



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PART I

SOLEMN PROCEDURE

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 or an application for leave to appeal against such conviction or sentence has previously been heard and determined by the High Court, either—
 - (a) refer the whole case to the High Court and the case shall then be heard and determined by the High Court as in the case of an appeal under this Part of this Act; or
 - (b) if he desires the assistance of the High Court on any point arising in the case refer that point to the court for their opinion thereon, and the court shall consider the point so referred and furnish the Secretary of State with their opinion thereon accordingly.
- (2) The power of the Secretary of State under this section to refer to the High Court the case, or any point arising on the case, of a person convicted shall be exercisable whether or not that person has petitioned for the exercise of Her Majesty's mercy.

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

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or disability shall not attach for the period of ten days from the date of the verdict against such person nor, in the event of a note of appeal or of application for leave to appeal being lodged under this Part of this Act, until the determination thereof.

- (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 ten days after the date of the verdict in the trial, and, in the event of a note of appeal or of application for leave to appeal being lodged under this Part of this Act, shall be further suspended until the determination thereof.

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 thereto.
- (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.
- (3) Where a person has on conviction been sentenced to payment of a fine and in default of such payment to imprisonment, and he intimates to the judge who presided at the trial that he is desirous of appealing against his conviction to the High Court, either upon grounds of law alone, or with the certificate of the said judge upon any grounds mentioned in section 228(b) of this Act, the judge may, by order entered on the record, appoint such person forthwith to find caution for such sum as the judge may think right, to prosecute his appeal; and, subject thereto, may also so order that payment of the said fine shall be made at the final determination of the appeal, if the same be dismissed, to the clerk of the court in which the conviction took place or otherwise as the High Court may then order.
- (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, be entitled, subject to any order of the High Court, to the return of the sum or any part thereof so paid by him.
- (5) If an appellant to whom subsection (3) of this section applies does not pay the fine or lodge a note of appeal upon grounds of law alone, or with the certificate of the judge who presided at the trial upon any grounds mentioned in section 228(6) of this Act, within ten days from the date of his conviction and sentence, the Clerk of Justiciary shall report such omission to the High Court or any judge thereof who, after such notice as they or he may deem advisable, may find that the aforesaid caution has been forfeited, and may pronounce against the cautioner decree for such sum as they or he may think proper and may issue a warrant for the apprehension of the appellant and may commit him to prison in default of payment of his fine, or may make such other order as they or he may think right.

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.

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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

- (1) The time during which an appellant, after admission to bail under section 238 of this Act, is at large pending the determination of his appeal shall not be reckoned as part of any term of imprisonment under his sentence.
- (2) The time during which an appellant is in custody pending the determination of his appeal shall, subject to any direction which the High Court may give to the contrary, be reckoned as part of any term of imprisonment under his sentence.
- (3) Imprisonment of an appellant shall, subject to any direction which the High Court may give to the contrary, be deemed to run, if the appellant is in custody, as from the date on which the sentence was passed, and to begin to run or to be resumed, if the appellant is not in custody, 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 Borstal institution, detention centre or place of safety and to detention in such institution, centre or place of safety, 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.

269 Extract convictions

No extract conviction shall be issued during the period of ten days 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 a note of appeal or of application for leave to appeal being lodged under this Part of this Act, until the determination thereof.

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) All documents and other productions produced at the trial of a person convicted shall be kept for the period of ten days after the actual day on which the conviction took place 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 a note of appeal or application for leave to appeal being lodged, and if within such period of ten days or any extension thereof authorised by the High Court a note of appeal or of application for leave to appeal has been lodged under this Part of this Act, they shall be so kept until the determination thereof.

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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 an appellant or applicant who has lodged a note of appeal or of application for leave to appeal or to his counsel or agent, and to the Crown Agent and the procurator-fiscal or his deposes.
- (4) In case no note of appeal or application for leave to appeal is lodged within such period of ten days or extension thereof as aforesaid, 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.

271 Clerk of Justiciary to furnish forms, etc.

The Clerk of Justiciary shall furnish the necessary forms and instructions in relation to notices 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 shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Clerk of Justiciary.

272 Note to be kept of appeal

The Clerk of Justiciary shall in all cases of appeal or of application for leave to appeal from a conviction obtained or sentence pronounced in the High Court, note on the margin of the record of the trial the fact of an appeal or application for leave to appeal having been taken and the result of the appeal or application for leave to appeal, and, in the case of an appeal or application for leave to appeal taken against any conviction obtained or sentence pronounced in the sheriff court, the Clerk of Justiciary shall notify the appropriate sheriff clerk of the result of the said appeal or application, and it shall be the duty of the sheriff clerk to enter on the margin of the record of the trial a note of such result.

273 Register of appeals

- (1) The Clerk of Justiciary shall keep a register, in such form as he thinks fit, of all cases in which he shall receive a note of appeal or note of application for leave to appeal under this Part of this Act, which register shall be open for public inspection at such place and at such hours as the Clerk of Justiciary, subject to the approval of the High Court, shall consider convenient.
- (2) The Clerk of Justiciary shall also take the necessary steps for preparing, from time to time, a list of cases to be dealt with by the High Court, and shall cause such list to be published in such manner as, subject to the approval of the High Court, he shall think convenient for giving due notice to any parties interested, of the hearing of such cases by the High Court.

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274 Shorthand notes of trial

- (1) Shorthand notes shall be taken of the proceedings at the trial of any person who, if convicted, is entitled or may be authorised to appeal under this Part of this Act, and on any appeal or application for leave to appeal a transcript of the notes or any part thereof shall be made if the Clerk of Justiciary so directs, and furnished to him for the use of the High Court or any judge thereof:

Provided that a transcript shall be furnished to any party interested upon the payment of such charges as the Treasury may fix.

- (2) The Secretary of State may also, if he thinks fit in any case, direct a transcript of the shorthand notes to be made and furnished to him.
- (3) The cost of taking any such shorthand notes, and of any transcript where a transcript is directed to be made by the Clerk of the Justiciary or by the Secretary of State, shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of moneys provided by Parliament.
- (4) In this section, the expression " proceedings at the trial " shall mean the whole proceedings, including discussions (a) on any objection to the relevancy of the indictment; (b) in reference to any challenge of jurors; and (c) on all questions arising in the course of the trial—with the decisions of the court thereon—the evidence led at the trial, any statement made by or on behalf of the prisoner, whether before or after verdict, the summing up by the judge, the speeches of counsel or agent, the verdict of the jury and sentence by the judge.

275 Certification of shorthand notes, etc.

- (1) The shorthand writer shall sign the shorthand notes taken by him of any trial or proceeding and certify the same to be complete and correct shorthand notes thereof and shall retain the same unless and until he is directed by the Clerk of Justiciary to forward a transcript of such shorthand notes to him.
- (2) The shorthand writer shall, on being directed by the Clerk of Justiciary, furnish to him for the use of the High Court a transcript of the whole or of any part of the shorthand notes taken by him of any trial or proceeding in reference to which an appellant has appealed under this Part of this Act.
- (3) The shorthand writer shall also furnish to a party interested in a trial or other proceeding in relation to which a person may appeal under this Part of this Act, and to no other person, a transcript of the whole or of any part of the shorthand notes of any such trial or other proceeding on payment by such party interested to such shorthand writer of his charges on such scale as the Treasury may fix.
- (4) A party interested in an appeal under this Part of this Act may obtain from the Clerk of Justiciary a copy of any documentary production lodged by or for any other party to the appeal, upon payment therefor of the charges thereof on the scale referred to in the preceding subsection.
- (5) For the purposes of this and the last foregoing section, " a party interested " shall mean the prosecutor or the person convicted or any other person named in, or immediately affected by, any order made by the judge of the court in which the conviction took place, or other person authorised to act on behalf of a party interested, as herein defined.

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- (6) Whenever a transcript of the whole or, of any part of such shorthand notes is required for the use of the High Court, such transcript may be made by the shorthand writer who took and certified the shorthand notes or by such other competent person as the Clerk of Justiciary may direct.
- (7) A transcript of the whole or any part of the shorthand notes relating to the case of any appellant which may be required for the use of the High Court shall be typewritten and certified by the person making the same to be a correct and complete transcript of the whole or of such part, as the case may be, of the shorthand notes purporting to have been taken, signed and certified by the shorthand writer who took the same.

276 Declaration administered to shorthand writer

The entry in the minute book of the court of trial shall be signed by the clerk of court and shall be in the following terms, viz.:—

“The court directed that the whole proceedings in this case (or) in all the cases set down for trial at this sitting be taken down in shorthand and appointed shorthand writer, (address), to do so, and the declaration de fideli administratione officii was administered to him.”

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 and applications for leave to appeal, shall not prevent the further prosecution of an appeal or application 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 or application shall proceed.
- (2) The provisions of this Act referred to in subsection (1) of this section are:—

section 229	section 250
section 232	section 251
section 233	section 253
section 234	section 257
section 235	section 259
section 236	section 260
section 237	section 261
section 239	section 264
section 241	section 265
section 242	section 267
section 243	section 269
section 244	section 270

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section 246

section 248

section 249

section 272

section 273

section 275.

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 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.

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, guardianship order or an order restricting discharge has been made by a court in respect of a person charged or brought before it, he may, without prejudice to any other form of appeal under any rule of law, appeal against that order in the same manner as against a conviction.