



Criminal Justice (Scotland) Act 1995

1995 CHAPTER 20

PART I

THE COURSE OF JUSTICE

Appeals

42 Leave to appeal

- (1) In section 228(1) of the 1975 Act (right of appeal), after the word “may” there shall be inserted “, with leave granted in accordance with section 230A of this Act,”.
- (2) After section 230 of that Act there shall be inserted the following section—

“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;

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

“(3A) Subsection (3) above shall not apply as respects any ground of appeal specified as an arguable ground of appeal by virtue of subsection (7) of section 230A of this Act.”.

(4) In section 442(1)(a) of that Act (right of appeal), after the word “may” there shall be inserted “, with leave granted in accordance with section 442ZA or, as the case may be, 453AA of this Act,”.

(5) After section 442 of that Act there shall be inserted the following section—

“442ZA Leave to appeal against conviction etc

(1) The decision whether to grant leave to appeal for the purposes of section 442(1)(a)(i) or (iii) 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 stated case lodged under subsection (4) of section 448 of this Act; and

(b) the documents transmitted to the Clerk of Justiciary under subsection (3)(b) of that section.

(3) A warrant granted under subsection (1)(b)(ii) above shall not take effect until the expiry of the period of 14 days mentioned in subsection (4) below without an application to the High Court for leave to appeal having been lodged by the appellant under that subsection.

(4) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under subsection (10) below, apply to the High Court for leave to appeal.

(5) In deciding an application under subsection (4) above the High Court shall—

(a) if, after considering the documents mentioned in subsection (2) above and the reasons for the refusal, the court is of the opinion that there are arguable grounds of appeal, grant leave to appeal and make such comments in writing as the court considers appropriate; and

(b) in any other case—

(i) refuse leave to appeal and give reasons in writing for the refusal; and

(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

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- (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 stated case) 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 stated case 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.”.
- (6) After subsection (3) of section 452 of that Act (restriction on arguing ground not in stated case) there shall be inserted the following subsection—

“(3A) Subsection (3) above shall not apply as respects any ground of appeal specified as an arguable ground of appeal by virtue of subsection (7) of section 442ZA of this Act.”.
- (7) After section 453A of that Act there shall be inserted the following section—

“453AA Leave to appeal against sentence

- (1) The decision whether to grant leave to appeal for the purposes of section 442(1)(a)(ii) or (ia) of this Act shall be made by a judge of the High Court who shall—
 - (a) if he considers that the note of appeal and other documents sent to the Clerk of Justiciary under section 453B(4)(a) of this Act disclose arguable grounds of appeal, grant leave to appeal; 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) 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 (3) below without an application to the High Court for leave to appeal having been lodged by the appellant under that subsection.

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- (3) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under subsection (9) below, apply to the High Court for leave to appeal.
- (4) In deciding an application under subsection (3) above the High Court shall—
 - (a) if, after considering the note of appeal and other documents mentioned in subsection (1) 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
 - (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.
- (5) Consideration whether to grant leave to appeal under subsection (1) or (4) above shall take place in chambers without the parties being present.
- (6) Comments in writing made under subsection (1)(a) or (4)(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.
- (7) Where the arguable grounds of appeal are specified by virtue of subsection (6) 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.
- (8) Any application by the appellant for the leave of the High Court under subsection (7) 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.
- (9) The Clerk of Justiciary shall forthwith intimate—
 - (a) a decision under subsection (1) or (4) 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.”.

43 Reduction in quorum of High Court for appeals against sentence etc

- (1) In section 245 of the 1975 Act (quorum of High Court in relation to appeals)—
 - (a) at the beginning of subsection (1) there shall be inserted “Subject to subsection (1A) below,”; and
 - (b) after subsection (1) there shall be inserted the following subsection—

“(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

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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) After section 451 of that Act there shall be inserted the following section—

“451A Quorum of High Court in relation to appeals

- (1) For the purpose of hearing and determining any appeal under this Part of this Act, or any proceeding connected therewith, three of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and the determination of any question under this Part of this Act by the court shall be according to the votes of the majority of the members of the court sitting, including the presiding judge, and each judge so sitting shall be entitled to pronounce a separate opinion.
- (2) For the purpose of hearing and determining appeals under section 442(1)(a) (ii) or (iia) 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.”.

44 Trial judge’s report

- (1) Without prejudice to sections 236A and 453B(3)(b) of the 1975 Act, the High Court may, in relation to any appeal—
 - (a) under section 228(1), 228A or 442(1) of the 1975 Act;
 - (b) by way of bill of suspension or advocacy; or
 - (c) by way of petition to the nobile officium,
 at any time before the appeal is finally determined, order the judge who presided at the trial, passed sentence or otherwise disposed of the case to provide to the Clerk of Justiciary a report in writing giving the judge’s opinion on the case generally or in relation to any particular matter specified in the order.
- (2) The Clerk of Justiciary shall send a copy of a report provided under subsection (1) above to the convicted person or his solicitor, the Crown Agent and, in relation to cases referred under section 263(1) of the 1975 Act, the Secretary of State.
- (3) Subject to subsection (2) above, the report of the judge shall be available only to the High Court, 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.
- (4) Expressions used in this section and in the 1975 Act have the same meaning in this section as in that Act.

45 Extension of certain time limits with respect to appeals

(1) In section 451(2) of the 1975 Act (power of sheriff principal to extend certain time limits with respect to appeal by stated case), for the words from “taken” to “the sheriff” there shall be substituted “taken—

- (a) is temporarily absent from duty for any cause;
- (b) is a temporary sheriff; or
- (c) is a justice of the peace,

the sheriff”.

(2) In the proviso to subsection (4) of section 453B of that Act (power of sheriff principal to extend time limit with respect to appeal against sentence), for the words from “judge” to “extend” there shall be substituted “judge—

- (a) is temporarily absent from duty for any cause;
- (b) is a temporary sheriff; or
- (c) is a justice of the peace,

extend”.

46 New prosecution for same or similar offence

(1) In section 255 of the 1975 Act (supplementary provisions where High Court authorises new prosecution)—

- (a) at the beginning of subsection (1) there shall be inserted “Subject to subsection (1A) below,”;
- (b) after subsection (1) there shall be inserted the following subsections—

“(1A) In a new prosecution under this section the accused shall not be charged with an 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.”; and

- (c) after subsection (4) there shall be inserted the following subsections—

“(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.”.

- (2) In section 452B of the 1975 Act (corresponding provision in relation to summary proceedings)—
- (a) at the beginning of subsection (1) there shall be inserted “Subject to subsection (1A) below,”;
 - (b) after subsection (1) there shall be inserted the following subsections—
 - “(1A) In a new prosecution under this section the accused shall not be charged with an 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 complaint 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.”; and
 - (c) after subsection (4) there shall be inserted the following subsection—
 - “(5) On granting authority under section 452A(1)(d) of this Act to bring a new prosecution, the High Court may, after giving the parties an opportunity of being heard, order the detention of the accused person in custody; but an accused person may not be detained by virtue of this subsection for a period of more than 40 days.”.