convictions and must not be libelled as such although they may be brought to the attention of the court.

7.84

It may be that there are previous convictions disclosed on the accused's driving licence. The court may take these into consideration. (See also paragraph 9.27).

7.85 PROVISION OF STATEMENTS OF POLICE WITNESSES TO DEFENCE SOLICITORS

In response to a request from a defence solicitor for a list of Crown witnesses, usually once a diet of trial has been fixed, the Procurator Fiscal will send the solicitor a list of Crown witnesses in the normal way provided that reciprocal arrangements are afforded. Form F71 should be used for this purpose.

Procurators Fiscal should co-operate in the handing over by the Police of statements of Police witnesses in lieu of precognition by a defence.

Where Police witnesses are involved in a case the Police reference number will be noted on the letter containing a list of witnesses and solicitors are invited to apply direct to the Police for copies of statements of the Police witnesses. No charge is made by the Police for these statements, the Police having agreed to bear the copying costs. There is no interference with the right of solicitors to precognosce Police witnesses in these cases.

The copy statements which are issued to defence solicitors under this scheme do not bear an actual signature of the Police Officer involved. The Lord Advocate recognises that they nonetheless fall into the category of "previous statements" which may in certain circumstances be put to the witness in court (in terms of section 263(4) of the Criminal Procedure (Scotland) Act 1995) if the witness departs materially from that statement in his evidence.

The Police will continue to make facilities for precognition available. If for any reason statements are not available to be sent out following a request, the solicitors will be informed: in such cases, solicitors can precognosce in the normal way. There will also be situations, for example, in custody trials, where the trial diet is only a short time after the pleading diet in which the defence may require to proceed straight to precognition. While the precise details will be a matter for local arrangement between the Procurator Fiscal and the local Bar the broad outlines given above should be followed.

7.86 PREVIOUS CONVICTIONS

In no circumstances will an accused or his solicitor be furnished with information relating to the criminal record of any person other than his client. If a request for such information is made by the defence they should be informed accordingly and told that if a witness gives false evidence in this respect action will be taken by the Crown.

7.87 DISCUSSION OF EVIDENCE WITH DEFENCE SOLICITORS

It is part of the duties of the Procurator Fiscal to meet defence solicitors as soon as possible after a plea of not guilty has been tendered for the purpose of:

(a) discussing the evidence available to the Crown.

(b) arranging minutes of admission in respect of evidence which is not to be contested, and

(c) giving to defence solicitors copies of statements of witnesses whose evidence is regarded as formal or technical.

The Procurator Fiscal must therefore be in a position to deal efficiently with requests by defence solicitors for interviews. Arrangements will require to be flexible and will be essentially a matter to be resolved by the individual Procurator Fiscal.

In making local arrangements the Procurator Fiscal should have regard to the fact that any person who meets with solicitors should have sufficient seniority and experience to accept reduced pleas and to exercise a proper judgement in the disclosure of evidence or the handing over of statements.

7.88 CITATION OF PRISONERS AS DEFENCE WITNESSES

Difficulties can arise when prisoners cite large numbers of other prisoners as witnesses for criminal court proceedings in connection with incidents in prison.

The Secretary of State has discretion to produce prisoners as witnesses in terms of section 29 of the Criminal Justice Act 1961.

The discretion not to produce prisoners as witnesses can be exercised where the Secretary of State is satisfied that that is desirable in the interest of justice. Although, in the ordinary case, it would be in the interest of justice to produce a prisoner in court where a Governor has received a citation in proper form, the Secretary of State may ultimately refuse to produce a prisoner after having regard to the nature or number of citations which a particular Governor has received. It may for example be that a Prison Governor will have knowledge that a particular cited prisoner would not be relevant to the case if, for example, that prisoner was in another prison or was not in the relevant part of the prison at the time of the alleged offence. Similarly where the number of prisoners cited is substantial it may be that a Governor will consider and make representations to the Secretary of State that the alleged offence was committed in circumstances where so many prisoners could not have been in the position to speak to the facts.

Procurators Fiscal should notify Crown Office of any case where difficulties arise as a result of a refusal by the Secretary of State to produce prisoners as witnesses.

7.89 DISCRETION TO DESERT CHARGES BEFORE THE START OF TRIAL

This regulation relates to the pre-trial stage and does not relate to decisions which are taken in the course of a trial.

1. Any Procurator Fiscal Depute who, prior to the commencement of the trial considers that he should permanently abandon proceedings against the living accused person must before doing so (a) consult with the person who originally marked the case for prosecution (if that person is available) and (b) consult also with a senior Procurator Fiscal Depute or the Procurator Fiscal.

2. Where prior to the commencement of the trial a Procurator Fiscal Depute decides to desert a case or to accept a plea of not guilty to part of the charges the Procurator Fiscal Depute must when possible (a) consult with the person who originally marked the case for prosecution (if that person is available) and (b) consult also with a senior Procurator Fiscal Depute or Procurator Fiscal.

In any of the situations envisaged in paragraphs 1 or 2 hereof the person by whom the decision is made (Procurator Fiscal or Procurator Fiscal Depute) must

minute on the Police Report his full reasons for doing so. The Procurator Fiscal should personally peruse all such reports in order to ensure that continuity and uniformity of practice is maintained.

7.90

In addition it would greatly assist in dealing with questions of acceptance or refusal of reduced plea if the person who originally marked the case for prosecution were to append a note concerning the acceptance of any reduced plea.

7.91 APPEAL IN CONNECTION WITH OBJECTION TO RELEVANCY, ETC

Section 174 sets out the procedure for appealing against a decision of the court which relates to such objection or denial as is mentioned in subsection (1). Where the Procurator Fiscal wishes to appeal he must apply to the court at the time the judge's decision is made. Thereafter, the Note of Appeal must be lodged within two days. (See paragraph 19.1 of the Act of Adjournal (Criminal Procedure Rules) 1996 for procedure.)

7.92 NO CASE TO ANSWER

In summary proceedings, when a submission of no case to answer under section 160 of the 1995 Act is made the Sheriff (or Justice in a District Court case) will be required to make his decision on the basis of sufficiency of evidence. If he rejects the submission, holding that there is insufficient evidence if accepted, he will then require to reach his verdict on grounds of sufficiency and credibility. It should not therefore be assumed that an eventual finding of guilty will ensue when a defence submission of no case to answer is rejected.

7.93

In every case where the Sheriff holds that there is no case to answer, a note of the terms of the submission and of the decision should be made and the case brought to the attention of the Procurator Fiscal and of the person who originally marked the case.

ANNEX 1

ANNEX 2

ANNEX 3

TRAVELLING TO COURT

BY BUS

The Sheriff Court House is within walking distance of Dunfermline Town Centre and is directly across Carnegie Drive from James Street Bus Station.

BY CAR

If you are arriving by car, parking is not available at Court itself, but there is a large multi-storey car park nearby in James Street.

BY TAXI

If you are disabled or elderly, and restricted in your movements, you may hire a taxi for your journey to and from court. However, you must make sure you obtain a receipt from the driver, otherwise my staff will not be able to reimburse you for the fare. If you have any other problems or enquiries do not hesitate to contact my office.

IF YOU ARE DISABLED

There is no difficulty in obtaining disabled access to the Sheriff Court House and there are facilities for disabled persons inside.

REFRESHMENTS

Are normally available in the mornings in the Court buildings. The court building normally shuts between 1pm and 2pm, and you will be able to go for lunch at that time. There is a number of places to eat nearby.

EXPENSES

Use the form on the back of the citation to claim travelling expenses to and from court and money for meals. As well as getting payment towards any loss of earnings, some special expenses can be claimed.

My staff will help you fill in your claim and make sure you receive the expenses to which you are entitled. You will be paid right away or money will be sent to you within one week.

Phone my office now if you have any doubts or problems about attending court. Make sure that you have a note of the date of the trial, the name of the accused and

the reference number on the citation (if any).

PLEASE REMEMBER:

You must attend court if you have a citation. You may be excused if attendance will cause you particular difficulty, for example if you are unwell or plan to be away on holiday.

IMPORTANT

If you do not appear at court, and have not been excused by myself or one of my colleagues, you may be arrested.

REMEMBER TO BRING YOUR CITATION WITH YOU

ARRIVING AT COURT

Please report to the appropriate court official when you arrive. He will note your arrival on his list. You should show him your citation and he will then direct you to the correct waiting room for witnesses.

Take something to pass the time as you may have to wait for a while before being called into court.

You must not go into court before you have given evidence. You will be kept informed about your case. If it becomes clear that you can leave you will be told and why.

HOW LONG WILL IT TAKE?

I am afraid that I cannot predict beforehand which trials will proceed and which witnesses will be required to give evidence. Accused persons are entitled to change their plea at any time. They often do this during the trial, or just before it is due to start.

If an accused person decides to plead guilty it is not necessary for witnesses to give evidence. In addition, some trials cannot proceed because the accused or perhaps another witness is ill or missing.

In any of these situations you will be told that you may leave, but you may also be told that you will have to return on a later date. Until it is clear that a trial is not going to proceed you must stay in the court building.

You must be prepared to stay all day if necessary. Wait in the witness room until you have been called to give evidence or told that you can go.

WHAT WILL HAPPEN?

When it is your turn to give evidence a court official will call your name and show you into a witness box in court. Once there you will be asked to face the judge, raise your right hand, and repeat the words of the oath. If you would prefer to promise solemnly to tell the truth, say to the judge or to the court official that you wish to “affirm”.

In some courts you will be allowed to sit while you are giving your evidence. Otherwise, you should stand unless this would be difficult for you, in which case you can ask the judge if you can sit down.

GIVING EVIDENCE

The first person to ask you questions will be the prosecutor. In the High Court this will be an Advocate Depute. In other courts the prosecutor is myself or one of my colleagues.

You will be asked your name, address, age and occupation. If for good reason you prefer to give your address, ask the judge if you can write it down on a piece of paper. Then you will be asked questions about the case, after which the defence lawyer may ask you questions.

It will help the court and your confidence if you listen carefully to what you are asked. Take your time in answering, and say if you do not understand or cannot answer. It is your duty to answer all the questions asked truthfully and as accurately as you can. Speak slowly and clearly.

In some cases where there is no defence lawyer, you may be asked questions by the accused. In cases with more than one accused, a number of different lawyers may ask you questions for the defence. Sometimes the judge will ask questions too.

You will be told when you can leave the witness box but you must remain in court unless you are told you are free to go. If you want to go away after giving evidence ask the judge. You can stay and listen to the rest of the case if you wish.

ANYTHING ELSE?

In the High Court and Sheriff Court you should call the “My Lord” or “My Lady” and in the District Court the judge is called “Your Honour”.

VICTIM SUPPORT (SCOTLAND)

If you are a victim of crime, you may wish to contact your local Victim Support Scheme in your area from the police or a Citizen’s Advice Bureau.

ANNEX 4

LORD ADVOCATE'S GUIDELINES TO CHIEF CONSTABLES THE CITATION OF WITNESSES

The following guidelines by the Lord Advocate set out, in general terms, procedures to be followed in the citation of witnesses for attendance at court. It is important that all witnesses who have been cited for a particular trial are in attendance at the diet of trial. If a material witness, without whom the trial cannot proceed, is absent, trial diets have frequently to be adjourned, with consequent inconvenience to witnesses who are in attendance. It is desirable that service of witness citations should be effected well in advance of the trial diet, so that problems regarding the attendance of witnesses can be identified as early as possible and remedial action taken with the aim of minimising the unnecessary attendance of other witnesses.

1. Wherever possible Procurators Fiscal will issue witness citations to the police at least 4 weeks before the trial date. In some cases, where for instance the accused is in custody, a trial date may be fixed for a date less than 4 weeks after his appearance in court. In such cases the Procurator Fiscal will issue witness citations as early as possible.

2. When witness citations are received from the Procurator Fiscal, arrangements should be made for service to be effected as soon as possible thereafter.

3. it is desirable that, in cases where it can readily be done, the citation should be served personally on the witness and the execution of service completed accordingly. This will enable a motion to be made for a warrant to apprehend in appropriate cases where the witness fails to attend the trial diet. If, however, the witness cannot be found in person, the citation may be left with another person in the household, and the execution of service completed accordingly. This should be done, however, only if every effort is made to ensure that the witness will in fact receive the citation. It should always be borne in mind that the purpose of a citation is to produce the appearance in court of the witness, and all reasonable steps should be taken to ensure that service of the citation will be effectual. Under no circumstance should a witness citation be put through a letter box or otherwise simply left at an address.

4. Where service of a witness citation cannot be effected the Procurator Fiscal should be informed of that fact immediately and of the reason for non service. To avoid unnecessary delay this should be done by telephone, and confirmed in writing as soon as possible thereafter enclosing the unserved citation. A record of the unsuccessful attempts made to effect citation should be made on the reverse of the form used to record the execution of the citation.

5. Immediately upon service of a witness citation, the execution thereof should be returned to the Procurator Fiscal. Care should be taken to ensure that all the particulars are completed accurately, including those on the reverse of the form, and in particular it should be noted whether service was effected personally or otherwise.

6. Where instructions are received from Procurators Fiscal to countermand witnesses for

a trial, immediate steps should be taken to secure compliance. It is of importance that the unnecessary attendance of witnesses at court should be avoided wherever possible.

ANNEX 5

ANNEX 6

SI 1990 NO 993

STATUTORY INSTRUMENTS

SPORTS GROUNDS AND SPORTING EVENTS

The Football Spectators (Corresponding Offences in Scotland) Order 1990

Made 1st May 1990
Laid before Parliament 9th May 1990
Coming into force 1st June 1990

At the Court at Buckingham Palace, the 1st day of May 1990.

Present,

The Queen's Most Excellent Majesty in Council

Whereas it appears to Her Majesty that the offences under the law of Scotland describe in Schedule 1 to this Order correspond to offences specified in Schedule 1 to the Football Spectators Act 1989[1]; Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 22(1) of the Football Spectators Act 1989[2], is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered as follows:

1.-(1) This order may be cited as the Football Spectators (Corresponding Offences in Scotland) Order 1990 and shall come into force on 1st June 1990.

(2) In this Order "the 1989 Act" means the Football Spectators Act 1989.

2.-(1) The offences under the law of Scotland which are described in Schedule 1 to this Order are hereby specified as offences corresponding to the offences specified in Schedule 1 to the 1989 Act.

(2) In Schedule 1 to this Order –

(a) the expression "period relevant to" shall be construed in accordance with section 1(8) of the 1989 Act, and

(b) "specified football match" means any association football match played in Scotland involving a team which represents –

(i) a country or territory, or

(ii) a club from England or Wales which is, at the time the match is played, a member (whether a full or associate member) of the Football League, or

(iii) a club which is, at the time the match is played, a member of the Scottish Football League.

3. The Crown Office, Edinburgh, is hereby specified as the authority in Scotland which is to certify the conviction of a person there of an offence specified in Schedule 1 to this Order, the nature and circumstances of the offence and whether or not the conviction is the subject of proceedings there questioning it.

4. The form of the certificate certifying the matters referred to in article 3 above is hereby prescribed in Schedule 2 to this Order.

G I de Deney

Clerk to the Privy Council

NOTES

[1] 1989 C. 37 back

[2] The power in section 22(1) is supplemented by section 22(9) of that Act.

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of, and Schedule 1 to, this Order specifies offences under the law of Scotland which appear to Her Majesty to correspond to certain of the offences specified in Schedule 1 to the Football Spectators Act 1989. Under section 22 of that Act proceedings may be commenced before magistrates against a person who resides or is believed to reside in an area of England or Wales if that person has been convicted of such an offence. Under such proceedings a restriction order may be made against such a person. Under section 19 of that Act the person to whom such an order applies may be required to report to a police station in England or Wales on the occasion of a football match played in any country outside England and Wales of a description for the time being designated by order under section 14(2) of that Act.

Article 3 specifies the Crown Office, Edinburgh, as the authority in Scotland by which a certificate may be made certifying a person's conviction for one of the offences specified in Schedule 1 to this Order. Article 4 prescribes the form of the certificate. Under section 22(10) of the Football Spectators Act 1989 such a certificate is admissible in proceedings under Part II of that Act (which concerns restriction orders) as evidence of the facts therein stated. Under section 22(11) such facts are to be taken as proved (on production of the certificate and proof that the person against whom the proceedings are brought is the person whose conviction is certified) unless the contrary is proved.