



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PART I

SOLEMN PROCEDURE

APPEAL

Procedure prior to hearing

228 Right of appeal

A person convicted may appeal under this Part of this Act to the High Court—

- (a) against his conviction on any ground of appeal which involves a question of law alone ;
- (b) with the leave of the High Court or upon the certificate of the judge who presided at the trial that it is a fit case for appeal, against his conviction on any ground of appeal which involves a question of fact alone or a question of mixed law and fact or on any other ground which appears to the High Court or to the judge to be a sufficient ground of appeal;
- (c) with the leave of the High Court, against the sentence passed on his conviction unless the sentence is one fixed by law:

Provided that a person sentenced to preventive detention within the meaning of section 21 of the Criminal Justice (Scotland) Act 1949 may appeal to the High Court against such sentence without such leave.

229 Certificate by judge that case appealable

- (1) The certificate of the judge who presided at the trial that a case is a fit case for appeal shall be in the form set out in an Act of Adjournal under the Criminal Appeal (Scotland) Act 1926 or under this Act or as nearly as may be in such form.
- (2) The trial judge may, in any case in which he considers it desirable to do so, inform the person convicted before him or sentenced by him that the case is, in his opinion, one

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fit for an appeal to the High Court under section 228(b) of this Act, and may give to such person a certificate to that effect.

230 Bill of suspension not competent

It shall not be competent to appeal to the High Court by bill of suspension against any conviction, sentence, judgment or order pronounced in any proceedings on indictment in the sheriff court.

231 Time for appealing

Where a person convicted desires to appeal under this Part of this Act to the High Court or to obtain the leave of the High Court to appeal, he shall within ten days of the date of his conviction in the case of appeal or application for leave to appeal against conviction, or within ten days of the date of his sentence in the case of appeal or application for leave to appeal against sentence, give notice of appeal or of application for leave to appeal. The time within which notice of appeal or of application for leave to appeal may be given may be extended at any time by the High Court.

232 Calculating days of appeal, etc.

In calculating the period of days in appeals and other applications under this Part of this Act, Sundays and public holidays shall not be included.

233 Forms for appeal

- (1) A note of—
 - (a) appeal against conviction or sentence ;
 - (b) application for leave to appeal against conviction or sentence; and
 - (c) application for extension of time within which, under this Part of this Act, a note of appeal or application for leave to appeal shall be given,shall be wholly or partly written, typed, or printed, and shall be signed by the appellant or applicant or his counsel or agent and shall be in the form set out in an Act of Adjournment under the Criminal Appeal (Scotland) Act 1926 or under this Act or as nearly as may be in such form.
- (2) Any such note shall, save as is hereinafter provided, be lodged with the Clerk of Justiciary within the prescribed period, and the appellant or applicant shall immediately after lodging the said note send a copy of it to the Crown Agent and, where the conviction or sentence was in the sheriff court, to the appropriate sheriff clerk.
- (3) Where, on the trial of a person entitled to appeal or make application for leave to appeal under this Part of this Act, a plea of insanity in bar of conviction has not been affirmed by the jury, any note required by this Part of this Act to be signed by the appellant or applicant himself may be signed by his counsel or agent, or other person authorised to act on his behalf, and may be lodged with the Clerk of Justiciary by such agent or other person authorised as aforesaid.
- (4) On an appeal being lodged and on an application for leave to appeal being granted, the Clerk of Justiciary shall give notice to the Prison Commissioners for Scotland.

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- (5) Where the High Court has, on a note of application for leave to appeal, given an applicant leave to appeal, it shall not be necessary for such applicant to lodge any note of appeal, but the note of application for leave to appeal shall in such case be deemed to be a note of appeal.

234 Presentation of appeal in writing

- (1) If an appellant or an applicant for leave to appeal desires to present his case and his argument in writing instead of orally he shall intimate this desire to the Clerk of Justiciary at least four days before the diet fixed for the hearing of the appeal or application for leave to appeal, and, at the same time, shall lodge with the Clerk of Justiciary three copies of his case and argument; at the same time, he shall also send a copy thereof to the Crown Agent. Any case or argument so presented shall be considered by the High Court.
- (2) Unless the High Court shall otherwise direct, the respondent, in a case to which this section applies, shall not make a written reply to the case and argument in writing, but shall reply orally thereto at the diet fixed for the hearing of the appeal or application for leave to appeal.
- (3) Unless the High Court shall otherwise allow, an appellant or an applicant for leave to appeal who has presented his case and argument in writing shall not be entitled to submit in addition an oral argument to the court in support of the appeal or application for leave to appeal.

235 Applications may be made orally or in writing

Except where otherwise provided in this Part of this Act, any application to the High Court may be made by the appellant or respondent as the case may be or by counsel on his behalf, orally or in writing, but in regard to such applications if the appellant is unrepresented and is in custody and is not entitled or has not obtained leave to be present before the court, he shall make any such application by forwarding the same in writing to the Clerk of Justiciary who shall take the proper steps to obtain the decision of the court thereon.

236 Proceedings in sheriff court to be furnished

In the case of an appeal or application for leave to appeal against a conviction or sentence in a sheriff court, the sheriff clerk shall furnish to the Clerk of Justiciary a certified copy of the proceedings at the trial, or shall forward to him the original record of the proceedings, as may be required by the Clerk of Justiciary.

237 Judge's notes and report to be furnished

- (1) Where a person convicted appeals or applies for leave to appeal under this Part of this Act against the conviction or sentence, the judge who presided at the trial shall furnish to the Clerk of Justiciary in the manner provided in this section, his notes of the proceedings before him, and a report giving his opinion on the case or on any point arising therein.
- (2) The Clerk of Justiciary when he has received such a note as is referred to in section 233(1) of this Act or when the Secretary of State shall exercise his powers

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under section 263(1) of this Act, shall request the judge who presided at the trial to furnish him with a copy of his notes of the proceedings at the trial, certified by him, and the judge shall comply with such request. The High Court or any judge thereof, if they or he sees fit, may order the said notes to be printed or typed for the use of the court and the parties.

- (3) When the Clerk of Justiciary has received such a note as is referred to in section 233(1) of this Act or when the Secretary of State shall exercise his powers under section 263(1) of this Act, he shall request the judge who presided at the trial to furnish him with a report in writing, giving his opinion upon the case generally, or upon any point arising upon the case of the appellant or applicant, and the judge shall comply with such request. When making a request for such report the Clerk of Justiciary shall send to the judge a copy of the note he has received or any other document or information which he shall consider material or which the High Court at any time shall direct him to send or with which such judge may request to be furnished, to enable such judge to deal in his report with the appellant's or applicant's case generally or with any point arising thereon.
- (4) The report of the judge shall be made to the High Court, and, except by leave of the High Court or a judge thereof, the Clerk of Justiciary shall not furnish to any person any part thereof.

238 Admission of appellant to bail

- (1) The High Court may, if it seems fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.
- (2) An appellant who is admitted to bail shall, unless the High Court otherwise directs, appear personally in court on the day or days fixed for the hearing of his appeal or application for leave to appeal. In the event of the appellant failing so to appear, the court may decline to consider the appeal or application, and may dismiss it summarily or may consider and determine it or make such other order as it thinks fit.

239 Notice to appellant of date of hearing

- (1) When the High Court fixes the date for the hearing of an appeal, or of an application for leave to appeal or for extension of time for lodging notes of appeal or of application for leave to appeal which it is proposed to dispose of by the court, the Clerk of Justiciary shall give notice to the Crown Agent and to the solicitor of the appellant or applicant, or to the appellant or applicant himself if he has no known solicitor, and the latter shall thereupon lodge three copies (typed or printed) of the said appeal or application for the use of the court.
- (2) Where it is proposed that the powers of the court shall be exercised by a single judge under the provisions of section 247 of this Act, one copy only of the application to be disposed of shall be lodged by the solicitor of the applicant for the use of the judge.

240 Appellant may be present at hearing

An appellant, notwithstanding that he is in custody, shall be entitled to be present if he desires it, on the hearing of his appeal, except where the appeal is on some ground involving a question of law alone, but, in that case and on an application for leave to appeal and on any proceedings preliminary or incidental to an appeal, shall not be

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entitled to be present, except where it is provided by Act of Adjournal that he shall have the right to be present, or where the High Court gives him leave to be present

241 Notice to authorities, etc., of date of hearing

Where an appellant or applicant is in custody and has obtained leave or is entitled to be present at the hearing of his appeal or application, the Clerk of Justiciary shall notify the appellant or applicant, the Governor of the prison in which the appellant or applicant then is, and the Prison Commissioners for Scotland of the probable day on which the appeal or application will be heard. The Prison Commissioners for Scotland shall take steps to transfer the appellant or applicant to a prison convenient for his appearance before the High Court, at such reasonable time before the hearing as shall enable him to consult his legal adviser, if any.

242 Notice to Prison Commissioners of attendance of appellant at hearing

When an appellant or applicant is entitled, or has been granted leave to be present at any diet—

- (a) before the High Court or any judge thereof, or
- (b) for the taking of additional evidence before a person appointed for the purpose under section 252(b) of this Act, or
- (c) for an examination or investigation by a special commissioner in terms of section 252(d) of this Act,

the Clerk of Justiciary shall give timeous notice to the Prison Commissioners for Scotland, in the form set out in an Act of Adjournal under the Criminal Appeal (Scotland) Act 1926 or under this Act or as nearly as may be in such form, which notice shall be sufficient warrant to the said Commissioners for transmitting the appellant or applicant in custody from prison to the place where said diet or any subsequent diets are to be held and for reconveying him to prison at the conclusion of the said diet and any subsequent diets. The appellant or applicant shall appear at all such diets in ordinary civilian clothes.

243 Warders to attend court

The Prison Commissioners for Scotland shall, on notice under the last foregoing section from the Clerk of Justiciary, cause from time to time such sufficient number of male and female warders to attend the sittings of the court as, having regard to the list of appeals thereat, they shall consider necessary.

244 Abandonment of appeal

An appellant or applicant, at any time after he has lodged such a note as is referred to in section 233(1) of this Act, may abandon his appeal or application by lodging with the Clerk of Justiciary notice of abandonment thereof, which shall be in the form set out in an Act of Adjournal under the Criminal Appeal (Scotland) Act 1926 or under this Act or as nearly as may be in such form, and on such notice being lodged the appeal or application shall be deemed to have been dismissed by the court.