



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PART II

SUMMARY PROCEDURE

CONVICTION AND SENTENCE

Review

442 Appeal by stated case

On the final determination of any summary prosecution, either party may, notwithstanding any provision in any statute excluding review, make application to the court to state a case for the opinion of the High Court, and on such application being made the court, subject to the conditions hereinafter mentioned, shall be bound to state a case for such opinion, and it shall thereupon be competent to appeal to, and to bring under the review of, the High Court by stated case—

- (a) the relevancy of the complaint;
- (b) any irregularity in procedure;
- (c) any alleged error of the court in point of law ; and
- (d) generally any matter which might immediately before the commencement of this Act have been competently reviewed by suspension, advocacy, or appeal under the Heritable Jurisdictions (Scotland) Act 1746 or otherwise.

443 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.

444 Manner and time of appeal

- (1) Application to have a case stated shall be made at the time when judgment is given, or at any time within 10 days thereafter, and shall be signed by the appellant or his solicitor and either written on the complaint or lodged with the clerk of court, and where the latter course is adopted the clerk of court shall enter in the record of proceedings the date when the application was lodged and shall thereupon intimate the appeal to the respondent.
- (2) Where such an application has been made by the person convicted, and the judge by whom he was convicted dies before signing the case or is precluded by illness or other cause from doing so, it shall be competent for the convicted person to present a bill of suspension to the High Court and to bring under the review of that court any matter which might have been brought under review by stated case.
- (3) Without prejudice to any other power of relief which the High Court may have, where it appears to that court on application made in accordance with the following provisions of this section, that the applicant has failed to comply with any of the requirements of subsection (1) of this section, the High Court may direct that such further period of time as it may think proper be afforded to the applicant to comply with any requirement of the aforesaid provisions.
- (4) Any application for a direction under the last foregoing subsection shall be made in writing to the Clerk of Justiciary and shall state the grounds for the application, and notification of the application shall be made by the appellant or his solicitor to the clerk of the court from which the appeal is to be taken, and the clerk shall thereupon transmit the complaint, documentary productions and any other proceedings in the cause to the Clerk of Justiciary.
- (5) The High Court shall dispose of any application under this section in like manner as an application to review the decision of an inferior court on a grant of interim liberation, but shall have power—
 - (a) to dispense with a hearing; and
 - (b) to make such enquiry in relation to the application as the court may think fit; and when the High Court has disposed of the application the Clerk of Justiciary shall inform the clerk of the inferior court of the result.
- (6) Section 457(a) of this Act shall apply for the purpose of giving effect to the provisions of this section.

445 Caution by appellant

Immediately on an appeal under section 442 of this Act being taken, the court shall fix a sum to be consigned by the appellant, or for which caution is to be found, to meet any fine and expenses imposed and the expenses of the appeal, and the appellant shall not be entitled to have a case stated unless within five days after the date of his appeal he has made consignation, or found such caution, to the satisfaction of the clerk of court and has also paid the clerk his fees for preparing the case :

Provided that—

- (i) the court shall have power in any case where it deems it expedient to do so to dispense with consignation or the finding of caution, and
- (ii) a person prosecuting in the public interest shall not be bound to make consignation or to find caution.

446 Procedure where appellant in custody

- (1) If an appellant under section 442 of this Act is in custody, the court may, on consignation being made or caution being found in accordance with the last foregoing section, grant interim liberation on such conditions as to caution or otherwise as the court may fix, and may grant a sist of execution, or may dispense with further consignation or caution, or may make any other interim order which the justice of the case may require, or may refuse to grant interim liberation.
- (2) An application for interim liberation shall be disposed of by the court within 24 hours after such application has been made. The appellant, if dissatisfied with the amount of caution fixed, or on refusal of liberation, may, within 24 hours after the judgment of the court, appeal thereagainst by a note of appeal written on the complaint and signed by himself or his solicitor, and the complaint and proceedings shall thereupon be transmitted to the Clerk of Justiciary, and the High Court or any judge thereof, either in court or in chambers, shall, after hearing parties, have power to" review the decision of the inferior court and to grant interim liberation on such conditions as such court or judge may think fit, or to refuse interim liberation.
- (3) No clerks' fees, court fees or other fees or expenses shall be exigible from or awarded against an appellant in custody in respect of an appeal to the High Court against the amount of caution fixed or on account of refusal of liberation by a court of summary jurisdiction.
- (4) If an appellant who has been granted interim liberation does not thereafter proceed with his appeal, the inferior court shall have power to grant warrant to apprehend and imprison him for such period of his sentence as at the date of his liberation remained unexpired, such period to run from the date of his imprisonment under such warrant.
- (5) Where an appellant who has been granted interim liberation does not thereafter proceed with his appeal, the court from which the appeal was taken shall have power, where at the time of the abandonment of the appeal the person is serving a term or terms of imprisonment imposed subsequently to the conviction appealed against, to order that the sentence or, as the case may be, the unexpired portion of that sentence relating to that conviction should run from such date as the court may think fit, not being a date later than the date on which the term or terms of imprisonment subsequently imposed expired.

447 Draft stated case to be prepared

- (1) The clerk of court shall, within 10 days from an application for a stated case under section 442 of this Act, or when consignation or caution is ordered, within five days from the date when consignation has been made or caution found, prepare a draft stated case, and shall within the said period send the draft to the appellant or his solicitor, and a duplicate thereof to the respondent or his solicitor.
- (2) A stated case shall be in the form, as nearly as may be, of the form contained in Part VI of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or of the appropriate form contained in an Act of Adjournal under this Act, and shall set forth the particulars of any matters competent for review which the appellant desires to bring under the review of the High Court, and of the facts, if any, proved in the case, and any point of law decided, and the grounds of the decision.

448 Adjustment and signature of case

- (1) Within one month after receipt of the draft case under the last foregoing section, each party shall cause to be transmitted to the judge against whose judgment the appeal is taken and to the other parties a note of any adjustments he desires to have made on the draft case or intimate that he has no such adjustments to suggest, and if the appellant fails to do so he shall be deemed to have abandoned his appeal, and in any such case the court shall have the like power to grant warrant for his apprehension and imprisonment as is conferred by section 446 of this Act.
- (2) Within 14 days after the latest date on which any such adjustments or intimation as aforesaid are or is received, the judge against whose judgment the appeal is taken shall (unless the appellant is deemed to have abandoned his appeal) after considering any such adjustments, state and sign the case.
- (3) As soon as the case shall be signed by the judge against whose judgment the appeal is taken, the clerk of court shall send it to the appellant and transmit the complaint, productions and any other proceedings in the cause to the Clerk of the Justiciary.
- (4) The appellant shall within 10 days after receiving the case send a copy of it to the respondent and cause it to be transmitted to or lodged with the Clerk of Justiciary together with a certificate by himself or his solicitor that a copy has been sent to the respondent in accordance with the requirement hereinbefore contained.
- (5) If the appellant fails to comply with the last foregoing subsection he shall be deemed to have abandoned his appeal, and the court shall have the like power to grant warrant for his apprehension and imprisonment as is conferred by section 446 of this Act.
- (6) Without prejudice to any other power of relief which the High Court may have, where it appears to that court on application made in accordance with the following provisions of this section, that the applicant has failed to comply with any of the requirements of subsection (4) of this section, the High Court may direct that such further period of time as it may think proper be afforded to the applicant to comply with any requirement of the aforesaid provisions.
- (7) Any application for a direction under the last foregoing subsection shall be made in writing to the Clerk of Justiciary and shall state the grounds for the application.
- (8) The High Court shall dispose of any application under this section in like manner as an application to review the decision of an inferior court on a grant of interim liberation, but shall have power—
 - (a) to dispense with a hearing; and
 - (b) to make such enquiry in relation to the application as the court may think fit; and when the High Court has disposed of the application the Clerk of Justiciary shall inform the clerk of the inferior court of the result.
- (9) Section 457(a) of this Act shall apply for the purpose of giving effect to the provisions of this section.

449 Abandonment of appeal

- (1) An appellant under section 442 of this Act may at any time prior to lodging the case with the Clerk of Justiciary abandon his appeal by minute signed by himself or his solicitor, written on the complaint or lodged with the clerk of the inferior court, and

intimated to the respondent, but such abandonment shall be without prejudice to any other competent mode of appeal, review, advocacy or suspension.

- (2) On the case being lodged with the Clerk of Justiciary, the appellant shall be held to have abandoned any other mode of appeal which might otherwise have been open to him.

450 Record of procedure in appeal

On an appeal being taken under section 442 of this Act the clerk of court shall record on the complaint the different steps of procedure in the appeal, and such record shall be evidence of the dates on which the various steps of procedure took place. The forms of procedure in appeals shall be as nearly as may be in accordance with the forms contained in Part VI of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in an Act of Adjournal under this Act.

451 Computation of time

In computing any number of days for the purpose of the provisions of this Part of this Act relating to appeal, Sundays and public holidays shall be excluded.

452 Hearing of appeal

- (1) A stated case under this Part of this Act shall be heard by the High Court on such date as it may fix, and the High Court shall have power to affirm, reverse or amend the determination of the inferior court, or to impose a fine instead of imprisonment where imprisonment has been awarded, or to reduce the period of imprisonment, or to reduce any fine imposed by the inferior court, or to remit the case back to the inferior court to be amended, and thereafter, on the case being amended and returned, to deliver judgment thereon, or to remit the case to the inferior court with their opinion thereon.
- (2) Where in any such case an appeal against an acquittal is sustained, the High Court may either convict and sentence the accused or may remit the case to the inferior court with instructions to convict and sentence the accused, who shall be bound to attend any diet fixed by such court for this purpose.
- (3) The High Court shall have power in appeals under this Part of this Act to award such expenses both in the High and inferior courts as it may think fit.
- (4) The High Court may remit to any fit person to inquire and report in regard to the facts and circumstances of any appeal, and on considering such report may pronounce judgment.
- (5) Where an appellant has been granted interim liberation, whether his appeal is under this Part of this Act or otherwise, he shall appear personally in court on the day or days fixed for the hearing of his appeal, failing which, unless the court shall on cause shown permit the appeal to be heard, he shall be held to have abandoned it.
- (6) Where an appeal is dismissed or refused in whole or in part, the High Court shall have power to grant warrant to apprehend and imprison the appellant for any term, to run from the date of his imprisonment, not longer than that part of the term of imprisonment specified in the sentence brought under review which remained unexpired at the date of liberation.

- (7) Where at the time an appeal is dismissed or refused as aforesaid the appellant is serving a term or terms of imprisonment imposed subsequently to the conviction appealed against, the High Court shall have the like powers in regard to him as may be exercised by a court of summary jurisdiction in pursuance of section 446(5) of this Act.

453 Consent by prosecutor to set aside conviction

- (1) Where an appeal has been taken under section 442 of this Act or by suspension or otherwise, and the prosecutor, on the appeal being intimated to him, is not prepared to maintain the judgment appealed against, he may by a minute signed by him and written on the complaint or lodged with the clerk of court consent to the conviction and sentence being set aside, either in whole or in part. Such minute shall set forth the grounds on which the prosecutor is of opinion that the judgment cannot be maintained.
- (2) A copy of any minute under the foregoing subsection shall be sent by the prosecutor to the appellant, and the clerk of court shall thereupon ascertain from the appellant or his solicitor whether he desires to be heard by the High Court before the appeal is disposed of, and shall note on the record whether or not the appellant so desires, and shall thereafter transmit the complaint and relative proceedings to the Clerk of Justiciary.
- (3) The Clerk of Justiciary on receipt of a complaint and relative proceedings under the last foregoing subsection shall lay them before any judge of the High Court, either in court or in chambers, and such judge, after hearing parties if they desire to be heard, or without hearing parties, may set aside the conviction either in whole or in part and award expenses to the appellant not exceeding £5.25, or may refuse to set aside the conviction, in which case the proceedings shall be returned to the clerk of the inferior court, and the appellant shall then be entitled to proceed with his appeal in the same way as if it had been marked on the date when the complaint and proceedings are returned to the clerk of the inferior court.
- (4) Where proceedings are taken under this section, the preparation of the draft stated case shall be delayed pending the decision of the High Court.
- (5) The power conferred by this section to consent to a conviction and sentence being set aside shall be exercisable—
- (a) where the appeal is by stated case, at any time within 10 days after the receipt by the prosecutor of the draft stated case ; and
 - (b) where the appeal is by suspension at any time within 10 days after the service on the prosecutor of the bill of suspension.

454 Convictions not to be quashed on certain grounds

- (1) No conviction, sentence, judgment, order of court or other proceeding whatsoever under this Part of this Act shall be quashed for want of form or, where the accused had legal assistance in his defence, shall be suspended or set aside in respect of any objections to the relevancy of the complaint, or to the want of specification therein, or to the competency or admission or rejection of evidence at the trial in the inferior court, unless such objections shall have been timeously stated at the trial by the solicitor of the accused.
- (2) Save as provided in sections 442 and 452 of this Act no conviction, sentence, judgment, order of court or other proceeding whatsoever shall be quashed except on

the ground of incompetency, or corruption, or malice, or oppression, or unless the High Court shall be of opinion that the accused has been misled as to the true nature of the charge against him or been prejudiced in his defence on the merits, and that a miscarriage of justice has resulted thereby:

Provided that the High Court may amend any conviction, sentence, judgment, order of court or other proceeding, or may pronounce such other sentence, judgment, or order as they shall judge expedient.

455 Other modes of appeal

- (1) The provisions regulating appeals shall, subject to the provisions of this Part of this Act, be without prejudice to any other mode of appeal competent.
- (2) Any officer of law may serve any bill of suspension or other writ relating to an appeal.