



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PART I

SOLEMN PROCEDURE

APPEAL

Procedure at hearing

245 Quorum and sitting of High Court

- (1) For the purpose of hearing and determining any appeal or other proceeding under this Part of this Act 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.
- (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 advocacion from the sheriff court in like manner as they apply to appeals under this Part of this Act.

246 Sittings to be arranged by Lord Justice General

Sittings of the High Court (including sittings in Court of Session vacation and sittings of a judge of the court under section 247 of this Act) shall be arranged to be held as may from time to time be directed by the Lord Justice General, whom failing by the Lord Justice Clerk.

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247 Powers which may be exercised by a single judge

The powers of the High Court under this Part of this Act to give leave to appeal, to extend the time within which notice of appeal or of an application for leave to appeal 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.

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.

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 Adjournment under the 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

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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 Prison Commissioners for Scotland.
- (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.

252 Supplemental powers of High Court

For the purposes of this Part of this Act the High Court may, if they think it necessary or expedient in the interest of justice—

- (a) order the production of any document, or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case;
- (b) if they think fit, order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the High Court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by section 253(1) of this Act before any judge of the High Court or other person appointed by the High Court for the purpose, and allow the admission of any depositions so taken as evidence before the High Court;
- (c) if they think fit, receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant makes an application for the purpose, of the husband or wife of the appellant, in cases where the evidence of the husband or wife could not have been given at the trial except on such an application;
- (d) where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the High Court conveniently be conducted before the court, order the reference of the question in manner provided by section 253(2) of this Act for inquiry and report to a special commissioner appointed by the court, and act upon the report of any such commissioner so far as they think fit to adopt it;
- (e) appoint any person with special expert knowledge to act as assessor to the High Court in any case where it appears to the court that such special knowledge is required for the proper determination of the case;

and exercise in relation to the proceedings under this Part of this Act any other powers vested in the High Court, and issue any warrants necessary for enforcing the orders or sentences of the High Court:

Provided that in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.

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

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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) When an order of reference is made by the High Court under section 252(d) of this Act, the question to be referred and the person to whom as special commissioner the same shall be referred shall be specified in such order. The court may in such order, or by giving directions as and when they from time to time shall think right, specify whether the appellant or respondent or any person on their behalf may be present at any examination or investigation or at any stage thereof as may be ordered under the said section 252(d), and specify any and what powers of the court may be delegated to such special commissioner, and may require him from time to time to make interim reports to the court upon the question referred to him, and may, if the appellant is in custody, give leave to him to be present at any stage of such examination or investigation, and may give directions to the Clerk of Justiciary that any report made by such special commissioner shall be made available to the appellant and respondent or to counsel or agent on their behalf, and that they shall be entitled to have copies thereof made if they so desire.

254 Determination of appeals

- (1) The High Court on an appeal against conviction shall allow the appeal if they think—
- (a) that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or
 - (b) that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law, or
 - (c) that on any ground there was a miscarriage of justice,
- and in any other case shall dismiss the appeal:

Provided that the court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred.

- (2) Subject to the special provisions of this Part of this Act the High Court shall, if they allow an appeal against conviction, quash the conviction.
- (3) On any appeal against conviction the High Court shall have the like power to quash the sentence passed and to pass another sentence as is conferred on the High Court by subsection (4) of this section in the case of an appeal against sentence.
- (4) On any appeal against sentence the High Court shall, if they think that a different sentence should have been passed, quash the sentence passed and pass such other sentence warranted in law (whether more or less severe) in substitution therefor as they think ought to have been passed, and in any other case shall dismiss the appeal.

255 Substitution of verdict

- (1) If it appears to the High Court that an appellant, though not properly convicted on some charge or part of the indictment, has been properly convicted on some other charge or part of the indictment, the High Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty on such other charge or part of the indictment, and may either affirm the sentence passed on the

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appellant at the trial or pass such sentence in substitution therefor as they think proper, and as may be warranted in law by the verdict so substituted.

- (2) Where an appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the High Court that the jury must have been satisfied of facts which proved him guilty of that other offence, the court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence.
- (3) If on any appeal it appears to the High Court that the appellant committed the act charged against him but that he was insane at the time of committing the same, the court may substitute for the verdict found by the jury a verdict of acquittal on the ground of insanity, and may quash the sentence passed at the trial and make such order for the detention of the appellant as may be made under section 174 of this Act in the case of a person acquitted by a jury on the ground of insanity.
- (4) An order for the detention of a person in a hospital under this section shall have the like effect as a hospital order together with an order restricting his discharge, made without limitation of time ; and where such an order is given in respect of a person while he is in hospital, he shall be deemed to be admitted in pursuance of, and on the date of, the order.

256 Frivolous appeals

If on any notice of appeal against a conviction purporting to be on a ground of appeal which involves a question of law alone it appears to the High Court that the appeal is frivolous or vexatious, and that it can be determined without adjourning it for a full hearing, they may dismiss the appeal summarily, without calling on any persons to attend the hearing or to appear for the Crown thereon.

257 Failure to appear at hearing

Where no appearance is made by or on behalf of an appellant or applicant at the diet appointed for the hearing of an appeal or application for leave to appeal and where no case or argument in writing has been timeously lodged, the High Court shall dispose of the appeal or application for leave to appeal as if it had been abandoned.

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 is for any reason not present.

259 Continuation of hearing

The High Court or any single judge exercising the powers of the High Court under section 247 of this Act may continue the hearing of any appeal or application to a date, fixed or not fixed, and any judge of the High Court, or other person appointed by the court to take additional evidence, may fix any diet of proof necessary for that purpose.

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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.

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 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 Prison Commissioners for Scotland.

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.