
STATUTORY INSTRUMENTS

1988 No. 110

Act of Adjournal (Consolidation) 1988

CHAPTER 2

SUMMARY PROCEDURE

PART IV

APPEAL PROCEDURE

Forms for appeal

127. For the purposes of appeals in summary proceedings the forms specified by numbers in column 3 of the Table set out below and set out under those numbers in Schedule 1 are the forms prescribed under the 1975 Act for the purposes of the sections of that Act specified in column 1 of the Table relating respectively to the matters summarised in column 2 of the Table, and shall have effect for those purposes.

TABLE

(1) <i>No. of Section</i>	(2) <i>Content</i>	(3) <i>No. of Form</i>
442A(2)(1)	Minute abandoning appeal against conviction only	70
444(2)	Application for a stated case	71
447(2)(3)	Stated case	72
449(4)	Minute abandoning stated case	70
450(5)	Minutes of procedure in appeal by stated case	73
453B(6)	Minutes of procedure in note of appeal	74
451(2)(7)	Extension of time limit by sheriff principal	75

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- (1) Section 442A was inserted by the 1980 Act, Schedule 3, paragraph 1.
(2) Section 444 was amended by the 1980 Act, Schedule 3, paragraph 3 and Schedule 8, and by the Bail etc.(Scotland) Act 1980 (c. 4), Schedule 1, paragraph 10.
(3) Section 447(2) was amended by the 1980 Act, Schedule 8.
(4) Section 449 was amended by the 1980 Act, Schedule 3, paragraph 8.
(5) Section 450 was amended by the 1980 Act, Schedule 3, paragraph 9, and by S.I.1981/386
(6) Section 453B was inserted by the 1980 Act, Schedule 3, paragraph 13.
(7) Section 451 was substituted by the 1980 Act, Schedule 3, paragraph 10.

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(1) <i>No. of Section</i>	(2) <i>Content</i>	(3) <i>No. of Form</i>
453B(1)	Note of appeal against sentence	76
453B(4)	Extension of time limit by sheriff principal	75
453B(7)	Minute abandoning appeal	77.

Appeals from decisions on competency and relevancy

128.—(1) If—

- (a) an accused states an objection to the competency or relevancy of the complaint or the proceedings; and
- (b) that objection is repelled,

he may only apply for leave to appeal against that decision under section 334(2A)(8) after stating how he pleads to the charge or charges set out in the complaint.

(2) Subject to paragraph (1), the accused shall apply for leave to appeal against any decision to which that paragraph applies and the court shall determine that application immediately following the decision in question.

(3) If the court grants the application, the clerk of court shall enter in the minutes of proceedings—

- (a) details of the decision in question, and
- (b) the granting of leave to appeal against it.

(4) An appeal under section 334 shall be made by way of note of appeal in the form set out in Form 78 of Schedule 1.

(5) The note of appeal shall be lodged with the clerk of the court that granted leave to appeal not later than 2 days after the decision in question.

(6) The clerk of court shall, on the lodging of the note of appeal with him—

- (a) send a copy to the respondent or his solicitors;
- (b) request a report from the presiding judge;
- (c) transmit the note of appeal, and certified copies of the complaint, minutes of proceedings and relevant documents to the Clerk of Justiciary.

(7) The presiding judge shall, as soon as possible after receiving the request for a report, send his report to the Clerk of Justiciary, who shall send a copy to the appellant and respondent or their solicitors.

(8) The Clerk of Justiciary shall arrange for the Appeal Court to hear the appeal as soon as possible, and shall cause to be copied any documents necessary for the Appeal Court.

(9) If the High Court makes any order postponing the trial diet under section 334(2B), or makes any such order and gives a direction under that section, the Clerk of Justiciary shall send a copy of that order, or of that order and direction, to the appropriate clerk of court and to any accused who are not parties to the appeal, or to their solicitors, and to the governor of any institution in which any of the accused is detained.

(10) Any such appeal may be abandoned at any time prior to the hearing of the appeal.

(8) Section 334 was amended by the 1980 Act, section 36 and Schedule 7, paragraph 54.

(11) An appeal shall be abandoned by lodging with the Clerk of Justiciary a minute of abandonment in the form set out in Form 79 of Schedule 1.

(12) On the lodging of a minute of abandonment under paragraph (11), the Clerk of Justiciary shall inform the appropriate clerk of court and the respondent or his solicitor that the appeal has been abandoned, and the court of first instance may then proceed as accords.

Abandoning appeal against conviction only

129.—(1) The provisions of this rule apply to an appellant abandoning his appeal against conviction and proceeding with the appeal against sentence alone under section 442A(2).

(2) An application to abandon under paragraph (1) shall be made by way of minute signed by the appellant or his solicitor and intimated by him to the respondent.

(3) Subject to paragraph (4), the minute shall be lodged with the clerk of the court which imposed sentence.

(4) If prior to the lodging of the minute the stated case has been lodged with the Clerk of Justiciary, the minute shall be lodged with him and he shall immediately send a copy of the minute to the clerk of the court which imposed sentence.

(5) If prior to the lodging of the minute prints of the stated case and relative proceedings have been lodged with the Clerk of Justiciary, those prints shall be used for the purposes of the hearing of the appeal against sentence.

(6) On the lodging of the minute, the provisions of sections 453B(3) to 453E(9) shall apply to the minute as they apply to a note of appeal.

Extension of time for appeal against sentence only

130.—(1) Where by virtue of the provisions of section 453B(6), the court makes an order extending the period within which the note of appeal shall be lodged under subsection (2) of that section, the periods mentioned in subsections (2) and (4) of that section shall run from the date which is 2 days after the date on which the court makes that order and not from the passing of the sentence.

(2) If the date from which an extended period runs by virtue of paragraph (1) is a Saturday, Sunday or court holiday prescribed for the relevant court, the date shall be the next date that is not a Saturday, Sunday or court holiday.

Intimation to Crown of abandonment

131. The Clerk of Justiciary or the clerk of court, as the case may be, on the lodging with him of—

- (a) a minute abandoning an appeal by stated case under section 449;
- (b) a minute abandoning a note of appeal against sentence under section 453B(7),

shall notify immediately the Crown Agent or the prosecutor, as the case may be, of the lodging of the minute.

Suspension of disqualification from driving pending application to sentencing court

132.—(1) Where a person who has been disqualified from holding or obtaining a driving licence appeals against that disqualification by stated case under section 442(10), any application to suspend the disqualification shall be made together with the application to the court to state a case for the opinion of the High Court.

(9) Sections 453A to 453E were inserted by the 1980 Act, Schedule 3, paragraph 13.

(10) Section 442 was substituted by the 1980 Act, Schedule 3, paragraph 1.

(2) On an application being made under paragraph (1) to suspend a disqualification, the court shall grant or refuse to grant the application within 7 days of it being made.

(3) If the court refuses to grant the application and the appellant applies to the High Court to suspend the disqualification, any such application shall be made by Note in the form set out in Form 80 of Schedule 1.

(4) The Note shall be lodged by the appellant or his solicitor with the Clerk of Justiciary.

(5) The appellant or his solicitor shall intimate the lodging of the Note to the respondent and the clerk of the court which imposed the sentence of disqualification.

(6) The clerk shall on receiving such intimation forthwith send to the Clerk of Justiciary—

- (a) a certified copy of the complaint;
- (b) a certified copy of the minute of proceedings.

(7) The Court may order such further intimation (including intimation to the Lord Advocate) as it thinks fit, and may dispose of the application in open court or in chambers after such hearing as it thinks fit.

(8) On the High Court making an order on the Note, the Clerk of Justiciary shall send a certified copy of the order to the clerk.

(9) If the order suspends the disqualification, the Clerk of Justiciary shall also send a certified copy of the order to the Secretary of State with such further information as the Secretary of State may require.

(10) An order made by a single judge of the High Court under this rule shall not be subject to review.

Bill of Suspension

133.—(1) Where a person who has been disqualified from holding or obtaining a driving licence appeals against that disqualification by Bill of Suspension, an application to suspend the disqualification shall be made by requesting *interim* suspension of the disqualification in the prayer of the Bill.

(2) If the Court orders *interim* suspension that order shall not have effect until—

- (a) the Bill has been served on the respondent; and
- (b) the principal Bill and first deliverance together with an execution or acceptance of service have been exhibited to the clerk of the sentencing court and he has endorsed a certificate of exhibition, and they have been returned to the Clerk of Justiciary by the complainer or his solicitor.

(3) On certifying the Bill under paragraph (2), the clerk of the sentencing court shall send a certified copy of the complaint and the relative minute of proceedings to the Clerk of Justiciary.

(4) Paragraphs (2), (8), (9) and (10) of rule 132 apply to this rule as they apply to that rule.

Intimation of determination of appeal

134.—(1) The Clerk of Justiciary shall send to the clerk of the sentencing court a certified copy of the order made on determination of the appeal or complaint.

(2) If the appeal or complaint against the disqualification is refused, the clerk shall make the appropriate endorsement on the appellant's or complainer's driving licence, and intimate the disqualification.

Duties of Solicitors

Edinburgh solicitor

135.—(1) Where an appellant in any appeal is represented by a solicitor who does not practise in Edinburgh, that solicitor shall appoint a solicitor who practises in Edinburgh (“Edinburgh solicitor”, to carry out the duties of solicitor to the appellant in relation to that appeal.

(2) In paragraph (1), “appeal” includes any appeal whether by way of stated case, note of appeal, or Bill of Suspension or Advocation.

(3) The Edinburgh solicitor so appointed or if unrepresented, the appellant or complainer, shall enter appearance and comply with the provisions of section 448(4)(**11**) (intimation of stated case to respondent and lodging with Clerk of Justiciary together with certificate of intimation).

Duty to print stated case, etc.

136.—(1) The Edinburgh solicitor (or, if unrepresented, the appellant or complainer) shall—

- (a) have printed the complaint, minutes of proceedings, and stated case or Bill;
- (b) not later than 7 days before the hearing, return the process to the Clerk of Justiciary;
- (c) provide copies of the print to—
 - (i) the Clerk of Justiciary, and
 - (ii) the Edinburgh solicitor for the respondent.

(2) If the Edinburgh solicitor or the appellant or complainer, as the case may be, cannot comply with any of the requirements of paragraph (1), he shall, not later than 7 days before the hearing, so inform the Clerk of Justiciary with reasons.

(3) On being so informed the Clerk of Justiciary may in his discretion postpone the hearing by dropping the appeal from the Justiciary Roll.

(4) If he does not do so, the Court may at the hearing allow the appeal to be dropped from the Roll, or may dismiss the appeal.

List of appeals

137.—(1) The Clerk of Justiciary shall, after consultation with the Lord Justice General or Lord Justice Clerk, issue a list of appeals with the respective dates of hearing on the Justiciary Roll.

(2) He shall give the respective Edinburgh solicitors representing appellants whose appeal is so listed at least 14 days notice of the date fixed for the hearing of the appeal.

Duty of Edinburgh solicitor in Bills of Suspension

138.—(1) This rule and rules 134 to 136 apply to Bills of Suspension and of Suspension and Liberation.

(2) An Edinburgh solicitor who requests a first deliverance shall comply with the requirements of rule 136(1) and (2) whether or not he is so nominated for the purposes of legal aid.

(3) The Clerk of Justiciary shall in appropriate cases inform such a solicitor who has not been so nominated of the requirements of the rules where appropriate.

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Diet for interim suspension

139. Where a Bill contains a prayer for *interim* suspension of any order or for *interim* liberation, the judge before whom the Bill is laid for a first deliverance shall assign a diet at which counsel for the parties may be heard on the *interim* prayer; and the Clerk of Justiciary shall forthwith give notice of that diet to the parties.