



Summary Jurisdiction (Scotland) Act 1954

1954 CHAPTER 48

Review

62 Appeal by stated case

On the final determination of any summary prosecution, either party may, notwithstanding any provision in any statute excluding review, make application to the court to state a case for the opinion of the High Court, and on such application being made the court, subject to the conditions hereinafter mentioned, shall be bound to state a case for such opinion, and it shall thereupon be competent to appeal to, and to bring under the review of, the High Court by stated case—

- (a) the relevancy of the complaint;
- (b) any irregularity in procedure ;
- (c) any alleged error of the court in point of law ; and
- (d) generally any matter which might immediately before the commencement of this Act have been competently reviewed by suspension, advocacy, or appeal under the Heritable Jurisdictions (Scotland) Act, 1746, or otherwise.

63 Manner and time of appeal

- (1) Application to have a case stated shall be made at the time when judgment is given, or at any time within five days thereafter, and shall be signed by the appellant or his solicitor, and either written on the complaint or lodged with the clerk of court, and where the latter course is adopted the clerk of court shall enter in the record of the proceedings the date when the application was lodged, and shall thereupon intimate the appeal to the respondent.
- (2) Where such an application has been made by the person convicted, and the judge by whom he was convicted dies before signing the case or is precluded by illness or other cause from so doing, it shall be competent for the convicted person to present a bill of suspension to the High Court and to bring under the review of that Court any matter which might have been brought under review by stated case.

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64 Caution by appellant

Immediately on an appeal under section sixty-two of this Act being taken the court shall fix a sum to be consigned by the appellant, or for which caution is to be found, to meet any fine and expenses imposed and the expenses of the appeal, and the appellant shall not be entitled to have a case stated unless within five days after the date of his appeal he has made consignation, or found such caution, to the satisfaction of the clerk of court and has also paid the clerk his fees for preparing the case:

Provided that

- (i) the court shall have power in any case where it deems it expedient so to do to dispense with consignation or the finding of caution, and
- (ii) a person prosecuting in the public interest shall not be bound to make consignation or to find caution.

65 Procedure where appellant in custody

- (1) If an appellant under section sixty-two of this Act is in custody the court may, on consignation being made or caution being found in accordance with the last foregoing section, grant interim liberation on such conditions as to caution or otherwise as the court may fix, and may grant a sist of execution, or may dispense with further consignation or caution, or may make any other interim order which the justice of the case may require, or may refuse to grant interim liberation.
- (2) An application for interim liberation shall be disposed of by the court within twenty-four hours after such application has been made. The appellant, if dissatisfied with the amount of caution fixed, or on refusal of liberation, may, within twenty-four hours after the judgment of the court, appeal there-against by a note of appeal written on the complaint and signed by himself or his solicitor, and the complaint and proceedings shall thereupon be transmitted to the clerk of justiciary, and the High Court or any judge thereof, either in court or in chambers, shall, after hearing parties, have power to review the decision of the inferior court and to grant interim liberation on such conditions as such Court or judge may think fit, or to refuse interim liberation.
- (3) If an appellant who has been granted interim liberation does not thereafter proceed with his appeal, the inferior court shall have power to grant warrant to apprehend and imprison him for such period of his sentence as at the date of his liberation remained unexpired, such period to run from the date of his imprisonment under such warrant.

66 Draft stated case to be prepared

- (1) The clerk of court shall, within ten days from an application for a stated case under section sixty-two of this Act, or, when consignation or caution is ordered, within five days from the date when consignation has been made or caution found, prepare a draft stated case, and shall within the said period send the draft to the appellant or his solicitor, and a duplicate thereof to the respondent or his solicitor.
- (2) A stated case shall be in the form as nearly as may be of the form contained in Part VI of the Second Schedule to this Act, and shall set forth the particulars of any matters competent for review which the appellant desires to bring under the review of the High Court, and of the facts, if any, proved in the case, and any point of law decided, and the grounds of the decision.

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67 Adjustment, signature and transmission to High Court of case

- (1) Within one month after -receipt of the draft case under the last foregoing section each party shall cause to be transmitted to the judge against whose judgment the appeal is taken and to the other parties a note of any adjustments he desires to have made on the draft case or intimate that he has no such adjustments to suggest, and if the appellant fails so to do he shall be deemed to have abandoned his appeal, and in any such case the court shall have the like power to grant warrant for his apprehension and imprisonment as is conferred by section sixty-five of this Act.
- (2) Within fourteen days after the latest date on which any such adjustments or intimation as aforesaid are or is received the judge against whose judgment the appeal is taken shall (unless the appellant is deemed to have abandoned his appeal) after considering any such adjustments, state and sign the case.
- (3) As soon as the case shall be signed by the judge against whose judgment the appeal is taken the clerk of court shall send it to the appellant and transmit the complaint, productions and any other proceedings in the cause to the clerk of justiciary.
- (4) The appellant shall within five days after receiving the case send a copy of it to the respondent and cause it to be transmitted to or lodged with the clerk of justiciary together with a certificate by himself or his solicitor that a copy has been sent to the respondent in accordance with the requirement herein-'before contained.
- (5) If the appellant fails to comply with the last foregoing subsection he shall be deemed to have abandoned his appeal, and the court shall have the like power to grant warrant for his apprehension and imprisonment as is conferred by section sixty-five of this Act.

68 Abandonment of appeal

- (1) An appellant under section sixty-two of this Act may at any time prior to lodging the case with the clerk of justiciary abandon, his appeal by minute signed by himself or his solicitor, written on the complaint, or lodged with the clerk of court, and intimated to the respondent, but such abandonment shall be without prejudice to any other mode of appeal, review, advocacy, or suspension competent.
- (2) On the case being lodged with the clerk of justiciary, the appellant shall be held, to have abandoned any other mode of appeal which might otherwise have been open to him.

69 Record of procedure in appeal

On an appeal being taken under section sixty-two of this Act the clerk of court shall record on the complaint the different steps of procedure in the appeal, and such record shall be evidence of the dates on which the various steps of procedure took place. The forms of procedure in appeals shall be as nearly as may be in accordance with the forms contained in Part VI of the Second Schedule to this Act.

70 Computation of time

In computing any number of days for the purpose of the provisions of this Act relating to appeals Sundays and public holidays shall be excluded.

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71 Hearing of appeal

- (1) A stated case under this Act shall be heard by the: High Court on such date as it may fix, and the High Court shall have power to affirm, reverse, or amend the determination of the inferior court, or to impose a fine instead of imprisonment where imprisonment has been awarded, or to reduce the period of imprisonment, or to reduce any fine imposed by the inferior court, or to remit the case back to the inferior court to be amended, and thereafter, on the case being amended and returned, to deliver judgment thereon, or to remit the case to the inferior court with their opinion thereon.
- (2) Where in any such case an appeal against an acquittal is sustained, the High Court may either convict and sentence the accused or may remit the case to the inferior court with instructions to convict and sentence the accused, who shall be bound to attend any diet fixed by such court for this purpose.
- (3) The High Court shall have power in appeals under this Act to award such expenses both in the High and inferior courts as it may think fit.
- (4) The High Court may remit to any fit person to inquire and report in regard to the facts and circumstances of any appeal, and on considering such report may pronounce judgment.
- (5) Where an appellant has been granted interim liberation, whether his appeal is under this Act or otherwise, he shall appear personally in court on the day or days fixed for the hearing of his appeal, failing which, unless the court shall on cause shown permit the appeal to be heard, he shall be held to have abandoned, it.
- (6) Where an appeal is dismissed or refused in whole or in part, the High Court shall have power to grant warrant to apprehend and imprison the appellant for any term, to run from the date of his imprisonment, not longer than that part of the term of imprisonment specified in the sentence brought under review which remained unexpired at the date of liberation.

72 Consent by prosecutor to setting aside conviction

- (1) Where an appeal has been taken under section sixty-two of this Act or by suspension or otherwise, and the prosecutor, on the appeal being intimated to him, is not prepared to maintain the judgment appealed against, he may by a minute signed by him and written on the complaint or lodged with the clerk of court consent to the conviction and sentence being set aside, either in whole or in part. Such minute shall set forth the grounds on which the prosecutor is of opinion that the judgment cannot be maintained.
- (2) A copy of any minute under the last foregoing subsection shall be sent by the prosecutor to the appellant, and the clerk of court shall thereupon ascertain from the appellant or his solicitor whether he desires to be heard by the High Court before the appeal is disposed of, and shall note on the record whether or not the appellant so desires, and shall thereafter transmit the complaint and relative proceedings to the clerk of justiciary.
- (3) The clerk of justiciary on receipt of a complaint and relative proceedings under the last foregoing subsection shall lay them before any judge of the High Court, either in court or in chambers, and such judge, after hearing parties if they desire to be heard, or without hearing parties, may set aside the conviction either in whole or in part and award expenses to the appellant not exceeding five guineas, or may refuse to set aside the conviction, in which case the proceedings shall be returned to the clerk of the

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inferior court, and the appellant shall then be entitled to proceed with his appeal in the same way as if it had been marked on the date when the complaint and proceedings are returned to the clerk of the inferior court.

- (4) Where proceedings are taken under this section, the preparation of the draft stated case shall be delayed pending the decision of the High Court.
- (5) The power conferred by this section to consent to a conviction and sentence being set aside shall be exercisable
 - (a) where the appeal is by stated case, at any time within ten days after the receipt by the prosecutor of the draft stated case; and
 - (b) where the appeal is by suspension at any time within ten days after the service on the prosecutor of the bill of suspension.

73 Convictions not to be quashed on certain grounds

- (1) No conviction, sentence, judgment, order of court, or other proceeding whatsoever under this Act shall be quashed for want of form, or, where the accused had legal assistance in his defence, shall be suspended or set aside in respect of any objections to the relevancy of the complaint, or to the want of specification therein, or to the competency or admission or rejection of evidence at the trial in the inferior court, unless such objections shall have been timeously stated at the trial by the solicitor of the accused.
- (2) Save as provided in sections sixty-two and seventy-one of this Act no conviction, sentence, judgment, order of court, or other proceeding whatsoever shall be quashed except on the ground of incompetency, or corruption, or malice, or oppression, or unless the High Court shall be of opinion that the accused has been misled as to the true nature of the charge against him or been prejudiced in his defence on the merits, and that a miscarriage of justice has resulted thereby:

Provided that the High Court may amend any conviction, sentence, judgment, order of court, or other proceeding, or may pronounce such other sentence, judgment, or order as they shall judge expedient.

74 Other modes of appeal

- (1) The provisions regulating appeals shall, subject to the provisions of this Act, be without prejudice to any other mode of appeal competent. Where it is competent to appeal against a sentence of imprisonment to the High Court under the Heritable Jurisdictions (Scotland) Act, 1746, or under any Act amending that Act, or applying or incorporating any of the provisions of that Act with regard to appeals, such appeal shall, if otherwise well taken, be held to be timeously made if lodged with the clerk of the court in which the sentence appealed against was pronounced and intimated to the respondent at any time during the appellant's imprisonment under the sentence appealed against, or within ten days from the date of the appellant's liberation from imprisonment under the said sentence:

Provided that this subsection shall not apply to any appeal against a sentence of imprisonment, unless the imprisonment under such sentence commenced within ten days after it was pronounced.

- (2) Any officer of law may serve any bill of suspension or other writ relating to an appeal.

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75 Actions of damages in respect of proceedings under this Act

- (1) No judge, clerk of court, or prosecutor in the public interest shall be found liable by any court in damages for or in respect of any proceedings taken, act done, or judgment, decree, or sentence pronounced under this Act, unless
 - (a) the person suing has suffered imprisonment in consequence thereof; and
 - (b) such proceeding, act, judgment, decree, or sentence has been quashed ; and
 - (c) the person suing shall specifically aver and prove that such proceeding, act, judgment, decree, or sentence was taken, done, or pronounced maliciously and without probable cause.
- (2) No such liability as aforesaid shall be incurred or found where such judge, clerk of court, or prosecutor shall establish that the person suing was guilty of the offence in respect whereof he had been convicted, or on account of which he had been apprehended or had otherwise suffered, and that he had undergone no greater punishment than was assigned by law to such offence.
- (3) No action to enforce such liability as aforesaid shall lie unless it is commenced within two months after the proceeding, act, judgment, decree, or sentence founded on, or in the case where the Act under which the action is brought fixes a shorter period, within that shorter period.
- (4) In this section " judge " shall not include " sheriff," and the provisions of this section shall be without prejudice to the privileges and immunities possessed by sheriffs.

76 Acts of Adjournal making rules, etc.

- (1) It shall be lawful for the High Court, by Act of Adjournal—
 - (a) to make rules to give effect to any of the provisions of this Act;
 - (b) to make rules regulating the procedure under this Act;
 - (c) to cancel or amend any of the forms of procedure under this Act or to provide additional forms ;
 - (d) to fix and regulate the fees payable in the High Court and the inferior courts in proceedings under this Act.
- (2) Until regulated under the foregoing provisions of this section the fees payable in the High Court shall be those payable at the commencement of this Act and the fees payable in the inferior courts shall be those set forth in the Third Schedule to this Act.
- (3) Nothing in this section shall affect the regulations enacted by the Courts of Law Fees (Scotland) Act, 1895.
- (4) Any power conferred on the High Court by this Act to make rules shall be exercisable by statutory instrument, and the Statutory Instruments Act, 1946, shall apply to a statutory instrument containing rules made by the High Court in the exercise of such power in like manner as if the rules had been made by a Minister of the Crown.

77 Interpretation

In this Act, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them—

" Bail " includes any pledge lodged by or on behalf of an accused person as security for his appearance at any diet of court:

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" Borstal training " and " Detention centre " have the like meanings as in the Prisons (Scotland) Act, 1952:

" County " extends to the limits within which a sheriff has jurisdiction in criminal matters, whether by statute or at common law, and includes district of a county:

" Court " and " Court of summary jurisdiction " mean any court of summary criminal jurisdiction, and include sheriff court, justice of peace court, burgh court, police court, and the court of the bailie of the river and firth of Clyde:

" District of a county " means any part of a county in which a separate sheriff court is held and for which a separate procurator fiscal is appointed:

" Extract conviction " and " extract of previous conviction " include certified copy conviction, certificate of conviction, and any other document under the hand of the proper officer in use to be issued from any court of justice of the United Kingdom as evidence of a conviction or convictions:

" High Court " means the High Court of Justiciary;

" Judge " means any sheriff, justice of the peace, and any magistrate or other judge of a court of summary criminal jurisdiction :

" Justice of the peace " means any of Her Majesty's justices of the peace for any county or county of a city in Scotland acting within such county or county of a city:

" Legalised police cells " has the like meaning as in the Prisons (Scotland) Act, 1952:

" Offence " means any act, attempt or omission punishable by law:

" Officer of law " includes chief constable, deputy chief constable, constable, sheriff officer, prison officer, and any person having authority to execute a warrant of court :

" Order " means any order, byelaw, rule, or regulation having statutory authority:

" Probation order " has the like meaning as in the Criminal Justice (Scotland) Act, 1949 :

" Prosecutor " includes procurator-fiscal, assistant procurator-fiscal, procurator-fiscal depute, justice of the peace fiscal, burgh prosecutor, and any other person prosecuting in the public interest, private prosecutor, and complainer, and any person duly authorised to represent or act for any public prosecutor:

" Remand centre," has the like meaning as in the Prisons (Scotland) Act, 1952;

" Remand home " means premises established or used by a county or town council under the provisions of section eighty-one of the Children and Young Persons (Scotland) Act, 1937:

" Statute " includes a Provisional Order confirmed by Act of Parliament:

" Witness " includes haver.

78 Repeals and savings

- (1) The enactments set forth in the Fourth Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (2) Nothing in this repeal shall affect any Act of Adjournal, rule, order, regulation passed or made, fee fixed or thing done under any enactment repealed by this Act and every

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such Act of Adjournal, rule, order, regulation, fee or thing shall, if in force at the commencement of this Act, continue in force and be deemed to have been passed, made, fixed or done under the corresponding provision of this Act.

- (3) Nothing in this Act shall make it unlawful to detain an accused person in custody pending trial otherwise than in prison if such detention would have been lawful prior to the commencement of this Act.
- (4) Any document referring to any Act or enactment repealed by this Act shall be construed as referring to this Act or to the corresponding enactment in this Act.
- (5) The mention of particular matters in this section shall not be taken to affect the general application to this Act of section thirty-eight of the Interpretation Act, 1889 (which relates to the effect of repeals).

79 Short title, commencement and extent

- (1) This Act may be cited as the Summary Jurisdiction (Scotland) Act, 1954.
- (2) This Act shall come into operation on the first day of January, nineteen hundred and fifty-five.
- (3) Save as otherwise expressly provided this Act shall extend to Scotland only.