



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.

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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.

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.

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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 Adjournal 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 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

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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 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.

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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 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

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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.

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.

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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 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,

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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.

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

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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:

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 deputes.
- (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

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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.

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

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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.
- (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 fidei administratione officii was administered to him.”

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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
section 246	section 272
section 248	section 273
section 249	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

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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.

Miscellaneous

281 High Court proceedings final

All interlocutors and sentences pronounced by the High Court under the authority of 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 forth of the High Court under the authority of the same.

282 Acts of Adjournal

The High Court may by Act of Adjournal regulate the practice and procedure in relation to solemn criminal procedure under any enactment, including this Part of this Act, and make such rules and regulations as may be necessary to carry out the purposes and accomplish the objects of any enactment relating to solemn criminal procedure, including this Part of this Act, provided that no rule, regulation or provision which affects the governor or any other officer of a prison shall be made by any such Act of Adjournal except with the consent of the Secretary of State.