

# COURTS REFORM (SCOTLAND) ACT 2014

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## EXPLANATORY NOTES

### THE ACT

#### Part 6 – Criminal Appeals

229. The Scottish Civil Courts Review recommended that the Sheriff Appeal Court should have jurisdiction to deal with all summary criminal appeals by an accused on conviction or sentence, appeals by the Crown on acquittal or sentence and bail appeals (whether in summary or solemn criminal proceedings). Part 6 gives effect to these recommendations.

#### Appeals from summary criminal proceedings

##### *Section 118 - Appeals to the Sheriff Appeal Court from summary criminal proceedings*

230. **Section 118(1)** transfers the existing powers and jurisdiction of the High Court of Justiciary relating to appeals from courts of summary criminal jurisdiction to the Sheriff Appeal Court. “Courts of summary criminal jurisdiction” are the justice of the peace court (as established by section 59 of the Criminal Proceedings etc (Reform) (Scotland) Act 2007) and the sheriff sitting (without jury) as a summary criminal court. The powers and jurisdiction transferred include those in relation to the hearing and disposal of appeals against conviction and sentence under section 175 of the Criminal Procedure (Scotland) Act 1995 and in relation to bills of suspension and bills of advocacy (for which provision is made in section 191 of that Act). Subsection (2) provides that subsection (1) does not apply to the *nobile officium* of the High Court: that is, to its inherent jurisdiction to grant, in extraordinary or unforeseen circumstances in which no other remedy is provided for by law, such orders as may be necessary for the purposes of preventing injustice or oppression. Subsection (3) gives effect to schedule 3, which modifies Part X (appeals from summary proceedings) of the 1995 Act in consequence of the transfer of jurisdiction effected by subsection (1).

##### *Section 119 - Appeals from the Sheriff Appeal Court to the High Court*

231. **Section 119** makes provision for appeals from the Sheriff Appeal Court to the High Court of Justiciary, by inserting a new Part 10ZA (consisting of sections 194ZB to 194ZL) after Part X (appeals from summary proceedings) of the 1995 Act.
232. Inserted section 194ZB(1) provides for an appeal from the Sheriff Appeal Court to the High Court against a decision of the Sheriff Appeal Court in criminal proceedings. Such an appeal may only be made on a point of law and with the permission of the High Court. Appeals in summary proceedings may be taken either by the defence or by the prosecutor; subsection (2) similarly permits an appeal under subsection (1) to be taken by any party to the appeal in the Sheriff Appeal Court. Subsection (3) limits the grounds upon which the High Court may grant permission by providing that permission may only be granted if the Court considers that the appeal raises an important point of principle or practice or that there is some other compelling reason for the Court to hear

the appeal (in other words, the “second appeals test” discussed in the context of sections 89 and 113). Such an application for permission to appeal must be made within 14 days after the decision of the Sheriff Appeal Court appealed against (subsection (5)). The High Court may extend this period if satisfied that doing so is justified by “exceptional circumstances”.

233. Inserted section 194ZC provides that an appeal under section 194ZB(1) is to be made by note of appeal (subsection (1)), which must specify the point of law on which the appeal is being made (subsection (2)). (The note of appeal will be the principal document upon which the decision to grant or refuse permission to appeal will be based: see inserted section 194ZF(1)(c)(i)). Subsection (3) makes provision in relation to the quorum of the High Court in considering and deciding an appeal under section 194ZB(1). That quorum is three judges of the High Court. Decisions are to be taken by a majority and each judge is entitled to pronounce a separate opinion.
234. Inserted section 194ZD is based on section 180(1) and (3) of the 1995 Act. As under that section, the decision whether to grant permission to appeal is to be taken by a single judge (subsection (1)), who may, in granting permission, make comments in writing in relation to the appeal (subsection (2)). (As to the effects of these comments, see inserted section 195ZG.) Where the single judge refuses permission, that judge must give reasons in writing for the refusal and, where the appellant has been sentenced to imprisonment and is on bail, must grant a warrant for the appellant’s apprehension and imprisonment (subsection (3)). In terms of subsection (4), such a warrant will not have effect until the expiry of the time limit for lodging a further application for permission to appeal in terms of section 194ZE.
235. Section 194ZE, which is based on section 180(4) to (5) of the 1995 Act, makes provision for a further application to the High Court where the single judge of the High Court has refused permission under 194ZD. The application must be made within 14 days of intimation of the single judge’s refusal (subsection (1)), although the High Court may extend this time limit if satisfied that doing so is justified by exceptional circumstances (subsections (2) and (3)). The application will be considered by a quorum of three judges (subsection (4)). Where the High Court gives permission, subsection (5) provides that it may make written comments in relation to the appeal (for the significance of which, see inserted section 194ZG). In the event of refusal, the High Court must give written reasons and, if the appellant has been sentenced to imprisonment and is on bail, grant warrant for the appellant’s apprehension and imprisonment (subsection (6)).
236. Section 194ZF makes further provision about the procedure for determining applications for leave to appeal. Subsection (1)(a), which is based upon section 180(6) of the 1995 Act provides for applications to be determined in chambers without the parties being present. Subsection (1)(b) requires the application to be determined by reference to section 194ZB(3), that is, the requirement that the High Court must consider that the appeal would raise an important point of principal or practice, or that there be some other compelling reason for the High Court to hear the appeal (again, the “second appeals test” discussed in the context of sections 89 and 113). Subsection (1) (c) specifies the documents which must be considered in determining the application. These are the note of appeal and such other document or information (if any) as may be specified by act of adjournal.
237. Inserted section 194ZG provides for the restriction of grounds of appeal to those specified in the note of appeal or as arguable in the written comments of the single judge in terms of section 194ZD(2) or, as the case may be, of the High Court in terms of section 194ZE(5). It is based, with appropriate modifications, on section 180(7) to (9) of the 1995 Act. Where written comments are made, they may specify the arguable grounds of appeal (whether or not they were stated in the note of appeal) (subsection (1)) and, where they do so, the appellant may not found upon any ground which has not been so specified without the permission of the High Court (subsection (2)). An application for such permission must be made and intimated to the Crown Agent, within 14 days of

intimation of the written comments (subsection (3)), which period may be extended by the High Court in exceptional circumstances (subsection (4)). The appellant may not found on any matter not stated in the note of appeal, except with the permission of the High Court on cause shown (subsection (5)), or unless that matter, not specified in the note, has been specified as an arguable ground of appeal in written comments made in terms of section 194ZD(2) or 194ZE(5) (subsection (6)).

238. Inserted section 194ZH provides for the powers of the High Court in disposing of an appeal. In terms of subsection (1), the High Court is empowered either (a) to remit the case back to the Sheriff Appeal Court with its opinion as to direction as to further procedure in, or disposal of, the case, or (b) exercise any power that the Sheriff Appeal Court could have exercised in relation to disposal of the appeal proceedings before that Court. Subsection (3) provides that the statutory powers given to the High Court by section 194ZH do not affect any power in relation to the consideration or disposal of appeals that the High Court otherwise has.
239. Inserted section 194ZI(1) applies section 177 (procedure where appellant in custody) of the 1995 Act to appeals from the Sheriff Appeal Court to the High Court, with the exception of the “excepted appeals” set out in subsection (2). Section 177 provides for the court of first instance to be able to grant bail, grant a sist of execution, or make any other interim order pending the determination of an appeal. The “excepted appeals” set out in subsection (2) are bail appeals under section 32 and appeals under section 177(3). In each of these cases, the subject of the appeal is a decision not to grant bail, and it would not make sense to provide for a further application for bail pending the outcome of an appeal against that refusal.
240. Inserted section 194ZJ, which provides for abandonment of an appeal, is based on section 116(1) of the 1995 Act.
241. Inserted section 194ZK provides that the judgments of the High Court in an appeal in summary proceedings are final and not subject to review by any court (subsection (1)). The only exceptions to this absolute finality are consideration by the High Court on a reference from the Scottish Criminal Cases Review Commission in terms of Part XA of the 1995 Act and consideration by the UK Supreme Court on an appeal under section 288AA of that Act (compatibility issues) or in terms of paragraph 13(a) of Schedule 6 to the Scotland Act 1998 (devolution issues).
242. Inserted section 194ZL makes equivalent provision for computation of time periods to that found in section 194(1) of the 1995 Act.

### ***Section 120 - Power to refer points of law for the opinion of the High Court***

243. **Section 120** amends the 1995 Act to insert a new section 175A after section 175 establishing the basis upon which the Sheriff Appeal Court may refer a point of law in an appeal case to the High Court for its opinion if the Sheriff Appeal Court thinks that the point is a complex or novel one. The Sheriff Appeal Court may do this on its own initiative or on the application of a party in the appeal proceedings.

### ***Section 121 - References by the Scottish Criminal Cases Review Commission***

244. **Section 121** amends section 194B (references by the Commission) of the 1995 Act to provide for the Scottish Criminal Cases Review Commission to be able to refer to the High Court cases in which the an appeal was originally heard in the Sheriff Appeal Court.

*These notes relate to the Courts Reform (Scotland) Act 2014  
(asp 18) which received Royal Assent on 10 November 2014*

## **Bail appeals**

### ***Section 122 - Bail appeals***

245. **Section 122** amends section 32 of the 1995 Act (bail appeals) to provide for appeals against bail decisions taken in the sheriff court (whether in summary or solemn criminal proceedings) to go to the Sheriff Appeal Court rather than the High Court.