In the field of civil justice, pending procedures and proceedings initiated before the end of the transition period will continue under EU law. The e-Justice Portal, on the basis of a mutual agreement with the UK, will maintain the relevant information related to the United Kingdom until the end of 2024.

Defendants (criminal proceedings)

Scotland

These factsheets explain what happens when a person is suspected or accused of a crime which is dealt with by a trial in court.

For information on minor road traffic offences, which are usually dealt with by a fixed penalty like a fine, go to Factsheet 5.

If you are the victim of a crime, you can find full information about your rights here.

Please note that these factsheets apply only to Scotland. If you want to know your rights in other parts of the United Kingdom, see the separate factsheets for England and Wales, and for Northern Ireland.

Summary of the criminal process

The normal stages in the criminal process are as follows:

The police make inquiries to discover if a crime has been committed and who committed it. They collect evidence;

Once the police identify a suspect they will make further inquiries, including questioning the suspect;

If the police consider that the suspect may have committed a crime they make a report to the prosecutor (known in Scotland as the Procurator Fiscal);

The prosecutor considers what charges are to be brought against the accused. A formal document is served on the accused which sets out the crime charged against him;

Before the trial, court hearings take place to find out how the accused wishes to answer the charge against him and to check that the case is ready to go to trial;

At the trial evidence is presented by the prosecutor. The accused may also present evidence in his defence. Guilt in the most serious cases will be decided by a jury, and in less serious cases by a judge sitting alone;

After all the evidence is led, the judge or jury state a verdict. If the accused is found guilty the judge will determine the sentence against him;

Once sentence has been given there may be an appeal against the conviction or sentence (or both).

Details about all of these stages in the process and about your rights can be found in these factsheets. This information is not a substitute for legal advice and is intended to be for guidance only.

Role of the European Commission

Please note that the European Commission has no role in criminal proceedings in Member States and cannot assist you if you have a complaint. Information is provided in these factsheets about how to complain and to whom.

Click on the links below to find the information that you need

1 – Getting legal advice

2 – My rights during the investigation of a crime

3 – My rights during the trial

Investigation

Court appearances before the trial

Preparation of the case before the trial

4 – My rights after the trial

5 – Road traffic offences

Related links

Criminal Procedure (Scotland) Act 1995

Scottish Courts and Tribunals Service

Crown Office and Procurator Fiscal Service

Scottish Criminal Cases Review Commission

Last update: 05/02/2020

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1 - Getting legal advice

Getting independent legal advice is very important when you are involved in some way with the criminal process. The factsheets tell you when and in what circumstances you are entitled to be represented by a lawyer. They also tell you what a lawyer will do for you. This general factsheet tells you how to find a lawyer and how the costs of the lawyer will be met if you cannot afford to pay.

When you are arrested, the police will tell you of your right to contact a lawyer. Your rights to legal advice and legal aid depend on whether you have been kept in police custody after your arrest.

Your rights if you are held in police custody

At a police station, a suspect who is arrested or attending voluntarily has a statutory right to a private consultation with a solicitor before questioning begins and at any other time during questioning.

The telephone Solicitor Contact Line is operated by Scottish Legal Aid Board (SLAB) employed solicitors and shall be the initial point of contact by the police. This service operates 24 hours a day, 7 days a week. If you request a named solicitor, SLAB will contact that solicitor/firm so they can assist you. A named solicitor shall always be contacted first by SLAB, even when they are not a duty solicitor in the police station duty scheme. In the event that a named solicitor is unavailable, contact will be made with the duty solicitor on your behalf.

All grants of Advice and Assistance made by solicitors for police interviews are available for free.

In some situations (e.g. if you are held in custody, or if you have been released on an undertaking to appear in court at a later date), you have the right to use the services of a duty solicitor. There are a number of duty solicitor schemes across Scotland with solicitors employed by Public Defence Solicitor Office also providing assistance. Duty solicitors can represent you at your first appearance in court and, depending on the circumstances, for the duration of your case. You do not have to pay for using the duty solicitor. If you are not held in custody and are cited to appear in court, you cannot use the duty solicitor and you will have to instruct your own solicitor for your case.

Criminal legal aid is only available in summary prosecutions after you plead not guilty. If you qualify for criminal legal aid it is free and you will not have to pay a contribution. Your solicitor will submit an application for legal aid to the Scottish Legal Aid Board, who will decide if your case requires the help of a lawyer. Another form of criminal legal assistance may be available to you in a summary prosecution where you plead guilty.

If you are an accused in a solemn case, you are automatically entitled to legal aid while you are in custody until a decision is made about whether to grant you legal aid or you are released from custody on bail. SLAB has to consider only whether paying your own legal costs would cause hardship to you or your dependents.

The criminal legal aid granted will cover all of the remaining stages of your case, but you will have to make a new application for an appeal. If you are eligible for criminal legal aid, you will not have to pay a contribution towards the cost.

Your rights if you are not held in police custody

If you are not held in police custody you should contact a lawyer as soon as possible. If you do not know a lawyer based in Scotland you should refer to the 'Find a Solicitor' section on SLAB's website or contact The Law Society of Scotland or Citizens Advice Scotland who will find one for you.

In some cases you will be released on investigative liberation, which means you can be released from police custody with certain conditions attached. These conditions must be necessary and proportionate and can include a condition that you do not interfere with a witness or evidence. The police may also require you to not be in a specified place at a specified time.

The conditions cease to apply 28 days after the conditions were first imposed, or before then if you are arrested for a relevant offence, or if you become officially accused, or the conditions are removed by a Sheriff.

On your release from custody you do not have to accept the conditions but you must request the conditions are removed through your solicitor. Your solicitor will apply to the Scottish Legal Aid Board for a grant of Assistance by Way of Representation (ABWOR) on your behalf. Criminal ABWOR is available if you qualify under statutory tests including financial eligibility. Your solicitor can also apply for this type of assistance to challenge bail conditions or post charge questioning.

In the majority of cases your right to legal advice and legal aid are the same when someone is held in custody. However, the duty solicitor can help you only when your first court appearance follows on from you giving an earlier undertaking to the police to appear in court. The situation is different if the first time you appear in court is after you receive a formal document (a citation) from the prosecutor. In this case your own lawyer can give you assistance but you may have to pay some of the costs.

If you plead not guilty your rights are the same as in cases where someone was held in custody. If you are given legal aid, this will cover all of the remaining stages of your case, but you will have to make a new application for an appeal.

I am not happy with my lawyer. Can I complain?

If you are not satisfied with a solicitor or a solicitors' firm, you need to raise your concerns with the firm in the first instance. Solicitors' firms have a client relations manager who will listen to your problem and try to resolve it. This is usually the quickest and most effective way of sorting out the problem.

You can contact the firm and ask for the name of the client relations manager or contact the Law Society's Public Communications team on 0131 226 7411 for that information.

The client relations manager has an important role in clarifying and explaining any possible misunderstandings and working to resolve your problem. It may be that a different client relations manager could step in if the problem relates to the client relations manager.

If the problem is not resolved with the client relations manager, you may submit a formal complaint to the Scottish Legal Complaints Commission (SLCC). The SLCC acts as a gateway and a point of contact for all complaints against legal practitioners in Scotland. The SLCC operates independently of the Scottish Government, Scottish legal profession, the Law Society of Scotland, the Faculty of Advocates and the Association of Commercial Attorneys. Their position of independence is valued by service users as providing a greater sense of impartiality and objectivity to reviewing complaints.

If you wish to make a complaint against a legal practitioner, the SLCC can be contacted by the following methods:

Online: Scottish Legal Complaints Commission

By mail:

Scottish Legal Complaints Commission
The Stamp Office
10-14 Waterloo Place
EDINBURGH
EH1 3EG

Related links

Legal Aid (Scotland) Act 1986
Scottish Legal Aid Board
The Law Society of Scotland
Citizens Advice Scotland
Citizens Advice Bureau Guides (UK)
Your Rights If Arrested
Criminal Justice (Scotland) Act 2016

Last update: 25/10/2019

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2 - My rights during the investigation of a crime and before the case goes to court

This factsheet and its sub-factsheets deal with the procedure used during the investigation of a crime. They also tell you what happens after the investigation has ended and before the criminal trial takes place.

Powers of arrest in Scotland are derived from the Criminal Justice (Scotland) Act 2016. The purpose of an arrest is to bring a person who is suspected of having committed an offence punishable by imprisonment to justice, or to prevent a person who has committed an offence from continuing to commit that offence or from obstructing the course of justice in any way. Prior to the Criminal Justice (Scotland) Act 2016, powers of arrest and detention in Scotland were derived from common law and the Criminal Procedure (Scotland) Act 1995.

What are the stages of a criminal investigation?

A criminal investigation begins when the police are told that a crime may have been committed. In the first stage, the police make inquiries to discover if a crime has been committed and who committed it.

The police conduct the investigation. In serious cases the police will make an initial report to the prosecutor, who may issue instructions for further investigation.

If the police identify you as a suspect they will make further inquiries. If the police consider that you may have committed a crime, you may be arrested. The police will make a report to the prosecutor. After the arrest, the police may release you but you must later appear in court. This could either be done by a summons after the Procurator Fiscal has read the police report or it could be done by you signing an undertaking issued by the police for you to appear at a specified time and date. If the police keep you in custody you will be taken to a court.

What procedure takes place before the trial?

If the police report you to the prosecutor, the prosecutor decides if any further proceedings are to be brought against you. If there are to be further proceedings you will receive a formal document setting out the crime charged against you. This is known as a copy complaint or, in serious cases, an indictment.

There will be court hearings before the trial. At these hearings the court will ask your lawyer how you wish to answer the charge against you.

How are preparations made for my trial?

Both the prosecutor and your lawyer will take steps to get your case ready for trial. Before the trial, you will discuss your case with your lawyer. Your lawyer will gather information to be used in evidence for your defence.

For more information, click on the links below:

Investigation (1)
Court appearances before the trial (2)
Preparation of the case before the trial (3)

Investigation (1)

Will the police ask me questions?

If the police think that you may have committed a crime or that you may have information about a crime, the following will happen:

If you are a suspect, you will be questioned.

If you are a witness, the police may ask for a statement on what you witnessed.

Must I go to a police station?

You can be questioned in the street or any other public place. If asked, you should tell the police your name and address. If the police think you may have useful information about a crime as a witness, they can ask you to go to a police station. You do not have to go, but you must give them your name, address, date of birth, place of birth and nationality.

If the police suspect that you have committed a crime, they may ask you to go to a police station voluntarily. They also have the power to take you to a police station. They must tell you that they are using this power.

Am I free to leave the police station?

If you have not been arrested and are there voluntarily, the police must tell you that you can leave when you wish.

If the police want to keep you in the police station, they must arrest you.

What is arrest?

The police can arrest you when they think that there is a basis for a case against you, or if they suspect that you have committed a crime. If you have been arrested in the street or somewhere else, the police can take you to a police station and hold you in custody.

What happens once I am arrested?

The police must tell you the reason for arresting you. The police can continue to question you. They can also search you, take your DNA and fingerprints, and may apply for a warrant to conduct more intrusive physical searches.

What happens if I don't speak the language?

In this case, the police must get an interpreter for you. The interpreter will be free and will translate the police questions and your replies.

Can I have a lawyer?

If you are arrested you have the right to have a lawyer informed. You also have the right to a private consultation with a lawyer before the police ask you questions and at any time during questioning unless there are exceptional circumstances. This is free. The police must tell you about these rights when you arrive at the police station. The police must also give you a letter telling you your rights. It is known as a letter of rights and translations of it are available if English is not your first language.

If you do not know a lawyer in Scotland you will be able receive advice from a duty solicitor or contact one through the Scottish Legal Aid Board's (SLAB) Solicitor Contact Line (SCL).

You can ask the police to contact someone else, e.g. a relative or friend, so that they know where you are.

Must I answer the police's questions?

You do not have to answer any questions but you do have to tell the police your name, address, date of birth, where you were born and nationality. If you are a suspect the police have to give you a formal warning (a caution) before they ask questions. This explains that you do not have to answer questions but if you do say anything, what you say can be used as evidence in court. Your failure to answer police questions cannot be used as evidence against you.

There are exceptions to this rule. For example, in terrorist legislation, there are occasions when you must provide the police with certain information and it is an offence not to do so. The police will explain when you must provide information and when you have the right to remain silent.

Can the police search me?

If you have been stopped, for example, in the street and the police suspect you of having committed an offence, the police can search your clothes and bags. If arrested, the police can also take your fingerprints and can get permission to take samples such as blood or saliva or other body tissues.

Your DNA and fingerprints can be kept if you are convicted after a trial. If you are prosecuted, but not convicted of a sexual or violent offence, your DNA and fingerprints can be kept for 3 years.
In some cases, where the Chief Constable believes it to be necessary, this might be extended by a further 2 years. There is no limit to how many 2-year extensions the Chief Constable can apply for. Relevant provisions are set out in section 18A of the Criminal Procedure (Scotland) Act 1995.
Otherwise, if you are not prosecuted or convicted, the police must destroy your DNA or fingerprints.

Must I take part in an identification parade?

If you have been arrested the police can require you to take part in an identification parade. You can have the assistance of the duty solicitor.

Can the police search my car or premises?

The police can search your car and premises and remove any of your property if it is relevant to the investigation but normally they must get authority from a judge.

Can I see a doctor if I need one?

If you need medical help you have the right to see a doctor. You should tell the police why you need medical help.

I am from another Member State. Can I contact my Embassy?

If you are from another country, you have the right to contact your Embassy. In some cases, this is automatic. A representative from the Embassy will come to the police station or contact you to see if you need help.

What happens if I am arrested on a European Arrest Warrant?

If a European Arrest Warrant is issued by one Member State, you can be arrested in another Member State and sent back to the country concerned after a hearing before a judge (unless exceptions apply). You are entitled to have a lawyer and an interpreter if you need one.

When will the police charge me?

The police will charge you if they think they have enough evidence against you. The charge will contain details of the crime. Once you have been charged the police cannot ask any more questions about that crime. However, when you go to court the prosecutor may change the offence to a different one. For example, after a charge, a person may give a voluntary statement to the police.

When will the police release me from custody?

If the police don't charge you, they must tell you that you can leave the police station. If you are charged with a serious crime, you will be kept in custody but the police must take you to court on the next possible day.
If the crime is less serious, the police may release you. They may ask you for an undertaking to appear in court at a later date. You will be told the date of the court hearing. If you are not asked to give an undertaking, the prosecutor will serve you with a document telling you the date of the hearing.

How do I make a complaint against the police?

If you think that the police have treated you inappropriately, you may complain to the Chief Constable of Police Scotland. If, following the Chief Constable's response, you remain dissatisfied, you may refer to the independent Police Investigations and Review Commissioner who can review the way your complaint was handled.

Court appearances before the trial (2)

When do I first appear in court?

If you have been held in custody by the police, the police must take you to a court on the next day when the court is sitting.

Do I have the right to a lawyer?

You have the right to a lawyer when you appear in court. If you do not have your own lawyer, the duty solicitor will act for you.

Will there be an interpreter if I don't speak the language?

If you don't speak the language then an interpreter will be provided for you. The services of the interpreter are free. The interpreter will translate the charges against you and all of the proceedings in court.

Can I be released from custody?

If you are held in custody you can apply to the court to be released on bail. You can apply for bail no matter what crime you have been charged with. If the court grants you bail in nearly all cases you do not have to deposit any money.
If you do not have a criminal record and the court thinks you are not a risk to society, the court will normally grant you bail. If the court does not grant you bail you will be taken to prison until the trial.
If the court gives you bail, some conditions - the "standard conditions" - will always apply. You must appear at court hearings, you must not commit an offence, and you should not interfere with, or cause distress to, witnesses. The court may also impose further conditions.

Can I appeal against the decision to keep me in prison until the trial?

You have the right to appeal against this decision. You can also appeal against conditions which are not the standard conditions. Your lawyer will advise how to make any appeal and on what grounds.

Will I appear in court again before the trial?

Before the trial you may attend court on one or more occasions. At these hearings you will tell the court how you plead and of any legal objections to the charges against you. Your lawyer will advise you what to do.

How long can I be held in prison before the trial?

If you have been held in prison, your trial must ordinarily take place within certain time-limits. In serious cases (which are tried by a judge and a jury), the trial must start within 140 days from the date you were sent to prison. If it doesn't, you will be released on bail.
In less serious cases (tried by a judge alone), the trial must take place within 40 days. If it doesn't, you will be released and the case against you will be dropped.
These time limits may, however, be extended by the courts. There is no limit on the extensions which may be obtained but the court will be increasingly reluctant to grant longer extensions.

Preparation of the case before the trial (3)

What happens before the trial?

In the period before the trial, the prosecutor gathers the evidence against you to ensure that the case is strong enough to justify going to court. The prosecutor must disclose evidence to your lawyer which would materially weaken or undermine the evidence that is likely to be led by the prosecution; materially strengthen your case; or be likely to form part of the evidence to be led by the prosecutor in the proceedings against you.

I am from another Member State. Do I have to be present in Scotland before the trial?

If you have not been held in custody or have been released on bail, you are free to go back to your own country. However you may not be granted bail if the prosecutor requires you to remain in Scotland while the investigation continues. The court may grant you bail on the condition that you remain in Scotland. It is an offence if you break this condition. If you are released on bail in these circumstances you must give an address in the United Kingdom where you can

be contacted. This can be the address of your lawyer. It may also be possible for the court to consider an application for a European Supervision Order. This would allow bail granted by the court in Scotland to be monitored in another Member State under the terms of Framework Decision 2009/829/JHA. This Framework Decision provides for mutual recognition between Member States of the European Union, of decisions on supervision measures applied as an alternative to provisional detention.

If I have gone back to my own Member State, do I have to go back to Scotland before the trial?

If you have been allowed to go back to your own country, then you must come back for every court hearing before the trial. However your lawyer can ask the court for permission for you not to attend some pre-trial hearings.

Can I participate by video link?

If you are in prison in Scotland you may participate by a television link but not if you are in another Member State. This only applies to court hearings before the trial.

Will my case always go to trial?

Your case will not always go to a trial. The prosecutor can decide to drop the case altogether, or to dispose of the case by giving you a written warning. Alternatively the prosecutor may suggest that instead of going to trial, you can pay a fine. If you agree to pay the fine you will not be able to appeal and the fact that you have paid such a fine may be revealed in some circumstances.

What kind of evidence will the prosecution collect?

The prosecutor will interview witnesses in the case and may also collect physical and forensic evidence. For example, the prosecution might collect documents from your home or place of work; they might search your car or collect samples of your DNA (e.g. hair, saliva, etc.). A warrant from the court is needed to be able to search for and take evidence except in very limited circumstances (e.g. where there is a risk of the evidence being destroyed).

Can I prevent the prosecution from collecting certain evidence?

You can challenge a warrant for the collection of evidence if the police do not respect the terms of the warrant. Usually warrants have to be specific about what can be searched and why. If the police search in places not specified in the warrant, then the evidence that they collect may not be allowed in the trial.

Will information be requested about my criminal record?

The prosecution will gather information about your criminal record. This may include convictions for crimes which you have committed outside Scotland.

Will I find out about the evidence against me?

Your lawyer will be told about evidence against you that would materially weaken or undermine the evidence of the prosecution; materially strengthen your case; or be likely to form part of the evidence to be led by the prosecutor in the proceedings against you. Your lawyer will have an opportunity to interview the witnesses against you and to examine the physical evidence.

Will my lawyer find evidence to help my case in court?

Your lawyer will look for evidence to help your case, for example by interviewing possible witnesses. Your lawyer may also ask for an expert to make a report on scientific or technical matters.

Can I use a private detective to obtain evidence for me? Is such evidence admissible?

You can use a private detective to obtain evidence which will help your case. Usually this evidence will be admissible at your trial. However, you may have to pay the cost of using a private detective, even if you are receiving legal aid.

How will I find out what crimes I am being prosecuted for?

The prosecutor must send you a document which tells you the crime or crimes you are being charged with at your trial. It is possible that the charges may not be the same as the crimes which the police had charged you with earlier.

Can the charges against me change before the trial?

The charges may change before the trial takes place, depending on the evidence which the prosecution finds. It is also possible for the charges to be dropped before the trial, again depending on the evidence.

What happens if I have been tried for the same offence in another Member State?

If a final decision on the same facts has been issued by a court in one Member State, you cannot be tried again on the same facts in another Member State.

Can I plead guilty before the trial?

In most cases, if you decide that you want to plead guilty to the charges during the investigation process, you can do so. You might have to go to court to do this, depending on how serious the crime is. If you plead guilty you will normally get a lighter sentence than if there had been a trial against you. If you decide to plead guilty, normally you cannot appeal against the conviction in the future and it will appear on your criminal record.

Last update: 25/10/2019

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3 - My rights during the trial

Where will the trial be held?

The trial will normally take place in the area where the crime you are charged with was committed. For very serious crimes the trial will be held at the High Court of Justiciary. Trials at this court take place before a judge and a jury (of 15 people). Other serious cases are tried by a judge and jury in a sheriff court. Less serious cases will be tried by a judge without a jury, either in the sheriff court or the justice of the peace court. The trial will almost always be held in public.

Can the charges be changed during the trial?

During the trial the prosecutor may change the charges against you (e.g. where the evidence supports only a lesser crime than that first charged). During the trial you can plead guilty to some or all of the charges. The prosecutor may agree to accept your plea of guilty to a lesser crime than the one you were charged with.

Do I have to be present at the trial?

Except in very exceptional circumstances, you must be present throughout the trial, if it is being held before a jury. It cannot be held without you. Where you are present at the start of the trial, it may later proceed in your absence provided you have a lawyer in court. A trial before a judge sitting without a jury may, however, go ahead without you, if the court so decides.

Can I participate at the trial by video link?

You cannot participate at the trial by video link.

Will I have an interpreter if I don't understand what's happening?

The court proceedings will be held in the English language. If you don't understand English the court will provide an interpreter for you.

Will I have a lawyer?

You do not need to have a lawyer with you in court but you are strongly advised to have one. For some trials you must have a lawyer (e.g. rape or other sexual offence cases and those with young witnesses).

Do I need to give evidence at the trial?

You can give evidence at the trial but you do not have to. Your lawyer will advise you whether you should give evidence. If you give evidence but do not tell the truth, you are committing the crime of perjury. You may be prosecuted for this crime later. If you are giving evidence and are considered vulnerable, certain measures are available to assist you when giving evidence - these are called 'special measures'. An example of a special measure is a supporter, who is someone who stays with you when you are giving your evidence. A supporter can be someone you know, however, they cannot help you give evidence, or interfere with or influence your evidence in any way.

What are my rights in relation to the evidence against me?

If the prosecutor uses documents as evidence against you, he or she must tell your lawyer before the trial. Your lawyer can tell the prosecutor that he or she does not agree with what the document says. Where a witness gives evidence against you, your lawyer can challenge the witness by asking him or her questions.

Can I produce evidence on my behalf?

You have the right to produce evidence for your defence. The evidence might be documents or physical evidence. You can also ask witnesses to give evidence for you.

Will information about my criminal record be taken into account?

Before the trial the prosecutor will gather information about your criminal record. This may include your previous convictions in another Member State. But the judge or the jury cannot be told about your criminal record until after the verdict has been given, unless you introduce it yourself, or make statements about character that your record contradicts.

What happens at the end of the trial?

After all the evidence has been given, the jury will decide on its verdict. If the case is not tried by a jury the verdict is decided by the judge. There are two types of verdict. The first is a conviction (called a guilty verdict). The second is an acquittal (called not guilty or not proven). If you are found not guilty or not proven, the case against you has ended. Unless the police or the court are dealing with you on a different criminal charge, you are free to leave the court.
If the verdict is guilty the judge will decide how to sentence you. In serious cases there will be a separate court hearing for sentencing.

What sentence will I receive?

The sentence which you receive will depend upon the seriousness of the crime you committed. For serious offences the court is likely to send you to prison. You must be told how long you will stay in prison. In fixing the length of the time in prison the judge takes into account how long you have already been in custody. For all crimes you may be required to pay a sum of money (a fine). In fixing the amount of the fine the judge will consider how much you can afford to pay.
Other possible sentences include:
compensation order (which requires you to pay money to the victim of your crime);
community payback (which involves you doing unpaid work in the local community);
deferred sentence (where the court does not make a sentence until a later date and you will be given a lesser sentence if you have been of good behaviour).

What is the role of the victim during the trial?

The victim cannot become a party to the proceedings against you. However, the prosecutor may decide that the victim can give evidence against you at your trial. If you have committed a serious crime, the judge may consider a statement from the victim about the impact of the crime in deciding your sentence. The judge cannot award civil damages against you but can make a sentence of a compensation order (see paragraph above).
The victim can also take part in proceedings which are not directly against you but which are related. In particular he or she, may oppose the recovery of documents you are seeking to prove your case. In this case it will be for the court to decide whether the interests of justice require that you be given access to those documents.

Related links

Criminal Procedure (Scotland) Act 1995
Scottish Courts and Tribunals Service

Last update: 25/10/2019

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4 - My rights after the trial

Can I appeal?

You have the right to appeal against your conviction, or against the sentence. You can also appeal against both the conviction and sentence. The appeal is made to the High Court of Justiciary which sits as a court of appeal. The appeals are heard in Edinburgh.

How do I appeal?

If the trial was heard by a jury the appeal is made by lodging a document with the appeal court within 2 weeks of the end of the trial proceedings. If you are appealing against your conviction or a sentence made by a judge you must apply to the court where the trial took place within 1 week.

What are the grounds of appeal?

When you make your appeal you must give a detailed statement of your reasons. The ground of appeal is that your case involved a miscarriage of justice. This can happen in various ways. Examples include:
The jury's verdict was unreasonable;
The availability of new evidence which could not have been heard at the original trial;
The judge gave wrong directions to the jury;
There was a mistake or irregularity in the trial procedure;
Evidence was wrongly allowed, or disallowed, to be heard;
Your sentence was too severe.

What happens if I am in prison when I appeal?

Once you have applied for an appeal you can apply for release from prison during the period until the appeal hearing takes place.
If you are not released from prison on bail to await your appeal you can appear at the appeal hearing by video link from prison.

How long will it be before the appeal is heard?

There is no fixed period of time for the hearing of the appeal but if you are in prison the court will try to ensure that your appeal is heard early.

What happens at the appeal hearing?

At the appeal hearing your lawyer and the prosecutor will make arguments about the merits of your grounds of appeal. The court can call for more information and hear evidence if it wishes to. It will also consider reports made by the trial judge.

What happens if the appeal against conviction is successful/unsuccessful?

If an appeal against a conviction is successful the court will generally nullify the verdict of guilty. This means that your conviction is removed from the official records. However, if you succeed in establishing that part of the prosecutor's case cannot be upheld, but what remains what still be sufficient to show you were guilty of a different crime, changes will be made to the record to show this. In some circumstances the court may set aside the conviction but give the prosecutor authority to bring a new trial. This will happen if there has been a mistake at the trial which was not the fault of the prosecutor.

If the appeal is unsuccessful, normally no change is made to the trial verdict.

What happens if the appeal against sentence is successful/unsuccessful?

If the appeal is successful the court will make a lesser sentence which it thinks appropriate.

If the appeal is unsuccessful the court may affirm the original sentence. However, it may instead increase it.

Is there a right to appeal again to a higher/different court?

You may have a right to a further appeal to the Supreme Court of the United Kingdom. You have this right of appeal only if you appeal on a point of constitutional law or on the basis that the trial breached your rights under the European Convention on Human Rights or EU law. Should the Supreme Court decide in your favour, however, it must send your case back to the High Court of Justiciary in Scotland, and it will be for the High Court to decide what to do.

If my appeal is successful will I get any compensation?

If your appeal is successful you will get compensation only if the previous proceedings breached your rights under the European Convention on Human Rights or if you can demonstrate malice on the part of the investigating and prosecuting authorities.

Is a further appeal possible if the first appeal fails?

You may be able to make a further appeal if you can show a ground of appeal that was not available at the time of the first appeal. The appeal is made to the same appeal court as for the first appeal. If you want to produce new evidence for the appeal you must explain why it was not heard at the trial.

Are there any other ways for me to make an appeal?

If you have been convicted you can apply to the Scottish Criminal Cases Review Commission. The Commission will make investigations to discover if your conviction involved a miscarriage of justice. The Commission has the power to refer your case to the appeal court. If they do, your case is heard as a normal appeal.

If I am convicted, can I be tried again for the same crime?

If you have been convicted of a crime after a trial in any part of the United Kingdom, you cannot be tried again in Scotland for the same crime. The same rule applies where a guilty verdict has been given after a trial in another Member State.

I am from another Member State. Can I be sent back there after the trial?

When you are convicted the judge may recommend that you are deported when your sentence ends, under the terms of s.3(6) of the Immigration Act 1971. If the judge does not recommend deportation, the UK Home Office can still consider your case and may serve you with a deportation order, depending on the severity of offence, length of sentence and personal circumstances. However, if you are a national of another Member State you can be deported only on the grounds of public policy, public security or public health. The fact that you have been convicted of a crime does not by itself justify you being deported on the grounds of public policy, public security or public health. You have the right to appeal to a special tribunal against a decision to deport you. You can read about how to appeal and how to seek help and advice on the UK Government's website.

What information will be held about the charges against me?

The details of the charge against you and what happened at your trial will be held at the court where your trial took place.

What information will be held about my conviction?

Details of a conviction are held on the Scottish Criminal History System (CHS). In less serious cases the record is held until both you reach the age of 40 and the conviction itself is 20 years old. For serious cases (e.g. if your trial was before a judge and jury, or if you were sent to prison) the record remains until both you reach the age of 70 and the conviction is 30 years old.

Information about a Scottish conviction will also be stored on the Police National Computer (PNC). This information will be stored and retained on the PNC for the same length of time as it is held on the CHS.

Related links

Criminal Procedure (Scotland) Act 1995
Scottish Courts and Tribunals Service
Scottish Criminal Cases Review Commission
Supreme Court of the United Kingdom
Scottish Police Authority
Immigration Enforcement

Last update: 25/10/2019

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5 - Road traffic offences

Are all road traffic offences prosecuted in the criminal courts?

The police have powers to deal with certain types of road traffic offences through the use of non-court disposals such as fixed penalty notices. The police will generally report certain types of traffic offences to the prosecutor, who will consider if they are to be prosecuted in the criminal courts. Where the offence is not serious (e.g. it may not involve injury to someone or any damage to property), the prosecutor may decide to offer you a conditional offer for which, if accepted and the penalty is paid, no prosecution will be brought against you. The prosecutor may also offer diversion from prosecution courses in respect of certain road traffice offences related to careless driving.

Are road traffic offences prosecuted against nationals of other Member States?

You may be prosecuted in the criminal courts for road traffic offences even if you are from another Member State. For certain offences, if you are fined, the fine will be enforced in your own country.

What road traffic offences are not part of the criminal justice system?

Many offences which involve parking are dealt with under civil law and separately from the criminal justice system.

How are parking etc. offences dealt with?

All of the cities in Scotland, as well as numerous towns, have parking that is enforced through Decriminalised Parking Enforcement (DPE) regimes. DPE enables local roads authorities to administer their own parking penalty schemes and to retain the penalties collected to finance their parking enforcement procedures. The parking rules are enforced by parking attendants employed either directly or under contract to the local authority, rather than the police. Since parking offences at that point are no longer a criminal offence, if you park where you shouldn't (e.g. on double yellow lines or in other restricted places such as bus lanes), you will be given a Penalty Charge Notice (PCN). If you pay within 14 days, you only have to pay 50% of the amount of the charge. If you wish to dispute the PCN, you should write to the relevant local authority. If you are unhappy with the way your case has been dealt with, you can appeal to an independent tribunal, the Parking and Bus Lane Tribunal for Scotland.

In other parts of the country parking offences remain as part of the criminal justice system. However, Police Scotland began removing its traffic warden service from local authority areas in February 2014, but it still enforces dangerous obstructive parking, as well as the misuse of disabled bays, which are enforced via Traffic Regulation Orders. Local arrangements remain in some areas where the parking rules are enforced by the police or special police traffic wardens, who will issue you with a Fixed Penalty Notice (FPN). The only formal system for appealing a FPN is to choose to have your case heard in court. However, there is also an informal appeal process. You can write a letter explaining why you don't think you should have to pay the penalty. Information about where to write to will be included in the FPN.

How are speeding offences etc. dealt with?

If you exceed the speed limit and are caught doing so by the police or a safety camera, the police have discretion in how they deal with the situation. They may give you a verbal warning if this is decided to be appropriate. However, the police have power to report you to the prosecutor, who may decide to take criminal proceedings against you for any speeding offence.

Alternatively, the police may give you a Conditional Offer of Fixed Penalty (COFP). If you do not accept the COFP, your case will be prosecuted in a criminal court. If you do accept the COFP, your case cannot be tried in a court and you must pay the amount of the penalty. If you do not pay within 28 days, the police will report you to the prosecutor, who may prosecute you for refusing to pay the penalty.

Are special procedures for parking offences and traffic offences used against nationals of other Member States?

The rules applied to citizens of Scotland for dealing with parking and traffic offences also apply to nationals of other Member States.

Will motoring offences appear on my criminal record?

If you have been convicted in a criminal court of a motoring offence the conviction will appear on your criminal record for a period of time. However, this does not apply if one of the special procedures for parking offences and speeding offences has been used against you and you do not appear in court. In such cases your criminal record will generally not contain any details of any fixed penalty or penalty charge you may have paid.

Related links

Crown Office and Procurator Fiscal Service

Which? Advice Parking Tickets

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