



Criminal Justice (Scotland) Act 1980

1980 CHAPTER 62

PART II

PROCEDURE AND EVIDENCE

Appeals

33 Solemn appeals

The provisions of the 1975 Act relating to appeals in solemn proceedings shall have effect as amended by Schedule 2 to this Act.

34 Summary appeals

The provisions of the 1975 Act relating to appeals in summary proceedings shall have effect as amended by Schedule 3 to this Act.

35 Prosecution appeal by bill of advocation

After section 280 of the 1975 Act there shall be inserted the following section—

“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.
- (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).”.

36 Appeals from decisions on competency and relevancy in summary proceedings

In section 334 of the 1975 Act (procedure at first diet), after subsection (2) (as substituted by paragraph 54(6) of Schedule 7 to this Act) there shall be inserted the following subsections—

- “(2A) Without prejudice to any right of appeal under section 442 or 453A of this Act, a party may, with the leave of the court (granted either on the motion of that party or *ex proprio motu*) and in accordance with such procedure as may be prescribed by Act of Adjournal under this Act, appeal to the High Court against a decision of the court of first instance (other than a decision not to grant leave under this subsection) which relates to such objection or denial as is mentioned in subsection (1) above; but such appeal must be taken not later than two days after such decision.
- (2B) Where an appeal is taken under subsection (2A) above, the High Court may postpone the trial diet (if one has been fixed) for such period as appears to them to be appropriate and may, if they think fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.
- (2C) If leave to appeal under subsection (2A) above is granted by the court it shall not proceed to trial at once under paragraph (a) of section 337 of this Act; and paragraph (b) of that section shall be construed as requiring sufficient time to be allowed for the appeal to be taken.
- (2D) In disposing of an appeal under subsection (2A) above the High Court may affirm the decision of the court of first instance or may remit the case to it with such directions in the matter as they think fit; and where the court of first instance had dismissed the complaint, or any part of it, may reverse that decision and direct that the court of first instance fix a trial diet (if it has not already fixed one as regards so much of the complaint as it has not dismissed.)”.

37 Lord Advocate's reference

After section 263 of the 1975 Act there shall be inserted the following section—

“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;

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

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.”