



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PROCEDURE PRIOR TO TRIAL

APPEAL

Further provisions as to appeals

263 Prerogative of mercy.

- (1) Nothing in this Part of this Act shall affect the prerogative of mercy, but the Secretary of State on the consideration of any conviction of a person or the sentence (other than sentence of death) passed on a person who has been convicted, may, if he thinks fit, at any time, and whether or not an appeal . . . ^{F1} against such conviction or sentence has previously been heard and determined by the High Court [^{F2}refer the whole case to the High Court and the case shall be heard and determined, subject to any directions the High Court may make, as if it were an appeal under this Part of this Act.]
- (2) The power of the Secretary of State under this section to refer to the High Court the case . . . ^{F3} of a person convicted shall be exercisable whether or not that person has petitioned for the exercise of Her Majesty's mercy.
- [^{F4}(3) This section shall apply in relation to a finding under section 174ZA(2) and an order under section 174ZC(2) of this Act as it applies, respectively, in relation to a conviction and a sentence.]

Textual Amendments

- F1** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 6, [Sch. 8](#)
- F2** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 22(b), [Sch. 6 para. 6](#)
- F3** Words repealed by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(2), [Sch. 2](#)
- F4** [S. 263\(3\)](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117, Sch. 6 Pt. I para. 90](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

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[^{F5}263A Lord Advocate's reference.

- (1) Where a person tried on indictment is acquitted [^{F6}or convicted]of a charge, the Lord Advocate may refer a point of law which has arisen in relation to that charge to the High Court for their opinion; and the Clerk of Justiciary shall send to the person and to any solicitor who acted for the person at the trial, a copy of the reference and intimation of the date fixed by the court for a hearing.
- (2) The person may, not later than seven days before the date so fixed, intimate in writing to the Clerk of Justiciary and to the Lord Advocate either—
 - (a) that he elects to appear personally at the hearing; or
 - (b) that he elects to be represented thereat by counsel;
 but, except by leave of the Court on cause shown, (and without prejudice to his right to attend), he shall not appear or be represented at the hearing other than by and in conformity with an election under this subsection.
- (3) Where there is no intimation under subsection (2)(b) above, the High Court shall appoint counsel to act at the hearing *as amicus curiae*.
- (4) The costs of representation elected under subsection (2)(b) above or of an appointment under subsection (3) above shall, after being taxed by the Auditor of the Court of Session, be paid by the Lord Advocate.
- (5) The opinion on the point referred under subsection (1) above shall not affect the acquittal [^{F7}or, as the case may be, conviction]in the trial.]

Textual Amendments

- F5** S. 263A inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 37, [Sch. 6 para. 6](#)
- F6** Words in [s. 263A\(1\)](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117\(1\)](#), [Sch. 6 Pt. I para. 91\(a\)](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)
- F7** Words in [s. 263A\(5\)](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117\(1\)](#), [Sch. 6 Pt. I para. 91\(b\)](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

264 Disqualification, forfeiture, etc.

- (1) Where, upon conviction of any person, any disqualification, forfeiture or disability attaches to such person by reason of such conviction, such disqualification, forfeiture or disability shall not attach for the period of [^{F8}[^{F9}four] weeks] from the date of the verdict against such person nor, in the event of [^{F8}an intimation of intention to appeal (or in the case of an appeal under section 228(1)(b) [^{F10}, (bb), (bc) or (bd)] [^{F11}or 228A]of this Act a note of appeal)] being lodged under this Part of this Act, until [^{F8}such appeal, if it is proceeded with, is determined].
- (2) Where, upon a conviction, any property, matters or things which are the subject of the prosecution or connected therewith are to be or may be ordered to be destroyed or forfeited, the destruction or forfeiture or the operation of any order for destruction or forfeiture thereof shall be suspended for the period of [^{F8}[^{F9}four] weeks] after the date of the verdict in the trial, and, in the event of [^{F8}an intimation of intention to appeal (or in the case of an appeal under section 228(1)(b) [^{F10}, (bb), (bc) or (bd)] [^{F11}or 228A]of

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this Act a note of appeal)] being lodged under this Part of this Act, shall be further suspended until [^{F8}such appeal, if it is proceeded with, is determined].

[^{F12}(3) Subsections (1) and (2) above do not apply in respect of any disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture under or by virtue of any enactment which contains express provision for the suspension of such disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture pending the determination of any appeal against conviction or sentence.]

[^{F13}(4) Where, upon conviction, a fine has been imposed on a person or a compensation order has been made against him under section 58 of the Criminal Justice (Scotland) Act 1980, then, for a period of four weeks from the date of the verdict against such person or, in the event of an intimation of intention to appeal (or in the case of an appeal under section 228(1)(b), (bb), (bc) or (bd) or 228A of this Act a note of appeal) being lodged under this Part of this Act, until such appeal, if it is proceeded with, is determined,—

- (a) the fine or compensation order shall not be enforced against that person and he shall not be liable to make any payment in respect of the fine or compensation order; and
- (b) any money paid by that person under the compensation order shall not be paid by the clerk of court to the person entitled to it under section 60(1) of the Act of 1980.]

Textual Amendments

- F8** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 23, **Sch. 6 para. 6**
- F9** Words in s. 264(1)(2) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(21)(a)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)
- F10** Words in s. 264(1)(2) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 92(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F11** Words in s. 264(1)(2) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(21)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)
- F12** S. 264(3) inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a)**, 68(2)
- F13** S. 264(4) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 92(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

265 Fines and caution.

- (1) Where a person has on conviction been sentenced to payment of a fine and in default of payment to imprisonment, the person lawfully authorised to receive such fine shall, on receiving the same, retain it until the determination of any appeal in relation [^{F14}to the conviction or sentence].
- (2) If a person sentenced to payment of a fine remains in custody in default of payment of the fine he shall be deemed, for the purposes of this Part of this Act, to be a person sentenced to imprisonment.
- [^{F15}(3)]
- (4) An appellant who has been sentenced to the payment of a fine, and has paid the same in accordance with such sentence, shall, in the event of his appeal being successful,

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be entitled, subject to any order of the High Court, to the return of the sum or any part thereof so paid to him.

[^{F16}(4A) A convicted person who has been sentenced to the payment of a fine and has duly paid it shall, if an appeal against sentence by the Lord Advocate results in the sentence being quashed and no fine, or a lesser fine than that paid, being imposed, be entitled, subject to any order of the High Court, to the return of the sum paid or as the case may be to the return of the amount by which that sum exceeds the amount of the lesser fine.]

(5)

Textual Amendments

- F14** Words in s. 265(1) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 93(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F15** S. 265(3)(5) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 93(b)**, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F16** S. 265(4A) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(22)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

266 Expenses.

On the hearing and determination of an appeal or any proceedings preliminary or incidental thereto under this Part of this Act no expenses shall be allowed on either side.

267 No fees exigible.

Save in so far as provided in this Part of this Act, no court fees, or other fees or expenses shall be exigible from or awarded against an appellant or applicant in respect of an appeal or application under any of the provisions contained in sections 228 to 279 of this Act.

268 Reckoning of time spent pending appeal.

[^{F17}(1) Subject to subsection (2) below, where [^{F18}a convicted person] is admitted to bail under section 238 of this Act the period beginning with the date of his admission to bail and ending on the date of his readmission to prison in consequence of the determination or abandonment of his appeal [^{F19}, or as the case may be of any [^{F20}relevant appeal by the Lord Advocate under section 228A of this Act], shall not be reckoned as part of any term of imprisonment under [^{F18}that] sentence.]

[^{F21}(2) The time (including any period consequent on the recall of bail) during which a convicted person is in custody pending the determination of his appeal, or as the case may be of any [^{F20}relevant appeal by the Lord Advocate under section 228A of this Act], shall subject to any direction which the High Court may give to the contrary be reckoned as part of any term of imprisonment under that sentence.

[^{F22}(3) Subject to any direction which the High Court may give to the contrary, imprisonment of an appellant [^{F23}(or, where the appellant is the Lord Advocate, of a convicted person)]—

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- (a) who is in custody in consequence of the conviction or sentence appealed against shall be deemed to run as from the date on which the sentence was passed;
 - (b) who is in custody other than in consequence of such conviction or sentence shall be deemed to run or to be resumed as from the date on which his appeal was determined or abandoned;
 - (c) who is not in custody shall be deemed to run or to be resumed as from the date on which he is received into prison under the sentence.]
- (4) In this section references to a prison and imprisonment shall include respectively references to a ^{F24}young offenders institution], detention centre or place of safety ^{F25}or, as respects a child sentenced to be detained under section 206 of this Act, the place directed by the Secretary of State] and to detention in such institution, centre or place of safety ^{F26}or, as respects such a child, place directed by the Secretary of State], and any reference to a sentence shall be construed as a reference to a sentence passed by the court imposing sentence or by the High Court on appeal as the case may require.

Textual Amendments

- F17** S. 268(1) substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF, 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 14(1)**
- F18** Words in s. 268(1) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(23)(a)(i)(iii)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)
- F19** Words in s. 268(1) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(23)(a)(ii)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)
- F20** Words in s. 268(1)(2) substituted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. 1 para. 2(8)**
- F21** S. 268(2) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(23)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)
- F22** S. 268(3) by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 14(3)**
- F23** Words in s. 268(3) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(23)(c)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)
- F24** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 46** and S.I. 1983/1580, **art. 3**
- F25** Words in s. 268(4) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. 1 para. 94(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F26** Words in s. 268(4) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. 1 para. 94(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

269 Extract convictions.

No extract conviction shall be issued during the period of ^{F27}[^{F28}four] weeks] after the actual day on which such conviction took place, save in so far as the same may be required as a warrant for the detention of the person convicted under any sentence which shall have been pronounced against him nor, in the event of ^{F27}an intimation of intention to appeal (or in the case of an appeal under section 228(1)(b) ^{F29}, (bb), (bc), or (bd)]^{F30}or 228A]of this Act a note of appeal)] being lodged under this Part of this Act, until ^{F27}such appeal, if it is proceeded with, is determined].

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Textual Amendments

- F27** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 2 para. 25](#), [Sch. 6 para. 6](#)
- F28** Word in [s. 269](#) substituted (1.10.1993) by 1993 c. 9, s. 47(1), [Sch. 5 para. 1\(24\)\(a\)](#) (with [s. 47\(2\)](#), [Sch. 6 paras. 1, 2](#)); S.I. 1993/2050, [arts. 3\(4\)](#), 10(b)
- F29** Words in [s. 269](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), [Sch. 6 Pt. I para. 95](#); S.I. 1996/517, [arts. 3\(2\)](#), 4-6, [Sch. 2](#)
- F30** Words in [s. 269](#) inserted (1.10.1993) by 1993 c. 9, s. 47(1), [Sch. 5 para. 1\(24\)\(b\)](#) (with [s. 47\(2\)](#), [Sch. 6 paras. 1, 2](#)); S.I. 1993/2050, [arts. 3\(4\)](#), 10(b)

270 Custody of trial documents, etc.

- (1) Any document, production or other thing lodged in connection with the proceedings on the trial of any person who, if convicted, is entitled or may be authorised to appeal under this Part of this Act, shall, in accordance with the provisions of this section, be kept in the custody of the court in which the conviction took place.
- (2) [^{F31}Until any period allowed under or by virtue of this Part of this Act for lodging intimation of intention to appeal ^{F32}. . . has elapsed, all documents and other productions produced at the trial of a convicted person shall be kept]in the custody of the court of trial in such manner as it may direct, and, failing direction, such custody shall be in the hands of the sheriff clerk of the district of the court of the second diet to whom the clerk of court shall hand them over at the close of the trial, unless otherwise ordered by the High Court on [^{F33}an intimation of intention to appeal]. . .being lodged, and if within such period ^{F34}. . . [^{F33}there has been such lodgement] under this Part of this Act, they shall be so kept until the [^{F33}appeal, if it is proceeded with, is determined]:
- Provided that the judge of the court in which the conviction took place may, on cause shown, grant an order authorising any of such documents or productions to be released on such conditions as to custody and return as he may deem it proper to prescribe.
- (3) All such documents or other productions so retained in custody or released and returned shall, under supervision of the custodian thereof, be made available for inspection and for the purpose of making copies of documents or productions to [^{F35}a person who has lodged an intimation of intention to appeal ^{F36}. . .]or [^{F37}, as the case may be, to the convicted person's] counsel or agent, and to the Crown Agent and the procurator-fiscal or his deputes.
- (4) In case no [^{F38}intimation of intention to appeal ^{F39}. . . is lodged within [^{F40}the period mentioned in subsection (2) above], all such documents and productions shall be dealt with as they are in use to be dealt with according to the existing law and practice at the conclusion of a trial [^{F41}; and they shall be so dealt with if, there having been such intimation, the appeal is not proceeded with.]]

Textual Amendments

- F31** Words in [s. 270\(2\)](#) substituted (1.10.1993) by 1993 c. 9, s. 47(1), [Sch. 5 para. 1\(25\)\(a\)\(i\)](#) (with [s. 47\(2\)](#), [Sch. 6 paras. 1, 2](#)); S.I. 1993/2050, [arts. 3\(4\)](#), 10(b)
- F32** Words in [s. 270\(2\)](#) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, [Sch. 6 Pt. I para. 96\(a\)](#), [Sch. 7 Pt. I](#); S.I. 1996/517, [arts. 3\(2\)](#), 4-6, [Sch. 2](#)

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- F33** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 2 para. 26\(a\)](#), [Sch. 6 para. 6](#)
- F34** Words in [s. 270\(2\)](#) repealed (1.10.1993) by [1993 c. 8, s. 47\(1\)\(3\)](#), [Sch. 5 para. 1\(25\)\(a\)\(iii\)](#), [Sch. 7 Pt. I](#); [S.I. 1993/2050, arts. 3\(4\)](#), 10(b)
- F35** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 2 para. 26\(b\)](#), [Sch. 6 para. 6](#)
- F36** Words in [s. 270\(3\)](#) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117, Sch. 6 Pt. I para. 96\(b\)](#), [Sch. 7 Pt. I](#); [S.I. 1996/517, arts. 3\(2\), 4-6, Sch. 2](#)
- F37** Words in [s. 270\(3\)](#) substituted (1.10.1993) by [1993 c. 9, s. 47\(1\)](#), [Sch. 5 para. 1\(25\)\(b\)\(ii\)](#) (with [s. 47\(2\)](#), [Sch. 6 paras. 1, 2](#)); [S.I. 1993/2050, arts. 3\(4\)](#), 10(b)
- F38** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 2 para. 26\(c\)](#), [Sch. 6 para. 6](#)
- F39** Words in [s. 270\(4\)](#) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117, Sch. 6 Pt. I para. 96\(4\)](#), [Sch. 7 Pt. I](#); [S.I. 1996/517, arts. 3\(2\), 4-6, Sch. 2](#)
- F40** Words in [s. 270\(4\)](#) substituted (1.10.1993) by [1993 c. 9, s. 47\(1\)](#), [Sch. 5 para. 25\(c\)\(ii\)](#) (with [s. 47\(2\)](#), [Sch. 6 paras. 1, 2](#)); [S.I. 1993/2050, arts. 3\(4\)](#), 10(b)
- F41** Words added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 2 para. 26\(c\)](#), [Sch. 6 para. 6](#)

271 Clerk of Justiciary to furnish forms, etc.

The Clerk of Justiciary shall furnish the necessary forms and instructions in relation to [^{F42}intimations of intention to appeal, notes of appeal] or notices of application under this Part of this Act to any person who demands the same, and to officers of courts, governors of prisons, and such other officers or persons as he thinks fit, and the governor of a prison shall cause those forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under this Part of this Act, and [^{F43} if any prisoner in his custody so requests, shall cause any such intimation, note or notice given by that prisoner to be forwarded on the prisoner's behalf to the Clerk of Justiciary].

Textual Amendments

- F42** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 2 para. 27](#), [Sch. 6 para. 6](#)
- F43** Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 39:1\)](#), [Sch. 2 para. 19](#)

^{F44}272

Textual Amendments

- F44** [S. 272](#) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117, Sch. 6 Pt. I para. 97](#), [Sch. 7 Pt. I](#); [S.I. 1996/517, arts. 3\(2\), 4-6, Sch. 2](#)

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Textual Amendments

F45 S. 273 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 97, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[274] ^{F46}Record of trial.

- (1) The proceedings at the trial of any person who, if convicted, is entitled to appeal under this Part of this Act shall be recorded by means of shorthand notes or by mechanical means.
- (2) A shorthand writer shall—
 - (a) sign the shorthand notes taken by him of such proceedings and certify them as being complete and correct; and
 - (b) retain the notes.
- (3) A person recording such proceedings by mechanical means shall—
 - (a) certify that the record is true and complete;
 - (b) specify in the certificate the proceedings (or, as the case may be, the part of the proceedings) to which the record relates; and
 - (c) retain the record.
- (4) The cost of making a record under subsection (1) above shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of money provided by Parliament.
- (5) In subsection (1) above “proceedings at the trial” means the whole proceedings including (without prejudice to that generality)—
 - (a) discussions—
 - (i) on any objection to the relevancy of the indictment;
 - (ii) with respect to any challenge of jurors; and
 - (iii) on all questions arising in the course of the trial;
 - (b) the decision of the court on any matter referred to in paragraph (a) above;
 - (c) the evidence led at the trial;
 - (d) any statement made by or on behalf of the accused whether before or after the verdict;
 - (e) the [^{F47} judge’s charge to the jury];
 - (f) the speeches of counsel or agent;
 - (g) the verdict of the jury; and
 - (h) the sentence by the judge.

Textual Amendments

F46 S. 274 substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(27)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 6**

F47 Words in s. 274(5)(e) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 98**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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[275 ^{F48}Transcripts of record and documentary productions.

- (1) The Clerk of Justiciary may direct that a transcript of a record made under section 274(1) of this Act, or any part thereof, be made and delivered to him for the use of any judge.
- (2) Subject to subsection (3) below, the Clerk of Justiciary shall, if he is requested to do so by—
 - (a) the Secretary of State; or
 - (b) any other person on payment of such charges as may be fixed for the time being by the Treasury,direct that such a transcript be made and sent to the person who requested it.
- (3) The Secretary of State may, after consultation with the Lord Justice General, by order made by statutory instrument provide that in any class of proceedings specified in the order the Clerk of Justiciary shall only make a direction under subsection (2)(b) above if satisfied that the person requesting the transcript is of a class of person so specified and, if purposes for which the transcript may be used are so specified, intends to use it only for such a purpose; and different purposes may be so specified for different classes of proceedings or classes of person.
- (4) Where subsection (3) above applies as respects a direction, the person to whom the transcript is sent shall, if purposes for which that transcript may be used are specified by virtue of that subsection, use it only for such a purpose.
- (5) A statutory instrument containing an order under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A direction under subsection (1) or (2) above may require that the transcript be made by the person who made the record or by such competent person as may be specified in the direction; and that person shall comply with the direction.
- (7) A transcript made in compliance with a direction under subsection (1) or (2) above—
 - (a) shall be in legible form; and
 - (b) shall be certified by the person making it as being a correct and complete transcript of the whole or, as the case may be, the part of the record purporting to have been made and certified, and in the case of shorthand notes signed, by the person who made the record.
- (8) The cost of making a transcript in compliance with a direction under subsection (1) or (2)(a) above shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of money provided by Parliament.
- (9) The Clerk of Justiciary shall, on payment of such charges as may be fixed for the time being by the Treasury, provide a copy of any documentary production lodged in connection with an appeal under this Part of this Act to such of the following persons as may request it—
 - (a) the prosecutor;
 - (b) any person convicted in the proceedings;
 - (c) any other person named in, or immediately affected by, any order made in the proceedings; and
 - (d) any person authorised to act on behalf of any of the persons mentioned in paragraphs (a) to (c) above.]

Changes to legislation: Criminal Procedure (Scotland) Act 1975, Cross Heading: Further provisions as to appeals is up to date with all changes known to be in force on or before 11 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F48 S. 275 substituted (18.8.1993 only for the purpose of enabling an Order to be made under s. 275(3) so as to come into force on or after 1.10.1993 and 1.10.1993 with application in respect of any request made on or after 1.10.1993 for a transcript to be made of the proceedings at any trial, whether that trial commenced before or after that date) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(27)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(2)(4), 7, **Sch. 1**

^{F49}**276**

Textual Amendments

F49 S. 276 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. 1 para. 99, **Sch. 7 Pt. 1**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

277 Non-compliance with certain provisions may be waived.

- (1) Non-compliance with the provisions of this Act set out in subsection (2) of this section, or with any rule of practice for the time being in force under this Part of this Act (other than section 280 of this Act) relating to appeals . . . ^{F50}, shall not prevent the further prosecution of an appeal . . . ^{F50} if the High Court or a judge thereof consider it just and proper that such non-compliance be waived or remedied by amendment or otherwise. The High Court or a judge thereof may, in such manner as they or he think fit, direct the remedy of such non-compliance, and upon the same being remedied accordingly the appeal . . . ^{F50} shall proceed.
- (2) The provisions of this Act referred to in subsection (1) of this section are:—

...	section 249
...	section 250
...	section 251
section 234	section 253
section 235	section 257
section 236	F51
	...
[^{F52} s ection 236]B	section 260
F51	section 261
...	
F51	section 264
...	
section 239	section 265
section 241	section 267
section 242	section 269

Changes to legislation: Criminal Procedure (Scotland) Act 1975, Cross Heading: Further provisions as to appeals is up to date with all changes known to be in force on or before 11 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

[^{F53} 242A]	
section 243	section 270
section 244	F51
	. . .
F51	F51
.
section 248	section 275.

Textual Amendments

- F50** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 6 para. 6](#), [Sch. 8](#)
- F51** Words in [s. 277\(2\)](#) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1996 c. 20, s. 117, Sch. 6 Pt. I para. 100, Sch. 7 Pt. I](#); [S.I. 1996/517, arts. 3\(2\), 4-6, Sch. 2](#)
- F52** Words added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 2 para. 31\(c\)](#), [Sch. 6 para. 6](#)
- F53** Entry in [s. 277\(2\)](#) inserted (1.10.1993) by [1993 c. 9, s. 47\(1\), Sch. 5 para. 1\(29\)](#) (with [s. 47\(2\), Sch. 6 paras. 1, 2](#)); [S.I. 1993/2050, arts. 3\(4\), 10\(b\)](#)

278 Forms of procedure may be varied.

The Clerk of Justiciary may, with the sanction of the Lord Justice General and the Lord Justice Clerk, vary the forms set out in an Act of Adjournal under the ^{M1}Criminal Appeal (Scotland) Act 1926 or under this Act from time to time as may be found necessary for giving effect to the provisions of this Part of this Act.

Marginal Citations

- M1** [1926 c. 15\(39:1\)](#).

279 Interpretation of sections 228 to 278 of this Act.

In sections 228 to 278 of this Act, unless the context otherwise requires—

“appellant” includes a person who has been convicted and desires to appeal under this Part of this Act;

“sentence” includes any order of the High Court made on conviction with reference to the person convicted or his wife or children, and any recommendation of the High Court as to the making of a deportation order in the case of a person convicted and the power of the High Court to pass a sentence includes a power to make any such order of the court or recommendation, and a recommendation so made by the High Court shall have the same effect for the purposes of Articles 20 and 21 of the Aliens Order 1953 as the certificate and recommendation of the convicting court.

280 Appeals against hospital orders, etc.

Where a hospital order, [^{F54}interim hospital order (but not a renewal thereof),] guardianship order or an order restricting discharge has been made by a court in respect

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of a person charged or brought before it, he may, without prejudice to any other form of appeal under any rule of law [^{F55}or, where an interim hospital order has been made, to any right of appeal against any other order or sentence which may be imposed)], appeal against that order in the same manner as against [^{F56}sentence].

Textual Amendments

- F54** Words inserted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\)](#), [s. 34 \(b\)\(i\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), [s. 126\(2\)\(b\)](#)
- F55** Words inserted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\)](#), [s. 34\(b\)\(ii\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, s. 126\(2\)\(b\)\)](#)
- F56** Word substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 2 para. 32](#), [Sch. 6 para. 6](#)

[^{F57}280A] Prosecution appeal by bill of advocacy.

- (1) Without prejudice to section 76A of this Act, the prosecutor's right to bring a decision under review of the High Court by way of bill of advocacy in accordance with existing law and practice shall extend to the review of a decision of any court of solemn jurisdiction.
- (2) Where a decision to which a bill of advocacy relates is reversed on the review of the decision the prosecutor may, whether or not there has already been a trial diet at which evidence has been led, proceed against the accused by serving him with an indictment containing the charge or charges which were affected by the decision (the wording of which charge or charges shall be as it was immediately before the decision appealed against).]

Textual Amendments

- F57** [S. 280A](#) inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [s. 35](#), [Sch. 6 para. 6](#)

Changes to legislation:

Criminal Procedure (Scotland) Act 1975, Cross Heading: Further provisions as to appeals is up to date with all changes known to be in force on or before 11 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act certain function transferred. by [1994 c. 39 s. 127\(1\)128](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 168(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(6\)\(b\)](#)
- s. 364(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(14\)\(b\)](#)
- s. 413(3) (defn.of "the appropriate local authority") para. (a)(b) amended by [1994 c. 39 Sch. 13 para. 97\(5\)](#)
- s. 413(3) (defns. of "care" and "the 1968 Act") repealed (prosp.) by [1995 c. 36 s. 105\(4\)\(5\)Sch. 4 para. 24\(17\)\(b\)\(i\)Sch. 5](#)
- s. 462 (defns. of "child" "children's hearing" "place of safety" "residential establishment" and "supervision requirement") amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(18\)](#)
- s. 462 (defns. of "crime" and "prosecutor") applied (prosp.) by [1995 c. 36 s. 53\(7\)](#)