

CHAPTER 19 - ADMINISTRATIVE REGULATIONS & MISCELLANEOUS PROCEDURES

ADMINISTRATIVE REGULATIONS AND MISCELLANEOUS PROCEDURES

19.01 PROCEDURE IN REPORTING CASES TO CROWN OFFICE

When a case is reported for the instructions of Crown Counsel, a slip should be enclosed with the report showing the date of dispatch, the name of the district, the name of the accused or deceased, the nature of the report, the name of the crime or cause of death, etc, as appropriate. All information should be contained in the report - covering letters will not be used. If further information is required the Procurator Fiscal will submit a further report to Crown Office with another slip giving similar details, adding that the case is being re-reported and quoting the Crown Office reference number. Every report should indicate its author's identity. Duplicates of all reports will be retained by the Procurator Fiscal. Any documents or productions enclosed must be accompanied by an inventory.

19.02 MODE OF TRANSMISSION OF PROCEEDINGS

Regard must be had to the security of productions and in appropriate cases, copies should be sent and the original retained by the Procurator Fiscal.

19.03 POLICE REPORTS

Unless instructed to do so by Crown Counsel, Procurators Fiscal should not normally forward police reports or information to Crown Office.

19.04 CROWN OFFICE INSTRUCTIONS

The Procurator Fiscal is personally responsible for the prompt implementation of the instructions of Crown Counsel. If this cannot be achieved a report should be sent to Crown Office with an explanation.

19.05 MONTHLY RETURN

During the first week of each month the Procurator Fiscal will submit to Crown Office a return specifying as outlined therein information on the state of work in his office during the preceding month. In counting the number of trials for this return the number of accused tried on the same complaint or indictment is irrelevant eg 7 accused tried together is counted as one trial. Further, pleas of guilty at trial diets must never be included as trials.

19.06 RETURN OF SHERIFF AND JURY CASES

When Crown Counsel instruct Sheriff and Jury proceedings a letter of instruction and a copy thereof is sent to the Procurator Fiscal. Procurators Fiscal no longer need to return the copy to Crown Office with a note of the disposal at the conclusion of the case.

19.07 REPORT OF CASES DEALT WITH UNDER THE VEHICLES EXCISE ACT

Form should be used by Procurators Fiscal to report monthly the results of such prosecutions (or decisions not to proceed) to LVLOs/LTOs.

19.08 RETURN OF CASES UNDER CONSUMER LEGISLATION

(References to Acts include any Orders made thereunder).

Procurators Fiscal should use form to give details of convictions and acquittals in proceedings under any of the undernoted statutes. Form should be used to give notification of the commencement of proceedings in respect of these statutes. The returns should be made monthly and the form should be sent to:

The Registry of Convictions
Office of Fair Trading
Consumer Credit Licensing Branch
Government Buildings
Bromyard Avenue
Acton
London W3 7BB

List of Consumer Legislation:

Agriculture Act 1970
Consumer Credit Act 1974
Consumer Protection Act 1961 and 1971
Employment Agencies Act 1973
Estate Agents Act 1979
Explosive Act 1875 and 1923
Fair Trading Act 1973
Food and Drugs Act 1955
Food and Drugs (Scotland) Act 1956
Hallmarking Act 1973
Medicines Act 1968 and 1971
Pharmacy and Poisons Act 1933
Prices Act 1974
Rag, Flock and Other Filling Materials Act 1951
Trade Descriptions Acts 1968 and 1972
Trading Representations (Disabled Persons) Act 1958
Trading Representations (Disabled Persons) Amendment Act 1972
Trading Stamps Act 1964
Unsolicited Goods and Services Act 1971
Weights and Measures Act 1963.

19.09 CRIMINAL OFFENCES INCLUDING HEALTH BOARD FUNDS OR PROPERTY

In every case where there are prima facie grounds for thinking that a criminal offence has been committed involving public funds or property for which a Health Board is responsible the Secretary of the Board will report the facts to the Procurator Fiscal. In addition Procurators Fiscal may be approached for advice in cases where there is doubt as to whether there is a prima facie case. Procurators Fiscal, as far as possible, should co-operate with such requests for advice.

CONVICTIONS INVOLVING CERTAIN CLASSES OF PERSON**19.10**

Formerly Procurators Fiscal reported to Crown Office the convictions of certain classes of persons so that notification could be made to the appropriate professional body. This function is now performed by Scottish Criminal Records Office and Procurators Fiscal should therefore no longer report such convictions to Crown Office except where specific instruction is made below.

19.11 SOLICITORS AND TRAINEE SOLICITORS

It has been agreed with the Law Society of Scotland that when a solicitor or trainee solicitor is reported to a Procurator Fiscal on a charge of dishonesty that Procurators Fiscal will report such cases to:

The Secretary of the Law Society of

Scotland
The Law Society's Hall
26 Drumsheugh Gardens
Edinburgh EH3 7YR

Procurators Fiscal in such cases of dishonesty should inform the Law Society of the nature of the charge and the action, if any, taken by the Procurator Fiscal.

It has also been agreed with the Law Society (of England and Wales) that when a solicitor or trainee solicitor in England and Wales is reported to a Procurator Fiscal on a charge of dishonesty, Procurators Fiscal will report such cases to:

The Director
The Office for the Supervision of
Solicitors
Victoria Court
7 Dormer Place
Leamington Spa
Warwickshire CU32 5AE

Procurators Fiscal in such cases of dishonesty should inform the Office for the Supervision of Solicitors (which is part of the Law Society) of the nature of the charge and the action, if any, taken by the Procurator Fiscal in the same way as for a solicitor or trainee solicitor in Scotland.

19.12 JUSTICES

Where the police report a case in which a Justice is involved either as the accused or in any way implicated in unlawful activities, including minor road traffic offences, a report will be made to Crown Office without delay giving brief details of the offence and the involvement of the Justice and the decision of the Procurator Fiscal as to proceedings.

19.13 CONVICTIONS OF PUBLIC SERVICE VEHICLE DRIVERS

Under current arrangements, the police

report to the Traffic Commissioner for the Scottish Traffic Area convictions of public service vehicle drivers in respect of offences which are relevant to fitness to drive or involve dishonesty, violence, drugs misuse or are against public decency.

In some cases the Commissioner may find it necessary to obtain further information about a conviction and it has been agreed that Procurators Fiscal will, on request, and in the category of cases referred to above, provide the Commissioner with a copy of the complaint. Care should be taken to ensure that any alteration or amendment to the complaint is noted.

19.14 PERSONS INVOLVED IN ESTATE AGENCY WORK

To enable the Director General of Fair Trading to fulfil his duties under the Estate Agents Act 1979 the following arrangements have been agreed with the Office of Fair Trading:

(1) Procurators Fiscal should notify the Director General of or intention to institute proceedings for an offence under this Act, that is, a contravention of sections 3, 14, 23 and 29.

(2) Notification of results of procedure

Procurators Fiscal should include in the monthly returns of cases under Consumer Legislation details of prosecutions under the Estate Agents Act 1979.

BREACH OF INTERDICT

19.15 CONCURRENCE OF THE LORD ADVOCATE

By the common law of Scotland any petition and complaint of breach of interdict

requires to have the concurrence of the Lord Advocate or of the Procurator Fiscal acting on his behalf. As a consequence of this rule many such petitions are presented to Crown Office seeking the concurrence of the Lord Advocate. The general principle which guides consideration of such petitions is that concurrence will be refused if a criminal prosecution has taken place, is in process or is in contemplation in respect of the subject matter of the alleged breach of interdict.

The requirement to seek the Lord Advocate's concurrence was approved by the Inner House of the Court of Session in the case of Gribben v Gribben 1976 SLT 266 when it was decided that was also required in all cases of breach of interim interdict. In these cases the procedure is prescribed by section 47(1) of the Court of Session Act 1988 and the relevant Rules of Court. Applications are simply made by a minute in the process. The 1988 Act procedure is commonplace in matrimonial disputes and there is accordingly a considerable number of cases in which the Lord Advocate's concurrence is sought.

The effect of the foregoing so far as Procurators Fiscal are concerned is that Crown Office will request information from Procurators Fiscal as to whether criminal proceedings have taken place, are in process or are in contemplation in respect of the subject matter of the alleged breach of interdict. Most of these requests will require to be made and answered by telephone or facsimile the same day.

Procurators Fiscal will require to give careful attention to the supply of this information in view of the consequences which flow from the granting by the Lord Advocate of his concurrence.

Where a prosecution has taken place in respect of any incident, concurrence will not be granted in respect of any part of that

incident, whether or not the actings complained of in the petition or minutes were the subject of the prosecution. For example, if a husband is interdicted from approaching his wife's house, and he is prosecuted for committing a breach of the peace there, concurrence is not appropriate in respect of an application for breach of interdict relating to his approaching the house on the same occasion. If, in such a case, the accused was acquitted but the evidence established that he had approached the house, it would still be inappropriate for the Procurator Fiscal to concur in an application for breach of interdict.

In the event of a criminal prosecution being commenced, and a plea of not guilty being accepted or the case being deserted, either simpliciter or pro loco et tempore, concurrence will not be granted, a prosecution having taken place. In addition, if a decision to take no proceedings has been taken on the basis that prosecution is not in the public interest, concurrence will usually be withheld. Concurrence is however appropriate in circumstances where no proceedings have been taken on the basis that no offence was committed, that civil proceedings were more appropriate, or there was insufficient evidence to justify a prosecution.

Concurrence should be withheld in the event of a warning, either in writing or personally, being given, or where a conditional offer of a fixed penalty or the offer of a fine under the Criminal Justice (Scotland) Act 1987 has been made and accepted. Equally, if a decision has been taken to divert the case to an outside agency, the Procurator Fiscal should not thereafter concur in breach of interdict proceedings.

Where a petition or minute for breach of interdict or interim interdict is submitted and

it is appropriate that concurrence be granted in respect of only part of it, the agents for the petitioner should be advised of the parts to which the Lord Advocate is prepared to concur and should be invited to submit a fresh petition or minute referring only to those aspects. For example, if the application relates to 3 incidents, and a prosecution has taken place in respect of one, concurrence should be granted in respect of the other 2 incidents only, and on a petition or minute which refers to those incidents alone. If concurrence is granted, and agents thereafter inform the Procurator Fiscal that they wish to amend or adjust the petition or minute to take account of incidents not referred to in the original petition or minute to which concurrence was granted, they should be requested to intimate the amended or adjusted pleadings for fresh consideration by the Lord Advocate.

19.16 CONCURRENCE OF THE PROCURATOR FISCAL

In some cases the Procurator Fiscal is asked to grant his concurrence in respect of an alleged breach of a sheriff court interdict. The general principles referred to in paragraph 19.15 supra should be applied before Procurators Fiscal docket, on behalf of the Lord Advocate, that they do not intend to intervene and to that extent concur in the minute of complaint.

19.17 POWER OF ARREST

Section 15(3) of the 1981 Act provides that where a power of arrest has been attached to an interdict, a constable may arrest without warrant the non-applicant spouse if he has reasonable cause for suspecting that spouse of being in breach of the interdict.

19.18 POLICE POWERS AFTER

ARREST

Section 16 sets out the steps which follow an arrest under section 15(3) of the Act. Following the arrest the officer in charge of a police station may either liberate or detain the spouse arrested. He may liberate unconditionally if satisfied that there is no likelihood of violence to the applicant spouse or any child of the family, or he may refuse to liberate and detain the person until his appearance in court under section 17(2) of the Act or under any other provision of the Criminal Procedure (Scotland) Act 1975.

19.19

By subsection (2) where a person is liberated, the facts and circumstances giving rise to the arrest will be reported to the Procurator Fiscal in the ordinary way. Where on receiving such a report, the Procurator Fiscal decides to take no criminal proceedings he must at the earliest opportunity take all reasonable steps to intimate that decision to the applicant spouse and the solicitor who acted for that spouse when the interdict was granted or to any other solicitor whom the Procurator Fiscal has reason to believe acts for the time being for that spouse. There is no obligation to make such intimation where the decision is to take criminal proceedings. It must be remembered that many, but not all, of the circumstances which will constitute a breach of interdict will also constitute a criminal offence.

19.20 PROCEDURE AFTER ARREST

Section 17 of the procedure to be followed if a non-applicant spouse has not been liberated under section 16(1) of the Act. At this stage the Procurator Fiscal must decide whether to institute criminal proceedings or bring the non-applicant spouse before the sheriff in terms of this section. If the Procurator Fiscal decides

that no criminal proceedings are to be taken in respect of the facts and circumstances which gave rise to the arrest, then the non-applicant spouse shall be brought before the sheriff sitting as a court of summary criminal jurisdiction not later than in the course of the first day after the arrest, such a day not being a Saturday, a Sunday or a court holiday.

19.21

It should be noted that the Procurator Fiscal has no discretion in this matter. If no criminal proceedings are to be taken then the non-applicant spouse must be brought before the sheriff.

19.22 DECISION ON WHETHER TO TAKE CRIMINAL PROCEEDINGS

If the Procurator Fiscal decides that criminal proceedings are to be taken then there is no requirement that this decision be intimated to the other spouse or her solicitor. The Procurator Fiscal should decide in the ordinary way whether to institute proceedings and, if so, whether to bring the accused before the sheriff on a summary complaint or on petition.

19.23

It should be noted, however, that if the non-applicant spouse is brought before the sheriff in terms of section 17 then the Crown will be deemed to have abandoned any right to institute criminal proceedings at a later stage.

19.24 REPORTING BREACH OF INTERDICT TO PROCURATOR FISCAL

The police have been instructed to keep a register of matrimonial interdicts and the officer in charge of a police station to which an arrested person is brought in connection with what might be termed "domestic incidents" will check to see if an interdict

with a power of arrest has been intimated to them.

There will be cases of course where the only power of arrest used by the police is that under section 15(3) of the Act and such cases will similarly be identified. The police will also have the responsibility of finding out the identity of the applicant spouse's solicitor although it is appreciated that often the existence of a Matrimonial Interdict may not be discovered until after the police have made their arrest (eg in cases where there is evidence of a criminal offence and the arrest is at common law) and that there will also be cases where the applicant spouse cannot accurately identify her solicitor. The police have been instructed to make it clear in all reports if they have exercised their power of arrest under that section. If the statutory power of arrest is not exercised, then there is no obligation on the Procurator Fiscal to employ any of the procedures laid down in this Act. Where the non-applicant spouse was arrested at common law or under some other statutory power of arrest and the arresting officer was unaware of the existence of the interdict, the police have been instructed to ensure that when the existence of the interdict is discovered the non-applicant spouse is informed that he is no longer being detained in relation to the offence which led to his arrest and is now being arrested by virtue of section 15(3) of the Act. This procedure should ensure that in any case where the Procurator Fiscal decides to take no proceedings in respect of the offence the procedure provided by section 17 may be applied.

19.25 INTIMATION TO APPLICANT SPOUSE

In those cases where a petition in terms of section 17 of the Act is to be brought the Procurator Fiscal must at the earliest opportunity and in any event prior to the non-applicant spouse appearing in court

under the section 17 procedure, take all reasonable steps to intimate the decision to take no criminal proceedings to the applicant spouse and her solicitor.

The Act does not specify what is meant by 'all reasonable steps'. It is suggested however that the solicitor be contacted immediately by telephone and informed of the decision or else a message be left for him with another responsible person in his firm. It is the responsibility of the Procurator Fiscal to intimate his decision by whatever means he deems appropriate. Appropriate minutes of all such procedure must be kept with the case papers.

19.26 PETITION PROCEDURE

Subsection 5 sets out the procedure which will apply where the arrested spouse is to be brought before the sheriff. The Procurator Fiscal must present a petition to the court setting out the following:

- (1) A statement of the personal particulars of the non-applicant spouse.
- (2) A statement of the facts and circumstances which gave rise to the arrest.
- (3) A request that the non-applicant spouse be detained for a further period not exceeding 2 days.

19.27

The Sheriff will grant the petition to detain the non-applicant spouse only if it appears to him that

- (1) The statement of the facts and circumstances which gave rise to the arrest discloses a prima facie breach of interdict by the non-applicant spouse.
- (2) Proceedings for breach of interdict

will be taken.

- (3) There is a substantial risk of violence by the non-applicant spouse against the applicant spouse or any child of the family.

19.28

In most cases the applicant spouse will be represented in court and the Procurator Fiscal's role is likely to be limited to giving further details of the circumstances which gave rise to the arrest. Where the applicant spouse is not represented or where the Procurator Fiscal has information which is likely to assist the sheriff in deciding whether to grant the petition, it is the Procurator Fiscal's duty to draw all relevant facts to the sheriff's attention. If the applicant spouse is not represented the Procurator Fiscal should inform the sheriff of the steps taken to intimate the decision to take no criminal proceedings to the applicant spouse and her solicitor.

19.29

Once the Procurator Fiscal has decided that no criminal proceedings are to be taken, then his sole duty is to bring the non-applicant spouse before the sheriff. A constable may arrest the non-applicant spouse if he has reasonable cause for suspecting that spouse of being in breach of the interdict. There may be no corroboration but the arrest will nevertheless have been lawful in charge of a police station and it is decided that no criminal proceedings are to be taken, then, no matter what the Procurator Fiscal's view may be of the evidence, the non-applicant spouse must be brought before the sheriff.

19.30 STYLE OF PETITION

To ensure that a non-applicant spouse whose further detention has been ordered by the sheriff is detained for the full period it has been agreed with the Scottish Office Home Department that Procurators Fiscal will obtain a warrant stating the actual date and time of earliest release.

The Act lays no obligation on the Procurator Fiscal to notify the result of this procedure although in many cases the applicant spouse's solicitor will be present in court. Where there is no such attendance it is suggested that the solicitor should be notified by telephone and that, in any event, a letter should be sent to the solicitor that same day.

19.31 CRIMINAL INJURIES COMPENSATION AUTHORITY

In all cases where death has been caused by the criminal act of an accused person, it has been arranged that Crown Office will supply the Criminal Injuries Compensation Authority with all the information which it requires to assess compensation.

In all other cases where a prosecution has taken place, it has been arranged that the Authority will write directly to the Procurator Fiscal requesting information regarding the circumstances of the incident with particular reference to the evidence given in the course of the trial. Procurators Fiscal should provide the information requested without reference to Crown Office but should any doubt or difficulty arise Crown Counsel's instructions may be obtained.

In giving information to the Authority Procurators Fiscal will confine themselves to statements of fact regarding evidence given in court. No expression of opinion should be made as to the credibility of any witness at the trial although the attention of the Authority may be drawn to inconsistencies in the evidence. In addition

no reference should be made to the fact that a witness had previous convictions or to any other matters relating to a witness unless this was part of the evidence led at the trial.

19.32 GOVERNMENT DEPARTMENT CASES

Arrangements have been made with various Government departments, eg Department of Health and Social Security, Department of Transport, that the departments concerned will send papers direct to Procurators Fiscal in cases where it is considered by the department that criminal offence has been committed and that proceedings should be instituted.

Upon receipt of such papers from a Government department, Procurators Fiscal will consider the evidence, ask the department concerned to make further investigation if that is necessary, instruct the police to caution and charge the accused, if appropriate, institute proceedings without reference to Crown Office and report the result in due course to the department concerned. The police should also be asked to provide a list of the accused person's previous convictions. In all cases where the Procurator Fiscal is in doubt or difficulty, the papers should be sent with a report to Crown Office for the instructions of Crown Counsel.

Procurators Fiscal are encouraged to refer to the Statutory Offences Handbook for guidance on the law and procedures appropriate in Government Department cases and other statutory contraventions.

19.33 COINAGE CASES

The Royal Mint desires to have a record of prosecutions in cases involving counterfeit coinage. At the conclusion of a prosecution the Deputy Master of the Royal Mint should be informed of the result and

the coins should be forwarded to him for examination and destruction or retention as the case may be. In the normal case it is the practice for the opinion of a bank official or reputable silversmith to be obtained regarding the coin and for him to be called as an expert witness should the evidence of such a witness be necessary. Where, however, there is difficulty or doubt as to whether the coin is counterfeit, the Deputy Master of the Royal Mint should be consulted and he will arrange for examination of the coin and for officers to give evidence.

19.34 LIAISON WITH THE SCOTTISH OFFICE AUDIT UNIT

Officials of the Scottish Office Audit Unit are anxious to have discussions with Procurators Fiscal at an early stage in any proceedings involving the Audit Unit. Ideally there should be consultation prior to the commencement of proceedings so that if further evidence is required the Audit Unit can undertake the necessary enquiry.

19.35 REPORTING OF CASES BY THE REGISTRAR GENERAL

The Registrar General's Office has raised the question of the appropriate jurisdiction for reporting alleged contraventions of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 and associated legislation. Where, for example, a birth takes place in a different jurisdiction from the place where the parents live, it is possible for the parents to register the birth either in the locality where the birth took place or where they live. As a result, failure to register such a birth could in principle be prosecuted at either location. However, Crown Counsel have directed that, as a matter of convenience, reports will be submitted by the Registrar General in such cases to the Procurator Fiscal for the jurisdiction in which the intended informants live, and not to the

Procurator Fiscal for the jurisdiction where the occurrence took place.

19.36 REQUESTS TO DRIVER AND VEHICLE LICENSING CENTRE

Since the creation of the Driver and Vehicle Licensing Centre in Swansea, a system has been established at the Centre whereby the police are provided with direct information and full details of the record of a particular driver or particular vehicle licence. This system is partially automated and in all but exceptional cases, such information should be requested through the police and not directly from the centre. In any exceptional cases or in any case of difficulty however, the officials of the centre have accepted that the Procurator Fiscal has an unfettered discretion to seek such information directly. It should be borne in mind that a request from a Procurator Fiscal requires to be dealt with individually and manually at the centre and will consequently involve additional work and time.

19.37 PRIVATE PROSECUTIONS

Although the general rule is that prosecution in Scotland is at the instance of the public prosecutor, exceptions still remain, namely:-

- (a) Prosecutions by the victim of crime
- (b) Summary prosecutions by a public body for statutory offences
- (c) Summary prosecutions by land owners and others for certain statutory offences.

19.38

In a Bill for Criminal Letters, the High Court is petitioned for authority to bring a private prosecution on the grounds that the Lord Advocate has refused to prosecute and that the Petitioner has a substantial interest

to do so. The Petitioner must aver that the Lord Advocate has not only refused to prosecute but has also refused to concur in a private prosecution (see *J & P Coats Ltd v Brown* 1909 6 Adam 19, *McBain v Crichton* 1961 JC 25, *Trapp v M*; *Trapp v Y* 1971 SLT (Notes) 30, *Meehan* 1974 SLT Notes 61 and *Henderson*, Appeal Circular A12/82). In the event of a Bill for Criminal Letters being presented to a Procurator Fiscal he will immediately send it to Crown Office with a report. Normally such Bills will be presented direct to Crown Office for the Lord Advocate's concurrence or otherwise.

19.39

Education authorities have the right to prosecute for certain offences (Education (Scotland) Act 1962, Section 43(2)) and in the event of such an offence being reported to a Procurator Fiscal, he should before proceeding with the case ensure that the local authority solicitor is not initiating proceedings upon the same charge(s).

19.40

Certain Acts authorise members of the public to prosecute contraventions thereof, eg the Game (Scotland) Act 1832, Section 2 and again, in the event of such an offence being reported to a Procurator Fiscal, he should before proceeding with the case ensure that the accused will not suffer double jeopardy through two prosecutions in respect of the same offence.

19.41 PROFESSIONAL REGISTER OF INTERPRETERS FOR THE DEAF

A list of interpreters is issued by the Scottish Association for the Deaf. Following any revisals a copy of the current Professional Register of Interpreters for the Deaf will be sent to Procurators Fiscal.

Except in emergencies, only those persons shown in the register should be used as interpreters for court purposes. Procurators Fiscal should refer to the volume entitled Lists of Valuable Contacts for Procurators Fiscal which is available in office libraries for the up to date list.

19.42

When an accused wishes to use his own interpreter, the Court cannot force the accused to use the "official" interpreter. However, the court has a duty to ensure that an accused has the fullest opportunity of understanding the charge and the proceedings and for that reason it is considered advisable that the 'official' interpreter should remain in court to observe the extent to which the accused's interpreter is discharging his function of ensuring that the accused understands the charge and the proceedings which are taking place in court.

19.43 ATTENDANCE OF PRISONERS AND INMATES OF INSTITUTIONS

SCOTLAND

The removal of a prisoner from a prison for judicial or other purposes is provided for by Section 11 of the Prisons (Scotland) Act 1989 and relevant rules. It is the duty of a Procurator Fiscal to take steps to secure the attendance of at court of an accused person who is known to be in custody. To obtain the attendance of a prisoner, tried or untried, as an accused in solemn or summary procedure, excluding a High Court trial diet, a written order must be sent by the Procurator Fiscal to the Governor of the appropriate prison or Young Offenders Institution. Where the prisoner is untried, intimation must also be made by the Procurator Fiscal to the police who are responsible for providing an escort. Where the prisoner is convicted, the responsibility for escorting him lies with the prison

authorities. Where the prisoner is untried, and is in custody due to an order of a court other than that at which he is to appear, the Procurator Fiscal arranging for him to attend court should also advise the Procurator Fiscal of the court which remanded him in custody of the circumstances and of the outcome of his court appearance.

19.44

To obtain the attendance of a prisoner as a prosecution witness in solemn and summary procedure, excluding a High Court trial diet, a citation must be served upon him and a written request intimating the diet must be sent by the Procurator Fiscal to the Governor who is responsible for providing an escort.

19.45

To obtain the attendance of an inmate of a List D School or an Assessment Centre as an accused, cited or otherwise, this is normally done by a written request by the Procurator Fiscal intimating the diet to the headmaster who arranges for his attendance although it is competent for the police to provide an escort where a warrant exists. If the inmate is required as a prosecution witness a citation must be served upon him and a written request made to the headmaster who arranges his attendance.

19.46

Where any Prison Governor has jurisdiction over a Young Offenders Institution or Remand Centre then the appropriate method of securing a prisoner or inmate either as an accused or as a witness is that above relating to prisoners in prison. The attendance of a prisoner or inmate of a Young Offenders Institution or Detention Centre as an accused or witness at a High Court trial diet will be instructed

by Crown Office but care must be taken by the Procurator Fiscal in charge of a High Court trial to ensure that any local alteration in the date of the required appearance, eg where a lengthy Sitting is involved, is conveyed in the appropriate manner to the appropriate institution.

19.47

When a transfer of a prisoner or inmate from one prison or Young Offenders Institution to another is required for the purpose of being tried or being a prosecution witness, both in solemn and summary procedure, excluding a High Court trial diet, then the Procurator Fiscal must make a timeous written request for the transfer to the Governor or Warden and intimate the diet to him to enable the transfer to be effected. Care must be taken in solemn cases where there is to be a preliminary diet to intimate both diets when the prisoner is an accused in order that his retention at the prison to which he is temporarily transferred may be considered. When the Procurator Fiscal is notified of this transfer the above rules relative to appearance or citation will apply and must be complied with.]

19.48 APPEALS

The attendance of convicted prisoners at the Court of Criminal Appeal for the hearing of their appeal is arranged by Crown Office. Procurators Fiscal should refer to Chapter 11 in this regard.

19.49 REMITS

The attendance at the High Court in Edinburgh of prisoners convicted in the Sheriff Court and remitted to the High Court for sentence is arranged by Crown Office.

19.50 ENGLAND, WALES AND NORTHERN IRELAND

See paragraph 12.41.

To secure the attendance of a convicted prisoner or inmate of a Detention Centre being held in England, Wales or Northern Ireland, application must be made by Crown Office to whom a brief report of the relevant circumstances should be made in order that a transfer may be effected to Scotland. This application should be made at least 28 days before the date of proceedings in order that the appropriate arrangements can be made although, in exceptional circumstances, arrangements can be made in a shorter period. Where the period is less than 28 days the Crown office should be given the background particulars and inmates in Scotland as to the appearance or citation will apply. Untried prisoners in England and Wales may be temporarily transferred at the discretion of the Home Office, although a prisoner will not normally be transferred until the outstanding charges have been disposed of.

19.53 RETENTION OF CASE PAPERS BY PROCURATORS FISCAL

Refer to Crown Office Circular 29/2001 Management No 3.

19.51 SCOTTISH NATIONAL BLOOD TRANSFUSION SERVICE DISCLOSURE OF PATIENT OR DONOR DATA

In cases in which the Procurator Fiscal wishes information from the Scottish National Blood Transfusion Service about a patient or a donor, the Procurator Fiscal should write to the appropriate Regional Director or the SNBTS. If, in an urgent case, the Procurator Fiscal wishes the police to obtain the information on his behalf, the Procurator Fiscal should give the police a request in writing so that the police can hand this to the appropriate Regional Director.

If any difficulties arise with this arrangement, Procurators Fiscal should advise Crown Office.

19.52 BLOOD/ALCOHOL LEVELS OF ROAD TRAFFIC FATALITIES

August 1998

