

HIGH COURT OF JUSTICIARY

PRACTICE NOTE

No. 2 of 2017

PRIOR STATEMENTS

Introduction

1. This Practice Note will come into effect on 28 April 2017.
2. Recent experience suggests that there is a degree of confusion amongst practitioners about the circumstances in which reference can be made in the course of a trial to statements previously made by a witness.
3. The three most common situations are as follows:
 - In the circumstances set out in *Jamieson v Her Majesty's Advocate (No. 2)* 1994 JC 251, where a witness is unable, or purports to be unable, to recall events, but acknowledges that a statement was made (eg to the police) and that it was true.
 - When the criteria set out in section 260 of the Criminal Procedure (Scotland) Act 1995 are satisfied. This section requires the existence of a written or audio recorded statement which the witness “adopts” as his evidence. This is concerned with a similar situation as that in *Jamieson*.
 - When the circumstances in section 263(4) of the 1995 Act apply. This section permits a witness to be examined or cross-examined about a previous statement “different from the evidence given by the witness”. The witness’s evidence must *differ* from that earlier statement.
4. Practitioners are reminded that they must be clear, before embarking on questioning of this nature, about the legal basis for any reference to a previous statement. They must be in a position, if required, to advise the trial judge or sheriff of the purpose of the proposed line. This is important because, amongst other things, the trial judge or sheriff will require to consider what, if any, directions are to be given to the jury in the event that a prior statement is introduced into the evidence. Notably, directions may be required on whether the content of a statement, which is accepted or adopted as truth, may be used as proof of fact or whether, in the case of a different statement, which is proved to have been made but which is not so accepted or adopted, it may be used only to test the witness’s credibility or reliability.

5. The attention of practitioners is drawn to Practice Note No. 1 of 2014 regarding the provision of copies of statements to the presiding judge or sheriff.

CJM Sutherland
Lord Justice General
Edinburgh
18 April 2017