

ACT OF ADJOURNAL (CRIMINAL PROCEDURE RULES) 1996 SI 1996/513

SCHEDULE 2

CRIMINAL PROCEDURE RULES 1996

PART IV Summary proceedings

CHAPTER 19 APPEALS FROM SUMMARY PROCEEDINGS

Appeals relating to preliminary pleas

19.1 (1) If—

(a) an accused states an objection to the competency or relevancy of a complaint or the proceedings, and

(b) that objection is repelled,

he may apply for leave to appeal against that decision under section 174(1) of the Act of 1995 (appeals relating to preliminary pleas) only after stating how he pleads to the charge or charges set out in the complaint.

(2) Subject to paragraph (1), the accused shall apply for leave to appeal against any decision to which that paragraph applies; and the court which made the decision shall determine that application immediately following the decision in question.

(3) Where the court grants the application, the clerk of court shall enter in the minute of proceedings—

(a) details of the decision in question; and

(b) the granting of leave to appeal against it.

(4) An appeal to which this rule applies shall be made by note of appeal in Form 19.1-A.

(5) The note of appeal shall be lodged with the clerk of the court which granted leave to appeal not later than two days after the decision appealed against.

(6) The clerk of court shall, on the lodging of the note of appeal with him—

(a) send a copy to the respondent or his solicitor;

(b) request a report from the presiding judge; and

(c) transmit—

(i) the note of appeal,

(ii) two certified copies of the complaint and the minutes of proceedings, and

(iii) any other relevant documents,

to the Clerk of Justiciary.

(7) The presiding judge shall, as soon as possible after receiving a request for a report, send his report to the Clerk of Justiciary who shall send a copy to the appellant and respondent or their solicitors.

(8) The Clerk of Justiciary shall arrange for the High Court to hear the appeal as soon as possible, and shall cause to be copied any documents necessary for the High Court.

(9) Where the High Court makes any order postponing the trial diet under section 174(2) of the Act of 1995, or makes any such order and gives a direction under that section, the Clerk of Justiciary shall send a copy of that order and any direction to—

(a) the appropriate clerk of court;

(b) any accused who are not parties to the appeal or to their solicitors; and

(c) the governor of any institution in which any accused is detained.

(10) Any such appeal may be abandoned at any time prior to the hearing of the appeal.

(11) Where an appeal is abandoned, a minute of abandonment in Form 19.1-B shall be lodged with the Clerk of Justiciary.

(12) On the lodging of a minute of abandonment under paragraph (11), the Clerk of Justiciary shall inform the appropriate clerk of court and the respondent or his solicitor that the appeal has been abandoned.

Forms for appeals by stated case

19.2 (1) An application under section 176(1) of the Act of 1995 (stated case: manner and time of appeal) shall be in Form 19.2-A.

(2) A stated case shall be in Form 19.2-B.

(3) The form of minutes of procedure in an appeal by stated case shall be in Form 19.2-C.

Forms for appeals against sentence only

19.3 (1) A note of appeal under section 186(1) of the Act of 1995 (appeals against sentence only) shall be in Form 19.3-A.

(2) The form of minutes of procedure in an appeal under section 186(1) of the Act of 1995 shall be in Form 19.3-B.

Extension of time for appeals

19.4 (1) An extension of time by the sheriff principal under section 186(5) (extension of time in appeal against sentence only), or section 194(2) (extension of time for stated case), of the Act of 1995 shall be in Form 19.4.

(2) Where, by virtue of subsection (8) of section 186 of the Act of 1995 (application of section 181 where appellant in appeal against sentence only fails to comply with a requirement), the court makes an order extending the period within which the note of appeal shall be lodged under subsection (2) of that section, the periods mentioned in subsections (2) and (4) of that section shall run from the date which is two days after the date on which the court makes that order and not from the date of the passing of the sentence.

Abandonment of appeals by stated case

19.5 A minute of abandonment of an appeal under section 184(1) of the Act of 1995 (abandonment of stated case before lodging it with the Clerk of Justiciary) shall be in Form 19.5.

Abandoning appeals against conviction only

19.6 (1) This rule applies for the purpose of section 175(8) of the Act of 1995 (abandoning appeal against conviction and proceeding with appeal against sentence alone).

(2) An application to abandon an appeal under section 175(8) of the Act of 1995 shall be made by minute in Form 19.6 and intimated by the appellant to the respondent.

(3) Subject to paragraph (4), the minute shall be lodged with the clerk of the court which imposed the sentence being appealed against.

(4) Where, before the lodging of the minute, the stated case has been lodged with the Clerk of Justiciary, the minute shall be lodged with the Clerk of Justiciary who shall send a copy of the minute to the clerk of the court which imposed the sentence appealed against.

(5) Where, before the lodging of the minute, copies of the stated case and relative proceedings have been lodged with the Clerk of Justiciary, those copies shall be used for the purposes of the hearing of the appeal against sentence.

(6) On the lodging of the minute, section 186(3) to (9) of the Act of 1995 (provisions relating to appeal against sentence only) shall apply to the stated case as they apply to a note of appeal.

Abandonment of appeals against sentence only

19.7 A minute of abandonment under section 186(9) of the Act of 1995 (abandonment of appeal against sentence only) shall be in Form 19.7.

Intimation of abandonment

19.8 The Clerk of Justiciary or clerk of court, as the case may be, on the lodging with him of—

(a) a minute abandoning an appeal under section 184(1) of the Act of 1995 (abandonment of appeal by stated case before lodging of case with the Clerk of Justiciary), or

(b) a minute abandoning an appeal under section 186(9) of the Act of 1995 (abandonment of appeal against sentence only),

shall immediately notify the Crown Agent or the prosecutor, as the case may be, of the lodging of the minute; and the Clerk of Justiciary shall, where the minute is lodged with him, notify immediately the clerk of the appropriate court.

Applications for suspension of disqualification from driving in appeals

19.9 (1) Where a person who has been disqualified from holding or obtaining a driving licence appeals against that disqualification under section 176(1) of the Act of 1995 by stated case, any application to suspend the disqualification shall be made with the application to the court to state a case for the opinion of the High Court.

(2) On an application being made under paragraph (1) to suspend a disqualification, the court shall grant or refuse to grant the application within seven days of it being made.

(3) Where the court refuses to grant the application and the appellant applies to the High Court to suspend the disqualification, any such application shall be made by note in Form 19.9.

(4) The note shall be lodged by the appellant or his solicitor with the Clerk of Justiciary.

(5) The appellant or his solicitor shall intimate the lodging of the note to the respondent and the clerk of the court which imposed the disqualification.

(6) The clerk shall, on receiving such intimation, forthwith send to the Clerk of Justiciary—

(a) a certified copy of the complaint; and

(b) a certified copy of the minute of proceedings.

(7) The High Court may order such further intimation (including intimation to the Lord Advocate) as it thinks fit, and may dispose of the application in open court or in chambers after such hearing as it thinks fit.

(8) On the High Court making an order on the note, the Clerk of Justiciary shall send a certified copy of the order to the clerk of the court which imposed the disqualification.

(9) Where the order suspends the disqualification, the Clerk of Justiciary shall also send a certified copy of the order to the Secretary of State with such further information as the Secretary of State may require.

(10) An order made by a single judge of the High Court under this rule shall not be subject to appeal or review.

Applications for suspension of disqualification from driving in bills of suspension

19.10 (1) Where a person who has been disqualified from holding or obtaining a driving licence appeals against that disqualification by bill of suspension, an application to suspend the disqualification shall be made by requesting interim suspension of the disqualification in the prayer of the bill.

(2) Where the court orders interim suspension, that order shall not have effect until—

(a) the bill has been served on the respondent; and

(b) the principal bill and first deliverance on the bill with an execution, or acceptance, of service—

(i) have been shown to the clerk of the sentencing court and he has endorsed a certificate of exhibition; and

(ii) they have been returned to the Clerk of Justiciary by the complainer or his solicitor.

(3) On certifying the bill under paragraph (2), the clerk of the court which imposed the disqualification shall send a certified copy of the complaint and the relative minute of proceedings to the Clerk of Justiciary.

(4) Paragraphs (2), (8), (9) and (10) of rule 19.9 (applications for suspension of disqualification from driving in appeals) apply to this rule as they apply to that rule.

Suspension of sentence under s.193A of the Act of 1995

19.10A (1) Where a convicted person or the prosecutor appeals to the High Court under section 175 of the Act of 1995, any application to suspend a relevant sentence shall be made with

(a) the application to the court to state a case for the opinion of the High Court; or

(b) the note of appeal, as the case may be.

(2) On an application being made under paragraph (1) to suspend a sentence the court shall grant or refuse to grant the application within seven days of its being made.

(3) In the application of section 193A of the Act of 1995 (suspension of certain sentences pending appeal) to a case in which leave to appeal has been refused under section 180 or 187 of that Act, the word "determined" in subsection (1) of the said section 193A shall be construed as meaning -

(a) the fifteenth day after the date of intimation to the appellant or his solicitor and to the Crown Agent of refusal of leave under subsection (1)(b) of section 180 or 187 of that Act, as the case may be, unless the appellant applies to the High Court for leave to appeal; or

(b) the seventh day after the date of intimation to the appellant or his solicitor and to the Crown Agent of the refusal of leave by the High Court under subsection (5)(b) of section 180 or subsection (4)(b) of section 187 of that Act, as the case may be.

Solicitor entering appearance etc.

19.11 (1) Where an appellant in an appeal is represented by a solicitor who does not practise in Edinburgh, that solicitor may appoint a solicitor who practises in Edinburgh to carry out the duties of solicitor to the appellant in relation to that appeal.

(2) In paragraph (1), "appeal" includes any appeal whether by stated case, note of appeal, bill of suspension or advocacy.

(3) The solicitor for the appellant or if unrepresented, the appellant, shall enter appearance and comply with the provisions of section 179(9) of the Act of 1995 (lodging of stated case with Clerk of Justiciary).

Duty to print stated case etc.

19.12 (1) The solicitor for the appellant or, if unrepresented, the appellant shall—

(a) print the complaint, minutes of proceedings and stated case or bill of suspension;

(b) not later than twenty-one days before the hearing, return the process to the Clerk of Justiciary; and

(c) provide—

(i) the Clerk of Justiciary with four copies of the print; and

(ii) the respondent or his solicitor with three copies of the print.

(2) Where the solicitor for the appellant or the appellant, as the case may be, cannot comply with any of the requirements of paragraph (1), he shall, not later than twenty-one days before the hearing, so inform the Clerk of Justiciary in writing with reasons.

(3) On being so informed, the Clerk of Justiciary may in his discretion postpone the hearing by dropping the appeal from the Justiciary Roll.

(4) Where the Clerk of Justiciary does not drop the appeal from the roll under paragraph (3), the court may, at the hearing, allow the appeal to be dropped from the roll or may dismiss the appeal.

Duty of solicitor in bill of suspension

19.13 A solicitor who requests a first deliverance in a bill of suspension shall comply with the requirements of rule 19.12(1) and (2) (printing of stated case) whether or not he is the nominated solicitor for the purposes of legal aid.

List of appeals

19.14 (1) The Clerk of Justiciary shall, after consultation with the Lord Justice General or Lord Justice-Clerk, issue a list of appeals with the respective dates of hearing on the Justiciary Roll.

(2) Subject to paragraph (3) the Clerk of Justiciary shall give the respective solicitors representing parties to an appeal so listed at least 14 days notice of the date fixed for the hearing of the appeal.

(3) In an appeal under section 175(2)(b), (c) or (ca) or by virtue of section 175(4) of the Act of 1995, the period of notice mentioned in paragraph (2) shall be 42 days.

Diet for interim suspension

19.15 Where a bill of suspension contains a prayer for interim suspension of any order or for interim liberation—

(a) the judge before whom the bill is laid for a first deliverance shall assign a diet at which counsel for each party may be heard on the crave for the interim order; and

(b) the Clerk of Justiciary shall forthwith give notice of that diet to the parties.

Intimation of determination of appeal

19.16 (1) The Clerk of Justiciary shall send to the clerk of the sentencing court a certified copy of the order made on determination of the appeal from summary proceedings.

(2) Where the appeal against a disqualification from driving is refused or abandoned, the clerk of the sentencing court shall—

(a) make the appropriate endorsement on the driving licence of the appellant; and

(b) intimate the disqualification to the appropriate driving licence and police authorities.

(3) In this rule, "appeal" includes any appeal whether by stated case, note of appeal, bill of suspension or advocatation.

Suspension of disqualification etc. under section 193 of the Act of 1995

19.17 In the application of section 193 of the Act of 1995 (suspension of disqualification, forfeiture, etc.) to a case in which leave to appeal has been refused under section 180 or 187 of the Act of 1995, the word "determination" in subsection (1) of section 193 of that Act shall be construed as meaning—

(a) the fifteenth day after the date of intimation to the appellant or his solicitor of refusal of leave under subsection (1)(b) of section 180 or 187 of that Act, as the case may be, unless the appellant applies to the High Court for leave to appeal; or

(b) the day seven days after the date of intimation to the appellant or his solicitor of the refusal of leave by the High Court under subsection (5)(b) of section 180 or subsection (4)(b) of section 187 of that Act, as the case may be.

Remits in applications for leave to appeal

19.18 The judge of the High Court considering an application for leave to appeal under section 180 (leave to appeal against conviction etc.), or section 187 (leave to appeal against sentence), of the Act of 1995 may, before deciding to grant or refuse leave, remit the case to the judge at first instance for a report or a supplementary report to be produced to him as soon as is reasonably practicable on any matter with respect to the grounds of appeal.

Presentation of summary conviction appeals in writing

19.18A. The court may, if it considers the circumstances of the case require it, order rules 15.15A and 15.15B to apply to an appeal under section 175(2)(a) or (d) of the Act of 1995 as if it were an appeal to which those rules apply.

Presentation of summary sentence appeal in writing

19.19 (1) This rule applies to an appeal under section 175(2)(b), (c) or (ca) or by virtue of section 175(4) of the Act of 1995 listed in terms of rule 19.14 (list of appeals).

(2) In an appeal to which paragraph (1) applies the appellant shall present his case in writing.

(3) The solicitor for the appellant or, if unrepresented, the appellant shall –

(a) not later than 21 days before the date assigned for the appeal court hearing, lodge a case and argument in Form 19.18;

(b) lodge with the case and argument all documents, or a copy thereof, referred to or founded upon in the case and argument and not already lodged; and

(c) at the same time as he lodges the case and argument referred to in sub-paragraph (a) and the supporting documents referred to in sub-paragraph (b), send a copy to the Crown or, where the Crown is the appellant, to the respondent.

(4) The case and argument referred to in paragraph (3) shall be signed by counsel or the solicitor advocate representing the appellant in the appeal, or by the appellant where the appellant intends to conduct the appeal himself.

(5) At the hearing of the appeal –

(a) the case and argument and supporting documents referred to in paragraph (3) shall constitute the submissions of the appellant;

(b) unless it otherwise directs, the Court will expect the appellant to rely upon the case and argument without reading it over to the Court; and

(c) the appellant may make supplementary comments to the case and argument; and shall answer any points raised by the Court.

(6) On cause shown, the Court may permit the appellant to introduce new information that has come to light in the period since the case and argument was lodged.

(7) Where the Court permits the introduction of new information, it may at its discretion permit the lodging of additional documents in support of the new information.

(8) A party who wishes to introduce new information and lodge additional documents shall send a copy of the information and documents to the Clerk of Justiciary as soon as the information and documents come into the appellant's possession.

(9) A party who has sent new information and documents to the Clerk of Justiciary shall make application at the bar to allow it to be introduced or lodged, as the case may be.

(10) Where the documents referred to in paragraph (3) are not lodged timeously, the Deputy Principal Clerk of Justiciary shall refer the matter to the Lord Justice-General, whom failing the Lord Justice-Clerk, for such action as the Lord Justice-General or Lord Justice-Clerk, as the case may be, considers appropriate.