



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PROCEDURE PRIOR TO TRIAL

APPEAL

Procedure prior to hearing

[^{F1}228 Right of appeal.

- (1) Any person convicted on indictment may appeal in accordance with the provisions of this Part of this Act, to the High Court—
- (a) against such conviction;
 - (b) against the sentence passed on such conviction
 - [against his absolute discharge or admonition;
 - ^{F2}(bb) against any probation order or any community service order under the ^{M1}Community Service by Offenders (Scotland) Act 1978;
 - (bd) against any order deferring sentence;]
- ;or
- (c) against both such conviction and such sentence [^{F3}or disposal or order]:

Provided that there shall be no appeal against any sentence fixed by law.

- (2) By an appeal under subsection (1) of this section, a person may bring under review of the High Court any alleged miscarriage of justice in the proceedings in which he was convicted, including any alleged miscarriage of justice on the basis of the existence and significance of additional evidence which was not heard at the trial and which was not available and could not reasonably have been made available at the trial.]

Status: Point in time view as at 27/07/1993.

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Textual Amendments

- F1 S. 228 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 1, Sch. 6 para. 6
- F2 S. 228(1)(bb)-(bd) inserted (27.7.1993) by 1993 c. 36, s. 68(1)(a)
- F3 Words in s. 228(1)(c) added (27.7.1993) by 1993 c. 36, s. 68(1)(b)

Modifications etc. (not altering text)

- C1 S. 228 modified by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 2(2), 47(4)(a)

Marginal Citations

- M1 1978 c. 49.

[^{F4}228A Appeal by Lord Advocate against sentence in solemn proceedings.

Where a person has been convicted on indictment, the Lord Advocate may appeal against the sentence passed on conviction [^{F5}or against any probation order or any community service order under the Community Service by Offenders (Scotland) Act 1978 or against the person’s absolute discharge or admonition or against any order deferring sentence]—

- [if it appears to the Lord Advocate that, as the case may be—
 - ^{F6}(a) (i) the sentence is unduly lenient;
 - (ii) the making of the probation order or community service order is unduly lenient or its terms are unduly lenient;
 - (iii) to dismiss with an admonition or to discharge absolutely is unduly lenient; or
 - (iv) the deferment of sentence is inappropriate or on unduly lenient conditions;]
 - (b) on a point of law.]

Textual Amendments

- F4 S. 228A inserted (*prosp.*) by 1993 c. 9, ss. 42(1), 48(2) (with s. 47(2), Sch. 6 paras. 1, 2).
- F5 Words in s. 228A inserted (27.7.1993) by 1993 c. 36, s. 68(2)(a)
- F6 S. 228A(a) substituted (27.7.1993) by 1993 c. 36, s. 68(2)(b)

229 ^{F7}

Textual Amendments

- F7 Ss. 229, 232, 253(2) repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 6, Sch. 8

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230 Bill of suspension not competent.

It shall not be competent to appeal to the High Court by bill of suspension against any conviction, sentence, judgment or order pronounced in any proceedings on indictment in the sheriff court.

230A Leave to appeal.

- (1) The decision whether to grant leave to appeal for the purposes of section 228(1) of this Act shall be made by a judge of the High Court who shall—
 - (a) if he considers that the documents mentioned in subsection (2) below disclose arguable grounds of appeal, grant leave to appeal and make such comments in writing as he considers appropriate; and
 - (b) in any other case—
 - (i) refuse leave to appeal and give reasons in writing for the refusal; and
 - (ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.
- (2) The documents referred to in subsection (1) above are—
 - (a) the note of appeal lodged under section 233(1)(a) of this Act;
 - (b) in a case to which section 236 of this Act applies, the certified copy or, as the case may be, the record of the proceedings at the trial;
 - (c) where the judge who presided at the trial furnishes a report under section 236A of this Act, that report; and
 - (d) where, by virtue of section 275(1) of this Act, a transcript of the charge to the jury of the judge who presided at the trial is delivered to the Clerk of Justiciary, that transcript.
- (3) A warrant granted under subsection (1)(b)(ii) above shall not take effect until the expiry of the period of 14 days mentioned in subsection (4) below without an application to the High Court for leave to appeal having been lodged by the appellant under that subsection.
- (4) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under subsection (10) below, apply to the High Court for leave to appeal.
- (5) In deciding an application under subsection (4) above the High Court shall—
 - (a) if, after considering the documents mentioned in subsection (2) above and the reasons for the refusal, the court is of the opinion that there are arguable grounds of appeal, grant leave to appeal and make such comments in writing as the court considers appropriate; and
 - (b) in any other case—
 - (i) refuse leave to appeal and give reasons in writing for the refusal; and
 - (ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.
- (6) Consideration whether to grant leave to appeal under subsection (1) or (5) above shall take place in chambers without the parties being present.

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- (7) Comments in writing made under subsection (1)(a) or (5)(a) above may, without prejudice to the generality of that provision, specify the arguable grounds of appeal (whether or not they are contained in the note of appeal) on the basis of which leave to appeal is granted.
- (8) Where the arguable grounds of appeal are specified by virtue of subsection (7) above it shall not, except by leave of the High Court on cause shown, be competent for the appellant to found any aspect of his appeal on any ground of appeal contained in the note of appeal but not so specified.
- (9) Any application by the appellant for the leave of the High Court under subsection (8) above—
 - (a) shall be made not less than seven days before the date fixed for the hearing of the appeal; and
 - (b) shall, not less than seven days before that date, be intimated by the appellant to the Crown Agent.
- (10) The Clerk of Justiciary shall forthwith intimate—
 - (a) a decision under subsection (1) or (5) above; and
 - (b) in the case of a refusal of leave to appeal, the reasons for the decision, to the appellant or his solicitor and to the Crown Agent.

[^{F9}231 Intimation of intention to appeal.

- (1) Subject to section 236B(2) of this Act [^{F10}and to section 2(2) of the Criminal Justice (Scotland) Act 1987 (postponed confiscation orders)], where a person desires to appeal under section 228(1)(a) or (c) of this Act, he shall, within two weeks of the final determination of the proceedings, lodge with the Clerk of Justiciary written intimation of intention to appeal and send a copy to the Crown Agent.
- (2) Such intimation shall identify the proceedings and be in as nearly as may be the form prescribed by Act of Adjournal under this Act.
- (3) On such intimation being lodged by a person in custody, the Clerk of Justiciary shall give notice thereof to the Secretary of State.
- (4) [^{F11}Subject to subsection (5) below,] for the purposes of subsection (1) above and section 270(2) of this Act, proceedings shall be deemed finally determined on the day on which sentence is passed in open court; except that, where in relation to an appeal under section 228(1)(a) of this Act sentence is deferred under section 219 of this Act, they shall be deemed finally determined on the day on which sentence is first so deferred in open court.]
- [^{F12}(5) Without prejudice to subsection (2) of section 2 of the said Act of 1987, the reference in subsection (4) above to “the day on which sentence is passed in open court” shall, in relation to any case in which, under subsection (1) of that section, a decision has been postponed for a period, be construed as a reference to the day on which that decision is made (whether or not a confiscation order is then made or any other sentence is then passed).]

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Textual Amendments

- F9** S. 231 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 3, **Sch. 6 para. 6**
- F10** Words inserted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 45(6)(a)**, 47(4)(a)
- F11** Words inserted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 45(6)(b)**, 47(4)(a)
- F12** S. 231(5) added by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 45(6)(c)**, 47(4)(a)

Modifications etc. (not altering text)

- C2** S. 231(1) modified by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 2(2)**, 47(4)(a)

232 ^{F13}

Textual Amendments

- F13** Ss. 229, 232, 253(2) repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 6, **Sch. 8**

[^{F14}233 Note of appeal.

- (1) Subject to section 236B(2) of this Act, within six weeks of lodging intimation of intention to appeal or, in the case of an appeal against sentence alone, within two weeks of the passing of the sentence in open court, the convicted person may lodge a written note of appeal with the Clerk of Justiciary who shall send a copy to the judge who presided at the trial and to the Crown Agent: Provided that the first mentioned period may be extended, before expiry thereof, by the Clerk of Justiciary.
- (2) Such a note shall identify the proceedings, contain a full statement of all the grounds of appeal and be in as nearly as may be the form prescribed by Act of Adjournal under this Act.
- (3) Except by leave of the High Court on cause shown it shall not be competent for an appellant to found any aspect of his appeal on a ground not contained in the note of appeal.
- (4) On a note of appeal against sentence alone being lodged by an appellant in custody the Clerk of Justiciary shall give notice thereof to the Secretary of State.]

Textual Amendments

- F14** S. 233 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 5, **Sch. 6 para. 6**

234 Presentation of appeal in writing.

- (1) If an appellant . . . ^{F15} desires to present his case and his argument in writing instead of orally he shall intimate this desire to the Clerk of Justiciary at least four days before the diet fixed for the hearing of the appeal . . . ^{F15}, and, at the same time, shall lodge with the Clerk of Justiciary three copies of his case and argument; at the same time, he

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shall also send a copy thereof to the Crown Agent. Any case or argument so presented shall be considered by the High Court.

- (2) Unless the High Court shall otherwise direct, the respondent, in a case to which this section applies, shall not make a written reply to the case and argument in writing, but shall reply orally thereto at the diet fixed for the hearing of the appeal or application for leave to appeal.
- (3) Unless the High Court shall otherwise allow, an appellant . . . ^{F15} who has presented his case and argument in writing shall not be entitled to submit in addition an oral argument to the court in support of the appeal . . . ^{F15}.

Textual Amendments

F15 Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 6 para. 6](#), [Sch. 8](#)

235 Applications may be made orally or in writing.

Except where otherwise provided in this Part of this Act, any application to the High Court may be made by the appellant or respondent as the case may be or by counsel on his behalf, orally or in writing, but in regard to such applications if the appellant is unrepresented and is in custody and is not entitled or has not obtained leave to be present before the court, he shall make any such application by forwarding the same in writing to the Clerk of Justiciary who shall take the proper steps to obtain the decision of the court thereon.

236 Proceedings in sheriff court to be furnished.

In the case of an appeal . . . ^{F16} against a conviction or sentence in a sheriff court, the sheriff clerk shall furnish to the Clerk of Justiciary a certified copy of the proceedings at the trial, or shall forward to him the original record of the proceedings, as may be required by the Clerk of Justiciary.

Textual Amendments

F16 Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 6 para. 6](#), [Sch. 8](#)

[^{F17}236A] Judge's report.

- (1) As soon as is reasonably practicable after his receipt of the copy note of appeal sent to him under section 233(1) of this Act, the judge who presided at the trial shall furnish the Clerk of Justiciary with a report in writing giving the judge's opinion on the case generally and on the grounds contained in the note of appeal; and the Clerk of Justiciary shall send a copy of the report to the convicted person or his solicitor, to the Crown Agent, and, in a case referred under section 263(1) of this Act, to the Secretary of State.
- (2) Where the judge's report is not furnished as mentioned in subsection (1) above, the High Court may call for such report to be furnished within such period as it may specify or, if it thinks fit, hear and determine the appeal without such report.

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- (3) Subject to subsection (1) above, the report of the judge shall be available only to the High Court and the parties.]

Textual Amendments

F17 Ss. 236A–236C inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 8, [Sch. 6 para. 6](#)

236B Computation of periods.

- (1) Where the last day of any period mentioned in sections 231(1) and 233(1) of this Act falls on a day which the office of the Clerk of Justiciary is closed, such period shall extend to and include the next day on which such office is open.
- (2) Any period mentioned in section 231(1) or 233(1) of this Act may be extended at any time by the High Court in respect of any convicted person; and application for such extension may be made under this subsection and shall be in as nearly as may be the form prescribed by Act of Adjournal under this Act.

236C Signing of documents.

Any intimation of intention to appeal, note of appeal or application in terms of section 236B(2) of this Act shall be signed by the convicted person or by his counsel or solicitor.

[^{F18}237 Note of Proceedings.

The High Court where hearing an appeal under this Part of this Act may require the judge who presided at the trial to produce any notes taken by him of the proceedings at the trial.]

Textual Amendments

F18 S. 237 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 9, [Sch. 6 para. 6](#)

238 Admission of appellant to bail.

- (1) The High 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 High 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 [^{F19}without prejudice to section 3 of the ^{M2}Bail etc. (Scotland) Act 1980] make such other order as it thinks fit.
- [^{F20}(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.]

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Textual Amendments

- F19** Words inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 10(a), **Sch. 6 para. 6**
- F20** [S. 238\(3\)](#) inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 10(b), **Sch. 6 para. 6**

Marginal Citations

- M2** [1980 c. 4\(39:1\)](#).

239 Clerk to give notice of date of hearing.

- (1) When the High Court fixes the date for the hearing of an appeal, or of an application [^{F21}under section 236B(2) of this Act], the Clerk of Justiciary shall give notice to the Crown Agent and to the solicitor of the appellant or applicant, or to the appellant or applicant himself if he has no known solicitor, and the latter shall thereupon lodge three copies (typed or printed) of the said appeal or application for the use of the court.
- (2) Where it is proposed that the powers of the court shall be exercised by a single judge under the provisions of section 247 of this Act, one copy only of the application to be disposed of shall be lodged by the solicitor of the applicant for the use of the judge.

Textual Amendments

- F21** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 11, **Sch. 6 para. 6**

240 Appellant may be present at hearing.

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 . . . ^{F22} 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 Adjournal that he shall have the right to be present, or where the High Court gives him leave to be present.

Textual Amendments

- F22** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 6, **Sch. 8**

241 Notice to authorities, etc., of date of hearing.

Where an appellant or applicant is in custody and has obtained leave or is entitled to be present at the hearing of his appeal or application, the Clerk of Justiciary shall notify the appellant or applicant, the Governor of the prison in which the appellant or applicant then is, and the [^{F23}Secretary of State] of the probable day on which the appeal or application will be heard. The [^{F23}Secretary of State] shall take steps to transfer the appellant or applicant to a prison convenient for his appearance before the High Court, at such reasonable time before the hearing as shall enable him to consult his legal adviser, if any.

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Textual Amendments

F23 Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 41](#)

242 Notice to Prison Commissioners of attendance of appellant at hearing.

When an appellant or applicant is entitled, or has been granted leave to be present at any diet—

- (a) before the High Court or any judge thereof, or
- (b) for the taking of additional evidence before a person appointed for the purpose under section 252(b) of this Act, or
- (c) for an examination or investigation by a special commissioner in terms of section 252(d) of this Act,

the Clerk of Justiciary shall give timeous notice to the [^{F24}Secretary of State], in the form set out in an Act of Adjournal under the ^{M3}Criminal Appeal (Scotland) Act 1926 or under this Act or as nearly as may be in such form, which notice shall be sufficient warrant to the [^{F24}Secretary of State] for transmitting the appellant or applicant in custody from prison to the place where said diet or any subsequent diets are to be held and for reconveying him to prison at the conclusion of the said diet and any subsequent diets. The appellant or applicant shall appear at all such diets in ordinary civilian clothes.

Textual Amendments

F24 Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 42](#)

Marginal Citations

M3 [1926 c. 15\(39:1\)](#).

242A ^{F25}Special provision where appellant is Lord Advocate.

Where the Lord Advocate is the appellant, sections 241 and 242 of this Act shall apply in respect of the convicted person, if in custody, as they apply to an appellant or applicant in custody.

243 Warders to attend court.

The [^{F26}Secretary of State] shall, on notice under the last foregoing section from the Clerk of Justiciary, cause from time to time such sufficient number of male and female [^{F26}prison officers] to attend the sittings of the court as, having regard to the list of appeals thereat, they shall consider necessary.

Textual Amendments

F26 Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 43](#)

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[^{F27}244 Abandonment of appeal.

- (1) An appellant may abandon his appeal by lodging with the Clerk of Justiciary a notice of abandonment in as nearly as may be the form prescribed by Act of Adjournal under this Act; and on such notice being lodged the appeal shall be deemed to have been dismissed by the court.
- (2) A person who has appealed against both conviction and sentence [^{F28}(or as the case may be against both conviction and disposal or order)] may abandon the appeal in so far as it is against conviction and may proceed with it against sentence [^{F29}(or disposal or order)] alone.]

Textual Amendments

- F27** S. 244 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 13, **Sch. 6 para. 6**
- F28** Words in s. 244(2) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(6)(a)**
- F29** Words in s. 244(2) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(6)(b)**

Procedure at hearing

245 Quorum and sitting of High Court.

- (1) For the purpose of hearing and determining any appeal [^{F30}under this Part of this Act or any proceeding connected therewith] three of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and the determination of any question under this Part of 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 High Court shall hold both during session and during vacation such sittings for the disposal of appeals and other proceedings under this Part of this Act as may be necessary.
- (3) The provisions of this section shall apply to cases certified to the High Court by a single judge of the said court and to appeals by way of advocacy . . . ^{F31} in like manner as they apply to appeals under this Part of this Act.

Textual Amendments

- F30** Words substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(1), **Sch. 1 para. 13(1)**
- F31** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 6, **Sch. 8**

246 Sittings to be arranged by Lord Justice General.

Sittings of the High Court (including sittings in Court of Session vacation and sittings of a judge of the court under section 247 of this Act) [^{F32}for the purposes of hearing and determining any appeal under this Part of this Act or any proceeding connected therewith] shall be arranged to be held as may from time to time be directed by the Lord Justice General, whom failing by the Lord Justice Clerk.

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Textual Amendments

- F32** Words inserted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(1), **Sch. 1 para. 13(2)**

247 Powers which may be exercised by a single judge.

The powers of the High Court under this Part of this Act . . . ^{F33}, to extend the time within which [^{F34}intimation of intention to appeal and note of appeal] . . . ^{F33} 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 High Court in the same manner as they may be exercised by the High 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 High Court.

Textual Amendments

- F33** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 6, **Sch. 8**
- F34** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 15(b), **Sch. 6 para. 6**

248 Single judge may act wherever convenient.

A judge of the High Court sitting under the provisions of section 247 of this Act may sit and act wherever convenient.

249 Interlocutory proceedings.

Subject to the provisions of section 247 of this Act and without prejudice thereto, preliminary and interlocutory proceedings incidental to any appeal or application may be disposed of by a single judge.

250 Representation before single judge.

In all proceedings before a judge under section 247 of this Act, and in all preliminary and interlocutory proceedings and applications except such as are heard before the full court, the parties thereto may be represented and appear by a solicitor alone.

251 Appeal against refusal of application.

- (1) When an application or applications have been dealt with by a judge of the High Court, under section 247 of this Act, the Clerk of Justiciary shall notify to the applicant the decision in the form set out in an Act of Adjournal under the ^{M4}Criminal Appeal (Scotland) Act 1926 or under this Act or as nearly as may be in such form.
- (2) In the event of such judge refusing all or any of such applications, the Clerk of Justiciary on notifying such refusal to the applicant shall forward to him the prescribed form to fill up and forthwith return if he desires to have his said application or applications determined by the High Court as fully constituted for the hearing of

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appeals under this Part of this Act. If the applicant does not so desire, or does not return within five days to the Clerk the form duly filled up by him, the refusal of his application or applications by such judge shall be final.

- (3) If the applicant desires a determination by the High Court as aforesaid and is not legally represented, he may be present at the hearing and determination by the High Court of his said application:

Provided that an applicant who is legally represented shall not be entitled to be present without leave of the court.

- (4) When an applicant duly fills up and returns to the Clerk of Justiciary within the prescribed time the said form expressing a desire to be present at the hearing and determination by the court of the applications mentioned in this section, the said form shall be deemed to be an application by the applicant for leave to be so present, and the Clerk of Justiciary, on receiving the said form, shall take the necessary steps for placing the said application before the court.
- (5) If the said application to be present is refused by the court, the Clerk of Justiciary shall notify the applicant; and if the said application is granted, he shall notify the applicant and the Governor of the prison wherein the applicant is in custody and the ^{F35}Secretary of State].
- (6) For the purpose of constituting a Court of Appeal, the judge who has refused any such application may sit as a member of such court, and take part in determining such application.

Textual Amendments

F35 Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 44](#)

Marginal Citations

M4 [1926 c. 15\(39:1\)](#).

^{F36}252 Powers of High Court.

Without prejudice to any existing power of the High Court, that court may for the purposes of an appeal under section 228(1) of this Act—

- (a) order the production of any document or other thing connected with the proceedings;
- (b) hear any additional evidence relevant to any alleged miscarriage of justice or order such evidence to be heard by a judge of the High Court or by such other person as it may appoint for that purpose;
- (c) take account of any circumstances relevant to the case which were not before the trial judge;
- (d) remit to any fit person to enquire and report in regard to any matter or circumstance affecting the appeal;
- (e) appoint a person with expert knowledge to act as assessor to the High Court in any case where it appears to the court that such expert knowledge is required for the proper determination of the case.]

Status: Point in time view as at 27/07/1993.

Changes to legislation: Criminal Procedure (Scotland) Act 1975 is up to date with all changes known to be in force on or before 06 June 2024. 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)

Textual Amendments

F36 S. 252 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 16, [Sch. 6 para. 6](#)

253 Evidence in court or on commission.

(1) The evidence of any witnesses ordered to be examined before the High Court or before any judge of the High Court or other person appointed by the High Court shall be taken in accordance with the existing law and practice as to the taking of evidence in criminal trials in Scotland. The appellant or applicant and the respondent or counsel on their behalf shall be entitled to be present at and take part in any examination of any witness to which this section relates.

(2) ^{F37}

Textual Amendments

F37 Ss. 229, 232, 253(2) repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 6, [Sch. 8](#)

^{F38}**254 Disposal of appeals.**

(1) The High Court may, subject to subsection (4) below, dispose of an appeal against conviction by—
(a) affirming the verdict of the trial court;
(b) setting aside the verdict of the trial court and either quashing the conviction or substituting therefor an amended verdict of guilty:

Provided that an amended verdict of guilty must be one which could have been returned on the indictment before the trial court; or

(c) setting aside the verdict of the trial court and granting authority to bring a new prosecution in accordance with section 255 of this Act.

(2) In setting aside, under subsection (1) above, a verdict the High Court may quash any sentence imposed on the appellant [^{F39}(or as the case may be any disposal or order made)]as respects the indictment, and—

(a) in a case where it substitutes an amended verdict of guilty, whether or not the sentence [^{F40}(or disposal or order)]related to the verdict set aside; or

(b) in any other case, where the sentence [^{F40}(or disposal or order)]did not so relate,

may pass another (but not more severe) sentence [^{F41}or make another (but not more severe) disposal or order]in substitution for the sentence [^{F42}, disposal or order]so quashed.

(3) The High Court may, subject to subsection (4) below, dispose of an appeal against sentence by—

(a) affirming such sentence; or

(b) if the Court thinks that, having regard to all the circumstances, including any additional evidence such as is mentioned in section 228(2) of this Act, a

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different sentence should have been passed, quashing the sentence and passing another sentence whether more or less severe in substitution therefor.

- (4) In relation to any appeal under section 228(1) of this Act, the High Court shall, where it appears to it that the appellant [^{F43}(or disposal or order made)]committed the act charged against him but that he was insane when he did so, dispose of the appeal by—
- (a) setting aside the verdict of the trial court and substituting therefor a verdict of acquittal on the ground of insanity; and
 - (b) quashing any sentence imposed on the appellant as respects the indictment and ordering that he be detained in a state hospital or such other hospital as for special reasons the court may specify.

[In subsection (3) above, “appeal against sentence” shall, without prejudice to the ^{F44}(4A) generality of the expression, be construed as including an appeal under section 228(1) (bb), (bc) or (bd), and any appeal under section 228A, of this Act; and other references to sentence in that subsection shall be construed accordingly.]

- (5) The provisions of subsection (4) of section 174 of this Act shall apply to an order under subsection (4)(b) above as they apply to an order under that section.]

Textual Amendments

- F38** S. 254 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 18, **Sch. 6 para. 6**
- F39** Words in s. 254(2) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(7)(a)(i)**
- F40** Words in s. 254(2)(a)(b) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(7)(a)(ii)**
- F41** Words in s. 254(2) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(7)(a)(iii)**
- F42** Words in s. 254(2) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(7)(a)(iv)**
- F43** Words in s. 254(4) inserted (27.7.1993) by 1993 c. 36, s. 79(13), Sch. 5 Pt. I para. 2(7)(b)
- F44** S. 254(4A) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(7)(c)**

Modifications etc. (not altering text)

- C3** S. 254(3) extended (1.10.1993) by 1993 c. 9, **ss. 5, 6, 10, 16(6)** (with **ss. 5(1), 6(1), 10, 27, 47(2)**), Sch. 6 paras. 1, 2, 6, 7); S.I. 1993/2050, **art. 3(4)**

254A Sentencing guidelines.

- (1) In disposing of an appeal under section 228(1)(b), (bb), (bc), (bd) or (c) or 228A of this Act the High Court may, without prejudice to any other power in that regard, pronounce an opinion on the sentence or other disposal or order which is appropriate in any similar case.
- (2) Without prejudice to any rule of law, a court in passing sentence shall have regard to any relevant opinion pronounced under subsection (1) above.

254B Convictions not to be quashed on certain grounds.

No conviction, sentence, judgment, order of court or other proceeding whatsoever in or for the purposes of solemn proceedings under this Act—

- (a) shall be quashed for want of form; or
- (b) where the accused had legal assistance in his defence, shall be suspended or set aside in respect of any objections to—

Status: Point in time view as at 27/07/1993.

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- (i) the relevancy of the indictment, or the want of specification therein; or
 - (ii) the competency or admission or rejection of evidence at the trial in the inferior court,
- unless such objections were timeously stated.

[^{F47}255 Supplementary provisions where High Court authorises new prosecution.

- (1) Where authority is granted under section 254(1)(c) of this Act, a new prosecution may be brought charging the accused with the same or any similar offence arising out of the same facts; and the proceedings out of which the appeal arose shall not be a bar to such new prosecution:

Provided that no sentence may be passed on conviction under the new prosecution which could not have been passed on conviction under the earlier proceedings.

- (2) A new prosecution may be brought under this section, notwithstanding that any time limit (other than the time limit mentioned in subsection (3) below), for the commencement of such proceedings has elapsed.
- (3) Proceedings in a prosecution under this section shall be commenced within two months of the date on which authority to bring the prosecution was granted; and for the purposes of this subsection proceedings shall, in a case where such warrant is executed without unreasonable delay, be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, and shall in any other case be deemed to be commenced on the date on which the warrant is executed.
- (4) Where the two months mentioned in subsection (3) above elapse and no new prosecution has been brought under this section, the order under section 254(1)(c) of this Act setting aside the verdict shall have the effect, for all purposes, of an acquittal.]

Textual Amendments

F47 S. 255 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 19, **Sch. 6 para. 6**

256 Frivolous appeals.

If on any [^{F48}note] of appeal against a conviction purporting to be on a ground of appeal which involves a question of law alone it appears to the High 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.

Textual Amendments

F48 Word substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 20, **Sch. 6 para. 6**

Status: Point in time view as at 27/07/1993.

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257 Failure to appear at hearing.

Where no appearance is made by or on behalf of an appellant . . . ^{F49} at the diet appointed for the hearing of an appeal . . . ^{F49} and where no case or argument in writing has been timeously lodged, the High Court shall dispose of the appeal . . . ^{F49} as if it had been abandoned.

Textual Amendments

F49 Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), Sch. 6 para. 6, Sch. 8](#)

258 Appellant may be sentenced in absence.

The power of the High Court to pass any sentence under this Part of this Act may be exercised notwithstanding that the appellant is for any reason not present.

259 Continuation of hearing.

The High Court or any single judge exercising the powers of the High Court under section 247 of this Act may continue the hearing of any appeal or application to a date, fixed or not fixed, and any judge of the High Court, or other person appointed by the court to take additional evidence, may fix any diet of proof necessary for that purpose.

260 Notice of decision of court on application.

When the High Court has heard and dealt with any application under this Part of this Act, the Clerk of Justiciary shall (unless it appears to him unnecessary so to do) give to the applicant (if he is in custody and has not been present at the hearing of such application) notice of the decision of the court in relation to the said application.

261 Notice of determination of appeal.

On the final determination of any appeal under this Part of this Act or of any matter under section 247 of this Act, the Clerk of Justiciary shall give notice of such determination to the appellant or applicant if he is in custody and has not been present at such final determination, to the clerk of the court in which the conviction took place, and to the [^{F50}Secretary of State].

Textual Amendments

F50 Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), Sch. 7 para. 45](#)

262 Finality of proceedings.

Subject to the provisions of the next following section of this Act, all interlocutors and sentences pronounced by the High Court under this Part of 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 High Court under this Part of this Act.

Status: Point in time view as at 27/07/1993.

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Further provisions as to appeals

263 Prerogative of mercy.

- (1) Nothing in this Part of this Act shall affect the prerogative of mercy, but the Secretary of State on the consideration of any conviction of a person or the sentence (other than sentence of death) passed on a person who has been convicted, may, if he thinks fit, at any time, and whether or not an appeal . . . ^{F51} against such conviction or sentence has previously been heard and determined by the High Court [^{F52}refer the whole case to the High Court and the case shall be heard and determined, subject to any directions the High Court may make, as if it were an appeal under this Part of this Act.]
- (2) The power of the Secretary of State under this section to refer to the High Court the case . . . ^{F53} of a person convicted shall be exercisable whether or not that person has petitioned for the exercise of Her Majesty's mercy.

Textual Amendments

- F51** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 6, **Sch. 8**
- F52** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 22(b), **Sch. 6 para. 6**
- F53** Words repealed by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(2), **Sch. 2**

[^{F54}263A Lord Advocate's reference.

- (1) Where a person tried on indictment is acquitted of a charge, the Lord Advocate may refer a point of law which has arisen in relation to that charge to the High Court for their opinion; and the Clerk of Justiciary shall send to the person and to any solicitor who acted for the person at the trial, a copy of the reference and intimation of the date fixed by the court for a hearing.
- (2) The person may, not later than seven days before the date so fixed, intimate in writing to the Clerk of Justiciary and to the Lord Advocate either—
 - (a) that he elects to appear personally at the hearing; or
 - (b) that he elects to be represented thereat by counsel;
 but, except by leave of the Court on cause shown, (and without prejudice to his right to attend), he shall not appear or be represented at the hearing other than by and in conformity with an election under this subsection.
- (3) Where there is no intimation under subsection (2)(b) above, the High Court shall appoint counsel to act at the hearing *as amicus curiae*.
- (4) The costs of representation elected under subsection (2)(b) above or of an appointment under subsection (3) above shall, after being taxed by the Auditor of the Court of Session, be paid by the Lord Advocate.
- (5) The opinion on the point referred under subsection (1) above shall not affect the acquittal in the trial.]

Textual Amendments

- F54** S. 263A inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 37, **Sch. 6 para. 6**

Status: Point in time view as at 27/07/1993.

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264 Disqualification, forfeiture, etc.

- (1) Where, upon conviction of any person, any disqualification, forfeiture or disability attaches to such person by reason of such conviction, such disqualification, forfeiture or disability shall not attach for the period of [^{F55}two weeks] from the date of the verdict against such person nor, in the event of [^{F55}an intimation of intention to appeal (or in the case of an appeal under section 228(1)(b) of this Act a note of appeal)] being lodged under this Part of this Act, until [^{F55}such appeal, if it is proceeded with, is determined].
- (2) Where, upon a conviction, any property, matters or things which are the subject of the prosecution or connected therewith are to be or may be ordered to be destroyed or forfeited, the destruction or forfeiture or the operation of any order for destruction or forfeiture thereof shall be suspended for the period of [^{F55}two weeks] after the date of the verdict in the trial, and, in the event of [^{F55}an intimation of intention to appeal (or in the case of an appeal under section 228(1)(b) of this Act a note of appeal)] being lodged under this Part of this Act, shall be further suspended until [^{F55}such appeal, if it is proceeded with, is determined].
- [^{F56}(3) Subsections (1) and (2) above do not apply in respect of any disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture under or by virtue of any enactment which contains express provision for the suspension of such disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture pending the determination of any appeal against conviction or sentence.]

Textual Amendments

F55 Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), Sch. 2 para. 23, Sch. 6 para. 6](#)

F56 [S. 264\(3\)](#) inserted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\), ss. 47\(4\)\(a\), 68\(2\)](#)

265 Fines and caution.

- (1) Where a person has on conviction been sentenced to payment of a fine and in default of payment to imprisonment, the person lawfully authorised to receive such fine shall, on receiving the same, retain it until the determination of any appeal in relation thereto.
- (2) If a person sentenced to payment of a fine remains in custody in default of payment of the fine he shall be deemed, for the purposes of this Part of this Act, to be a person sentenced to imprisonment.
- (3) Where a person has on conviction been sentenced to payment of a fine and in default of such payment to imprisonment, and he intimates to the judge who presided at the trial that he is desirous of appealing against his conviction to the High Court, . . . ^{F57}, the judge may, by order entered on the record, appoint such person forthwith to find caution for such sum as the judge may think right, to prosecute his appeal; and, subject thereto, may also so order that payment of the said fine shall be made at the final determination of the appeal, if the same be dismissed, to the clerk of the court in which the conviction took place or otherwise as the High Court may then order.
- (4) An appellant who has been sentenced to the payment of a fine, and has paid the same in accordance with such sentence, shall, in the event of his appeal being successful, be entitled, subject to any order of the High Court, to the return of the sum or any part thereof so paid to him.

Status: Point in time view as at 27/07/1993.

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- (5) If an appellant to whom subsection (3) of this section applies does not pay the fine or lodge ^{F58}an intimation of intention to appeal within two weeks] from the date of his conviction and sentence, the Clerk of Justiciary shall report such omission to the High Court or any judge thereof who, after such notice as they or he may deem advisable, may find that the aforesaid caution has been forfeited, and may pronounce against the cautioner decree for such sum as they or he may think proper and may issue a warrant for the apprehension of the appellant and may commit him to prison in default of payment of his fine, or may make such other order as they or he may think right.

Textual Amendments

- F57** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 6, **Sch. 8**
- F58** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 24(b), **Sch. 6 para. 6**

266 Expenses.

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

267 No fees exigible.

Save in so far as provided in this Part of this Act, no court fees, or other fees or expenses shall be exigible from or awarded against an appellant or applicant in respect of an appeal or application under any of the provisions contained in sections 228 to 279 of this Act.

268 Reckoning of time spent pending appeal.

^{F59}(1) Subject to subsection (2) below, where an appellant is admitted to bail under section 238 of this Act the period beginning with the date of his admission to bail and ending on the date of his readmission to prison in consequence of the determination or abandonment of his appeal shall not be reckoned as part of any term of imprisonment under this sentence.]

(2) The time during which an appellant is in custody pending the determination of his appeal ^{F60}, including any period spent in custody in consequence of the recall of his bail,] shall, subject to any direction which the High Court may give to the contrary, be reckoned as part of any term of imprisonment under his sentence.

^{F61}(3) Subject to any direction which the High Court may give to the contrary, imprisonment of an appellant—

- (a) who is in custody in consequence of the conviction or sentence appealed against shall be deemed to run as from the date on which the sentence was passed;
- (b) who is in custody other than in consequence of such conviction or sentence shall be deemed to run or to be resumed as from the date on which his appeal was determined or abandoned;
- (c) who is not in custody shall be deemed to run or to be resumed as from the date on which he is received into prison under the sentence.]

Status: Point in time view as at 27/07/1993.

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- (4) In this section references to a prison and imprisonment shall include respectively references to a ^{F62}young offenders institution], detention centre or place of safety and to detention in such institution, centre or place of safety, and any reference to a sentence shall be construed as a reference to a sentence passed by the court imposing sentence or by the High Court on appeal as the case may require.

Textual Amendments

- F59** S. 268(1) substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF, 39:1\)](#), ss. 47(4)(a), 70(1), [Sch. 1 para. 14\(1\)](#)
- F60** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 1, [Sch. 8](#)
- F61** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 4 para. 1(b), [Sch. 6 para. 1](#)
- F62** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 46](#) and S.I. 1983/1580, [art. 3](#)

269 Extract convictions.

No extract conviction shall be issued during the period of ^{F63}two weeks] after the actual day on which such conviction took place, save in so far as the same may be required as a warrant for the detention of the person convicted under any sentence which shall have been pronounced against him nor, in the event of ^{F63}an intimation of intention to appeal (or in the case of an appeal under section 228(1)(b) of this Act a note of appeal)] being lodged under this Part of this Act, until ^{F63}such appeal, if it is proceeded with, is determined].

Textual Amendments

- F63** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 25, [Sch. 6 para. 6](#)

270 Custody of trial documents, etc.

- (1) Any document, production or other thing lodged in connection with the proceedings on the trial of any person who, if convicted, is entitled or may be authorised to appeal under this Part of this Act, shall, in accordance with the provisions of this section, be kept in the custody of the court in which the conviction took place.
- (2) All documents and other productions produced at the trial of a person convicted shall be kept for the period of ^{F64}two weeks] after the ^{F64}final determination (as construed in accordance with section 231(4) of this Act) of the proceedings] in the custody of the court of trial in such manner as it may direct, and, failing direction, such custody shall be in the hands of the sheriff clerk of the district of the court of the second diet to whom the clerk of court shall hand them over at the close of the trial, unless otherwise ordered by the High Court on ^{F64}an intimation of intention to appeal (or in the case of an appeal under section 228(1)(b) of this Act a note of appeal)] being lodged, and if within such period of ^{F64}two weeks] or any extension thereof authorised by the High Court ^{F64}there has been such lodgement] under this Part of this Act, they shall be so kept until the ^{F64}appeal, if it is proceeded with, is determined]:

Status: Point in time view as at 27/07/1993.

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Provided that the judge of the court in which the conviction took place may, on cause shown, grant an order authorising any of such documents or productions to be released on such conditions as to custody and return as he may deem it proper to prescribe.

- (3) All such documents or other productions so retained in custody or released and returned shall, under supervision of the custodian thereof, be made available for inspection and for the purpose of making copies of documents or productions to [^{F65}a person who has lodged an intimation of intention to appeal (or in the case of an appeal under section 228(1)(b) of this Act a note of appeal)] or to his counsel or agent, and to the Crown Agent and the procurator-fiscal or his deposes.
- (4) In case no [^{F66}intimation of intention to appeal (or, in the case of an appeal under section 228(1)(b) of this Act, note of appeal)] is lodged within such period of [^{F66}two weeks] or extension thereof as aforesaid, all such documents and productions shall be dealt with as they are in use to be dealt with according to the existing law and practice at the conclusion of a trial [^{F67}; and they shall be so dealt with if, there having been such intimation, the appeal is not proceeded with.]

Textual Amendments

- F64** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 26(a), **Sch. 6 para. 6**
- F65** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 26(b), **Sch. 6 para. 6**
- F66** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 26(c), **Sch. 6 para. 6**
- F67** Words added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 26(c), **Sch. 6 para. 6**

271 Clerk of Justiciary to furnish forms, etc.

The Clerk of Justiciary shall furnish the necessary forms and instructions in relation to [^{F68}intimations of intention to appeal, notes of appeal] or notices of application under this Part of 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 Part of this Act, and [^{F69}, if any prisoner in his custody so requests, shall cause any such intimation, note or notice given by that prisoner to be forwarded on the prisoner's behalf to the Clerk of Justiciary].

Textual Amendments

- F68** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 27, **Sch. 6 para. 6**
- F69** Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 39:1\)](#), **Sch. 2 para. 19**

Status: Point in time view as at 27/07/1993.

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272 Note to be kept of appeal.

The Clerk of Justiciary shall in all cases of appeal . . . ^{F70} from a conviction obtained or sentence pronounced in the High Court, note on the margin of the record of the trial the fact of an appeal . . . ^{F70} having been taken and the result of the appeal . . . ^{F70}, and, in the case of an appeal . . . ^{F70} taken against any conviction obtained or sentence pronounced in the sheriff court, the Clerk of Justiciary shall notify the appropriate sheriff clerk of the result of the said appeal . . . ^{F70}, and it shall be the duty of the sheriff clerk to enter on the margin of the record of the trial a note of such result.

Textual Amendments

F70 Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 6, [Sch. 8](#)

273 Register of appeals.

- (1) The Clerk of Justiciary shall keep a register, in such form as he thinks fit, of all cases in which he shall receive [^{F71}intimation of intention to appeal or, in the case of an appeal under section 228(1)(b) of this Act, note of] appeal under this Part of this Act, which register shall be open for public inspection at such place and at such hours as the Clerk of Justiciary, subject to the approval of the High Court, shall consider convenient.
- (2) The Clerk of Justiciary shall also take the necessary steps for preparing, from time to time, a list of cases to be dealt with by the High Court, and shall cause such list to be published in such manner as, subject to the approval of the High Court, he shall think convenient for giving due notice to any parties interested, of the hearing of such cases by the High Court.

Textual Amendments

F71 Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 29, [Sch. 6 para. 6](#)

274 Shorthand notes of trial.

- (1) Shorthand notes shall be taken of the proceedings at the trial of any person who, if convicted, is entitled . . . ^{F72} to appeal under this Part of this Act, and on any appeal . . . ^{F72} 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 High 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 of State may also, if he thinks fit in any case, direct a transcript of the shorthand notes to be made and furnished to him.
- (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 the Justiciary or by the Secretary of State, shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of moneys provided by Parliament.
- (4) In this section, the expression “proceedings at the trial” shall mean the whole proceedings, including discussions (a) on any objection to the relevancy of the

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indictment; (b) in reference to any challenge of jurors; and (c) on all questions arising in the course of the trial—with the decisions of the court thereon—the evidence led at the trial, any statement made by or on behalf of the prisoner, whether before or after verdict, the summing up by the judge, the speeches of counsel or agent, the verdict of the jury and sentence by the judge.

Textual Amendments

F72 Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 6 para. 6](#), [Sch. 8](#)

Modifications etc. (not altering text)

C4 [S. 274](#) modified by [S.I. 1988/110](#), [rule 33\(2\)](#)

275 Certification of shorthand notes, etc.

- (1) The shorthand writer shall sign the shorthand notes taken by him of any trial or proceeding and certify the same to be complete and correct shorthand notes thereof and shall retain the same unless and until he is directed by the Clerk of Justiciary to forward a transcript of such shorthand notes to him.
- (2) The shorthand writer shall, on being directed by the Clerk of Justiciary, furnish to him for the use of the High Court a transcript of the whole or of any part of the shorthand notes taken by him of any trial or proceeding in reference to which an appellant has appealed under this Part of this Act.
- (3) The shorthand writer shall also furnish to a party interested in a trial or other proceeding in relation to which a person may appeal under this Part of this Act, and to no other person, a transcript of the whole or of any part of the shorthand notes of any such trial or other proceeding on payment by such party interested to such shorthand writer of his charges on such scale as the Treasury may fix.
- (4) A party interested in an appeal under this Part of this Act may obtain from the Clerk of Justiciary a copy of any documentary production lodged by or for any other party to the appeal, upon payment therefor of the charges thereof on the scale referred to in the preceding subsection.
- (5) For the purposes of this and the last foregoing section, “a party interested” shall mean the prosecutor or the person convicted or any other person named in, or immediately affected by, any order made by the judge of the court in which the conviction took place, or other person authorised to act on behalf of a party interested, as herein defined.
- (6) Whenever a transcript of the whole or, of any part of such shorthand notes is required for the use of the High Court, such transcript may be made by the shorthand writer who took and certified the shorthand notes or by such competent person as the Clerk of Justiciary may direct.
- (7) A transcript of the whole or any part of the shorthand notes relating to the case of any appellant which may be required for the use of the High Court shall be typewritten and certified by the person making the same to be a correct and complete transcript of the whole or of such part, as the case may be, of the shorthand notes purporting to have been taken, signed and certified by the shorthand writer who took the same.

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276 Declaration administered to shorthand writer.

The entry in the minute book of the court of trial shall be signed by the clerk of court and shall be in the following terms, viz.:—

“The court directed that the whole proceedings in this case (or) in all the cases set down for trial at this sitting be taken down in shorthand and appointed shorthand writer, (address), to do so, and the declaration de fideli administratione officii was administered to him.”

277 Non-compliance with certain provisions may be waived.

(1) Non-compliance with the provisions of this Act set out in subsection (2) of this section, or with any rule of practice for the time being in force under this Part of this Act (other than section 280 of this Act) relating to appeals . . . ^{F73}, shall not prevent the further prosecution of an appeal . . . ^{F73} if the High Court or a judge thereof consider it just and proper that such non-compliance be waived or remedied by amendment or otherwise. The High Court or a judge thereof may, in such manner as they or he think fit, direct the remedy of such non-compliance, and upon the same being remedied accordingly the appeal . . . ^{F73} shall proceed.

(2) The provisions of this Act referred to in subsection (1) of this section are:—

. . .	section 249
. . .	section 250
. . .	section 251
section 234	section 253
section 235	section 257
section 236	section 259
[^{F74} section 2 36B]	section 260
[^{F74} section 236C]	section 261
section 237	section 264
section 239	section 265
section 241	section 267
section 242	section 269
section 243	section 270
section 244	section 272
section 246	section 273
section 248	section 275.

Textual Amendments

F73 Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 6, **Sch. 8**

F74 Words added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 31(c), **Sch. 6 para. 6**

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278 Forms of procedure may be varied.

The Clerk of Justiciary may, with the sanction of the Lord Justice General and the Lord Justice Clerk, vary the forms set out in an Act of Adjournment under the^{M5}Criminal Appeal (Scotland) Act 1926 or under this Act from time to time as may be found necessary for giving effect to the provisions of this Part of this Act.

Marginal Citations

M5 1926 c. 15(39:1).

279 Interpretation of sections 228 to 278 of this Act.

In sections 228 to 278 of this Act, unless the context otherwise requires—

“appellant” includes a person who has been convicted and desires to appeal under this Part of this Act;

“sentence” includes any order of the High Court made on conviction with reference to the person convicted or his wife or children, and any recommendation of the High Court as to the making of a deportation order in the case of a person convicted and the power of the High 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 High Court shall have the same effect for the purposes of Articles 20 and 21 of the Aliens Order 1953 as the certificate and recommendation of the convicting court.

280 Appeals against hospital orders, etc.

Where a hospital order, [^{F75}interim hospital order (but not a renewal thereof),] guardianship order or an order restricting discharge has been made by a court in respect of a person charged or brought before it, he may, without prejudice to any other form of appeal under any rule of law [^{F76}or, where an interim hospital order has been made, to any right of appeal against any other order or sentence which may be imposed)], appeal against that order in the same manner as against [^{F77}sentence].

Textual Amendments

F75 Words inserted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), s. 34 \(b\)\(i\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)

F76 Words inserted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), s. 34\(b\)\(ii\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, s. 126\(2\)\(b\)](#)

F77 Word substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), Sch. 2 para. 32, Sch. 6 para. 6](#)

[^{F78}280A Prosecution appeal by bill of advocation.

- (1) Without prejudice to section 76A of this Act, the prosecutor’s right to bring a decision under review of the High Court by way of bill of advocation in accordance with existing law and practice shall extend to the review of a decision of any court of solemn jurisdiction.

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- (2) Where a decision to which a bill of advocation relates is reversed on the review of the decision the prosecutor may, whether or not there has already been a trial diet at which evidence has been led, proceed against the accused by serving him with an indictment containing the charge or charges which were affected by the decision (the wording of which charge or charges shall be as it was immediately before the decision appealed against).]

Textual Amendments

F78 S. 280A inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 35, [Sch. 6 para. 6](#)

Miscellaneous

281 High Court proceedings final.

All interlocutors and sentences pronounced by the High Court under the authority of this Part of 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 forth of the High Court under the authority of the same.

282 Acts of Adjournal.

[^{F79}(1)] The High Court may by Act of Adjournal regulate the practice and procedure in relation to solemn criminal procedure under any enactment, including this Part of this Act, and make such rules and regulations as may be necessary to carry out the purposes and accomplish the objects of any enactment relating to solemn criminal procedure, including this Part 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 of State.

[^{F80}(2)] The High Court may by Act of Adjournal modify, amend or repeal any enactment, including an enactment contained in this Part of this Act, in so far as that enactment relates to matters with respect to which an Act of Adjournal may be made under subsection (1) above.]

Textual Amendments

F79 Word substituted by virtue of [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 47](#)

F80 S. 282(2) added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 47](#)

Modifications etc. (not altering text)

C5 S. 282 extended by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 65

[^{F81}282A] Right of audience of solicitor before the High Court.

Without prejudice to section 250 of this Act, any solicitor who has, by virtue of section 25A (rights of audience) of the ^{M6}Solicitors (Scotland) Act 1980 a right of audience in relation to the High Court of Justiciary shall have the same right of audience in that court as is enjoyed by an advocate.]

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Textual Amendments

F81 Ss. 282A, 282B inserted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 74(1), **Sch. 8 para. 27(2)**; S.I. 1991/1252, art. 3, **Sch. 1**

Marginal Citations

M6 1980 c.46(76:2).

[^{F82} **282B** Further provision as to rights of audience.

Any person who has complied with the terms of a scheme approved under section 26 of the ^{M7}Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (consideration of applications made under section 25) shall have such rights of audience before the High Court of Justiciary as may be specified in an Act of Adjournal made under subsection (7)(b) of that section.]

Textual Amendments

F82 Ss. 282A, 282B inserted (3.6.1991) by Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 (c. 40, SIF 39:1), s. 74(1), Sch. 8 para. 27(2); S.I. 1991/1252, art. 3, **Sch. 1**

Marginal Citations

M7 1990 c.40(39:1).

Status:

Point in time view as at 27/07/1993.

Changes to legislation:

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