



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 [^{F2}, with leave granted in accordance with section 230A of this Act,] 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
 - [^{F3}(bb) against his absolute discharge or admonition;
 - (bc) 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 [^{F4}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.]

Changes to legislation: Criminal Procedure (Scotland) Act 1975 is up to date with all changes known to be in force on or before 23 May 2023. 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) View outstanding changes

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** Words in s. 228(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 42(1); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F3** S. 228(1)(bb)-(bd) inserted (27.7.1993) by 1993 c. 36, s. 68(1)(a)
- F4** 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)
- C2** S. 228 modified (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1987 c. 41, s. 2 as substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 113(3), **Sch. 5 para. 3**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- S. 228 extended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, ss. 70(2), 76(5), 113(1); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Marginal Citations

- M1** 1978 c. 49.

[^{F5}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 [^{F6}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—
- ^{F7}(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

- F5** S. 228A inserted (1.10.1993) by 1993 c. 9, s. 42(1) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(4), 4(1)(a)
- F6** Words in s. 228A inserted (27.7.1993) by 1993 c. 36, s. 68(2)(a)
- F7** S. 228A(a) substituted (27.7.1993) by 1993 c. 36, s. 68(2)(b)

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Textual Amendments

F8 Ss. 229, 232, 253(2) repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 6, [Sch. 8](#)

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.

[^{F9}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

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- (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.
- (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.]

Textual Amendments

F9 S. 230A inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 42(2); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[^{F10}231 Intimation of intention to appeal.

- (1) Subject to section 236B(2) of this Act [^{F11}and to section 2(2) of the Criminal Justice (Scotland) Act 1987 [^{F12}and section 76(4) of the Criminal Justice (Scotland) Act 1995] (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) [^{F13}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

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this Act, they shall be deemed finally determined on the day on which sentence is first so deferred in open court.]

[^{F14}(5) Without prejudice to subsection (2) of section 2 of the said Act of 1987 [^{F15}and subsection (4) of section 76 of the said Act of 1995], 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 [^{F16}the said section 2 or 76], 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).]

Textual Amendments

- F10** S. 231 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 3, **Sch. 6 para. 6**
- F11** Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 45(6)(a)**, 47(4)(a)
- F12** Words in s. 231(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. II para. 181(3)(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F13** Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 45(6)(b)**, 47(4)(a)
- F14** S. 231(5) added by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 45(6)(c)**, 47(4)(a)
- F15** Words in s. 231(5) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. II para. 181(3)(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F16** Words in s. 231(5) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. II para. 181(3)(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Modifications etc. (not altering text)

- C3** S. 231(1) modified by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 2(2)**, 47(4)(a)
S. 231(1) amended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **ss. 70(2)**, 76(4), 113(1); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
S. 231(1) modified (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1987 c. 41, **s. 2** as substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 113(3), **Sch. 5 para. 3**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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Textual Amendments

- F17** **Ss. 229, 232, 253(2)** repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 6, **Sch. 8**

[^{F18}**233 Note of appeal.**

(1) Subject to section 236B(2) of this Act,

[^{F19}(a)] within six weeks of lodging intimation of intention to appeal or, in the case of an appeal [^{F20}under section 228(1)(b), (bb), (bc) or (bd) of this Act], within two weeks of the passing of the sentence [^{F21}(or as the case may be, of the making of the order disposing of the case or deferring sentence)] in open court,

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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 [^{F22}; or]

[^{F23}(b) as the case may be, within four weeks of the passing of the sentence [^{F24}(or as the case may be, of the making of the order disposing of the case or deferring sentence)] in open court, the Lord Advocate may lodge such a note with the Clerk of Justiciary, who shall send a copy to the said judge and to the convicted person or that person's solicitor.]

(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.

[Subsection (3) above shall not apply as respects any ground of appeal specified as an ^{F25}(3A) arguable ground of appeal by virtue of subsection (7) of section 230A of this Act.]

(4) On a note of appeal [^{F26}under section 228(1)(b), (bb), (bc) or (bd)] being lodged by an appellant in custody the Clerk of Justiciary shall give notice thereof to the Secretary of State.]

Textual Amendments

- F18** S. 233 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 5, **Sch. 6 para. 6**
- F19** Words in s. 233(1) renumbered as s. 233(1)(a) (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(9)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 10(b)**
- F20** S. 183(5A) inserted by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **s. 7(b)**
- F21** Words substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 68(2), **Sch. 13 Pt. II para. 3**
- F22** Word inserted by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **s. 7(a)**
- F23** Words added by Community Service by Offenders (Scotland) Act 1978 (c. 49, SIF 39:1), **s. 7(a)**
- F24** Words in s. 183(1) inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), **s. 61(1)(a)**; S.I. 1991/850, art. 3, **Sch.**
- F25** Words substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 10(b)**
- F26** Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 10(a)**

234 Presentation of appeal in writing.

(1) If an appellant [^{F27}other than the Lord Advocate] . . . ^{F28} 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 . . . ^{F28}, and, at the same time, shall lodge with the Clerk of Justiciary three copies of his case and argument; at the same time, he 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

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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 . . . ^{F28} 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 . . . ^{F28}.

Textual Amendments

F27 Words in s. 234(1) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(10)** (with s. 47(2), **Sch. 6 paras. 1, 2**); S.I. 1993/2050, **arts. 3(4), 10(b)**

F28 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. ^{F29} . . .

Textual Amendments

F29 S. 183(1A) inserted (1.4.1991) by **Law Reform (Miscellaneous Provisions) (Scotland) Act 1990** (c. 40, SIF 39:1), **s. 61(1)(b)**; S.I. 1991/850, art. 3, **Sch.**

236 Proceedings in sheriff court to be furnished.

In the case of an appeal . . . ^{F30} 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

F30 Words repealed by **Criminal Justice (Scotland) Act 1980** (c. 62, SIF 39:1), **Sch. 6 para. 6, Sch. 8**

[^{F31}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 [^{F32}, the parties and, on such conditions as may be prescribed by Act of Adjournal, such other persons or classes of persons as may be so prescribed].]

Textual Amendments

- F31** Words in s. 183(4)(a) substituted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 61(1)(c)(i); S.I. 1991/850, art. 3, Sch.
- F32** Word in s. 183(4)(a) substituted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 39:1), s. 61(1)(c)(ii); S.I. 1991/850, art. 3, Sch.

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 [^{F33}233(1)(a)] 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.

Textual Amendments

- F33** Words in s. 236B(2) substituted (1.10.1993) by 1993 c. 9, s. 47(1), Sch. 5 para. 1(11) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(4), 10(b)

^{F34}236C.....

Textual Amendments

- F34** S. 183(5B)(5C) inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 65(1)(2)(a)

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Textual Amendments

- F35** S. 183(1A)(a)(b) substituted (1.10.1992) for certain words by Criminal Justice Act 1991 (c. 53), s. 16, Sch. 3, Pt. II para. 7(2) (with s. 28); S.I. 1992/333, art. 2(2), Sch. 2.

238 Admission of appellant to bail.

- [^{F36}(1) [^{F37}Subject to subsection (1A) below,]]The High Court may, if it thinks fit, on the application of a convicted person, admit him to bail pending the determination of—
- (a) his appeal; or

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[^{F38}(b) any relevant appeal by the Lord Advocate under section 228A of this Act.]

[^{F39}(1A) The High Court shall not admit a convicted person to bail under subsection (1) above unless—

- (a) where he is the appellant and has not lodged a note of appeal in accordance with section 233(1)(a) of this Act, the application for bail states reasons why it should be granted and sets out the proposed grounds of appeal; or
- (b) where the Lord Advocate is the appellant, the application for bail states reasons why it should be granted;

and, in either case, the High Court considers there to be exceptional circumstances justifying admitting the convicted person to bail.]

(2) A person who is admitted to bail under subsection (1) above shall, unless the High Court otherwise directs, appear personally in court on the day or days fixed for the hearing of the appeal ^{F40}. . . ; and in the event of his failing to do so the court may—

- (a) if he is the appellant—
 - (i) decline to consider the appeal ^{F41}. . . ; and
 - (ii) dismiss it summarily; or
- (b) whether or not he is the appellant—
 - (i) consider and determine the appeal ^{F42}. . . ; or
 - (ii) without prejudice to section 3 of the Bail etc. (Scotland) Act 1980 (breach of conditions), make such other order as the court thinks fit.

[^{F43}(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.]

Textual Amendments

- F36** S. 238(1)(2) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(13)** (with s. 47(2), **Sch. 6 paras. 1, 2**); S.I. 1993/2050, **arts. 3(4), 10(b)**
- F37** Words in s. 238(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 5(2); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F38** S. 238(1)(b) substituted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(5)**.
- F39** S. 238(1A) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 5(3); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F40** Words in s. 238(2) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 81, Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F41** Words in s. 238(2)(a)(i) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 81, Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F42** Words in s. 238(2)(b)(i) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 81, Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F43** S. 238(3) inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 2 para. 10(b), Sch. 6 para. 6**

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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 [F44 under section 236B(2) of this Act], the Clerk of Justiciary shall give notice to the Crown Agent and to the solicitor of the [F45 convicted person], or to the [F45 convicted person] himself if he has no known solicitor. F46 . . .

F47 (2)

Textual Amendments

- F44** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 2 para. 11](#), [Sch. 6 para. 6](#)
- F45** Words in [s. 239\(1\)](#) substituted (1.10.1993) by [1993 c. 9, s. 47\(1\)](#), [Sch. 5 para. 1\(14\)\(a\)](#) (with [s. 47\(2\)](#), [Sch. 6 paras. 1, 2](#)); [S.I. 1993/2050, arts. 3\(4\)](#), 10(b)
- F46** Words in [s. 239\(1\)](#) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117](#), [Sch. 6 Pt. I para. 82\(a\)](#), [Sch. 7 Pt. I](#); [S.I. 1996/517, arts. 3\(2\), 4-6](#), [Sch. 2](#)
- F47** [S. 239\(2\)](#) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117](#), [Sch. 6 Pt. I para. 82\(b\)](#), [Sch. 7 Pt. I](#); [S.I. 1996/517, arts. 3\(2\), 4-6](#), [Sch. 2](#)

240 Appellant may be present at hearing.

[F48 A convicted] appellant, notwithstanding that he is in custody, shall be entitled to be present if he desires it, on the hearing of his appeal. F49 . . .

Textual Amendments

- F48** Word in [s. 240](#) substituted (1.10.1993) by [1993 c. 9, s. 47\(1\)](#), [Sch. 5 para. 1\(15\)](#) (with [s. 47\(2\)](#), [Sch. 6 paras. 1, 2](#)); [S.I. 1993/2050, arts. 3\(4\)](#), 10(b)
- F49** Words in [s. 240](#) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117](#), [Sch. 6 Pt. I para. 83](#), [Sch. 7 Pt. I](#); [S.I. 1996/517, arts. 3\(2\), 4-6](#), [Sch. 2](#)

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 [F50 Secretary of State] of the probable day on which the appeal or application will be heard. The [F50 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.

Textual Amendments

- F50** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 41](#)

Changes to legislation: Criminal Procedure (Scotland) Act 1975 is up to date with all changes known to be in force on or before 23 May 2023. 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) View outstanding changes

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 [^{F51}Secretary of State], in the form set out in an Act of Adjournal under the ^{M2}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 [^{F51}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

F51 Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **Sch. 7 para. 42**

Marginal Citations

M2 [1926 c. 15\(39:1\)](#).

[242A] ^{F52}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.]

Textual Amendments

F52 [S. 242A](#) inserted (1.10.1993) by [1993 c. 9, s. 47\(1\)](#), **Sch. 5 para. 1(16)** (with [s. 47\(2\)](#), [Sch. 6 paras. 1, 2](#)); [S.I. 1993/2050, arts. 3\(4\), 10\(b\)](#)

243 Warders to attend court.

The [^{F53}Secretary of State] shall, on notice under [^{F54}section 242 of this Act] from the Clerk of Justiciary, cause from time to time such sufficient number of male and female [^{F53}prison officers] to attend the sittings of the court as, having regard to the list of appeals thereat, they shall consider necessary.

Textual Amendments

F53 Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **Sch. 7 para. 43**

F54 Words in [s. 243](#) substituted (1.10.1993) by [1993 c. 9, s. 47\(1\)](#), **Sch. 5 para. 1(17)** (with [s. 47\(2\)](#), [Sch. 6 paras. 1, 2](#)); [S.I. 1993/2050, arts. 3\(4\), 10\(b\)](#)

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[^{F55}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 [^{F56}(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 [^{F57}(or disposal or order)] alone.]

Textual Amendments

- F55** S. 244 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 13, **Sch. 6 para. 6**
- F56** Words in s. 244(2) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(6)(a)**
- F57** 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) [^{F58}Subject to subsection (1A) below,] For the purpose of hearing and determining any appeal [^{F59}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.
- [^{F60}(1A) For the purpose of hearing and determining any appeal under section 228(1)(b), (bb), (bc) or (bd) of this Act, or any proceeding connected therewith, two of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and each judge shall be entitled to pronounce a separate opinion; but where the two Lords Commissioners of Justiciary are unable to reach agreement on the disposal of the appeal, or where they consider it appropriate, the appeal shall be heard and determined in accordance with subsection (1) above.]
- (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 . . . ^{F61} in like manner as they apply to appeals under this Part of this Act.

Textual Amendments

- F58** Words in s. 245(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 43(1)(a); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F59** Words substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 13(1)**

Changes to legislation: *Criminal Procedure (Scotland) Act 1975 is up to date with all changes known to be in force on or before 23 May 2023. 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) View outstanding changes*

F60 S. 245(1A) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 43(1)(b); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F61 Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 6, **Sch. 8**

F62 246

Textual Amendments

F62 S. 246 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. 1 para. 84, **Sch. 7 Pt. 1**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

247 Powers which may be exercised by a single judge.

The powers of the High Court under this Part of this Act . . . ^{F63}, to extend the time within which [^{F64}intimation of intention to appeal and note of appeal] . . . ^{F63} 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

F63 Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 6, **Sch. 8**

F64 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

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the decision 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.

- (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 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 [^{F65}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

F65 Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 7 para. 44](#)

Marginal Citations

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

[^{F66}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) [^{F67}or 228A] 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;

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- (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.]

Textual Amendments

- F66** S. 252 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 2 para. 16, **Sch. 6 para. 6**
- F67** Words in s. 252 inserted (1.10.1993) by [1993 c. 9, s. 47\(1\)](#), **Sch. 5 para. 1(18)** (with s. 47(2), Sch. 6 paras. 1, 2); [S.I. 1993/2050, arts. 3\(4\), 10\(b\)](#)

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) **F68**

Textual Amendments

- F68** [Ss. 229, 232, 253\(2\)](#) repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 6 para. 6, **Sch. 8**

[^{F69}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 [^{F70}(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 [^{F71}(or disposal or order)]related to the verdict set aside; or
 - (b) in any other case, where the sentence [^{F71}(or disposal or order)]did not so relate,

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may pass another (but not more severe) sentence [^{F72}or make another (but not more severe) disposal or order]in substitution for the sentence [^{F73}, 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 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 [^{F74}(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 [^{F75}and- .
 - (i) making, in respect of the appellant, any order mentioned in section 174ZC(2)(a) to (d) of this Act; or
 - (ii) making no order.]

[In subsection (3) above, “appeal against sentence” shall, without prejudice to the ^{F76}(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.]

[Subsections (3) and (4) of section 174ZC of this Act shall apply to an order made ^{F77}(5) under subsection (4)(b)(i) above as they apply to an order made under subsection (2) of that section.]]

Textual Amendments

- F69** S. 254 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 18, **Sch. 6 para. 6**
- F70** 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)**
- F71** 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)**
- F72** 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)**
- F73** 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)**
- F74** Words in s. 254(4) inserted (27.7.1993) by 1993 c. 36, s. 79(13), Sch. 5 Pt. I para. 2(7)(b)
- F75** Words in s. 254(4)(b) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 85(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F76** S. 254(4A) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(7)(c)**
- F77** S. 254(5) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 85(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

Modifications etc. (not altering text)

- C4** 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)**

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[^{F78}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.]

Textual Amendments

F78 S. 254A inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 34(1); S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

[^{F79}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—
 - (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.]

Textual Amendments

F79 S. 254B inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), Sch. 6 Pt. 1 para. 86; S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

[^{F80}255 Supplementary provisions where High Court authorises new prosecution.

- (1) [^{F81}Subject to subsection (1A) below,] 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.

[In a new prosecution under this section the accused shall not be charged with an ^{F82}(1A) offence more serious than that of which he was convicted in the earlier proceedings.

- (1B) In proceedings in a new prosecution under this section it shall, subject to subsection (1C) below, be competent for either party to lead any evidence which it was competent for him to lead in the earlier proceedings.
- (1C) The indictment in a new prosecution under this section shall identify any matters as respects which the prosecutor intends to lead evidence by virtue of subsection (1B) above which would not have been competent but for that subsection.]

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- (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.]
- [^{F83}(5) On granting authority under section 254(1)(c) of this Act to bring a new prosecution, the High Court shall, after giving the parties an opportunity of being heard, order the detention of the accused person in custody or admit him to bail.
- (6) Subsections (2)(b) and (4) to (6) of section 101 of this Act (prevention of delay in trials) shall apply to an accused person who is detained under subsection (5) above as they apply to an accused person detained by virtue of being committed until liberated in due course of law.]

Textual Amendments

- F80** S. 255 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 19, **Sch. 6 para. 6**
- F81** Words in s. 255(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 46(1)(a); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F82** S. 255(1A)-(1C) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 46(1)(b); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F83** S. 255(5)(6) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 46(1)(c); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

^{F84}**256**

Textual Amendments

- F84** S. 256 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 87, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

257 Failure to appear at hearing.

[^{F85}Where—

- (a) intimation of the diet appointed for the hearing of an appeal has been made to the appellant;
- (b) no appearance is made by or on behalf of the appellant at the diet; and
- (c)]

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no case or argument in writing has been timeously lodged, the High Court shall dispose of the appeal^{F86} . . . as if it had been abandoned.

Textual Amendments

- F85** Words in s. 257 substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 88**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F86** 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 [^{F87}(or, where the Lord Advocate is the appellant, the convicted person)] is for any reason not present.

Textual Amendments

- F87** Words in s. 258 inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(19)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(4), 10(b)

^{F88}259

Textual Amendments

- F88** S. 259 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 89, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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 [^{F89}(or, where the Lord Advocate is the appellant, the convicted person)] 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 [^{F90}Secretary of State].

Textual Amendments

- F89** Words in s. 261 inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(20)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(4), 10(b)

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F90 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.

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 . . . ^{F91} against such conviction or sentence has previously been heard and determined by the High Court [^{F92}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 . . . ^{F93} of a person convicted shall be exercisable whether or not that person has petitioned for the exercise of Her Majesty's mercy.
- [^{F94}(3) This section shall apply in relation to a finding under section 174ZA(2) and an order under section 174ZC(2) of this Act as it applies, respectively, in relation to a conviction and a sentence.]

Textual Amendments

- F91** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 6 para. 6](#), [Sch. 8](#)
- F92** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 2 para. 22\(b\)](#), [Sch. 6 para. 6](#)
- F93** Words repealed by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(2), [Sch. 2](#)
- F94** [S. 263\(3\)](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, [Sch. 6 Pt. I para. 90](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)

[^{F95}263A Lord Advocate's reference.

- (1) Where a person tried on indictment is acquitted [^{F96}or convicted] 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;

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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 ^[F97]or, as the case may be, conviction]in the trial.]

Textual Amendments

- F95** S. 263A inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 37, **Sch. 6 para. 6**
- F96** Words in s. 263A(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 91(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F97** Words in s. 263A(5) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 91(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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 ^[F98]^[F99]four] weeks] from the date of the verdict against such person nor, in the event of ^[F98]an intimation of intention to appeal (or in the case of an appeal under section 228(1)(b) ^[F100], (bb), (bc) or (bd)]^[F101]or 228A]of this Act a note of appeal)] being lodged under this Part of this Act, until ^[F98]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 ^[F98]^[F99]four] weeks] after the date of the verdict in the trial, and, in the event of ^[F98]an intimation of intention to appeal (or in the case of an appeal under section 228(1)(b) ^[F100], (bb), (bc) or (bd)]^[F101]or 228A]of this Act a note of appeal)] being lodged under this Part of this Act, shall be further suspended until ^[F98]such appeal, if it is proceeded with, is determined].
- ^[F102](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.]
- ^[F103](4) Where, upon conviction, a fine has been imposed on a person or a compensation order has been made against him under section 58 of the Criminal Justice (Scotland) Act 1980, then, for a period of four weeks from the date of the verdict against such person or, in the event of an intimation of intention to appeal (or in the case of an appeal under

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section 228(1)(b), (bb), (bc) or (bd) or 228A of this Act a note of appeal) being lodged under this Part of this Act, until such appeal, if it is proceeded with, is determined,—

- (a) the fine or compensation order shall not be enforced against that person and he shall not be liable to make any payment in respect of the fine or compensation order; and
- (b) any money paid by that person under the compensation order shall not be paid by the clerk of court to the person entitled to it under section 60(1) of the Act of 1980.]

Textual Amendments

- F98** Words substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 2 para. 23](#), [Sch. 6 para. 6](#)
- F99** Words in [s. 264\(1\)\(2\)](#) substituted (1.10.1993) by 1993 c. 9, s. 47(1), [Sch. 5 para. 1\(21\)\(a\)](#) (with [s. 47\(2\)](#), [Sch. 6 paras. 1, 2](#)); [S.I. 1993/2050](#), [arts. 3\(4\)](#), 10(b)
- F100** Words in [s. 264\(1\)\(2\)](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), [Sch. 6 Pt. I para. 92\(a\)](#); [S.I. 1996/517](#), [arts. 3\(2\)](#), 4-6, [Sch. 2](#)
- F101** Words in [s. 264\(1\)\(2\)](#) inserted (1.10.1993) by 1993 c. 9, s. 47(1), [Sch. 5 para. 1\(21\)\(b\)](#) (with [s. 47\(2\)](#), [Sch. 6 paras. 1, 2](#)); [S.I. 1993/2050](#), [arts. 3\(4\)](#), 10(b)
- F102** [S. 264\(3\)](#) inserted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), [ss. 47\(4\)\(a\)](#), 68(2)
- F103** [S. 264\(4\)](#) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), [Sch. 6 Pt. I para. 92\(b\)](#); [S.I. 1996/517](#), [arts. 3\(2\)](#), 4-6, [Sch. 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 [^{F104}to the conviction or sentence].
- (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.
- ^{F105}(3)
- (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.
- [^{F106}(4A) A convicted person who has been sentenced to the payment of a fine and has duly paid it shall, if an appeal against sentence by the Lord Advocate results in the sentence being quashed and no fine, or a lesser fine than that paid, being imposed, be entitled, subject to any order of the High Court, to the return of the sum paid or as the case may be to the return of the amount by which that sum exceeds the amount of the lesser fine.]
- (5)

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Textual Amendments

- F104** Words in s. 265(1) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 93(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F105** S. 265(3)(5) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 93(b)**, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F106** S. 265(4A) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(22)** (with s. 47(2), **Sch. 6 paras. 1, 2**); S.I. 1993/2050, **arts. 3(4), 10(b)**

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.

- [^{F107}(1) Subject to subsection (2) below, where [^{F108}a convicted person] 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 [^{F109}, or as the case may be of any [^{F110}relevant appeal by the Lord Advocate under section 228A of this Act], shall not be reckoned as part of any term of imprisonment under [^{F108}that] sentence.]
- [^{F111}(2) The time (including any period consequent on the recall of bail) during which a convicted person is in custody pending the determination of his appeal, or as the case may be of any [^{F110}relevant appeal by the Lord Advocate under section 228A of this Act]], shall subject to any direction which the High Court may give to the contrary be reckoned as part of any term of imprisonment under that sentence.
- [^{F112}(3) Subject to any direction which the High Court may give to the contrary, imprisonment of an appellant [^{F113}(or, where the appellant is the Lord Advocate, of a convicted person)]—
- (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.]
- (4) In this section references to a prison and imprisonment shall include respectively references to a [^{F114}young offenders institution], detention centre or place of safety

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[^{F115}or, as respects a child sentenced to be detained under section 206 of this Act, the place directed by the Secretary of State] and to detention in such institution, centre or place of safety [^{F116}or, as respects such a child, place directed by the Secretary of State], 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

- F107** 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)**
- F108** Words in s. 268(1) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(23)(a)(i)(iii)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)
- F109** Words in s. 268(1) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(23)(a)(ii)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)
- F110** Words in s. 268(1)(2) substituted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(8)**
- F111** S. 268(2) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(23)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)
- F112** S. 268(3) by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(1), **Sch. 1 para. 14(3)**
- F113** Words in s. 268(3) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(23)(c)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)
- F114** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 7 para. 46** and S.I. 1983/1580, **art. 3**
- F115** Words in s. 268(4) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 94(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F116** Words in s. 268(4) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 94(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

269 Extract convictions.

No extract conviction shall be issued during the period of [^{F117}[^{F118}four] 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 [^{F117}an intimation of intention to appeal (or in the case of an appeal under section 228(1)(b) [^{F119}, (bb), (bc), or (bd)] [^{F120}or 228A] of this Act a note of appeal)] being lodged under this Part of this Act, until [^{F117}such appeal, if it is proceeded with, is determined].

Textual Amendments

- F117** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 25, **Sch. 6 para. 6**
- F118** Word in s. 269 substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(24)(a)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)
- F119** Words in s. 269 inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 95**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F120** Words in s. 269 inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(24)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)

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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) [F121]Until any period allowed under or by virtue of this Part of this Act for lodging intimation of intention to appeal F122. . . has elapsed, all documents and other productions produced at the trial of a convicted person shall be kept]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 [F123an intimation of intention to appeal]. . .being lodged, and if within such period F124. . . [F123there has been such lodgement] under this Part of this Act, they shall be so kept until the [F123appeal, if it is proceeded with, is determined]:

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 [F125a person who has lodged an intimation of intention to appeal F126. . .]or [F127, as the case may be, to the convicted person's] counsel or agent, and to the Crown Agent and the procurator-fiscal or his deutes.
- (4) In case no [F128intimation of intention to appeal F129. . . is lodged within [F130the period mentioned in subsection (2) above], 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 [F131; and they shall be so dealt with if, there having been such intimation, the appeal is not proceeded with.]]

Textual Amendments

- F121** Words in s. 270(2) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(25)(a)(i)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 10(b)**
- F122** Words in s. 270(2) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 96(a), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F123** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 26(a), **Sch. 6 para. 6**
- F124** Words in s. 270(2) repealed (1.10.1993) by 1993 c. 8, s. 47(1)(3), Sch. 5 para. 1(25)(a)(iii), **Sch. 7 Pt. I**; S.I. 1993/2050, **arts. 3(4), 10(b)**
- F125** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 26(b), **Sch. 6 para. 6**
- F126** Words in s. 270(3) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 96(b), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F127** Words in s. 270(3) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(25)(b)(ii)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 10(b)**

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- F128** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 26(c), **Sch. 6 para. 6**
- F129** Words in s. 270(4) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 96(4), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F130** Words in s. 270(4) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 25(c)(ii)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 10(b)
- F131** 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 [^{F132}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 [^{F133}, 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

- F132** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 2 para. 27, **Sch. 6 para. 6**
- F133** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 39:1), **Sch. 2 para. 19**

^{F134}**272**

Textual Amendments

- F134** S. 272 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 97, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

^{F135}**273**

Textual Amendments

- F135** S. 273 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 97, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

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[274] ^{F136}Record of trial.

- (1) The proceedings at the trial of any person who, if convicted, is entitled to appeal under this Part of this Act shall be recorded by means of shorthand notes or by mechanical means.
- (2) A shorthand writer shall—
 - (a) sign the shorthand notes taken by him of such proceedings and certify them as being complete and correct; and
 - (b) retain the notes.
- (3) A person recording such proceedings by mechanical means shall—
 - (a) certify that the record is true and complete;
 - (b) specify in the certificate the proceedings (or, as the case may be, the part of the proceedings) to which the record relates; and
 - (c) retain the record.
- (4) The cost of making a record under subsection (1) above shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of money provided by Parliament.
- (5) In subsection (1) above “proceedings at the trial” means the whole proceedings including (without prejudice to that generality)—
 - (a) discussions—
 - (i) on any objection to the relevancy of the indictment;
 - (ii) with respect to any challenge of jurors; and
 - (iii) on all questions arising in the course of the trial;
 - (b) the decision of the court on any matter referred to in paragraph (a) above;
 - (c) the evidence led at the trial;
 - (d) any statement made by or on behalf of the accused whether before or after the verdict;
 - (e) the [^{F137} judge’s charge to the jury];
 - (f) the speeches of counsel or agent;
 - (g) the verdict of the jury; and
 - (h) the sentence by the judge.

Textual Amendments

F136 S. 274 substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(27)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 6**

F137 Words in s. 274(5)(e) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117(1), **Sch. 6 Pt. I para. 98**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[275] ^{F138}Transcripts of record and documentary productions.

- (1) The Clerk of Justiciary may direct that a transcript of a record made under section 274(1) of this Act, or any part thereof, be made and delivered to him for the use of any judge.
- (2) Subject to subsection (3) below, the Clerk of Justiciary shall, if he is requested to do so by—

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- (a) the Secretary of State; or
 - (b) any other person on payment of such charges as may be fixed for the time being by the Treasury,

direct that such a transcript be made and sent to the person who requested it.
- (3) The Secretary of State may, after consultation with the Lord Justice General, by order made by statutory instrument provide that in any class of proceedings specified in the order the Clerk of Justiciary shall only make a direction under subsection (2)(b) above if satisfied that the person requesting the transcript is of a class of person so specified and, if purposes for which the transcript may be used are so specified, intends to use it only for such a purpose; and different purposes may be so specified for different classes of proceedings or classes of person.
- (4) Where subsection (3) above applies as respects a direction, the person to whom the transcript is sent shall, if purposes for which that transcript may be used are specified by virtue of that subsection, use it only for such a purpose.
- (5) A statutory instrument containing an order under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A direction under subsection (1) or (2) above may require that the transcript be made by the person who made the record or by such competent person as may be specified in the direction; and that person shall comply with the direction.
- (7) A transcript made in compliance with a direction under subsection (1) or (2) above—
 - (a) shall be in legible form; and
 - (b) shall be certified by the person making it as being a correct and complete transcript of the whole or, as the case may be, the part of the record purporting to have been made and certified, and in the case of shorthand notes signed, by the person who made the record.
- (8) The cost of making a transcript in compliance with a direction under subsection (1) or (2)(a) above shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of money provided by Parliament.
- (9) The Clerk of Justiciary shall, on payment of such charges as may be fixed for the time being by the Treasury, provide a copy of any documentary production lodged in connection with an appeal under this Part of this Act to such of the following persons as may request it—
 - (a) the prosecutor;
 - (b) any person convicted in the proceedings;
 - (c) any other person named in, or immediately affected by, any order made in the proceedings; and
 - (d) any person authorised to act on behalf of any of the persons mentioned in paragraphs (a) to (c) above.]

Textual Amendments

F138 S. 275 substituted (18.8.1993 only for the purpose of enabling an Order to be made under s. 275(3) so as to come into force on or after 1.10.1993 and 1.10.1993 with application in respect of any request made on or after 1.10.1993 for a transcript to be made of the proceedings at any trial, whether that trial commenced before or after that date) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(27)** (with s. 47(2), **Sch. 6 paras. 1, 2**); S.I. 1993/2050, arts. 3(2)(4), 7, **Sch. 1**

Changes to legislation: *Criminal Procedure (Scotland) Act 1975 is up to date with all changes known to be in force on or before 23 May 2023. 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) View outstanding changes*

^{F139} 276

Textual Amendments

F139 S. 276 repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 99, Sch. 7 Pt. I; S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

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 . . . ^{F140}, shall not prevent the further prosecution of an appeal . . . ^{F140} 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 . . . ^{F140} 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	^{F141}
	. . .
[^{F142} s section 236]B	section 260
^{F141}	section 261
. . .	
^{F141}	section 264
. . .	
section 239	section 265
section 241	section 267
section 242	section 269
[^{F143} 242A]	
section 243	section 270
section 244	^{F141}
	. . .
^{F141}	^{F141}
.
section 248	section 275.

Changes to legislation: Criminal Procedure (Scotland) Act 1975 is up to date with all changes known to be in force on or before 23 May 2023. 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) View outstanding changes

Textual Amendments

- F140** Words repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 6 para. 6](#), [Sch. 8](#)
- F141** Words in [s. 277\(2\)](#) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1996 c. 20, s. 117](#), [Sch. 6 Pt. I para. 100](#), [Sch. 7 Pt. I](#); [S.I. 1996/517](#), [arts. 3\(2\), 4-6](#), [Sch. 2](#)
- F142** Words added by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 2 para. 31\(c\)](#), [Sch. 6 para. 6](#)
- F143** Entry in [s. 277\(2\)](#) inserted (1.10.1993) by [1993 c. 9, s. 47\(1\)](#), [Sch. 5 para. 1\(29\)](#) (with [s. 47\(2\)](#), [Sch. 6 paras. 1, 2](#)); [S.I. 1993/2050](#), [arts. 3\(4\)](#), [10\(b\)](#)

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 Adjournal under the ^{M4}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

M4 [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, [^{F144}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 [^{F145}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 [^{F146}sentence].

Textual Amendments

- F144** 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\(2\)\(b\)](#)

Changes to legislation: *Criminal Procedure (Scotland) Act 1975 is up to date with all changes known to be in force on or before 23 May 2023. 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) View outstanding changes*

F145 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\(2\)\(b\)\)](#)

F146 Word substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 2 para. 32](#), [Sch. 6 para. 6](#)

[^{F147}**280A** Prosecution appeal by bill of advocacy.

- (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 advocacy in accordance with existing law and practice shall extend to the review of a decision of any court of solemn jurisdiction.
- (2) Where a decision to which a bill of advocacy 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

F147 [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.

[^{F148}**282**

Textual Amendments

F148 [S. 282](#) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117, Sch. 6 Pt. I para. 101](#), [Sch. 7 Pt. I](#); [S.I. 1996/517](#), [arts. 3\(2\), 4-6](#), [Sch. 2](#)

[^{F149}**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 ^{M5}[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.]

Changes to legislation: Criminal Procedure (Scotland) Act 1975 is up to date with all changes known to be in force on or before 23 May 2023. 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) View outstanding changes

Textual Amendments

F149 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

M5 1980 c.46(76:2).

[^{F150}**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 ^{M6}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

F150 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 1990 c.40(39:1).

Changes to legislation:

Criminal Procedure (Scotland) Act 1975 is up to date with all changes known to be in force on or before 23 May 2023. 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.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act certain function transferred. by [1994 c. 39 s. 127\(1\)](#)[128](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 168(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)](#)[Sch. 4 para. 24\(6\)\(b\)](#)
- s. 364(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)](#)[Sch. 4 para. 24\(14\)\(b\)](#)
- s. 413(3) (defn. of "the appropriate local authority") para. (a)(b) amended by [1994 c. 39 Sch. 13 para. 97\(5\)](#)
- s. 413(3) (defns. of "care" and "the 1968 Act") repealed (prosp.) by [1995 c. 36 s. 105\(4\)\(5\)](#)[Sch. 4 para. 24\(17\)\(b\)\(i\)](#)[Sch. 5](#)
- s. 462 (defns. of "child" "children's hearing" "place of safety" "residential establishment" and "supervision requirement") amended (prosp.) by [1995 c. 36 s. 105\(4\)](#)[Sch. 4 para. 24\(18\)](#)
- s. 462 (defns. of "crime" and "prosecutor") applied (prosp.) by [1995 c. 36 s. 53\(7\)](#)