Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART X

APPEALS FROM SUMMARY PROCEEDINGS

Stated case

176 Stated case: manner and time of appeal.

(1) An appeal under section 175(2)(a) or (d) or (3) of this Act shall be by application for a stated case, which application shall—

(a) be made within one week of the final determination of the proceedings;

(b) contain a full statement of all the matters which the appellant desires to bring under review and, where the appeal is also against sentence or disposal or order, the ground of appeal against that sentence or disposal or order; and

(c) be signed by the appellant or his solicitor and lodged with the clerk of court,

and a copy of the application shall, within the period mentioned in paragraph (a) above, be sent by the appellant to the respondent or the respondent's solicitor.

(2) The clerk of court shall enter in the record of the proceedings the date when an application under subsection (1) above was lodged.

(3) The appellant may, at any time within the period of three weeks mentioned in subsection (1) of section 179 of this Act, or within any further period afforded him by virtue of section 181(1) of this Act, amend any matter stated in his application or add a new matter; and he shall intimate any such amendment, or addition, to the respondent or the respondent's solicitor.

(4) Where such an application has been made by the person convicted, and the judge by whom he was convicted dies before signing the case or is precluded by illness or other cause from doing so, it shall be competent for the convicted person to present a bill of suspension to the High Court and to bring under the review of that court any matter which might have been brought under review by stated case.

(5) The record of the procedure in the inferior court in an appeal mentioned in subsection (1) above shall be as nearly as may be in the form prescribed by Act of Adjournal.

Modifications etc. (not altering text)

C1 S. 176(1) modified (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), **ss. 100(8)**, 458; S.S.I. 2003/210, **art. 2(1)(a)** (subject to transitional provisions and savings in arts. 3-7)

177 Procedure where appellant in custody.

(1) If an appellant making an application under section 176 of this Act is in custody, the court of first instance may—

(a) grant bail;

(b) grant a sist of execution;

(c) make any other interim order.

(2) An application for bail shall be disposed of by the court within 24 hours after such application has been made.

(3) If bail is refused or the appellant is dissatisfied with the conditions imposed, he may, within 24 hours after the judgment of the court, appeal against it by a note of appeal written on the complaint and signed by himself or his solicitor, and the complaint and proceedings shall thereupon be transmitted to the Clerk of Justiciary, and the High Court or any judge thereof, either in court or in chambers, shall, after hearing parties, have power to review the decision of the inferior court and to grant bail on such conditions as the Court or judge may think fit, or to refuse bail.

(4) No clerks' fees, court fees or other fees or expenses shall be exigible from or awarded against an appellant in custody in respect of an appeal to the High Court against the conditions imposed or on account of refusal of bail by a court of summary jurisdiction.

(5) If an appellant who has been granted bail does not thereafter proceed with his appeal, the inferior court shall have power to grant warrant to apprehend and imprison him for such period of his sentence as at the date of his bail remained unexpired and, subject to subsection (6) below, such period shall run from the date of his imprisonment under the warrant or, on the application of the appellant, such earlier date as the court thinks fit, not being a date later than the date of expiry of any term or terms of imprisonment imposed subsequently to the conviction appealed against.

(6) Where an appellant who has been granted bail does not thereafter proceed with his appeal, the court from which the appeal was taken shall have power, where at the time of the abandonment of the appeal the person is in custody or serving a term or terms of imprisonment imposed subsequently to the conviction appealed against, to order that the sentence or, as the case may be, the unexpired portion of that sentence relating to that conviction should run from such date as the court may think fit, not being a date later than the date on which any term or terms of imprisonment subsequently imposed expired.

(7) The court shall not make an order under subsection (6) above to the effect that the sentence or, as the case may be, unexpired portion of the sentence shall run other than concurrently with the subsequently imposed term of imprisonment without first

notifying the appellant of its intention to do so and considering any representations made by him or on his behalf.

178 Stated case: preparation of draft.

(1) Within three weeks of the final determination of proceedings in respect of which an application for a stated case is made under section 176 of this Act—

(a) where the appeal is taken from the district court and the trial was presided over by a justice of the peace or justices of the peace, the Clerk of Court; or

(b) in any other case the judge who presided at the trial,

shall prepare a draft stated case, and the clerk of the court concerned shall forthwith issue the draft to the appellant or his solicitor and a duplicate thereof to the respondent or his solicitor.

(2) A stated case shall be, as nearly as may be, in the form prescribed by Act of Adjournal, and shall set forth the particulars of any matters competent for review which the appellant desires to bring under the review of the High Court, and of the facts, if any, proved in the case, and any point of law decided, and the grounds of the decision.

179 Stated case: adjustment and signature.

(1) Subject to section 181(1) of this Act, within three weeks of the issue of the draft stated case under section 178 of this Act, each party shall cause to be transmitted to the court and to the other parties or their solicitors a note of any adjustments he proposes be made to the draft case or shall intimate that he has no such proposal.

(2) The adjustments mentioned in subsection (1) above shall relate to evidence heard or purported to have been heard at the trial and not to such additional evidence as is mentioned in section 175(5) of this Act.

(3) Subject to section 181(1) of this Act, if the period mentioned in subsection (1) above has expired and the appellant has not lodged adjustments and has failed to intimate that he has no adjustments to propose, he shall be deemed to have abandoned his appeal; and subsection (5) of section 177 of this Act shall apply accordingly.

(4) If adjustments are proposed under subsection (1) above or if the judge desires to make any alterations to the draft case there shall, within one week of the expiry of the period mentioned in that subsection or as the case may be of any further period afforded under section 181(1) of this Act, be a hearing (unless the appellant has, or has been deemed to have, abandoned his appeal) for the purpose of considering such adjustments or alterations.

(5) Where a party neither attends nor secures that he is represented at a hearing under subsection (4) above, the hearing shall nevertheless proceed.

(6) Where at a hearing under subsection (4) above—

(a) any adjustment proposed under subsection (1) above by a party (and not withdrawn) is rejected by the judge; or

(b) any alteration proposed by the judge is not accepted by all the parties,

that fact shall be recorded in the minute of the proceedings of the hearing.

(7) Within two weeks of the date of the hearing under subsection (4) above or, where there is no hearing, within two weeks of the expiry of the period mentioned in subsection (1)

above, the judge shall (unless the appellant has been deemed to have abandoned the appeal) state and sign the case and shall append to the case—

(a) any adjustment, proposed under subsection (1) above, which is rejected by him, a note of any evidence rejected by him which is alleged to support that adjustment and the reasons for his rejection of that adjustment and evidence; and

(b) a note of the evidence upon which he bases any finding of fact challenged, on the basis that it is unsupported by the evidence, by a party at the hearing under subsection (4) above.

(8) As soon as the case is signed under subsection (7) above the clerk of court—

(a) shall send the case to the appellant or his solicitor and a duplicate thereof to the respondent or his solicitor; and

(b) shall transmit the complaint, productions and any other proceedings in the cause to the Clerk of Justiciary.

(9) Subject to section 181(1) of this Act, within one week of receiving the case the appellant or his solicitor, as the case may be, shall cause it to be lodged with the Clerk of Justiciary.

(10) Subject to section 181(1) of this Act, if the appellant or his solicitor fails to comply with subsection (9) above the appellant shall be deemed to have abandoned the appeal; and subsection (5) of section 177 of this Act shall apply accordingly.

180 Leave to appeal against conviction etc.

(1) The decision whether to grant leave to appeal for the purposes of section 175(2)(a) or (d) of this Act shall be made by a judge of the High Court who shall—

(a) if he considers that the documents mentioned in subsection (2) below disclose arguable grounds of appeal, grant leave to appeal and make such comments in writing as he considers appropriate; and

(b) in any other case—

(i) refuse leave to appeal and give reasons in writing for the refusal; and

(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(2) The documents referred to in subsection (1) above are—

(a) the stated case lodged under subsection (9) of section 179 of this Act; and

(b) the documents transmitted to the Clerk of Justiciary under subsection (8)(b) of that section.

(3) A warrant granted under subsection (1)(b)(ii) above shall not take effect until the expiry of the period of 14 days mentioned in subsection (4) below without an application to the High Court for leave to appeal having been lodged by the appellant under that subsection.

(4) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under subsection (10) below, apply to the High Court for leave to appeal.

(5) In deciding an application under subsection (4) above the High Court shall—

(a) if, after considering the documents mentioned in subsection (2) above and the reasons for the refusal, the court is of the opinion that there are arguable grounds of appeal, grant leave to appeal and make such comments in writing as the court considers appropriate; and

(b) in any other case—

(i) refuse leave to appeal and give reasons in writing for the refusal; and

(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(6) The question whether to grant leave to appeal under subsection (1) or (5) above shall be considered and determined in chambers without the parties being present.

(7) Comments in writing made under subsection (1)(a) or (5)(a) above may, without prejudice to the generality of that provision, specify the arguable grounds of appeal (whether or not they are contained in the stated case) on the basis of which leave to appeal is granted.

(8) Where the arguable grounds of appeal are specified by virtue of subsection (7) above it shall not, except by leave of the High Court on cause shown, be competent for the appellant to found any aspect of his appeal on any ground of appeal contained in the stated case but not so specified.

(9) Any application by the appellant for the leave of the High Court under subsection (8) above—

(a) shall be made not less than seven days before the date fixed for the hearing of the appeal; and

(b) shall, not less that seven days before that date, be intimated by the appellant to the Crown Agent.

(10) The Clerk of Justiciary shall forthwith intimate—

(a) a decision under subsection (1) or (5) above; and

(b) in the case of a refusal of leave to appeal, the reasons for the decision,

to the appellant or his solicitor and to the Crown Agent.

181 Stated case: directions by High Court.

(1) Without prejudice to any other power of relief which the High Court may have, where it appears to that court on application made in accordance with subsection (2) below, that the applicant has failed to comply with any of the requirements of—

(a) subsection (1) of section 176 of this Act; or

(b) subsection (1) or (9) of section 179 of this Act,

the High Court may direct that such further period of time as it may think proper be afforded to the applicant to comply with any requirement of the aforesaid provisions.

(2) Any application for a direction under subsection (1) above shall be made in writing to the Clerk of Justiciary and shall state the ground for the application, and, in the case of an application for the purposes of paragraph (a) of subsection (1) above, notification of the application shall be made by the appellant or his solicitor to the clerk of the court from which the appeal is to be taken, and the clerk shall thereupon transmit the complaint, documentary productions and any other proceedings in the cause to the Clerk of Justiciary.

(3) The High Court shall dispose of any application under subsection (1) above in like manner as an application to review the decision of an inferior court on a grant of bail, but shall have power—

(a) to dispense with a hearing; and

(b) to make such enquiry in relation to the application as the court may think fit,

and when the High Court has disposed of the application the Clerk of Justiciary shall inform the clerk of the inferior court of the result.

182 Stated case: hearing of appeal.

(1) A stated case under this Part of this Act shall be heard by the High Court on such date as it may fix.

(2) For the avoidance of doubt, where an appellant, in his application under section 176(1) of this Act (or in a duly made amendment or addition to that application), refers to an alleged miscarriage of justice, but in stating a case under section 179(7) of this Act the inferior court is unable to take the allegation into account, the High Court may nevertheless have regard to the allegation at a hearing under subsection (1) above.

(3) Except by leave of the High Court on cause shown, it shall not be competent for an appellant to found any aspect of his appeal on a matter not contained in his application under section 176(1) of this Act (or in a duly made amendment or addition to that application).

(4) Subsection (3) above shall not apply as respects any ground of appeal specified as an arguable ground of appeal by virtue of subsection (7) of section 180 of this Act.

(5) Without prejudice to any existing power of the High Court, that court may in hearing a stated case—

(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 at 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;

(f) take account of any matter proposed in any adjustment rejected by the trial judge and of the reasons for such rejection;

(g) take account of any evidence contained in a note of evidence such as is mentioned in section 179(7) of this Act.

(6) The High Court may at the hearing remit the stated case back to the inferior court to be amended and returned.

Modifications etc. (not altering text)

C2 S. 182(5)(a)-(e) applied (1.4.1996) by 1984 c. 12, **s. 81(8)** (as substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 48(3)**)
S. 182(5)(a)-(e) applied (1.7.1997) by S.I. 1997/831, reg. 19(1)-(4), **Sch. 15 para. 5(8)**

183 Stated case: disposal of appeal.

(1) The High Court may, subject to subsection (3) below and to section 190(1) of this Act, dispose of a stated case by—

(a) remitting the cause to the inferior court with its opinion and any direction thereon;

(b) affirming the verdict of the inferior court;

(c) setting aside the verdict of the inferior court and either quashing the conviction or, subject to subsection (2) below, substituting therefor an amended verdict of guilty; or

(d) setting aside the verdict of the inferior court and granting authority to bring a new prosecution in accordance with section 185 of this Act.

(2) An amended verdict of guilty substituted under subsection (1)(c) above must be one which could have been returned on the complaint before the inferior court.

(3) The High Court shall, in an appeal—

(a) against both conviction and sentence, subject to section 190(1) of this Act, dispose of the appeal against sentence; or

(b) by the prosecutor, against sentence, dispose of the appeal,

by exercise of the power mentioned in section 189(1) of this Act.

(4) In setting aside, under subsection (1) above, a verdict the High Court may quash any sentence imposed on the appellant as respects the complaint, and—

(a) in a case where it substitutes an amended verdict of guilty, whether or not the sentence related to the verdict set aside; or

(b) in any other case, where the sentence did not so relate,

may pass another (but not more severe) sentence in substitution for the sentence so quashed.

(5) For the purposes of subsections (3) and (4) above, "sentence" shall be construed as including disposal or order.

(6) Where an appeal against acquittal is sustained, the High Court may—

(a) convict and, subject to subsection (7) below, sentence the respondent;

(b) remit the case to the inferior court with instructions to convict and sentence the respondent, who shall be bound to attend any diet fixed by the court for such purpose; or

(c) remit the case to the inferior court with their opinion thereon.

(7) Where the High Court sentences the respondent under subsection (6)(a) above it shall not in any case impose a sentence beyond the maximum sentence which could have been passed by the inferior court.

(8) Any reference in subsection (6) above to convicting and sentencing shall be construed as including a reference to—

(a) convicting and making some other disposal; or

(b) convicting and deferring sentence.

(9) The High Court shall have power in an appeal under this Part of this Act to award such expenses both in the High Court and in the inferior court as it may think fit.

(10) Where, following an appeal, other than an appeal under section 175(2)(b) or (3) of this Act, the appellant remains liable to imprisonment or detention under the sentence of the inferior court, or is so liable under a sentence passed in the appeal proceedings the High Court shall have the power where at the time of disposal of the appeal the appellant—

(a) was at liberty on bail, to grant warrant to apprehend and imprison or detain the appellant for a term, to run from the date of such apprehension, not longer than that part of the term or terms of imprisonment or detention specified in the sentence brought under review which remained unexpired at the date of liberation;

(b) is serving a term or terms of imprisonment or detention imposed in relation to a conviction subsequent to the conviction appealed against, to exercise the like powers in regard to him as may be exercised, in relation to an appeal which has been abandoned, by a court of summary jurisdiction in pursuance of section 177(6) of this Act.

184 Abandonment of appeal.

(1) An appellant in an appeal such as is mentioned in section 176(1) of this Act may at any time prior to lodging the case with the Clerk of Justiciary abandon his appeal by minute signed by himself or his solicitor, written on the complaint or lodged with the clerk of the inferior court, and intimated to the respondent or the respondent's solicitor, but such abandonment shall be without prejudice to any other competent mode of appeal, review, advocation or suspension.

(2) Subject to section 191 of this Act, on the case being lodged with the Clerk of Justiciary, the appellant shall be held to have abandoned any other mode of appeal which might otherwise have been open to him.

Status:
Point in time view as at 01/04/1996.

Changes to legislation:
Criminal Procedure (Scotland) Act 1995, Cross Heading: Stated case is up to date with all changes known to be in force on or before 23 April 2024. 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.