
SCOTTISH STATUTORY INSTRUMENTS

2002 No. 387

HIGH COURT OF JUSTICIARY

Act of Adjournal (Criminal Appeals) 2002

Made - - - - 23rd August 2002

Coming into force in accordance with paragraph 1(2)

The Lord Justice-General, the Lord Justice-Clerk and the Lords Commissioners of Justiciary, under and by virtue of the powers conferred upon them by section 305 of the Criminal Procedure (Scotland) Act 1995⁽¹⁾ and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Appeals) 2002.

(2) This Act of Adjournal shall come into force on 26 August 2002 with the exception of paragraph 3(2), which shall come into force on 23 September 2002.

(3) This Act of Adjournal shall be inserted in the Books of Adjournal.

Amendment of the Criminal Procedure (Scotland) Act 1995

2. In section 110 of the Criminal Procedure (Scotland) Act 1995 (note of appeal), in subsections (1)(a) and (2), for “six” there shall be substituted “eight”.

Amendment of the Act of Adjournal (Criminal Procedure Rules) 1996

3.—(1) The Act of Adjournal (Criminal Procedure Rules) 1996⁽²⁾ shall be amended in accordance with this paragraph.

(2) In rule 15.2 (forms of appeal)—

(a) in paragraph (5)—

(i) in sub-paragraph (a), after “Advocate;” there shall be inserted “or”;

(ii) in sub-paragraph (b) “or” shall be omitted; and

(iii) sub-paragraph (c) shall be omitted; and

(b) after paragraph (5) there shall be inserted—

“(5A) The note of appeal shall be signed by—

(1) 1995 c. 46.

(2) S.I. 1996/513.

- (a) the counsel or solicitor advocate who has drafted it; or
 - (b) the appellant where the appellant has drafted it and intends to conduct the appeal himself.”
- (3) After rule 15.5 (intimation of appeal against sentence of death) there shall be inserted—

“Procedural hearing

15.5A.—(1) In any appeal against conviction or conviction and sentence, the Clerk of Justiciary may fix a procedural hearing for the purposes of determining whether the parties are ready to proceed to a hearing of the appeal.

(2) The procedural hearing shall be heard by a judge of the High Court and, where the appellant is an individual and is represented, may be held in his absence.

(3) The Clerk of Justiciary shall intimate to the parties in Form 15.5A-A the date of the procedural hearing fixed under paragraph (1), not later than twenty-one days before that date.

(4) Not later than seven days before the date of the procedural hearing, the appellant shall complete and lodge a notice in Form 15.5A-B with the Clerk of Justiciary and send a copy to the respondent. The said notice shall be signed by the counsel or solicitor advocate representing the appellant in the appeal, or by the appellant where the appellant intends to conduct the appeal himself.

(5) Where the appellant has lodged a notice in accordance with paragraph (4), the Clerk of Justiciary, having considered the terms of the said notice and any representations made to him by the respondent, may determine that it is unnecessary to proceed with the procedural hearing and, if he so determines, shall intimate this to the parties not less than forty-eight hours before the date of the procedural hearing.

(6) Not later than seven days after the last day of the appeal court sitting during which

- (a) the procedural hearing at which it has been determined that the appeal is ready to proceed has been heard; or
- (b) the procedural hearing was due to be heard but in respect of which the Clerk of Justiciary has made a determination in terms of paragraph (5),

the Clerk of Justiciary shall fix and intimate to the parties the date when the appeal is to be heard.

(7) Not later than seven days before the date of the appeal hearing, the appellant shall submit a list of the authorities upon which he intends to rely with references to the relevant passages and shall send a copy to the respondent.”

- (4) After rule 15.14 (remits in applications for leave to appeal), there shall be inserted—

“Amended grounds of appeal

15.15.—(1) On cause shown, the High Court may grant leave to an appellant to amend the grounds of appeal contained in the note of appeal.

(2) Where the High Court has granted leave to amend the grounds of appeal under paragraph (1), it may order—

- (a) that the Clerk of Justiciary shall send a copy of the amended note of appeal to the judge who presided at the trial; and
- (b) that as soon as is reasonably practicable after receiving a copy of the amended note of appeal, the judge who presided at the trial shall provide the Clerk of Justiciary with a written report on the amended grounds of appeal.

(3) Section 113(2) to (4) of the Act of 1995 (judge's report) shall apply to a report on the amended grounds of appeal ordered under paragraph (2) as it applies to a report under subsection (1) of that section.

(4) Where the High Court grants leave to amend under paragraph (1), section 107 of the Act of 1995 shall apply, unless the Court otherwise directs, for the purposes of obtaining leave to appeal for the amended grounds of appeal as it applied for the purposes of the original grounds of appeal and, for the references in subsection (2)(a) and (c) of that section to the note of appeal and the trial judge's report, there shall be substituted references to the amended grounds of appeal contained in the amended note of appeal and the trial judge's report, if any, on the amended grounds of appeal, respectively."

(5) In the appendix, after Form 15.3-B, there shall be inserted the forms set out in the Schedule to this Act of Adjournal.

W. DOUGLAS CULLEN

Parliament House,
Edinburgh
23rd August 2002

Lord Justice-General I.P.D.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Form 15.5A–A HIGH COURT OF JUSTICIARY, EDINBURGH NOTICE OF INTIMATION OF PROCEDURAL HEARING

Rule 15.5A(3)

TO:

APPEAL: **v HMA**

The above appeal has been set down for a procedural hearing on _____ at 10.00am.

It is intended to allocate this appeal to a date between _____ and _____

Form 15.5A-B is attached to this Notice and in terms of Rule 15.5A(4) of the Act of Adjournal (Criminal Appeals) 2002 the completed form should be lodged with the Clerk of Justiciary not less than 7 days before the procedural hearing.

In terms of Rule 15.5A(5), if the Clerk of Justiciary determines that the appeal is ready to proceed, you will receive a letter of confirmation from this office within 48 hours before the procedural hearing confirming that no appearance is required. Thereafter you will be advised of the date for the Appeal Court hearing. However should you not lodge the form, lodge it partially completed, or advise that the Appeal is not ready to proceed, you will require to instruct counsel for the procedural hearing.

Justiciary Office

Form 15.5A–B HIGH COURT OF JUSTICIARY, EDINBURGH PROCEDURAL HEARING

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 15.5A(4)

This notice should be completed and lodged with the Justiciary Office not later than 7 days before the procedural hearing

	Case Ref No: /
	Solicitor Ref. No:
	Solicitor Contact No:
<u>Name of Appellant</u>	
<u>Date of Final Determination</u>	
<u>Court of First Instance</u>	<u>Judge</u>
<u>Date of Procedural Hearing</u>	
<u>Proposed appeal sitting dates</u>	
	<input type="checkbox"/> Yes <input type="checkbox"/> No
1. Is appeal ready to proceed?	
2. Who is the nominated counsel? -----	
3. When is the nominated counsel available during the appeal sitting dates? ----- -----	
4. What is the estimate of court time required to deal with the appeal? -----	
5. (a) If the appeal is <u>not</u> ready to proceed, what are the reasons and what is the current position? ----- ----- -----	
(b) How much time is required to carry out the necessary work? -----	
 (counsel <u>or</u> solicitor advocate <u>or</u> appellant)

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EXPLANATORY NOTE

(This note is not part of the Order)

This Act of Adjournment amends the procedure relating to Criminal Appeals.

Paragraph 2 amends section 110 of the Criminal Procedure (Scotland) Act 1995 (c. 46) to extend the period within which a note of appeal may be lodged from six weeks to eight.

Paragraph 3 amends the Act of Adjournment (Criminal Appeal Rules) 1996 (S.I.1996/513) ("the principal rules") as follows:—

sub-paragraph (2) inserts a new paragraph (5A) into rule 15.2 (forms of appeal) of the principal rules which provides that a note of appeal is to be signed by the appellant where the appellant is unrepresented or, where the appellant is represented, by the counsel or solicitor advocate who has drafted the note;

sub-paragraph (3) inserts a new rule 15.5A into the principal rules which allows the Clerk of Justiciary to fix, and prescribes the procedure relating to, a procedural hearing;

sub-paragraph (4) inserts a new rule 15.15 into the principal rules which prescribes the procedure relating to the amendment of grounds of appeal.