



# Criminal Procedure (Scotland) Act 1975

## 1975 CHAPTER 21

### PROCEDURE PRIOR TO TRIAL

#### APPEAL

##### *Procedure prior to hearing*

#### **238 Admission of appellant to bail.**

[<sup>F1</sup>(1) [<sup>F2</sup>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

[<sup>F3</sup>(b) any relevant appeal by the Lord Advocate under section 228A of this Act.]

[<sup>F4</sup>(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;

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 <sup>F5</sup>. . . ; 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 <sup>F6</sup>. . . ; and

(ii) dismiss it summarily; or

(b) whether or not he is the appellant—

(i) consider and determine the appeal <sup>F7</sup>. . . ; or

**Changes to legislation:** Criminal Procedure (Scotland) Act 1975, Section 238 is up to date with all changes known to be in force on or before 19 October 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

(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.

[<sup>F8</sup>(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

- F1** 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)
- F2** 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**
- F3** S. 238(1)(b) substituted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(5)**.
- F4** 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**
- F5** 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. I para. 81, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F6** 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. I para. 81, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F7** 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. I para. 81, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F8** S. 238(3) inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 10(b), **Sch. 6 para. 6**

**Changes to legislation:**

Criminal Procedure (Scotland) Act 1975, Section 238 is up to date with all changes known to be in force on or before 19 October 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\(7\)](#)