

Courts Reform (Scotland) Act 2014

2014 asp 18

PART 6

CRIMINAL APPEALS

Appeals from summary criminal proceedings

118 Appeals to the Sheriff Appeal Court from summary criminal proceedings

- (1) There are transferred to and vested in the Sheriff Appeal Court all the powers and jurisdiction of the High Court of Justiciary (whether under an enactment or otherwise) so far as relating to appeals from courts of summary criminal jurisdiction.
- (2) Subsection (1) does not apply to the nobile officium of the High Court.
- (3) Schedule 3 (which modifies the Criminal Procedure (Scotland) Act 1995 in consequence of subsection (1)) has effect.

119 Appeals from the Sheriff Appeal Court to the High Court

In the Criminal Procedure (Scotland) Act 1995, after Part X (appeals from summary proceedings), insert—

“PART 10ZA

APPEALS FROM SHERIFF APPEAL COURT

194ZB Appeal from the Sheriff Appeal Court

- (1) An appeal on a point of law may be taken to the High Court against any decision of the Sheriff Appeal Court in criminal proceedings, but only with the permission of the High Court.
- (2) An appeal under subsection (1) may be taken by any party to the appeal in the Sheriff Appeal Court.

Status: This is the original version (as it was originally enacted).

- (3) The High Court may give permission for an appeal under subsection (1) only if the Court considers that—
 - (a) the appeal would raise an important point of principle or practice, or
 - (b) there is some other compelling reason for the Court to hear the appeal.
- (4) An application for permission for an appeal under subsection (1) must be made before the end of the period of 14 days beginning with the day on which the decision of the Sheriff Appeal Court that would be the subject of the appeal was made.
- (5) The High Court may extend the period of 14 days mentioned in subsection (4) if satisfied that doing so is justified by exceptional circumstances.

194ZC Appeals: applications and procedure

- (1) An appeal under section 194ZB(1) is to be made by way of note of appeal.
- (2) A note of appeal must specify the point of law on which the appeal is being made.
- (3) For the purposes of considering and deciding an appeal under section 194ZB(1)
 - (a) three of the judges of the High Court are to constitute a quorum of the Court,
 - (b) decisions are to be taken by a majority vote of the members of the Court sitting (including the presiding judge),
 - (c) each judge sitting may pronounce a separate opinion.

194ZD Application for permission for appeal: determination by single judge

- (1) An application to the High Court for permission for an appeal under section 194ZB(1) is to be determined by a single judge of the High Court.
- (2) If the judge gives permission for the appeal, the judge may make comments in writing in relation to the appeal.
- (3) If the judge refuses permission for the appeal—
 - (a) the judge must give reasons in writing for the refusal, and
 - (b) where the appellant is on bail and the sentence imposed on the appellant on conviction is one of imprisonment, the judge must grant a warrant to apprehend and imprison the appellant.
- (4) A warrant under subsection (3)(b) does not take effect until the expiry of the period of 14 days mentioned in section 194ZE(1) (or, where that period is extended under section 194ZE(2) before the period being extended expires, until the expiry of the period as so extended) without an application for permission having been lodged by the appellant under section 194ZE(1).

194ZE Further application for permission where single judge refuses permission

- (1) Where the judge refuses permission for the appeal under section 194ZD, the appellant may, within the period of 14 days beginning with the day on which intimation of the decision is given under section 194ZF(2), apply again to the High Court for permission for the appeal.
- (2) The High Court may extend the period of 14 days mentioned in subsection (1), or that period as extended under this subsection, whether or not the period to be extended has expired.
- (3) The High Court may extend a period under subsection (2) only if satisfied that doing so is justified by exceptional circumstances.
- (4) Three of the judges of the High Court are to constitute a quorum for the purposes of considering an application under subsection (1).
- (5) If the High Court gives permission for the appeal, the Court may make comments in writing in relation to the appeal.
- (6) If the High Court refuses permission for the appeal—
 - (a) the Court must give reasons in writing for the refusal, and
 - (b) where the appellant is on bail and the sentence imposed on the appellant on conviction is one of imprisonment, the Court must grant a warrant to apprehend and imprison the appellant.

194ZF Applications for permission: further provision

- (1) An application for permission for an appeal under section 194ZB(1) is to be considered and determined (whether under section 194ZD or 194ZE)—
 - (a) in chambers without the parties being present,
 - (b) by reference to section 194ZB(3), and
 - (c) on the basis of consideration of—
 - (i) the note of appeal under section 194ZC(1), and
 - (ii) such other document or information (if any) as may be specified by act of adjournal.
- (2) The Clerk of Justiciary must, as soon as possible, intimate to the appellant or the appellant's solicitor and to the Crown Agent—
 - (a) a decision under section 194ZD or 194ZE determining the application for permission for an appeal, and
 - (b) in the case of a refusal of permission for the appeal, the reasons for the decision.

194ZG Restriction of grounds of appeal

- (1) Comments in writing made under section 194ZD(2) or 194ZE(5) may specify the arguable grounds of appeal (whether or not they were stated in the note of appeal) on the basis of which permission for the appeal was given.

Status: This is the original version (as it was originally enacted).

- (2) Where the arguable grounds of appeal are specified under subsection (1), the appellant may not, except with the permission of the High Court on cause shown, found any aspect of the appeal on a ground of appeal stated in the application for permission but not specified under subsection (1).
- (3) An application by the appellant for permission under subsection (2) must—
 - (a) be made before the end of the period of 14 days beginning with the date of intimation under section 194ZF(2), and
 - (b) be intimated by the appellant to the Crown Agent before the end of that period.
- (4) The High Court may extend the period of 14 days mentioned in subsection (3) if satisfied that doing so is justified by exceptional circumstances.
- (5) The appellant may not, except with the permission of the High Court on cause shown, found any aspect of the appeal on a matter not stated in the note of appeal (or in a duly made amendment or addition to the note of appeal).
- (6) Subsection (5) does not apply in relation to a matter specified as an arguable ground of appeal under subsection (1).

194ZH Disposal of appeals

- (1) In disposing of an appeal under section 194ZB(1), the High Court may—
 - (a) remit the case back to the Sheriff Appeal Court with its opinion and any 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.
- (2) So far as necessary for the purposes or in consequence of the exercise of a power by the High Court by virtue of subsection (1)(b)—
 - (a) references in Part X to the Sheriff Appeal Court are to be read as including references to the High Court, and
 - (b) references in Part X to a verdict of or sentence passed by the inferior court are to be read as including references to a verdict of or sentence passed by the Sheriff Appeal Court in disposing of the appeal before it.
- (3) Subsections (1)(b) and (2) do not affect any power in relation to the consideration or disposal of appeals that the High Court has apart from those subsections.

194ZI Procedure where appellant in custody

- (1) Section 177 (procedure where appellant in custody) applies in the case where a party making an appeal (other than an excepted appeal) under section 194ZB(1) is in custody as it applies in the case where an appellant making an application under section 176 is in custody.
- (2) In subsection (1), “excepted appeal” means an appeal against a decision of the Sheriff Appeal Court in—
 - (a) an appeal under section 32, or
 - (b) an appeal under section 177(3).

194ZJ Abandonment of appeal

An appellant in an appeal under section 194ZB(1) may at any time abandon the appeal by minute to that effect—

- (a) signed by the appellant or the appellant’s solicitor,
- (b) lodged with the Clerk of Justiciary, and
- (c) intimated to the respondent or the respondent’s solicitor.

194ZK Finality of proceedings

- (1) Every interlocutor and sentence (including disposal or order) pronounced by the High Court in disposing of an appeal relating to summary proceedings is final and conclusive and not subject to review by any court whatsoever.
- (2) Subsection (1) is subject to—
 - (a) Part XA and section 288AA, and
 - (b) paragraph 13(a) of Schedule 6 to the Scotland Act 1998.
- (3) It is incompetent to stay or suspend any execution or diligence issuing from the High Court under this Part, except for the purposes of an appeal under—
 - (a) section 288AA, or
 - (b) paragraph 13(a) of Schedule 6 to the Scotland Act 1998.

194ZL Computation of time

If any period of time specified in this Part expires on a Saturday, Sunday or court holiday prescribed for the relevant court, the period is extended to expire on the next day which is not a Saturday, Sunday or such a court holiday.”.

120 Power to refer points of law for the opinion of the High Court

In the Criminal Procedure (Scotland) Act 1995, after section 175, insert—

“175A Power to refer points of law for the opinion of the High Court

- (1) In an appeal under this Part, the Sheriff Appeal Court may refer a point of law to the High Court for its opinion if it considers that the point is a complex or novel one.
- (2) The Sheriff Appeal Court may make a reference under subsection (1)—
 - (a) on the application of a party to the appeal proceedings, or
 - (b) on its own initiative.
- (3) On giving its opinion on a reference under subsection (1), the High Court may also give a direction as to further procedure in, or disposal of, the appeal.”.

121 References by the Scottish Criminal Cases Review Commission

- (1) In the Criminal Procedure (Scotland) Act 1995, section 194B (references by the Commission) is amended in accordance with this section.

Status: This is the original version (as it was originally enacted).

- (2) In subsection (1), after “High Court”, in the first place where those words appear, insert “or the Sheriff Appeal Court”.
- (3) After subsection (3), insert—
- “(3A) For the purposes of an appeal under Part X of this Act in a case referred to the High Court under subsection (1)—
- (a) the High Court may exercise in the case all the powers and jurisdiction that the Sheriff Appeal Court would, had the case been an appeal to that Court, have had in relation to the case by virtue of section 118 of the Courts Reform (Scotland) Act 2014, and
- (b) accordingly, Part X of this Act has effect in relation to the case subject to the following modifications—
- (i) references to the Sheriff Appeal Court are to be read as references to the High Court,
- (ii) references to an Appeal Sheriff are to be read as references to a judge of the High Court,
- (iii) references to the Clerk of the Sheriff Appeal Court are to be read as reference to the Clerk of Justiciary.”.

Bail appeals

122 Bail appeals

- (1) Section 32 of the Criminal Procedure (Scotland) Act 1995 (bail appeals) is amended in accordance with this section.
- (2) In each of subsections (1), (2), (3H)(a), (3I), (4), (5) and (7) for “High Court” substitute “appropriate Appeal Court”.
- (3) For subsections (3D) and (3E) substitute—
- “(3CA) The clerk of the court from which the appeal is to be taken (unless that clerk is the Clerk of Justiciary) must—
- (a) send the notice of appeal without delay to the clerk of the appropriate Appeal Court, and
- (b) before the end of the day after the day of receipt of the notice of appeal, send the judge’s report (if provided by then) to the clerk of the appropriate Appeal Court.”.
- (4) In each of subsections (3F), (3G) and (10), for “Clerk of Justiciary” in each place it occurs substitute “clerk of the appropriate Appeal Court”.
- (5) In subsection (3H)—
- (a) for “Where” substitute “In a case where the Sheriff Appeal Court is the appropriate Appeal Court, if”, and
- (b) for “(3E)” substitute “(3CA)”.
- (6) In each of subsections (4) and (5), for “Lord Commissioner of Justiciary” substitute “judge of the appropriate Appeal Court”.
- (7) In subsection (7B)(a), for “High Court” substitute “the appropriate Appeal Court”.

(8) After subsection (10), insert—

“(11) In this section—

“appropriate Appeal Court” means—

- (a) in the case of an appeal under this section against a bail decision of the High Court or a judge of the High Court, that Court,
- (b) in the case of an appeal under this section against a bail decision of the Sheriff Appeal Court, the High Court,
- (c) in the case of an appeal under this section against a bail decision of a sheriff (whether in solemn or summary proceedings) or a JP court, the Sheriff Appeal Court,

“judge of the appropriate Appeal Court” means—

- (a) in a case where the High Court is the appropriate Appeal Court, judge of that Court,
- (b) in a case where the Sheriff Appeal Court is the appropriate Appeal Court, Appeal Sheriff,

“the clerk of the appropriate Appeal Court” means—

- (a) in a case where the High Court is the appropriate Appeal Court, the Clerk of Justiciary,
- (b) in a case where the Sheriff Appeal Court is the appropriate Appeal Court, the Clerk of that Court.

(12) In a case where the Sheriff Appeal Court is the appropriate Appeal Court, the references in subsections (3G)(b) and (10) to the Crown Agent are to be read as references to the prosecutor.”.