



# Criminal Appeal (Scotland) Act 1926

## 1926 CHAPTER 15

An Act to amend the law of Scotland relating to appeal in criminal cases tried on indictment. [8th July 1926.]

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Right of appeal by persons convicted on indictment**

A person convicted on indictment may appeal under this Act to the High Court of Justiciary (hereinafter in this Act referred to as the Court)—

- (a) against his conviction on any ground of appeal, which involves a question of law alone; and
- (b) with the leave of the 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 Court or to the judge to be a sufficient ground of appeal;
- (c) with the leave of the 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 the Prevention of Crime Act, 1908, may appeal to the Court against such sentence without the leave of the Court.

### **2 Determination of appeals in ordinary cases**

- (1) The Court on any such appeal against conviction shall allow the appeal if they think 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 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 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 Act the Court shall, if they allow an appeal against conviction, quash the conviction.
- (3) On any appeal against conviction the Court shall have the like power to quash the sentence passed and to pass another sentence as is conferred on the Court by the immediately succeeding subsection of this section in the case of an appeal against sentence.
- (4) On any appeal against sentence the 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.

### **3 Powers of Court in special cases**

- (1) If it appears to the 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 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 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 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 until His Majesty's pleasure be known, as may be made under section eighty-eight of the Lunacy (Scotland) Act, 1857, in the case of a person acquitted by a jury on the ground of insanity.

### **4 Time for appealing**

- (1) Where a person convicted desires to appeal under this Act to the Court or to obtain the leave of the 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, in such manner as may be directed by Act of Adjournal, notice of appeal or of application for leave to appeal. Provision shall be made by such Act of Adjournal to enable any such person to present his case and his argument in writing instead of orally if he so desires, and any case or argument so presented shall be considered by the Court. Except in the case of a conviction involving sentence of

death, 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 Court.

- (2) In the case of a sentence of death or corporal punishment—
- (a) the sentence shall not in any case be executed until after the expiration of the time within which notice of appeal or of an application for leave to appeal may be given under this section; and
  - (b) if notice is so given, the appeal or application shall be heard and determined with as much expedition as practicable, and the sentence shall not be executed until after the determination of the appeal, or, in cases where an application for leave to appeal is finally refused, of the application.
- (3) Where in the case of a conviction involving sentence of death the appeal is dismissed or the application for leave to appeal is finally refused, the Court shall fix a day for the execution of the sentence which day shall be not less than fourteen or more than eighteen clear days after the day when the appeal is dismissed or the application for leave to appeal is finally refused, and the sentence pronounced at the trial shall have effect as if for the day therein mentioned, the day fixed in pursuance of this subsection were substituted.

## **5 Judges notes and report to be furnished on appeal**

Where a person convicted appeals under this Act against the conviction or against the sentence, or applies for leave to appeal, the judge who presided at the trial shall furnish to the Clerk of Justiciary, in such manner as may be directed by Act of Adjournal, his notes of the proceedings before him, and a report giving his opinion on the case or on any point arising therein.

## **6 Supplemental powers of Court**

For the purposes of this Act the 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; and
- (b) if they think fit, order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by Act of Adjournal before any judge of the Court or other person appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court; and
- (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; and
- (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 Court conveniently be conducted before the Court, order the reference of the question in manner provided by Act of Adjournal 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; and

- (e) appoint any person with special expert knowledge to act as assessor to the 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 Act any other powers vested in the Court, and issue any warrants necessary for enforcing the orders or sentences of the 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.

## **7 Right of appellant to be present**

- (1) 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 entitled to be present, except where it is provided by Act of Adjournment that he shall have the right to be present, or where the Court gives him leave to be present.
- (2) The power of the Court to pass any sentence under this Act may be exercised notwithstanding that the appellant is for any reason not present.

## **8 Expenses of appeal**

On the hearing and determination of an appeal or any proceedings preliminary or incidental thereto under this Act no expenses shall be allowed on either side.

## **9 Admission of appellant to bail, and custody when attending Court**

- (1) The 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 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 they think fit.
- (3) An appellant who is not admitted to bail shall, pending the determination of his appeal, be treated in such manner as may be directed by rules made under the Prisons (Scotland) Act, 1877.
- (4) The time during which an appellant, pending the determination of his appeal, is admitted to bail, and subject to any directions which the Court may give to the contrary on any appeal, the time during which the appellant, if in custody, is specially treated as an appellant under this section, shall not count as part of any term of imprisonment or penal servitude under his sentence, and, in the case of an appeal under this Act, any imprisonment or penal servitude under the sentence of the appellant, whether it is the sentence passed by the court of trial or the sentence passed by the Court on appeal shall, subject to any directions which may be given by the Court as aforesaid, be deemed to be resumed or to begin to run, as the case requires, if the appellant is in custody, as from the day on which the appeal is determined, and, if he is not in custody, as from the day on which he is received into prison under the sentence.

- (5) Provision shall be made by rules under the Prisons (Scotland) Act, 1877, for the manner in which an appellant, when in custody, is to be brought to any place at which he is entitled to be present for the purposes of this Act, or to any place to which the Court or any judge thereof may order him to be taken for the purpose of any proceedings of the Court, and for the manner in which he is to be kept in custody while absent from prison for the purpose; and an appellant whilst in custody in accordance with those rules shall be deemed to be in legal custody.

## **10 Summary determination of frivolous appeals, & c**

- (1) 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 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.
- (2) Any documents, productions, or other things lodged in connection with the proceedings on the trial of any person on indictment, who, if convicted, is entitled or may be authorised to appeal under this Act, shall be kept in the custody of the court of trial in accordance with rules made by Act of Adjournal for the purpose, for such time as may be provided by the rules, and subject to such power as may be given by the rules for the conditional release of any such documents, productions, or things from that custody.
- (3) The Clerk of Justiciary shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application under 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 Act, and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Clerk of Justiciary.

## **11 Shorthand notes of trial**

- (1) Shorthand notes shall be taken of the proceedings at the trial of any person on indictment, who, if convicted, is entitled or may be authorised to appeal under 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 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 for Scotland may also, if he thinks fit in any case, direct a transcript of the shorthand notes to be made and furnished to him for his use.
- (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 Justiciary or by the Secretary for Scotland, shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of moneys provided by Parliament, and such provision as is necessary for securing the accuracy of the notes to be taken and for the verification of the transcript may be made by Act of Adjournal.

## **12 Quorum procedure and sitting of the Court, & c**

- (1) For the purpose of hearing and determining any appeal or other proceeding under this Act three of the Lords Commissioners of Justiciary shall be a quorum of the Court, and the determination of any question under 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 Court shall hold both during Session and during Vacation such sittings for the disposal of appeals and other proceedings under this Act as may be necessary.
- (3) The provisions of this section shall apply to oases certified to the High Court of Justiciary by a single judge of the said Court and to appeals by way of advocacy from the Sheriff Court in like manner as they apply to appeals under this Act.
- (4) the provision substituted as regards Scotland by subsection (5) of section seventeen of the Prevention of Crime Act, 1908, for section eleven thereof is hereby repealed except as regards persons convicted on or before the thirty-first day of October, nineteen hundred and twenty-six.

## **13 Sentence in Sheriff Court not to be suspended**

It shall not be competent to appeal to the High Court of Justiciary by bill of suspension against any conviction, sentence, judgment or order pronounced after the thirty-first day of October, nineteen hundred and twenty-six, in any proceedings on indictment in the Sheriff Court.

## **14 Powers which may be exercised by a judge of the Court**

The powers of the Court under 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 Court in the same manner as they may be exercised by the 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 Court.

## **15 Power to make Acts of Adjournal**

The Court may by Act of Adjournal regulate the practice and procedure under this Act, and make such rules and regulations as may be necessary to carry out the purposes 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 for Scotland.

## **16 Prerogative of mercy**

Nothing in this Act shall affect the prerogative of mercy, but the Secretary for Scotland on the consideration of any petition for the exercise of His Majesty's mercy, having reference to the conviction of a person on indictment or to the sentence (other than sentence of death) passed on a person who has been so convicted, may, if he thinks fit, at any time, and whether an appeal or an application for leave to appeal against

such conviction or sentence has or has not previously been heard and determined by the Court, either—

- (a) refer the whole case to the Court and the case shall then be heard and determined by the Court as in the case of an appeal under this Act; or
- (b) if he desires the assistance of the Court on any point arising in the case with a view to the determination of the petition, refer that point to the Court for their opinion thereon, and the Court shall consider the point so referred and furnish the Secretary for Scotland with their opinion thereon accordingly.

## **17 Finality of proceedings of Court**

- (1) Subject to the provisions of the immediately preceding section of this Act, all interlocutors and sentences pronounced by the Court under 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 Court under this Act.
- (2) Section seventy-two of the Criminal Procedure (Scotland) Act, 1887, shall have effect subject to the provisions of this Act,

## **18 Definitions**

In this Act, unless the context otherwise requires—

The expression "appellant" includes a person who has been convicted and desires to appeal under this Act; and the expression "sentence" includes any order of the Court made on conviction with reference to the person convicted or his wife or children, and any recommendation of the Court as to the making of a deportation order in the case of a person convicted and the power of the Court to pass a sentence includes a power to make any such order of the Court or recommendation, and a recommendation so made by the Court shall have the same effect for the purposes of Article twelve of the Aliens Order, 1920, as the certificate and recommendation of the convicting Court.

## **19 Short title, extent and application**

- (1) This Act may be cited as the Criminal Appeal (Scotland) Act, 1926, and shall extend to Scotland only.
- (2) This Act shall apply to all persons convicted after the thirty-first day of October, nineteen hundred and twenty-six, but shall not affect the rights as regards appeal of any person convicted on or before that date.