
STATUTORY INSTRUMENTS

1997 No. 1834 (S.135)

**HIGH COURT OF JUSTICIARY, SCOTLAND
SHERIFF COURT, SCOTLAND
SUMMARY JURISDICTION, SCOTLAND**

**Act of Adjournal (Criminal Procedure
Rules Amendment No. 4) 1997**

Made - - - - - *23rd July 1997*

Coming into force - - - - - *1st August 1997*

The Lord Justice General, Lord Justice Clerk and Lords Commissioners of Justiciary under and by virtue of the powers conferred on them by section 305 of the Criminal Procedure (Scotland) Act 1995⁽¹⁾ and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment No. 4) 1997 and shall come into force on 1st August 1997.

(2) This Act of Adjournal shall be inserted in the Books of Adjournal.

Amendment of the Criminal Procedure Rules

2.—(1) Schedule 2 (criminal procedure rules) to the Act of Adjournal (Criminal Procedure Rules) 1996 ⁽²⁾ shall be amended in accordance with this Act of Adjournal.

(2) After rule 15.12 insert—

“Suspension of sentence under s.121A of the Act of 1995

15.12A –

(1) Where under section 109(1) of the Act of 1995 a person lodges intimation of intention to appeal, any application for suspension of a relevant sentence under section 121A of that Act shall be made by petition to the High Court in Form 15.12A-A.

(1) 1995 c. 46.
(2) S.I. 1996/513.

(2) Where a convicted person or the prosecutor lodges a note of appeal in respect of an appeal under section 106(1)(b) to (e) or 108 of the Act of 1995, as the case may be, any application for suspension of a relevant sentence under section 121A of that Act shall be made by petition to the High Court in Form 15.12A-B.

(3) A petition to the High Court under paragraph (1) or (2) shall be lodged with the Clerk of Justiciary.

(4) The court shall grant or refuse any application under paragraph (1) or (2) within 7 days of the petition having been lodged as mentioned in paragraph (3).

(5) Where the court grants an application under paragraph (1) or (2) the Clerk of Justiciary shall, if the sentencing court was the sheriff, send a certified copy of the order to the clerk of that court.

(6) In any case where—

(a) intimation of intention to appeal is lodged under section 109(1) of the Act of 1995; and

(b) a relevant sentence is suspended under section 121A of that Act,

but no note of appeal is lodged under section 110 of that Act, the order suspending *ad interim* the relevant sentence shall be recalled with effect from the seventh day after the date on which the Clerk of Justiciary intimates that the appeal is deemed to have been abandoned.

(7) In the application of section 121A of the Act of 1995 (suspension of certain sentences pending appeal) to a case in which leave to appeal has been refused under section 107 of that Act, the word “determined” in subsection (1) of the said section 121A 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 107 of that Act, 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 107 of that Act.”.

(3) After rule 19.10 insert—

“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.”.
- (4) In chapter 22 (evidence of children)—
 - (a) in the heading, for “CHILDREN” substitute “VULNERABLE PERSONS”;
 - (b) in the heading of rule 22.1, for “children” substitute “vulnerable persons” and in paragraph (1) of that rule—
 - (i) for “child” substitute “vulnerable person”; and
 - (ii) at the end insert “and, where the vulnerable person is subject to an order or transfer direction (being an order or transfer direction such as is mentioned in paragraph (b) (i) or (ii) of the definition of “vulnerable person” in section 271(12) of the Act of 1995) shall be accompanied by a copy of the order or transfer direction, as the case may be”; and”
 - (c) in rule 22.2(1)(b), for “child's” substitute “vulnerable person's”.
- (5) After chapter 37 insert—

“CHAPTER 38

TRANSFER OF RIGHTS OF APPEAL OF DECEASED PERSONS

Applications for transfer under section 303A of the Act of 1995

38. Any application to the High Court under section 303A of the Act of 1995 for an order authorising a person (the “applicant”) as executor, or as the case may be by reason of his having a legitimate interest, to institute or continue any appeal which could have been or has been instituted by a deceased person shall be made in Form 38 and shall be accompanied by a copy of the confirmation of the applicant as executor or evidence of his legitimate interest, as the case may be.”.

- (6) In the Appendix—
 - (a) after Form 15.11-B insert—
 - (i) as Form 15.12A-A the form which is in Schedule 1; and
 - (ii) as Form 15.12A-B the form which is in Schedule 2;
 - (b) in Form 19.2-A (form of application for stated case), in paragraph 4, after “Acts,” insert “for interim suspension of sentence under section 193A of the Criminal Procedure (Scotland) Act 1995”;
 - (c) in Form 19.2-C (form of minutes of procedure in appeal by stated case), after the entry relating to section 41(2) of the Road Traffic Offenders Act 1988 insert—

“(Date)	(Name of judge.) The court refused to suspend [or <i>ad interim</i> suspended] the appellant’s sentence under section 193A of the Criminal Procedure (Scotland) Act 1995.	Clerk of Court”;
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- (d) in Form 19.3-A (form of note of appeal against sentence under section 186(1) of the Criminal Procedure (Scotland) Act 1995), in paragraph 3, after “Acts,” insert “for interim

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suspension of sentence under section 193A of the Criminal Procedure (Scotland) Act 1995”;

- (e) in Form 22.1 (form of petition for authorisation of the giving of evidence by child by live television link)—
 - (i) in the heading, for “child” substitute “vulnerable person”; and
 - (ii) in paragraph 3, for “child born on (*date of birth*)” substitute “vulnerable person”; and
- (f) after Form 36.4-B insert as Form 38 the form which is in Schedule 3.

Edinburgh,
23rd July 1997

Rodger of Earlsferry
Lord Justice General, I.P.D.

SCHEDULE 1

Paragraph 2(6)(a)(i)

Rule 15.12A(1)

FORM 15.12A-A

Form of petition to High Court of Justiciary for suspension of sentence where intimation of intention to appeal lodged

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE CLERK and LORDS COMMISSIONERS OF JUSTICIARY

PETITION

of

A.B.] (*address*)

[*or Prisoner in the Prison of (place)*]

PETITIONER

under

section 121A of the Criminal Procedure (Scotland) Act 1995

HUMBLY SHEWETH:

1. That on (*date*) the petitioner was convicted in the High Court of Justiciary [*or sheriff court*] at (*place*) of (*specify offence*) and was sentenced to (*specify relevant sentence*).

2. That on (*date*) the petitioner lodged with the Clerk of Justiciary an intimation of intention to appeal under section 109(1) of the Criminal Procedure (Scotland) Act 1995.

3. That (state facts relevant to application).

4. That the applicant has served a copy of this application on the Crown Agent.

MAY IT THEREFORE please your Lordships under section 121A of the Criminal Procedure (Scotland) Act 1995 to suspend *ad interim* the sentence.

ACCORDING TO JUSTICE, etc.

(*Signed*)

[Solicitor for petitioner]

(*Address and telephone number of solicitor*)

SCHEDULE 2

Paragraph 2(6)(a)(ii)

Rule 15.12A(2)

FORM 15.12A-B

Form of petition to High Court of Justiciary for suspension of sentence pending appeal

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE CLERK and LORDS COMMISSIONERS OF JUSTICIARY

PETITION

of

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A.B.] (*address*)

[*or Prisoner in the Prison of (place)*

or Her Majesty's Advocate]

PETITIONER

under

section 121A of the Criminal Procedure (Scotland) Act 1995

HUMBLY SHEWETH:

1. That on (*date*) the petitioner [*or* **A.B.]** (*address*) *or* Prisoner in the Place of (*place*)] was convicted in the High Court of Justiciary [*or* sheriff court] at (*place*) of (*specify offence*) and was sentenced to (*specify relevant sentence*).

2. That on (*date*) the petitioner lodged with the Clerk of Justiciary [a note of appeal under section 110 of the Criminal Procedure (Scotland) Act 1995 in respect of an appeal under section 106(1)(b) to (e) of that Act] [*or* an appeal under section 108 of the Criminal Procedure (Scotland) Act 1995].

3. That the petitioner has served a copy of this petition on the Crown Agent [*or* **A.B.]]**.

MAY IT THEREFORE please your Lordships under section 121A of the Criminal Procedure (Scotland) Act 1995 to suspend *ad interim* the sentence.

ACCORDING TO JUSTICE, etc.

(*Signed*)

[Solicitor for petitioner]

[Advocate Depute [*or* Procurator Fiscal]

On behalf of Her Majesty's Advocate]

(*Address and telephone number of solicitor*)

SCHEDULE 3

Paragraph 2(6)(f)

Rule 38.

FORM 38

**Form of application to High Court for transfer of rights of appeal of deceased person
UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE
CLERK and LORDS COMMISSIONERS OF JUSTICIARY**

APPLICATION

for

TRANSFER OF RIGHTS OF APPEAL OF DECEASED PERSON

by

A.B.] (*address*)

APPLICANT

under

section 303A of the Criminal Procedure (Scotland) Act 1995

HUMBLY SHEWETH:—

1. That on (*date*) [C.D.] (*address*) was convicted in the High Court of Justiciary [*or* sheriff court or district court] at (*place*) of (*specify offence*) and sentenced to (*specify sentence*).
2. That [C.D.] did not institute any appeal in relation to that conviction or sentence [*or state details of any appeal instituted by* [C.D.]].
3. That [C.D.] died on (*date*) at (*place*).
4. That the applicant is executor of [C.D.] conform to attached copy confirmation [*or* has a legitimate interest (*specify nature of interest and attach supporting documents*)].
5. That the applicant has served a copy of this application on the Crown Agent.

MAY IT THEREFORE please your Lordships under section 303A of the Criminal Procedure (Scotland) Act 1995 to authorise the applicant to institute any appeal in relation to that conviction which [C.D.] could have instituted [*or* to continue the appeal instituted by [C.D.]].

ACCORDING TO JUSTICE, etc.

(*Signed*)

[Solicitor for applicant]

(*Address and telephone number of solicitor*)

EXPLANATORY NOTE

(*This note is not part of the Act of Adjournal*)

This Act of Adjournal amends the Criminal Procedure Rules as follows—

- (a) paragraph 2(2) and (3) inserts new rules 15.12A and 19.10A which enable applications to be made to the court by a convicted person or the prosecutor for suspension of sentence pending the determination of an appeal. Two new Forms (Forms 15.12A-A and 15.12A-B) are provided for use in applications under section 121A of the Criminal Procedure (Scotland) Act 1995 (solemn proceedings). For summary proceedings (where applications are made under section 193A of that Act) minor amendments are made to two existing Forms (Forms 19.2-A and 19.3-A) to enable applications for suspension to be made at the stage when an application is made for a stated case or a note of appeal is lodged, as appropriate;
- (b) paragraph 2(4) amends chapter 22 of the rules so as to make them applicable in relation to vulnerable persons (as defined in section 271 of the Criminal Procedure (Scotland) Act 1995) rather than children; and
- (c) paragraph 2(5) adds a new chapter 38 and provides a new Form 38 for use in applications by executors and those having a legitimate interest for transfer of the rights of deceased persons as respects any appeal which was or could have been instituted by that person.