

## SCHEDULE 2

### CRIMINAL PROCEDURE RULES 1996

#### *PART III*

#### *Solemn proceedings*

#### **CHAPTER 15**

#### **APPEALS FROM SOLEMN PROCEEDINGS**

##### **Register and lists of appeals**

**15.1.**—(1) The Clerk of Justiciary shall keep a register, in such form as he thinks fit, of all cases in which he receives intimation of intention to appeal or, in the case of an appeal under section 106 (right of appeal) or section 108 (Lord Advocate’s appeal against sentence) of the Act of 1995, a note of appeal under section 110 of that Act.

(2) The register kept under paragraph (1) shall be open for public inspection at such place and at such hours as the Clerk of Justiciary, subject to the approval of the Lord Justice General, considers convenient.

(3) The Clerk of Justiciary shall—

- (a) prepare from time to time, a list of appeals to be dealt with by the High Court; and
- (b) cause such list to be published in such manner as, subject to the approval of the Lord Justice General, he considers convenient for giving due notice to persons having an interest in the hearing of such appeals by the High Court.

##### **Forms of appeal**

**15.2.**—(1) Any intimation under section 109(1) of the Act of 1995 (written intimation of intention to appeal) shall be in Form 15.2-A.

(2) A note under section 110(1) of the Act of 1995 (written note of appeal) shall be in Form 15.2-B.

(3) An application under section 111(2) of the Act of 1995 (application to extend time) shall be made in Form 15.2-C.

(4) An application under section 112(1) of the Act of 1995 (application of appellant for bail) shall be made in Form 15.2-D.

(5) The following documents shall be signed by the appellant or by his counsel or solicitor:—

- (a) an intimation of intention to appeal under section 109(1) of the Act of 1995 except where the appellant is the Lord Advocate;
- (b) an application under section 111(2) of the Act of 1995 (application to extend time); or
- (c) a note of appeal.

(6) An appeal under section 19 of the Prisoners and Criminal Proceedings (Scotland) Act 1993<sup>(1)</sup> (appeals in respect of decisions relating to supervised release orders) shall be in Form 15.2-B.

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(1) 1993 c. 9.

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### **Appeals against refusal of applications heard by single judge**

**15.3.**—(1) Where an application has been dealt with by a single judge of the High Court by virtue of section 103(5) of the Act of 1995 (powers exercisable by single judge), the Clerk of Justiciary shall notify the decision to the applicant in Form 15.3-A.

(2) In the event of such judge refusing any such application, the Clerk of Justiciary on notifying such refusal to the applicant shall forward to him a form in Form 15.3-B to complete and return forthwith if he desires to have his application determined by the High Court as constituted for the hearing of appeals under Part VIII of the Act of 1995 (appeals from solemn proceedings).

### **Extension of time by Clerk of Justiciary**

**15.4.** Where, under section 110(2) of the Act of 1995, the Clerk of Justiciary extends the period for lodging a note of appeal, the period of any such extension shall be recorded on the completed form of intimation of intention to appeal.

### **Intimation of appeal against sentence of death**

**15.5.** The Clerk of Justiciary shall intimate an appeal against a conviction in respect of which sentence of death has been pronounced, and the determination in any such appeal, immediately on such intimation or determination, as the case may be, to—

- (a) the Secretary of State for Scotland; and
- (b) the governor of the prison in which the appellant is detained.

### **Abandonment of appeals**

**15.6.** A notice of abandonment under section 116(1) of the Act of 1995 (abandonment of appeal) shall be in Form 15.6.

### **Note of proceedings at trial**

**15.7.** In an appeal under section 106(1) of the Act of 1995 (right of appeal), the High Court may require the judge who presided at the trial to produce any notes taken by him of the proceedings at the trial.

### **Clerk to give notice of date of hearing**

**15.8.**—(1) Where the High Court fixes the date for the hearing of an appeal or of an application under section 111(2) of the Act of 1995 (application to extend time), the Clerk of Justiciary shall give notice to the Crown Agent and to the solicitor of the convicted person, or to the convicted person himself if he has no known solicitor; and the appellant or applicant shall, within seven days before the hearing, lodge three copies (typed or printed) of the appeal or application for the use of the court.

(2) Where the powers of the court are to be exercised by a single judge under section 103(5) of the Act of 1995 (powers exercisable by single judge), a copy of the application to be determined shall be lodged for the use of the judge.

(3) A notice by the Clerk of Justiciary to the Secretary of State for the purposes of section 117(4) of the Act of 1995 (notice that appellant or applicant be present at a diet) shall be in Form 15.8.

### **Continuation of hearings**

**15.9.**—(1) The High Court, or any single judge exercising the powers of the High Court under section 103(5) of the Act of 1995 (powers exercisable by single judge), may continue the hearing of any appeal or application to a date, fixed or not fixed.

(2) Any judge of the High Court, or the person appointed by the court to take additional evidence, may fix any diet or proof necessary for that purpose.

### **Note to be kept of appeal**

**15.10.**—(1) The Clerk of Justiciary shall, in all cases of appeal from a conviction obtained or sentence pronounced in the High Court, note on the margin of the record of the trial the fact of an appeal having been taken and the result of the appeal.

(2) In the case of an appeal taken against any conviction obtained or sentence pronounced in the sheriff court on indictment, the Clerk of Justiciary shall notify the clerk of that court of the result of the appeal; and it shall be the duty of the clerk of that court to enter on the margin of the record of the trial a note of such result.

### **Suspension of disqualification from driving pending appeal**

**15.11.**—(1) Where a person who has been disqualified from holding or obtaining a driving licence following a conviction on indictment appeals against that disqualification to the High Court, any application to suspend that disqualification pending the hearing of the appeal shall be made—

- (a) if the sentencing court was the sheriff, by application to the sheriff; or
- (b) if the sentencing court was the High Court, or if an application to the sheriff under subparagraph (a) has been refused, by petition to the High Court.

(2) An application to the sheriff under paragraph (1)(a) shall be—

- (a) in Form 15.11-A, and
- (b) lodged with the sheriff clerk with a copy of the note of appeal endorsed with the receipt of the Clerk of Justiciary;

and the sheriff clerk shall record the order made by the sheriff on the application in the minute of proceedings.

(3) A petition to the High Court under paragraph (1)(b) shall be—

- (a) in Form 15.11-B; and
- (b) lodged with the Clerk of Justiciary.

### **Provisions supplemental to rule 15.11(3)**

**15.12.**—(1) The petitioner or his solicitor shall, on lodging a petition under rule 15.11(3), send a copy of it to—

- (a) the Crown Agent; and
- (b) if the sentencing court was the sheriff, the clerk of that court.

(2) 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.

(3) An order made by a single judge under paragraph (2) shall not be subject to review.

(4) On an order being made on a petition under rule 15.11(3), 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.

(5) Where the order referred to in paragraph (4) suspends a disqualification from driving, 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.

(6) The Clerk of Justiciary shall, on determination of the appeal against a disqualification from driving—

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- (a) if the sentencing court was the sheriff, send the clerk of that court a certified copy of the order determining the appeal and the clerk of that court shall, if appropriate, make the appropriate endorsement on the appellant's driving licence and intimate the disqualification to the persons concerned; or
  - (b) if the appeal against the disqualification is refused, make the appropriate endorsement on the appellant's driving licence and intimate the disqualification to the persons concerned.
- (7) Where leave to appeal has been refused under section 107 of the Act of 1995, "determination" in paragraph (6) of this rule means—
- (a) the fifteenth day after the date of intimation to the appellant or his solicitor of refusal of leave under subsection (1)(b) of that section, unless the appellant applies to the High Court for leave to appeal; or
  - (b) the day two 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 that section.

**Suspension of disqualification etc. under section 121 of the Act of 1995**

**15.13.** In the application of section 121 of the Act of 1995 (suspension of disqualification, forfeiture, etc.) to a case in which leave to appeal has been refused under section 107 of the Act of 1995, the word "determined" in subsections (1) and (2) of section 121 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 107 of that Act, unless the appellant applies to the High Court for leave to appeal; or
- (b) the day two 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 107 of that Act.