



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PROCEDURE PRIOR TO TRIAL

APPEAL

Procedure at hearing

245 Quorum and sitting of High Court.

- (1) [^{F1}Subject to subsection (1A) below,]For the purpose of hearing and determining any appeal [^{F2}under this Part of this Act or any proceeding connected therewith] three of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and the determination of any question under this Part of this Act by the court shall be according to the votes of the majority of the members of the court sitting, including the presiding judge, and each judge so sitting shall be entitled to pronounce a separate opinion.

[^{F3}(1A) For the purpose of hearing and determining any appeal under section 228(1)(b), (bb), (bc) or (bd) of this Act, or any proceeding connected therewith, two of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and each judge shall be entitled to pronounce a separate opinion; but where the two Lords Commissioners of Justiciary are unable to reach agreement on the disposal of the appeal, or where they consider it appropriate, the appeal shall be heard and determined in accordance with subsection (1) above.]

- (2) The High Court shall hold both during session and during vacation such sittings for the disposal of appeals and other proceedings under this Part of this Act as may be necessary.
- (3) The provisions of this section shall apply to cases certified to the High Court by a single judge of the said court and to appeals by way of advocacy . . . ^{F4} in like manner as they apply to appeals under this Part of this Act.

Changes to legislation: Criminal Procedure (Scotland) Act 1975, Cross Heading: Procedure at hearing is up to date with all changes known to be in force on or before 10 August 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

- F1** Words in [s. 245\(1\)](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 43\(1\)\(a\)](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)
- F2** Words substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(1), [Sch. 1 para. 13\(1\)](#)
- F3** [S. 245\(1A\)](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 43\(1\)\(b\)](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)
- F4** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 6 para. 6](#), [Sch. 8](#)

^{F5}**246**

Textual Amendments

- F5** [S. 246](#) 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. 84](#), [Sch. 7 Pt. 1](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

247 Powers which may be exercised by a single judge.

The powers of the High Court under this Part of this Act . . . ^{F6}, to extend the time within which [^{F7}intimation of intention to appeal and note of appeal] . . . ^{F6} may be given, to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave, and to admit an appellant to bail, may be exercised by any judge of the High Court in the same manner as they may be exercised by the High Court, and subject to the same provisions; but, if the judge refuses an application on the part of the appellant to exercise any such power in his favour, the appellant shall be entitled to have the application determined by the High Court.

Textual Amendments

- F6** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 6 para. 6](#), [Sch. 8](#)
- F7** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 2 para. 15\(b\)](#), [Sch. 6 para. 6](#)

248 Single judge may act wherever convenient.

A judge of the High Court sitting under the provisions of section 247 of this Act may sit and act wherever convenient.

249 Interlocutory proceedings.

Subject to the provisions of section 247 of this Act and without prejudice thereto, preliminary and interlocutory proceedings incidental to any appeal or application may be disposed of by a single judge.

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250 Representation before single judge.

In all proceedings before a judge under section 247 of this Act, and in all preliminary and interlocutory proceedings and applications except such as are heard before the full court, the parties thereto may be represented and appear by a solicitor alone.

251 Appeal against refusal of application.

- (1) When an application or applications have been dealt with by a judge of the High Court, under section 247 of this Act, the Clerk of Justiciary shall notify to the applicant the decision in the form set out in an Act of Adjournal under the ^{M1}Criminal Appeal (Scotland) Act 1926 or under this Act or as nearly as may be in such form.
- (2) In the event of such judge refusing all or any of such applications, the Clerk of Justiciary on notifying such refusal to the applicant shall forward to him the prescribed form to fill up and forthwith return if he desires to have his said application or applications determined by the High Court as fully constituted for the hearing of appeals under this Part of this Act. If the applicant does not so desire, or does not return within five days to the Clerk the form duly filled up by him, the refusal of his application or applications by such judge shall be final.
- (3) If the applicant desires a determination by the High Court as aforesaid and is not legally represented, he may be present at the hearing and determination by the High Court of his said application:

Provided that an applicant who is legally represented shall not be entitled to be present without leave of the court.

- (4) When an applicant duly fills up and returns to the Clerk of Justiciary within the prescribed time the said form expressing a desire to be present at the hearing and determination by the court of the applications mentioned in this section, the said form shall be deemed to be an application by the applicant for leave to be so present, and the Clerk of Justiciary, on receiving the said form, shall take the necessary steps for placing the said application before the court.
- (5) If the said application to be present is refused by the court, the Clerk of Justiciary shall notify the applicant; and if the said application is granted, he shall notify the applicant and the Governor of the prison wherein the applicant is in custody and the [^{F8}Secretary of State].
- (6) For the purpose of constituting a Court of Appeal, the judge who has refused any such application may sit as a member of such court, and take part in determining such application.

Textual Amendments

F8 Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 44](#)

Marginal Citations

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

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[^{F9}252 Powers of High Court.

Without prejudice to any existing power of the High Court, that court may for the purposes of an appeal under section 228(1) [^{F10}or 228A] of this Act—

- (a) order the production of any document or other thing connected with the proceedings;
- (b) hear any additional evidence relevant to any alleged miscarriage of justice or order such evidence to be heard by a judge of the High Court or by such other person as it may appoint for that purpose;
- (c) take account of any circumstances relevant to the case which were not before the trial judge;
- (d) remit to any fit person to enquire and report in regard to any matter or circumstance affecting the appeal;
- (e) appoint a person with expert knowledge to act as assessor to the High Court in any case where it appears to the court that such expert knowledge is required for the proper determination of the case.]

Textual Amendments

F9 S. 252 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 16, **Sch. 6 para. 6**

F10 Words in s. 252 inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(18)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 10(b)**

253 Evidence in court or on commission.

- (1) The evidence of any witnesses ordered to be examined before the High Court or before any judge of the High Court or other person appointed by the High Court shall be taken in accordance with the existing law and practice as to the taking of evidence in criminal trials in Scotland. The appellant or applicant and the respondent or counsel on their behalf shall be entitled to be present at and take part in any examination of any witness to which this section relates.
- (2) ^{F11}

Textual Amendments

F11 Ss. 229, 232, 253(2) repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 6, **Sch. 8**

[^{F12}254 Disposal of appeals.

- (1) The High Court may, subject to subsection (4) below, dispose of an appeal against conviction by—
 - (a) affirming the verdict of the trial court;
 - (b) setting aside the verdict of the trial court and either quashing the conviction or substituting therefor an amended verdict of guilty:

Provided that an amended verdict of guilty must be one which could have been returned on the indictment before the trial court; or

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- (c) setting aside the verdict of the trial court and granting authority to bring a new prosecution in accordance with section 255 of this Act.
 - (2) In setting aside, under subsection (1) above, a verdict the High Court may quash any sentence imposed on the appellant [^{F13}(or as the case may be any disposal or order made)]as respects the indictment, and—
 - (a) in a case where it substitutes an amended verdict of guilty, whether or not the sentence [^{F14}(or disposal or order)]related to the verdict set aside; or
 - (b) in any other case, where the sentence [^{F14}(or disposal or order)]did not so relate,may pass another (but not more severe) sentence [^{F15}or make another (but not more severe) disposal or order]in substitution for the sentence [^{F16}, disposal or order]so quashed.
 - (3) The High Court may, subject to subsection (4) below, dispose of an appeal against sentence by—
 - (a) affirming such sentence; or
 - (b) if the Court thinks that, having regard to all the circumstances, including any additional evidence such as is mentioned in section 228(2) of this Act, a different sentence should have been passed, quashing the sentence and passing another sentence whether more or less severe in substitution therefor.
 - (4) In relation to any appeal under section 228(1) of this Act, the High Court shall, where it appears to it that the appellant [^{F17}(or disposal or order made)]committed the act charged against him but that he was insane when he did so, dispose of the appeal by—
 - (a) setting aside the verdict of the trial court and substituting therefor a verdict of acquittal on the ground of insanity; and
 - (b) quashing any sentence imposed on the appellant as respects the indictment [^{F18}and- .
 - (i) making, in respect of the appellant, any order mentioned in section 174ZC(2)(a) to (d) of this Act; or
 - (ii) making no order.]
- [In subsection (3) above, “appeal against sentence” shall, without prejudice to the ^{F19}(4A) generality of the expression, be construed as including an appeal under section 228(1) (bb), (bc) or (bd), and any appeal under section 228A, of this Act; and other references to sentence in that subsection shall be construed accordingly.]
- [Subsections (3) and (4) of section 174ZC of this Act shall apply to an order made ^{F20}(5) under subsection (4)(b)(i) above as they apply to an order made under subsection (2) of that section.]]

Textual Amendments

- F12** S. 254 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 18, **Sch. 6 para. 6**
- F13** Words in s. 254(2) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(7)(a)(i)**
- F14** Words in s. 254(2)(a)(b) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(7)(a)(ii)**
- F15** Words in s. 254(2) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(7)(a)(iii)**
- F16** Words in s. 254(2) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(7)(a)(iv)**
- F17** Words in s. 254(4) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(7)(b)**

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- F18** Words in [s. 254\(4\)\(b\)](#) 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. 85\(a\)](#); [S.I. 1996/517, arts. 3\(2\), 4-6, Sch. 2](#)
- F19** [S. 254\(4A\)](#) inserted (27.7.1993) by [1993 c. 36, s. 79\(13\), Sch. 5 Pt. I para. 2\(7\)\(c\)](#)
- F20** [S. 254\(5\)](#) 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. 85\(b\)](#); [S.I. 1996/517, arts. 3\(2\), 4-6, Sch. 2](#)

Modifications etc. (not altering text)

- C1** [S. 254\(3\)](#) extended (1.10.1993) by [1993 c. 9, ss. 5, 6, 10, 16\(6\)](#) (with [ss. 5\(1\), 6\(1\), 10, 27, 47\(2\), Sch. 6 paras. 1, 2, 6, 7](#)); [S.I. 1993/2050, art. 3\(4\)](#)

[^{F21}254A Sentencing guidelines.

- (1) In disposing of an appeal under section 228(1)(b), (bb), (bc), (bd) or (c) or 228A of this Act the High Court may, without prejudice to any other power in that regard, pronounce an opinion on the sentence or other disposal or order which is appropriate in any similar case.
- (2) Without prejudice to any rule of law, a court in passing sentence shall have regard to any relevant opinion pronounced under subsection (1) above.]

Textual Amendments

- F21** [S. 254A](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 34\(1\)](#); [S.I. 1996/517, arts. 3\(2\), 4-6, Sch. 2](#)

[^{F22}254B Convictions not to be quashed on certain grounds.

No conviction, sentence, judgment, order of court or other proceeding whatsoever in or for the purposes of solemn proceedings under this Act—

- (a) shall be quashed for want of form; or
- (b) where the accused had legal assistance in his defence, shall be suspended or set aside in respect of any objections to—
 - (i) the relevancy of the indictment, or the want of specification therein; or
 - (ii) the competency or admission or rejection of evidence at the trial in the inferior court,
 unless such objections were timeously stated.]

Textual Amendments

- F22** [S. 254B](#) 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. 86](#); [S.I. 1996/517, arts. 3\(2\), 4-6, Sch. 2](#)

[^{F23}255 Supplementary provisions where High Court authorises new prosecution.

- (1) [^{F24}Subject to subsection (1A) below,] Where authority is granted under section 254(1) (c) of this Act, a new prosecution may be brought charging the accused with the same or any similar offence arising out of the same facts; and the proceedings out of which the appeal arose shall not be a bar to such new prosecution:

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Provided that no sentence may be passed on conviction under the new prosecution which could not have been passed on conviction under the earlier proceedings.

[In a new prosecution under this section the accused shall not be charged with an
^{F25}(1A) offence more serious than that of which he was convicted in the earlier proceedings.

(1B) In proceedings in a new prosecution under this section it shall, subject to subsection (1C) below, be competent for either party to lead any evidence which it was competent for him to lead in the earlier proceedings.

(1C) The indictment in a new prosecution under this section shall identify any matters as respects which the prosecutor intends to lead evidence by virtue of subsection (1B) above which would not have been competent but for that subsection.]

(2) A new prosecution may be brought under this section, notwithstanding that any time limit (other than the time limit mentioned in subsection (3) below), for the commencement of such proceedings has elapsed.

(3) Proceedings in a prosecution under this section shall be commenced within two months of the date on which authority to bring the prosecution was granted; and for the purposes of this subsection proceedings shall, in a case where such warrant is executed without unreasonable delay, be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, and shall in any other case be deemed to be commenced on the date on which the warrant is executed.

(4) Where the two months mentioned in subsection (3) above elapse and no new prosecution has been brought under this section, the order under section 254(1)(c) of this Act setting aside the verdict shall have the effect, for all purposes, of an acquittal.]

[^{F26}(5) On granting authority under section 254(1)(c) of this Act to bring a new prosecution, the High Court shall, after giving the parties an opportunity of being heard, order the detention of the accused person in custody or admit him to bail.

(6) Subsections (2)(b) and (4) to (6) of section 101 of this Act (prevention of delay in trials) shall apply to an accused person who is detained under subsection (5) above as they apply to an accused person detained by virtue of being committed until liberated in due course of law.]

Textual Amendments

F23 S. 255 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 19, **Sch. 6 para. 6**

F24 Words in s. 255(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 46(1)(a); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F25 S. 255(1A)-(1C) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 46(1)(b); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F26 S. 255(5)(6) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 46(1)(c); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

^{F27}**256**

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Textual Amendments

- F27** S. 256 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. 87, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

257 Failure to appear at hearing.

[^{F28}Where—

- (a) intimation of the diet appointed for the hearing of an appeal has been made to the appellant;
- (b) no appearance is made by or on behalf of the appellant at the diet; and
- (c)]

no case or argument in writing has been timeously lodged, the High Court shall dispose of the appeal ^{F29} . . . as if it had been abandoned.

Textual Amendments

- F28** Words in s. 257 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. 88**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F29** Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 6, **Sch. 8**

258 Appellant may be sentenced in absence.

The power of the High Court to pass any sentence under this Part of this Act may be exercised notwithstanding that the appellant [^{F30}(or, where the Lord Advocate is the appellant, the convicted person)] is for any reason not present.

Textual Amendments

- F30** Words in s. 258 inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(19)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(4), 10(b)

^{F31}259

Textual Amendments

- F31** S. 259 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. 89, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

260 Notice of decision of court on application.

When the High Court has heard and dealt with any application under this Part of this Act, the Clerk of Justiciary shall (unless it appears to him unnecessary so to do) give to the applicant (if he is in custody and has not been present at the hearing of such application) notice of the decision of the court in relation to the said application.

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261 Notice of determination of appeal.

On the final determination of any appeal under this Part of this Act or of any matter under section 247 of this Act, the Clerk of Justiciary shall give notice of such determination to the appellant or applicant [^{F32}(or, where the Lord Advocate is the appellant, the convicted person)] if he is in custody and has not been present at such final determination, to the clerk of the court in which the conviction took place, and to the [^{F33}Secretary of State].

Textual Amendments

- F32** Words in s. 261 inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(20)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 10(b)**
- F33** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 45**

262 Finality of proceedings.

Subject to the provisions of the next following section of this Act, all interlocutors and sentences pronounced by the High Court under this Part of this Act shall be final and conclusive and not subject to review by any court whatsoever and it shall be incompetent to stay or suspend any execution or diligence issuing from the High Court under this Part of this Act.

Changes to legislation:

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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\(7\)](#)