



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PROCEDURE PRIOR TO TRIAL

APPEAL

Procedure prior to hearing

[^{F1}228 Right of appeal.

(1) Any person convicted on indictment may [^{F2}, with leave granted in accordance with section 230A of this Act,] appeal in accordance with the provisions of this Part of this Act, to the High Court—

- (a) against such conviction;
 - (b) against the sentence passed on such conviction
 - [^{F3}(bb) against his absolute discharge or admonition;
 - (bc) against any probation order or any community service order under the ^{M1}Community Service by Offenders (Scotland) Act 1978;
 - (bd) against any order deferring sentence;]
- ;or
- (c) against both such conviction and such sentence [^{F4}or disposal or order]:

Provided that there shall be no appeal against any sentence fixed by law.

(2) By an appeal under subsection (1) of this section, a person may bring under review of the High Court any alleged miscarriage of justice in the proceedings in which he was convicted, including any alleged miscarriage of justice on the basis of the existence and significance of additional evidence which was not heard at the trial and which was not available and could not reasonably have been made available at the trial.]

Textual Amendments

F1 S. 228 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 1, [Sch. 6 para. 6](#)

Changes to legislation: Criminal Procedure (Scotland) Act 1975, Cross Heading: Procedure prior to hearing is up to date with all changes known to be in force on or before 23 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F2** Words in s. 228(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 42(1); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F3** S. 228(1)(bb)-(bd) inserted (27.7.1993) by 1993 c. 36, s. 68(1)(a)
- F4** Words in s. 228(1)(c) added (27.7.1993) by 1993 c. 36, s. 68(1)(b)

Modifications etc. (not altering text)

- C1** S. 228 modified by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 2(2), 47(4)(a)
- C2** S. 228 modified (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1987 c. 41, s. 2 as substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 113(3), **Sch. 5 para. 3**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- S. 228 extended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, ss. 70(2), 76(5), 113(1); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Marginal Citations

- M1** 1978 c. 49.

[^{F5}228A Appeal by Lord Advocate against sentence in solemn proceedings.

Where a person has been convicted on indictment, the Lord Advocate may appeal against the sentence passed on conviction [^{F6}or against any probation order or any community service order under the Community Service by Offenders (Scotland) Act 1978 or against the person's absolute discharge or admonition or against any order deferring sentence]—

- [if it appears to the Lord Advocate that, as the case may be—
- ^{F7}(a) (i) the sentence is unduly lenient;
- (ii) the making of the probation order or community service order is unduly lenient or its terms are unduly lenient;
- (iii) to dismiss with an admonition or to discharge absolutely is unduly lenient; or
- (iv) the deferment of sentence is inappropriate or on unduly lenient conditions;]
- (b) on a point of law.]

Textual Amendments

- F5** S. 228A inserted (1.10.1993) by 1993 c. 9, s. 42(1) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(4), 4(1)(a)
- F6** Words in s. 228A inserted (27.7.1993) by 1993 c. 36, s. 68(2)(a)
- F7** S. 228A(a) substituted (27.7.1993) by 1993 c. 36, s. 68(2)(b)

229 ^{F8}

Textual Amendments

- F8** Ss. 229, 232, 253(2) repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 6, **Sch. 8**

Changes to legislation: Criminal Procedure (Scotland) Act 1975, Cross Heading: Procedure prior to hearing is up to date with all changes known to be in force on or before 23 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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.

[^{F9}230A Leave to appeal.

- (1) The decision whether to grant leave to appeal for the purposes of section 228(1) of this Act shall be made by a judge of the High Court who shall—
 - (a) if he considers that the documents mentioned in subsection (2) below disclose arguable grounds of appeal, grant leave to appeal and make such comments in writing as he considers appropriate; and
 - (b) in any other case—
 - (i) refuse leave to appeal and give reasons in writing for the refusal; and
 - (ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.
- (2) The documents referred to in subsection (1) above are—
 - (a) the note of appeal lodged under section 233(1)(a) of this Act;
 - (b) in a case to which section 236 of this Act applies, the certified copy or, as the case may be, the record of the proceedings at the trial;
 - (c) where the judge who presided at the trial furnishes a report under section 236A of this Act, that report; and
 - (d) where, by virtue of section 275(1) of this Act, a transcript of the charge to the jury of the judge who presided at the trial is delivered to the Clerk of Justiciary, that transcript.
- (3) A warrant granted under subsection (1)(b)(ii) above shall not take effect until the expiry of the period of 14 days mentioned in subsection (4) below without an application to the High Court for leave to appeal having been lodged by the appellant under that subsection.
- (4) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under subsection (10) below, apply to the High Court for leave to appeal.
- (5) In deciding an application under subsection (4) above the High Court shall—
 - (a) if, after considering the documents mentioned in subsection (2) above and the reasons for the refusal, the court is of the opinion that there are arguable grounds of appeal, grant leave to appeal and make such comments in writing as the court considers appropriate; and
 - (b) in any other case—
 - (i) refuse leave to appeal and give reasons in writing for the refusal; and
 - (ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.
- (6) Consideration whether to grant leave to appeal under subsection (1) or (5) above shall take place in chambers without the parties being present.

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- (7) Comments in writing made under subsection (1)(a) or (5)(a) above may, without prejudice to the generality of that provision, specify the arguable grounds of appeal (whether or not they are contained in the note of appeal) on the basis of which leave to appeal is granted.
- (8) Where the arguable grounds of appeal are specified by virtue of subsection (7) above it shall not, except by leave of the High Court on cause shown, be competent for the appellant to found any aspect of his appeal on any ground of appeal contained in the note of appeal but not so specified.
- (9) Any application by the appellant for the leave of the High Court under subsection (8) above—
 - (a) shall be made not less than seven days before the date fixed for the hearing of the appeal; and
 - (b) shall, not less than seven days before that date, be intimated by the appellant to the Crown Agent.
- (10) The Clerk of Justiciary shall forthwith intimate—
 - (a) a decision under subsection (1) or (5) above; and
 - (b) in the case of a refusal of leave to appeal, the reasons for the decision, to the appellant or his solicitor and to the Crown Agent.]

Textual Amendments

F9 S. 230A inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 42(2); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[^{F10}231 Intimation of intention to appeal.

- (1) Subject to section 236B(2) of this Act [^{F11}and to section 2(2) of the Criminal Justice (Scotland) Act 1987 [^{F12}and section 76(4) of the Criminal Justice (Scotland) Act 1995] (postponed confiscation orders)], where a person desires to appeal under section 228(1)(a) or (c) of this Act, he shall, within two weeks of the final determination of the proceedings, lodge with the Clerk of Justiciary written intimation of intention to appeal and send a copy to the Crown Agent.
- (2) Such intimation shall identify the proceedings and be in as nearly as may be the form prescribed by Act of Adjournal under this Act.
- (3) On such intimation being lodged by a person in custody, the Clerk of Justiciary shall give notice thereof to the Secretary of State.
- (4) [^{F13}Subject to subsection (5) below,] for the purposes of subsection (1) above and section 270(2) of this Act, proceedings shall be deemed finally determined on the day on which sentence is passed in open court; except that, where in relation to an appeal under section 228(1)(a) of this Act sentence is deferred under section 219 of this Act, they shall be deemed finally determined on the day on which sentence is first so deferred in open court.]
- [^{F14}(5) Without prejudice to subsection (2) of section 2 of the said Act of 1987 [^{F15}and subsection (4) of section 76 of the said Act of 1995], the reference in subsection (4) above to “the day on which sentence is passed in open court” shall, in relation to any case in which, under subsection (1) of [^{F16}the said section 2 or 76], a decision has been

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postponed for a period, be construed as a reference to the day on which that decision is made (whether or not a confiscation order is then made or any other sentence is then passed).]

Textual Amendments

- F10** S. 231 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 3, **Sch. 6 para. 6**
- F11** Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 45(6)(a)**, 47(4)(a)
- F12** Words in s. 231(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. II para. 181(3)(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F13** Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 45(6)(b)**, 47(4)(a)
- F14** S. 231(5) added by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 45(6)(c)**, 47(4)(a)
- F15** Words in s. 231(5) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. II para. 181(3)(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F16** Words in s. 231(5) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. II para. 181(3)(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Modifications etc. (not altering text)

- C3** S. 231(1) modified by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 2(2)**, 47(4)(a)
S. 231(1) amended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **ss. 70(2)**, 76(4), 113(1); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
S. 231(1) modified (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1987 c. 41, **s. 2** as substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 113(3), **Sch. 5 para. 3**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

232 F17

Textual Amendments

- F17** **Ss. 229, 232, 253(2)** repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 6, **Sch. 8**

[^{F18}233 Note of appeal.

(1) Subject to section 236B(2) of this Act,

[^{F19}(a)] within six weeks of lodging intimation of intention to appear or, in the case of an appeal [^{F20}under section 228(1)(b), (bb), (bc) or (bd) of this Act], within two weeks of the passing of the sentence [^{F21}(or as the case may be, of the making of the order disposing of the case or deferring sentence)] in open court, the convicted person may lodge a written note of appeal with the Clerk of Justiciary who shall send a copy to the judge who presided at the trial and to the Crown Agent: Provided that the first mentioned period may be extended, before expiry thereof, by the Clerk of Justiciary [^{F22}; or]

[^{F23}(b)] as the case may be, within four weeks of the passing of the sentence [^{F24}(or as the case may be, of the making of the order disposing of the case or deferring

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sentence)] in open court, the Lord Advocate may lodge such a note with the Clerk of Justiciary, who shall send a copy to the said judge and to the convicted person or that person's solicitor.]

(2) Such a note shall identify the proceedings, contain a full statement of all the grounds of appeal and be in as nearly as may be the form prescribed by Act of Adjournal under this Act.

(3) Except by leave of the High Court on cause shown it shall not be competent for an appellant to found any aspect of his appeal on a ground not contained in the note of appeal.

[Subsection (3) above shall not apply as respects any ground of appeal specified as an ^{F25}(3A) arguable ground of appeal by virtue of subsection (7) of section 230A of this Act.]

(4) On a note of appeal [^{F26}under section 228(1)(b), (bb), (bc) or (bd)] being lodged by an appellant in custody the Clerk of Justiciary shall give notice thereof to the Secretary of State.]

Textual Amendments

- F18** S. 233 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 5, **Sch. 6 para. 6**
- F19** Words in s. 233(1) renumbered as s. 233(1)(a) (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(9)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 10(b)**
- F20** S. 183(5A) inserted by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **s. 7(b)**
- F21** Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 68(2), **Sch. 13 Pt. II para. 3**
- F22** Word inserted by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **s. 7(a)**
- F23** Words added by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **s. 7(a)**
- F24** Words in s. 183(1) inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **s. 61(1)(a)**; S.I. 1991/850, art. 3, **Sch.**
- F25** Words substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 10(b)**
- F26** Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 10(a)**

234 Presentation of appeal in writing.

- (1) If an appellant [^{F27}other than the Lord Advocate] . . . ^{F28} 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 . . . ^{F28}, 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 . . . ^{F28} 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 . . . ^{F28}.

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Textual Amendments

- F27** Words in s. 234(1) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(10)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 10(b)**
- F28** Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 6, **Sch. 8**

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.^{F29} . . .

Textual Amendments

- F29** S. 183(1A) inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 61(1)(b); S.I. 1991/850, art. 3, **Sch.**

236 Proceedings in sheriff court to be furnished.

In the case of an appeal . . .^{F30} 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.

Textual Amendments

- F30** Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 6, **Sch. 8**

[^{F31}236A Judge's report.

- (1) As soon as is reasonably practicable after his receipt of the copy note of appeal sent to him under section 233(1) of this Act, the judge who presided at the trial shall furnish the Clerk of Justiciary with a report in writing giving the judge's opinion on the case generally and on the grounds contained in the note of appeal; and the Clerk of Justiciary shall send a copy of the report to the convicted person or his solicitor, to the Crown Agent, and, in a case referred under section 263(1) of this Act, to the Secretary of State.
- (2) Where the judge's report is not furnished as mentioned in subsection (1) above, the High Court may call for such report to be furnished within such period as it may specify or, if it thinks fit, hear and determine the appeal without such report.
- (3) Subject to subsection (1) above, the report of the judge shall be available only to the High Court [^{F32}, the parties and, on such conditions as may be prescribed by Act of Adjournal, such other persons or classes of persons as may be so prescribed].]

Textual Amendments

- F31** Words in s. 183(4)(a) substituted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 61(1)(c)(i); S.I. 1991/850, art. 3, **Sch.**

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F32 Word in s. 183(4)(a) substituted (1.4.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990](#) (c. 40, SIF 39:1), [s. 61\(1\)\(c\)\(ii\)](#); S.I. 1991/850, art. 3, [Sch.](#)

236B Computation of periods.

- (1) Where the last day of any period mentioned in sections 231(1) and 233(1) of this Act falls on a day which the office of the Clerk of Justiciary is closed, such period shall extend to and include the next day on which such office is open.
- (2) Any period mentioned in section 231(1) or [^{F33}233(1)(a)] of this Act may be extended at any time by the High Court in respect of any convicted person; and application for such extension may be made under this subsection and shall be in as nearly as may be the form prescribed by Act of Adjournal under this Act.

Textual Amendments

F33 Words in s. 236B(2) substituted (1.10.1993) by [1993 c. 9, s. 47\(1\)](#), [Sch. 5 para. 1\(11\)](#) (with s. 47(2), [Sch. 6 paras. 1, 2](#)); S.I. 1993/2050, [arts. 3\(4\)](#), 10(b)

^{F34}236C.....

Textual Amendments

F34 [S. 183\(5B\)\(5C\)](#) inserted by [Criminal Justice \(Scotland\) Act 1987](#) (c. 41, SIF 39:1), [ss. 47\(4\)\(a\)](#), 65(1)(2)(a)

^{F35}237

Textual Amendments

F35 [S. 183\(1A\)\(a\)\(b\)](#) substituted (1.10.1992) for certain words by [Criminal Justice Act 1991](#) (c. 53), s. 16, [Sch. 3](#), Pt. II para. 7(2) (with s. 28); S.I. 1992/333, art. 2(2), [Sch. 2](#).

238 Admission of appellant to bail.

[^{F36}(1) [^{F37}Subject to subsection (1A) below,]]The High Court may, if it thinks fit, on the application of a convicted person, admit him to bail pending the determination of—

(a) his appeal; or

[^{F38}(b) any relevant appeal by the Lord Advocate under section 228A of this Act.]

[^{F39}(1A) The High Court shall not admit a convicted person to bail under subsection (1) above unless—

(a) where he is the appellant and has not lodged a note of appeal in accordance with section 233(1)(a) of this Act, the application for bail states reasons why it should be granted and sets out the proposed grounds of appeal; or

(b) where the Lord Advocate is the appellant, the application for bail states reasons why it should be granted;

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and, in either case, the High Court considers there to be exceptional circumstances justifying admitting the convicted person to bail.]

(2) A person who is admitted to bail under subsection (1) above shall, unless the High Court otherwise directs, appear personally in court on the day or days fixed for the hearing of the appeal^{F40} . . . ; and in the event of his failing to do so the court may—

(a) if he is the appellant—

(i) decline to consider the appeal^{F41} . . . ; and

(ii) dismiss it summarily; or

(b) whether or not he is the appellant—

(i) consider and determine the appeal^{F42} . . . ; or

(ii) without prejudice to section 3 of the Bail etc. (Scotland) Act 1980 (breach of conditions), make such other order as the court thinks fit.

[^{F43}(3) For the purposes of subsections (1) and (2) above, “appellant” includes not only a person who has lodged a note of appeal but also one who has lodged an intimation of intention to appeal.]

Textual Amendments

F36 S. 238(1)(2) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(13)** (with s. 47(2), **Sch. 6 paras. 1, 2**); S.I. 1993/2050, **arts. 3(4), 10(b)**

F37 Words in s. 238(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 5(2); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F38 S. 238(1)(b) substituted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. 1 para. 2(5)**.

F39 S. 238(1A) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 5(3); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F40 Words in s. 238(2) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. 1 para. 81, Sch. 7 Pt. 1**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F41 Words in s. 238(2)(a)(i) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. 1 para. 81, Sch. 7 Pt. 1**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F42 Words in s. 238(2)(b)(i) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. 1 para. 81, Sch. 7 Pt. 1**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F43 S. 238(3) inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 2 para. 10(b), Sch. 6 para. 6**

239 Clerk to give notice of date of hearing.

(1) When the High Court fixes the date for the hearing of an appeal, or of an application [^{F44}under section 236B(2) of this Act], the Clerk of Justiciary shall give notice to the Crown Agent and to the solicitor of the [^{F45}convicted person], or to the [^{F45}convicted person] himself if he has no known solicitor.^{F46} . . .

^{F47}(2)

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Textual Amendments

- F44** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 2 para. 11](#), [Sch. 6 para. 6](#)
- F45** Words in [s. 239\(1\)](#) substituted (1.10.1993) by [1993 c. 9, s. 47\(1\)](#), [Sch. 5 para. 1\(14\)\(a\)](#) (with [s. 47\(2\)](#), [Sch. 6 paras. 1, 2](#)); [S.I. 1993/2050, arts. 3\(4\)](#), 10(b)
- F46** Words in [s. 239\(1\)](#) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117](#), [Sch. 6 Pt. I para. 82\(a\)](#), [Sch. 7 Pt. I](#); [S.I. 1996/517, arts. 3\(2\), 4-6](#), [Sch. 2](#)
- F47** [S. 239\(2\)](#) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117](#), [Sch. 6 Pt. I para. 82\(b\)](#), [Sch. 7 Pt. I](#); [S.I. 1996/517, arts. 3\(2\), 4-6](#), [Sch. 2](#)

240 Appellant may be present at hearing.

[^{F48}A convicted] appellant, notwithstanding that he is in custody, shall be entitled to be present if he desires it, on the hearing of his appeal. ^{F49}. . .

Textual Amendments

- F48** Word in [s. 240](#) substituted (1.10.1993) by [1993 c. 9, s. 47\(1\)](#), [Sch. 5 para. 1\(15\)](#) (with [s. 47\(2\)](#), [Sch. 6 paras. 1, 2](#)); [S.I. 1993/2050, arts. 3\(4\)](#), 10(b)
- F49** Words in [s. 240](#) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117](#), [Sch. 6 Pt. I para. 83](#), [Sch. 7 Pt. I](#); [S.I. 1996/517, arts. 3\(2\), 4-6](#), [Sch. 2](#)

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 [^{F50}Secretary of State] of the probable day on which the appeal or application will be heard. The [^{F50}Secretary of State] 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.

Textual Amendments

- F50** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 41](#)

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—

- before the High Court or any judge thereof, or
- for the taking of additional evidence before a person appointed for the purpose under section 252(b) of this Act, or
- for an examination or investigation by a special commissioner in terms of section 252(d) of this Act,

Changes to legislation: Criminal Procedure (Scotland) Act 1975, Cross Heading: Procedure prior to hearing is up to date with all changes known to be in force on or before 23 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

the Clerk of Justiciary shall give timeous notice to the [^{F51}Secretary of State], in the form set out in an Act of Adjournal under the ^{M2}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 [^{F51}Secretary of State] 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.

Textual Amendments

F51 Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **Sch. 7 para. 42**

Marginal Citations

M2 [1926 c. 15\(39:1\)](#).

[242A] ^{F52}Special provision where appellant is Lord Advocate.

Where the Lord Advocate is the appellant, sections 241 and 242 of this Act shall apply in respect of the convicted person, if in custody, as they apply to an appellant or applicant in custody.]

Textual Amendments

F52 [S. 242A](#) inserted (1.10.1993) by [1993 c. 9, s. 47\(1\)](#), **Sch. 5 para. 1(16)** (with [s. 47\(2\)](#), [Sch. 6 paras. 1, 2](#)); [S.I. 1993/2050](#), **arts. 3(4), 10(b)**

243 Warders to attend court.

The [^{F53}Secretary of State] shall, on notice under [^{F54}section 242 of this Act] from the Clerk of Justiciary, cause from time to time such sufficient number of male and female [^{F53}prison officers] to attend the sittings of the court as, having regard to the list of appeals thereat, they shall consider necessary.

Textual Amendments

F53 Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **Sch. 7 para. 43**

F54 Words in [s. 243](#) substituted (1.10.1993) by [1993 c. 9, s. 47\(1\)](#), **Sch. 5 para. 1(17)** (with [s. 47\(2\)](#), [Sch. 6 paras. 1, 2](#)); [S.I. 1993/2050](#), **arts. 3(4), 10(b)**

[^{F55}244] Abandonment of appeal.

- (1) An appellant may abandon his appeal by lodging with the Clerk of Justiciary a notice of abandonment in as nearly as may be the form prescribed by Act of Adjournal under this Act; and on such notice being lodged the appeal shall be deemed to have been dismissed by the court.
- (2) A person who has appealed against both conviction and sentence [^{F56}(or as the case may be against both conviction and disposal or order)] may abandon the appeal in so

Changes to legislation: Criminal Procedure (Scotland) Act 1975, Cross Heading: Procedure prior to hearing is up to date with all changes known to be in force on or before 23 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

far as it is against conviction and may proceed with it against sentence [^{F57}(or disposal or order)] alone.]

Textual Amendments

F55 S. 244 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 13, **Sch. 6 para. 6**

F56 Words in s. 244(2) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(6)(a)**

F57 Words in s. 244(2) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(6)(b)**

Changes to legislation:

Criminal Procedure (Scotland) Act 1975, Cross Heading: Procedure prior to hearing is up to date with all changes known to be in force on or before 23 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act certain function transferred. by [1994 c. 39 s. 127\(1\)](#)[128](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 168(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)](#)[Sch. 4 para. 24\(6\)\(b\)](#)
- s. 364(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)](#)[Sch. 4 para. 24\(14\)\(b\)](#)
- s. 413(3) (defn. of "the appropriate local authority") para. (a)(b) amended by [1994 c. 39 Sch. 13 para. 97\(5\)](#)
- s. 413(3) (defns. of "care" and "the 1968 Act") repealed (prosp.) by [1995 c. 36 s. 105\(4\)\(5\)](#)[Sch. 4 para. 24\(17\)\(b\)\(i\)](#)[Sch. 5](#)
- s. 462 (defns. of "child" "children's hearing" "place of safety" "residential establishment" and "supervision requirement") amended (prosp.) by [1995 c. 36 s. 105\(4\)](#)[Sch. 4 para. 24\(18\)](#)
- s. 462 (defns. of "crime" and "prosecutor") applied (prosp.) by [1995 c. 36 s. 53\(7\)](#)