



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART X

#### APPEALS FROM SUMMARY PROCEEDINGS

##### Modifications etc. (not altering text)

- C1** Pt. X (ss. 173-194) excluded (19.2.2001) by 2000 c. 11, ss. 7(7), 8(1)(f)(ii); S.I. 2001/421, art. 2
- C2** Pt. 10 extended (11.3.2005) by Prevention of Terrorism Act 2005 (c. 2), s. 12(6)(e)

#### *General*

#### **173 Quorum of High Court in relation to appeals.**

- (1) For the purpose of hearing and determining any appeal under this Part of this Act, or any proceeding connected therewith, three of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and the determination of any question under this Part of this Act by the court shall be according to the votes of the majority of the members of the court sitting, including the presiding judge, and each judge so sitting shall be entitled to pronounce a separate opinion.
- (2) For the purpose of hearing and determining appeals under section 175(2)(b) or (c) [F1 or (cb)] of this Act, or any proceeding connected therewith, two of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and each judge shall be entitled to pronounce a separate opinion; but where the two Lords Commissioners of Justiciary are unable to reach agreement on the disposal of the appeal, or where they consider it appropriate, the appeal shall be heard and determined in accordance with subsection (1) above.

*Status:* Point in time view as at 10/03/2008. This version of this part contains provisions that are not valid for this point in time.

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### Textual Amendments

- F1 Words in s. 173(2) inserted (10.1.2005) by [Protection of Children \(Scotland\) Act 2003 \(asp 5\)](#), ss. [16\(6\)](#), [22\(2\)](#); S.S.I. 2004/522, [art. 2](#)

## 174 Appeals relating to preliminary pleas.

- (1) Without prejudice to any right of appeal under section 175(1) to (6) or 191 of this Act, a party may, with the leave of the court (granted either on the motion of the party or *ex proprio motu*) and in accordance with such procedure as may be prescribed by Act of Adjournal, appeal to the High Court against a decision of the court of first instance (other than a decision not to grant leave under this subsection) which relates to such objection or denial as is mentioned in section 144(4) of this Act; but such appeal must be taken not later than two days after such decision.
- (2) Where an appeal is taken under subsection (1) above, the High Court may postpone the trial diet (if one has been fixed) for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.
- (3) If leave to appeal under subsection (1) above is granted by the court it shall not proceed to trial at once under subsection (2) of section 146 of this Act; and subsection (3) of that section shall be construed as requiring sufficient time to be allowed for the appeal to be taken.
- (4) In disposing of an appeal under subsection (1) above the High Court may affirm the decision of the court of first instance or may remit the case to it with such directions in the matter as it thinks fit; and where the court of first instance had dismissed the complaint, or any part of it, may reverse that decision and direct that the court of first instance fix a trial diet (if it has not already fixed one as regards so much of the complaint as it has not dismissed.)

## 175 Right of appeal.

- (1) This section is without prejudice to any right of appeal under section 191 of this Act.
- (2) Any person convicted, or found to have committed an offence, in summary proceedings may, with leave granted in accordance with section 180 or, as the case may be, 187 of this Act, appeal under this section to the High Court—
  - (a) against such conviction, or finding;
  - (b) against the sentence passed on such conviction;
  - (c) against his absolute discharge or admonition or any probation order <sup>F2</sup>, drug treatment and testing order] or any community service order or any order deferring sentence;<sup>F3</sup> . . .
  - <sup>F4</sup>(ca) against any decision to remit made under section 49(1)(a) or (7)(b) of this Act;]
  - <sup>F5</sup>(cb) against any reference proposed under section 10(1) of the Protection of Children (Scotland) Act 2003 (asp 5) in respect of the conviction or, as the case may be, against such reference and such sentence, disposal or order; or]
  - (d) against
    - <sup>F6</sup>(i)] both such conviction and such sentence or disposal or order.

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- [<sup>F7</sup>(ii) both such a conviction and such a reference; or
- (iii) such a conviction, such a reference and such sentence, disposal or order.]

- (3) The prosecutor in summary proceedings may appeal under this section to the High Court on a point of law—
- (a) against an acquittal in such proceedings; or
  - (b) against a sentence passed on conviction in such proceedings.

[<sup>F8</sup>(4) The prosecutor in summary proceedings, in any class of case specified by order made by the Secretary of State, may, in accordance with subsection (4A) below, appeal to the High Court against any of the following disposals, namely—

- (a) a sentence passed on conviction;
- (b) a decision under section 209(1)(b) of this Act not to make a supervised release order;
- (c) a decision under section 234A(2) of this Act not to make a non-harassment order;

[ a decision under section 92 of the Proceeds of Crime Act 2002 not to make

<sup>F9</sup>(ca) a confiscation order;.]

- (d) a probation order;

[ a drug treatment and testing order;]

<sup>F10</sup>(dd)

- (e) a community service order;
- (f) a decision to remit to the Principal Reporter made under section 49(1)(a) or (7)(b) of this Act;
- (g) an order deferring sentence;
- (h) an admonition; or
- (i) an absolute discharge.

(4A) An appeal under subsection (4) above may be made—

- (a) on a point of law;
- (b) where it appears to the Lord Advocate, in relation to an appeal under—
  - (i) paragraph (a), (h) or (i) of that subsection, that the disposal was unduly lenient;
  - (ii) paragraph (b) [<sup>F11</sup>, (c) or (ca)] of that subsection, that the decision not to make the order in question was inappropriate;
  - (iii) paragraph (d) [<sup>F12</sup>to] (e) of that subsection, that the making of the order concerned was unduly lenient or was on unduly lenient terms;
  - (iv) under paragraph (f) of that subsection, that the decision to remit was inappropriate;
  - (v) under paragraph (g) of that subsection, that the deferment of sentence was inappropriate or was on unduly lenient conditions.]

[<sup>F13</sup>(4B) For the purposes of subsection (4A)(b)(i) above in its application to a confiscation order by virtue of section 92(11) of the Proceeds of Crime Act 2002, the reference to the disposal being unduly lenient is a reference to the amount required to be paid by the order being unduly low.]

[<sup>F14</sup>(5) By an appeal under subsection (2) above, an appellant may bring under review of the High Court any alleged miscarriage of justice which may include such a miscarriage

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based, subject to subsections (5A) to (5D) below, on the existence and significance of evidence which was not heard at the original proceedings.

- (5A) Evidence which was not heard at the original proceedings may found an appeal only where there is a reasonable explanation of why it was not so heard.
- (5B) Where the explanation referred to in subsection (5A) above or, as the case may be, (5C) below is that the evidence was not admissible at the time of the original proceedings, but is admissible at the time of the appeal, the court may admit that evidence if it appears to the court that it would be in the interests of justice to do so.
- (5C) Without prejudice to subsection (5A) above, where evidence such as is mentioned in <sup>F15</sup> . . . subsection (5) above is evidence—
- (a) which is—
    - (i) from a person; or
    - (ii) of a statement (within the meaning of section 259(1) of this Act) by a person,
 

who gave evidence at the original proceedings; and
  - (b) which is different from, or additional to, the evidence so given,
 

it may not found an appeal unless there is a reasonable explanation as to why the evidence now sought to be adduced was not given by that person at those proceedings, which explanation is itself supported by independent evidence.
- (5D) For the purposes of subsection (5C) above, “independent evidence” means evidence which—
- (a) was not heard at the original proceedings;
  - (b) is from a source independent of the person referred to in subsection (5C) above; and
  - (c) is accepted by the court as being credible and reliable.
- (5E) By an appeal against acquittal under subsection (3) above a prosecutor may bring under review of the High Court any alleged miscarriage of justice.]
- (6) The power of the Secretary of State to make an order under subsection (4) above shall be exercisable by statutory instrument; and any order so made shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Where a person desires to appeal under subsection (2)(a) or (d) or (3) above, he shall pursue such appeal in accordance with sections 176 to 179, 181 to 185, 188, 190 and 192(1) and (2) of this Act.
- (8) A person who has appealed [<sup>F16</sup> under subsection (2)(cb) or (d) above may abandon the appeal in so far as it is against conviction, reference or sentence and may proceed with it against—
- (a) both reference and sentence; or
  - (b) reference alone; or, as the case may be
  - (c) sentence alone,]
- subject to such procedure as may be prescribed by Act of Adjournal.
- (9) Where a convicted person or as the case may be a person found to have committed an offence desires to appeal under subsection (2)(b) or (c) [<sup>F17</sup> or (cb)] above, or the prosecutor desires so to appeal by virtue of subsection (4) above, he shall pursue such appeal in accordance with sections 186, 189(1) to (6), 190 and 192(1) and (2)

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of this Act; but nothing in this section shall prejudice any right to proceed by bill of suspension, or as the case may be advocacy, against an alleged fundamental irregularity relating to the imposition of sentence.

- (10) Where any statute provides for an appeal from summary proceedings to be taken under any public general or local enactment, such appeal shall be taken under this Part of this Act.

#### Textual Amendments

- F2** Words in s. 175(2)(c) inserted (30.9.1998) by 1998 c. 37, s. 94(2), **Sch. 6 Pt. II para. 7(2)**; S.I. 1998/2327, **art. 2(1)(s)** (subject to arts. 5-8)
- F3** Word in s. 175(2)(c) repealed (10.1.2005) by Protection of Children (Scotland) Act 2003 (asp 5), **ss. 16(7)(a), 22(2)**; S.S.I. 2004/522, **art. 2** (as amended by S.S.I. 2004/556, art. 2)
- F4** S. 175(2)(ca) inserted (1.8.1997) by 1997 c. 48, **s. 23(c)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)
- F5** S. 175(2)(cb) inserted (10.1.2005) by Protection of Children (Scotland) Act 2003 (asp 5), **ss. 16(7)(b), 22(2)**; S.S.I. 2004/522, **art. 2** (as amended by S.S.I. 2004/556, art. 2)
- F6** S. 175(2): words in para. (d) become s. 175(2)(d)(i) (10.1.2005) by virtue of Protection of Children (Scotland) Act 2003 (asp 5) {ss. 16(7)(c)}, 22(2); S.S.I. 2004/522, **art. 2** (as amended by S.S.I. 2004/556, art. 2)
- F7** S. 175(2)(d)(ii)(iii) inserted (10.1.2005) by Protection of Children (Scotland) Act 2003 (asp 5), **ss. 16(7)(d), 22(2)**; S.S.I. 2004/522, **art. 2** (as amended by S.S.I. 2004/556, art. 2)
- F8** S. 175(4)(4A) substituted (1.8.1997) for s. 175(4) by 1997 c. 48, **s. 21(2)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)
- F9** S. 175(4)(ca) inserted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), **ss. 115(6), 458**; S.S.I. 2003/210, **art. 2(1)(a)** (subject to arts. 3-7)
- F10** S. 175(4)(dd) inserted (30.9.1998) by 1998 c. 37, s. 94(2), **Sch. 6 Pt. II para. 7(3)**; S.I. 1998/2327, **art. 2(1)(s)** (subject to arts. 5-8)
- F11** Words in s. 175(4A)(b)(ii) substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), **ss. 115(7), 458**; S.S.I. 2003/210, **art. 2(1)(a)** (subject to arts. 3-7)
- F12** Word in s. 175(4A)(b)(iii) substituted (30.9.1998) by 1998 c. 37, s. 94(2), **Sch. 6 Pt. II para. 7(4)**; S.I. 1998/2327, **art. 2(1)(s)** (subject to arts. 5-8)
- F13** S. 175(4B) inserted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), **ss. 115(8), 458**; S.S.I. 2003/210, **art. 2(1)(a)** (subject to arts. 3-7)
- F14** S. 175(5)-(5E) substituted (1.8.1997) for s. 175(5) by 1997 c. 48, **s. 17(2)**; S.I. 1997/1712, art. 3, **Sch.** (subject to arts. 4, 5)
- F15** Words in s. 175(5C) repealed (30.9.1998) by 1998 c. 37, **ss. 119, 120(2)**, Sch. 8 para. 123, **Sch. 10**; S.I. 1998/2327, **art. 2(1)(y)(aa)(2)(kk)(3)(w)** (subject to arts. 5-8)
- F16** S. 175(8): paras. (a)-(c) and preceding words substituted (10.1.2005) for words by Protection of Children (Scotland) Act 2003 (asp 5), **ss. 16(7)(e), 22(2)**; S.S.I. 2004/522, **art. 2** (as amended by S.S.I. 2004/556, art. 2)
- F17** Words in s. 175(9) inserted (10.1.2005) by Protection of Children (Scotland) Act 2003 (asp 5), **ss. 16(7)(f), 22(2)**; S.S.I. 2004/522, **art. 2** (as amended by S.S.I. 2004/556, art. 2)

#### Modifications etc. (not altering text)

- C3** S. 175(2)(b) amended (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), **ss. 100(9), 458**; S.S.I. 2003/210, **art. 2(1)(a)** (subject to arts. 3-7)
- C4** S. 175(3)(b) amended (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), **ss. 100(9), 458**; S.S.I. 2003/210, **art. 2(1)(a)** (subject to arts. 3-7)

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### Stated case

#### 176 Stated case: manner and time of appeal.

- (1) An appeal under section 175(2)(a) or (d) or (3) of this Act shall be by application for a stated case, which application shall—
  - (a) be made within one week of the final determination of the proceedings;
  - (b) contain a full statement of all the matters which the appellant desires to bring under review and, where the appeal is also against sentence or disposal or order, the ground of appeal against that sentence or disposal or order; and
  - (c) be signed by the appellant or his solicitor and lodged with the clerk of court, and a copy of the application shall, within the period mentioned in paragraph (a) above, be sent by the appellant to the respondent or the respondent’s solicitor.
- (2) The clerk of court shall enter in the record of the proceedings the date when an application under subsection (1) above was lodged.
- (3) The appellant may, at any time within the period of three weeks mentioned in subsection (1) of section 179 of this Act, or within any further period afforded him by virtue of section 181(1) of this Act, amend any matter stated in his application or add a new matter; and he shall intimate any such amendment, or addition, to the respondent or the respondent’s solicitor.
- (4) 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 doing so, 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.
- (5) The record of the procedure in the inferior court in an appeal mentioned in subsection (1) above shall be as nearly as may be in the form prescribed by Act of Adjournal.

#### Modifications etc. (not altering text)

- C5** S. 176(1) modified (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. **100(8)**, 458; S.S.I. 2003/210, [art. 2\(1\)\(a\)](#) (subject to transitional provisions and savings in [arts. 3-7](#))

#### 177 Procedure where appellant in custody.

- (1) If an appellant making an application under section 176 of this Act is in custody, the court of first instance may—
  - (a) grant bail;
  - (b) grant a sist of execution;
  - (c) make any other interim order.
- (2) An application for bail shall be disposed of by the court [F18] before the end of the day (not being a Saturday or Sunday, or a court holiday prescribed for the court which is to determine the question of bail, unless that court is sitting on that day for the disposal of criminal business) after the day on which the application is] made.

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- (3) If bail is refused or the appellant is dissatisfied with the conditions imposed, he may, within 24 hours after the judgment of the court, appeal against it 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 <sup>F19</sup>. . . have power to review the decision of the inferior court and to grant bail on such conditions as the Court or judge may think fit, or to refuse bail.
- (4) No clerks' fees, court fees or other fees or expenses shall be exigible from or awarded against an appellant in custody in respect of an appeal to the High Court against the conditions imposed or on account of refusal of bail by a court of summary jurisdiction.
- (5) If an appellant who has been granted bail 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 bail remained unexpired and, subject to subsection (6) below, such period shall run from the date of his imprisonment under the warrant or, on the application of the appellant, such earlier date as the court thinks fit, not being a date later than the date of expiry of any term or terms of imprisonment imposed subsequently to the conviction appealed against.
- (6) Where an appellant who has been granted bail does not thereafter proceed with his appeal, the court from which the appeal was taken shall have power, where at the time of the abandonment of the appeal the person is in custody or serving a term or terms of imprisonment imposed subsequently to the conviction appealed against, to order that the sentence or, as the case may be, the unexpired portion of that sentence relating to that conviction should run from such date as the court may think fit, not being a date later than the date on which any term or terms of imprisonment subsequently imposed expired.
- (7) The court shall not make an order under subsection (6) above to the effect that the sentence or, as the case may be, unexpired portion of the sentence shall run other than concurrently with the subsequently imposed term of imprisonment without first notifying the appellant of its intention to do so and considering any representations made by him or on his behalf.
- [<sup>F20</sup>(8) Subsections (6) and (7) of section 112 of this Act (bail pending determination of appeals under paragraph 13(a) of Schedule 6 to the Scotland Act 1998) shall apply to appeals arising in summary proceedings as they do to appeals arising in solemn proceedings.]

#### Textual Amendments

- F18** Words in s. 177(2) substituted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 6(3)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S. I. 2007/527)
- F19** Words in s. 177(3) repealed (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 80, 84**, **Sch. para. 18(1)**; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S. I. 2007/527)
- F20** S. 177(8) inserted (6.5.1999) by S.I. 1999/1042, **arts. 1(2)(a), 3**, **Sch. 1 Pt. 1 para. 13(7)**

#### Modifications etc. (not altering text)

- C6** S. 177(2) applied (1.9.2001) by [2001 c. 17](#), **s. 10(6)**; S.I. 2001/2161, **art. 2** (subject to [art. 3](#)) (as amended by S.I. 2001/2304, **art. 2**)



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## 178 Stated case: preparation of draft.

- (1) Within three weeks of the final determination of proceedings in respect of which an application for a stated case is made under section 176 of this Act—
  - (a) where the appeal is taken from the [<sup>F21</sup>JP court] and the trial was presided over by a justice of the peace or justices of the peace, the Clerk of Court; or
  - (b) in any other case the judge who presided at the trial,
 shall prepare a draft stated case, and the clerk of the court concerned shall forthwith issue the draft to the appellant or his solicitor and a duplicate thereof to the respondent or his solicitor.
- (2) A stated case shall be, as nearly as may be, in the form prescribed by Act of Adjournal, 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.

### Textual Amendments

**F21** Words in s. 178(1)(a) substituted (10.3.2008, 2.6.2008, 8.12.2008, 23.2.2009 and 14.12.2009 for certain purposes, otherwise 22.2.2010) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), ss. 80, 84, [Sch. para. 26\(h\)](#); S.S.I. 2008/42, [art. 3](#), Sch.; S.S.I. 2008/192, [art. 3](#), Sch.; S.S.I. 2008/329, [art. 3](#), Sch.; S.S.I. 2008/362, [art. 3](#), Sch.; S.S.I. 2009/432, [art. 3](#), Schs. 1, 2

## 179 Stated case: adjustment and signature.

- (1) Subject to section 181(1) of this Act, within three weeks of the issue of the draft stated case under section 178 of this Act, each party shall cause to be transmitted to the court and to the other parties or their solicitors a note of any adjustments he proposes be made to the draft case or shall intimate that he has no such proposal.
- (2) The adjustments mentioned in subsection (1) above shall relate to evidence heard or purported to have been heard at the trial and not to such <sup>F22</sup>... evidence as is mentioned in section 175(5) of this Act.
- (3) Subject to section 181(1) of this Act, if the period mentioned in subsection (1) above has expired and the appellant has not lodged adjustments and has failed to intimate that he has no adjustments to propose, he shall be deemed to have abandoned his appeal; and subsection (5) of section 177 of this Act shall apply accordingly.
- (4) If adjustments are proposed under subsection (1) above or if the judge desires to make any alterations to the draft case there shall, within one week of the expiry of the period mentioned in that subsection or as the case may be of any further period afforded under section 181(1) of this Act, be a hearing (unless the appellant has, or has been deemed to have, abandoned his appeal) for the purpose of considering such adjustments or alterations.
- (5) Where a party neither attends nor secures that he is represented at a hearing under subsection (4) above, the hearing shall nevertheless proceed.
- (6) Where at a hearing under subsection (4) above—
  - (a) any adjustment proposed under subsection (1) above by a party (and not withdrawn) is rejected by the judge; or
  - (b) any alteration proposed by the judge is not accepted by all the parties,



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that fact shall be recorded in the minute of the proceedings of the hearing.

- (7) Within two weeks of the date of the hearing under subsection (4) above or, where there is no hearing, within two weeks of the expiry of the period mentioned in subsection (1) above, the judge shall (unless the appellant has been deemed to have abandoned the appeal) state and sign the case and shall append to the case—
- (a) any adjustment, proposed under subsection (1) above, which is rejected by him, a note of any evidence rejected by him which is alleged to support that adjustment and the reasons for his rejection of that adjustment and evidence; and
  - (b) a note of the evidence upon which he bases any finding of fact challenged, on the basis that it is unsupported by the evidence, by a party at the hearing under subsection (4) above.
- (8) As soon as the case is signed under subsection (7) above the clerk of court—
- (a) shall send the case to the appellant or his solicitor and a duplicate thereof to the respondent or his solicitor; and
  - (b) shall transmit the complaint, productions and any other proceedings in the cause to the Clerk of Justiciary.
- (9) Subject to section 181(1) of this Act, within one week of receiving the case the appellant or his solicitor, as the case may be, shall cause it to be lodged with the Clerk of Justiciary.
- (10) Subject to section 181(1) of this Act, if the appellant or his solicitor fails to comply with subsection (9) above the appellant shall be deemed to have abandoned the appeal; and subsection (5) of section 177 of this Act shall apply accordingly.

#### Textual Amendments

**F22** Word in s. 179(2) repealed (1.8.1997) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 21(20), Sch. 3; S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)

### 180 Leave to appeal against conviction etc.

- (1) The decision whether to grant leave to appeal for the purposes of section 175(2)(a) or (d) of this Act shall be made by a judge of the High Court who shall—
- (a) if he considers that the documents mentioned in subsection (2) below disclose arguable grounds of appeal, grant leave to appeal and make such comments in writing as he considers appropriate; and
  - (b) in any other case—
    - (i) refuse leave to appeal and give reasons in writing for the refusal; and
    - (ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.
- (2) The documents referred to in subsection (1) above are—
- (a) the stated case lodged under subsection (9) of section 179 of this Act; and
  - (b) the documents transmitted to the Clerk of Justiciary under subsection (8)(b) of that section.

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- (3) A warrant granted under subsection (1)(b)(ii) above shall not take effect until the expiry of the period of 14 days mentioned in subsection (4) below [<sup>F23</sup>(and if that period is extended under subsection (4A) below before the period being extended expires, until the expiry of the period as so extended)] without an application to the High Court for leave to appeal having been lodged by the appellant under [<sup>F24</sup>subsection (4) below]
- (4) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under subsection (10) below, apply to the High Court for leave to appeal.
- [<sup>F25</sup>(4A) The High Court may, on cause shown, extend the period of 14 days mentioned in subsection (4) above, or that period as extended under this subsection, whether or not the period to be extended has expired (and if that period of 14 days has expired, whether or not it expired before section 25(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) came into force).]
- (5) In deciding an application under subsection (4) above the High Court shall—
- (a) if, after considering the documents mentioned in subsection (2) above and the reasons for the refusal, the court is of the opinion that there are arguable grounds of appeal, grant leave to appeal and make such comments in writing as the court considers appropriate; and
  - (b) in any other case—
    - (i) refuse leave to appeal and give reasons in writing for the refusal; and
    - (ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.
- (6) The question whether to grant leave to appeal under subsection (1) or (5) above shall be considered and determined in chambers without the parties being present.
- (7) Comments in writing made under subsection (1)(a) or (5)(a) above may, without prejudice to the generality of that provision, specify the arguable grounds of appeal (whether or not they are contained in the stated case) on the basis of which leave to appeal is granted.
- (8) Where the arguable grounds of appeal are specified by virtue of subsection (7) above it shall not, except by leave of the High Court on cause shown, be competent for the appellant to found any aspect of his appeal on any ground of appeal contained in the stated case but not so specified.
- (9) Any application by the appellant for the leave of the High Court under subsection (8) above—
- (a) shall be made [<sup>F26</sup>within 14 days of the date of intimation under subsection (10) below] ; and
  - (b) shall, [<sup>F27</sup>within 14 days of] that date, be intimated by the appellant to the Crown Agent.
- [<sup>F28</sup>(9A) The High Court may, on cause shown, extend the periods of 14 days mentioned in subsection (9) above.]
- (10) The Clerk of Justiciary shall forthwith intimate—
- (a) a decision under subsection (1) or (5) above; and
  - (b) in the case of a refusal of leave to appeal, the reasons for the decision,

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to the appellant or his solicitor and to the Crown Agent.

#### Textual Amendments

- F23** Words in s. 180(3) inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 25\(1\)\(a\)\(i\)](#), 84; S.S.I. 2007/479, [art. 3\(1\)](#), Sch. (as amended by S.S.I. 2007/527)
- F24** Words in s. 180(3) substituted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 25\(1\)\(a\)\(ii\)](#), 84; S.S.I. 2007/479, [art. 3\(1\)](#), Sch. (as amended by S.S.I. 2007/527)
- F25** S. 180(4A) inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 25\(1\)\(b\)](#), 84; S.S.I. 2007/479, [art. 3\(1\)](#), Sch. (as amended by S.S.I. 2007/527)
- F26** Words in s. 180(9)(a) substituted (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 80, 84](#), [Sch. para. 18\(2\)\(a\)\(i\)](#); S.S.I. 2007/250, [art. 3\(h\)\(i\)](#) (subject to [art. 4\(2\)](#))
- F27** Words in s. 180(9)(b) substituted (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 80, 84](#), [Sch. para. 18\(2\)\(a\)\(ii\)](#); S.S.I. 2007/250, [art. 3\(h\)\(i\)](#) (subject to [art. 4\(2\)](#))
- F28** S. 180(9A) inserted (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [ss. 80, 84](#), [Sch. para. 18\(2\)\(b\)](#); S.S.I. 2007/250, [art. 3\(h\)\(i\)](#) (subject to [art. 4\(2\)](#))

#### 181 Stated case: directions by High Court.

- (1) Without prejudice to any other power of relief which the High Court may have, where it appears to that court on application made in accordance with subsection (2) below, that the applicant has failed to comply with any of the requirements of—
- subsection (1) of section 176 of this Act; or
  - subsection (1) or (9) of section 179 of this Act,
- the High Court may direct that such further period of time as it may think proper be afforded to the applicant to comply with any requirement of the aforesaid provisions.
- (2) Any application for a direction under subsection (1) above shall be made in writing to the Clerk of Justiciary and shall state the ground for the application, and, in the case of an application for the purposes of paragraph (a) of subsection (1) above, notification of the application shall be made by the appellant or his solicitor to the clerk of the court from which the appeal is to be taken, and the clerk shall thereupon transmit the complaint, documentary productions and any other proceedings in the cause to the Clerk of Justiciary.
- (3) The High Court shall dispose of any application under subsection (1) above in like manner as an application to review the decision of an inferior court on a grant of bail, but shall have power—
- to dispense with a hearing; and
  - to make such enquiry in relation to the application as the court may think fit, and when the High Court has disposed of the application the Clerk of Justiciary shall inform the clerk of the inferior court of the result.
- [<sup>F29</sup>(4) Subsection (1) above does not allow the High Court to make a direction in relation to an appeal under section 175(2)(cb) or (d)(ii) or (iii) of this Act.]

#### Textual Amendments

- F29** S. 181(4) inserted (4.10.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [ss. 24\(4\)](#), 27(1); S.S.I. 2004/405, [art. 2](#), Sch. 1 (with savings in [arts. 3-5](#))

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## 182 Stated case: hearing of appeal.

- (1) A stated case under this Part of this Act shall be heard by the High Court on such date as it may fix.
- (2) For the avoidance of doubt, where an appellant, in his application under section 176(1) of this Act (or in a duly made amendment or addition to that application), refers to an alleged miscarriage of justice, but in stating a case under section 179(7) of this Act the inferior court is unable to take the allegation into account, the High Court may nevertheless have regard to the allegation at a hearing under subsection (1) above.
- (3) Except by leave of the High Court on cause shown, it shall not be competent for an appellant to found any aspect of his appeal on a matter not contained in his application under section 176(1) of this Act (or in a duly made amendment or addition to that application).
- (4) Subsection (3) above shall not apply as respects any ground of appeal specified as an arguable ground of appeal by virtue of subsection (7) of section 180 of this Act.
- (5) Without prejudice to any existing power of the High Court, that court may in hearing a stated case—
  - (a) order the production of any document or other thing connected with the proceedings;
  - (b) hear any <sup>F30</sup> evidence relevant to any alleged miscarriage of justice or order such evidence to be heard by a judge at the High Court or by such other person as it may appoint for that purpose;
  - (c) take account of any circumstances relevant to the case which were not before the trial judge;
  - (d) remit to any fit person to enquire and report in regard to any matter or circumstance affecting the appeal;
  - (e) appoint a person with expert knowledge to act as assessor to the High Court in any case where it appears to the court that such expert knowledge is required for the proper determination of the case;
  - (f) take account of any matter proposed in any adjustment rejected by the trial judge and of the reasons for such rejection;
  - (g) take account of any evidence contained in a note of evidence such as is mentioned in section 179(7) of this Act.
- (6) The High Court may at the hearing remit the stated case back to the inferior court to be amended and returned.

### Textual Amendments

**F30** Word in s. 182(5)(b) repealed (1.8.1997) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 21(21), Sch. 3; S.I. 1997/1712, art. 3, Sch. (subject to arts. 4 and 5)

### Modifications etc. (not altering text)

**C7** S. 182(5)(a)-(e) applied (1.4.1996) by 1984 c. 12, s. 81(8) (as substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 48(3))  
S. 182(5)(a)-(e) applied (1.7.1997) by S.I. 1997/831, reg. 19(1)-(4), Sch. 15 para. 5(8)  
S. 182(5)(a)-(e) applied (3.7.2001) by S.I. 2001/1701, reg. 17, Sch. 13 para. 14(8)

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- S. 182(5)(a)-(e) applied (20.11.2002) by Copyright, Designs and Patents Act 1988 (c. 48), ss. 114B(10), 204B(10), 297D(10) (as inserted by Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002 (c. 25), ss. 3, 4, 5; S.I. 2002/2749, art. 2)
- S. 182(5)(a)-(e) applied (7.3.2005) by The Electromagnetic Compatibility Regulations 2005 (S.I. 2005/281), reg. 98(8)
- C8** S. 182(5)(a)-(e) applied (8.4.2000) by S.I. 2000/730, reg. 18, Sch. 9 para. 4(8) (which amendment was superseded by S.I. 2003/3144, reg. 2(10))
- S. 182(5)(a)-(e) applied (29.12.2003) by S.I. 2000/730, Sch. 9 para. 22(8) (as substituted (29.12.2003) by S.I. 2003/3144, reg. 2(10))
- S. 182(5)(a)-(e) applied (20.7.2007) by The Electromagnetic Compatibility Regulations 2006 (S.I. 2006/3418), reg. 59(8) (with savings in regs. 7-14, 63, 64)
- C9** S. 182(5)(a)-(e) applied (1.12.2008) by The REACH Enforcement Regulations 2008 (S.I. 2008/2852), reg. 9(1), Sch. 6 Pt. 3 para. 36 (with reg. 19)
- C10** S. 182(5)(a)-(e) applied (1.12.2008) by The REACH Enforcement Regulations 2008 (S.I. 2008/2852), reg. 9(1), Sch. 6 Pt. 3 para. 36 (with reg. 19)
- C11** S. 182(5)(a)-(e) applied (1.12.2008) by The REACH Enforcement Regulations 2008 (S.I. 2008/2852), reg. 9(1), Sch. 6 Pt. 3 para. 36 (with reg. 19)
- C12** S. 182(5)(a)-(e) applied (1.12.2008) by The REACH Enforcement Regulations 2008 (S.I. 2008/2852), reg. 9(1), Sch. 6 Pt. 3 para. 36 (with reg. 19)
- C13** S. 182(5)(a)-(e) applied (1.12.2008) by The REACH Enforcement Regulations 2008 (S.I. 2008/2852), reg. 9(1), Sch. 6 Pt. 3 para. 36 (with reg. 19)

### 183 Stated case: disposal of appeal.

- (1) The High Court may, subject to subsection (3) below and to section 190(1) of this Act, dispose of a stated case by—
  - (a) remitting the cause to the inferior court with its opinion and any direction thereon;
  - (b) affirming the verdict of the inferior court;
  - (c) setting aside the verdict of the inferior court and either quashing the conviction or, subject to subsection (2) below, substituting therefor an amended verdict of guilty; or
  - (d) setting aside the verdict of the inferior court and granting authority to bring a new prosecution in accordance with section 185 of this Act.
- (2) An amended verdict of guilty substituted under subsection (1)(c) above must be one which could have been returned on the complaint before the inferior court.
- (3) The High Court shall, in an appeal—
  - (a) against both conviction and sentence, subject to section 190(1) of this Act, dispose of the appeal against sentence; or
  - (b) by the prosecutor, against sentence, dispose of the appeal,by exercise of the power mentioned in section 189(1) of this Act.
- (4) In setting aside, under subsection (1) above, a verdict the High Court may quash any sentence imposed on the appellant as respects the complaint, and—
  - (a) in a case where it substitutes an amended verdict of guilty, whether or not the sentence related to the verdict set aside; or
  - (b) in any other case, where the sentence did not so relate,may pass another (but not more severe) sentence in substitution for the sentence so quashed.

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- (5) For the purposes of subsections (3) and (4) above, “sentence” shall be construed as including disposal or order.
- (6) Where an appeal against acquittal is sustained, the High Court may—
  - (a) convict and, subject to subsection (7) below, sentence the respondent;
  - (b) remit the case to the inferior court with instructions to convict and sentence the respondent, who shall be bound to attend any diet fixed by the court for such purpose; or
  - (c) remit the case to the inferior court with their opinion thereon.
- (7) Where the High Court sentences the respondent under subsection (6)(a) above it shall not in any case impose a sentence beyond the maximum sentence which could have been passed by the inferior court.
- (8) Any reference in subsection (6) above to convicting and sentencing shall be construed as including a reference to—
  - (a) convicting and making some other disposal; or
  - (b) convicting and deferring sentence.
- (9) The High Court shall have power in an appeal under this Part of this Act to award such expenses both in the High Court and in the inferior court as it may think fit.
- (10) Where, following an appeal, other than an appeal under section 175(2)(b) or (3) of this Act, the appellant remains liable to imprisonment or detention under the sentence of the inferior court, or is so liable under a sentence passed in the appeal proceedings the High Court shall have the power where at the time of disposal of the appeal the appellant—
  - (a) was at liberty on bail, to grant warrant to apprehend and imprison or detain the appellant for a term, to run from the date of such apprehension, not longer than that part of the term or terms of imprisonment or detention specified in the sentence brought under review which remained unexpired at the date of liberation;
  - (b) is serving a term or terms of imprisonment or detention imposed in relation to a conviction subsequent to the conviction appealed against, to exercise the like powers in regard to him as may be exercised, in relation to an appeal which has been abandoned, by a court of summary jurisdiction in pursuance of section 177(6) of this Act.

#### **184 Abandonment of appeal.**

- (1) An appellant in an appeal such as is mentioned in section 176(1) 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 the inferior court, and intimated to the respondent or the respondent’s solicitor, but such abandonment shall be without prejudice to any other competent mode of appeal, review, advocacy or suspension.
- (2) Subject to section 191 of this Act, 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.

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### *New prosecution*

#### **185 Authorisation of new prosecution.**

- (1) Subject to subsection (2) below, where authority is granted under section 183(1)(d) of this Act, a new prosecution may be brought charging the accused with the same or any similar offence arising out of the same facts; and the proceedings out of which the stated case arose shall not be a bar to such prosecution.
- (2) In a new prosecution under this section the accused shall not be charged with an offence more serious than that of which he was convicted in the earlier proceedings.
- (3) No sentence may be passed on conviction under the new prosecution which could not have been passed on conviction under the earlier proceedings.
- (4) A new prosecution may be brought under this section, notwithstanding that any time limit (other than the time limit mentioned in subsection (5) below) for the commencement of such proceedings has elapsed.
- (5) Proceedings in a prosecution under this section shall be commenced within two months of the date on which authority to bring the prosecution was granted.
- (6) In proceedings in a new prosecution under this section it shall, subject to subsection (7) below, be competent for either party to lead any evidence which it was competent for him to lead in the earlier proceedings.
- (7) The complaint in a new prosecution under this section shall identify any matters as respects which the prosecutor intends to lead evidence by virtue of subsection (6) above which would not have been competent but for that subsection.
- (8) For the purposes of subsection (5) above, proceedings shall be deemed to be commenced—
  - (a) in a case where such warrant is executed without unreasonable delay, on the date on which a warrant to apprehend or to cite the accused is granted; and
  - (b) in any other case, on the date on which the warrant is executed.
- (9) Where the two months mentioned in subsection (5) above elapse and no new prosecution has been brought under this section, the order under section 183(1)(d) of this Act setting aside the verdict shall have the effect, for all purposes, of an acquittal.
- (10) On granting authority under section 183(1)(d) of this Act to bring a new prosecution, the High Court may, after giving the parties an opportunity of being heard, order the detention of the accused person in custody; but an accused person may not be detained by virtue of this subsection for a period of more than 40 days.

### *Appeals against sentence*

#### **186 Appeals against sentence only.**

- (1) An appeal under section 175(2)(b) or (c) [<sup>F31</sup>or (cb)] , or by virtue of section 175(4), of this Act shall be by note of appeal, which shall state the ground of appeal.
- (2) The note of appeal shall, where the appeal is—
  - (a) under section 175(2)(b) or (c) [<sup>F31</sup>or (cb)] be lodged, within one week of—
    - (i) the passing of the sentence,<sup>F32</sup> . . .



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- (ii) the making of the order disposing of the case or deferring sentence<sup>[F33]</sup>; or
  - (iii) in the case of an appeal under section 175(2)(cb), the date on which it is proposed that a reference be made]

with the clerk of the court from which the appeal is to be taken; or

  - (b) by virtue of section 175(4) be so lodged within four weeks of such passing or making.
- (3) The clerk of court on receipt of the note of appeal shall—
  - (a) send a copy of the note to the respondent or his solicitor; and
  - (b) obtain a report from the judge who sentenced the convicted person or, as the case may be, who disposed of the case or deferred sentence.
- (4) Subject to subsection (5) below, the clerk of court shall within two weeks of the passing of the sentence or within two weeks of the disposal or order against which the appeal is taken—
  - (a) send to the Clerk of Justiciary the note of appeal, together with the report mentioned in subsection (3)(b) above, a certified copy of the complaint, the minute of proceedings and any other relevant documents; and
  - (b) send copies of that report to the appellant and respondent or their solicitors.
- (5) <sup>[F34]</sup>The sheriff principal of the sheriffdom in which the judgment was pronounced may, on cause shown,] extend the period of two weeks specified in subsection (4) above for such period as he considers reasonable.
- (6) Subject to subsection (4) above, the report mentioned in subsection (3)(b) above shall be available only to the High Court, the parties and, on such conditions as may be prescribed by Act of Adjournal, such other persons or classes of persons as may be so prescribed.
- (7) Where the judge’s report is not furnished within the period mentioned in subsection (4) above or such period as extended under subsection (5) above, the High Court may extend such period, or, if it thinks fit, hear and determine the appeal without the report.
- (8) Section 181 of this Act shall apply where an appellant fails to comply with the requirement of subsection (2)(a) above as they apply where an applicant fails to comply with any of the requirements of section 176(1) of this Act.
- (9) An appellant under section 175(2)(b) or (c) <sup>[F31]</sup>or (cb)] , or by virtue of section 175(4), of this Act may at any time prior to the hearing of the appeal abandon his appeal by minute, signed by himself or his solicitor, lodged—
  - (a) in a case where the note of appeal has not yet been sent under subsection (4) (a) above to the Clerk of Justiciary, with the clerk of court;
  - (b) in any other case, with the Clerk of Justiciary,

and intimated to the respondent.
- (10) Sections 176(5), 177 and 182(5)(a) to (e) of this Act shall apply to appeals under section 175(2)(b) or (c) <sup>[F31]</sup>or (cb)] , or by virtue of section 175(4), of this Act as they apply to appeals under section 175(2)(a) or (d) of this Act, except that, for the purposes of such application to any appeal by virtue of section 175(4), references in subsections (1) to (4) of section 177 to the appellant shall be construed as references to the convicted person and subsections (6) and (7) of that section shall be disregarded.

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### Textual Amendments

- F31** Words in s. 186(1)(2)(9)(10) inserted (10.1.2005) by [Protection of Children \(Scotland\) Act 2003 \(asp 5\)](#), **ss. 16(8), 22(2)**; S.S.I. 2004/522, **art. 2** (as amended by S.S.I. 2004/556, art. 2)
- F32** Word in s. 186(2)(a) repealed (4.10.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 24(5)(a), 27(1)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F33** S. 186(2)(a)(iii) and preceding word inserted (4.10.2004) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 24(5)(b), 27(1)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F34** Words in s. 186(5) substituted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 25(2), 84**; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

## 187 Leave to appeal against sentence.

- (1) The decision whether to grant leave to appeal for the purposes of section 175(2)(b) or (c) [<sup>F35</sup>or (cb)] of this Act shall be made by a judge of the High Court who shall—
- (a) if he considers that the note of appeal and other documents sent to the Clerk of Justiciary under section 186(4)(a) of this Act disclose arguable grounds of appeal, grant leave to appeal and make such comments in writing as he considers appropriate; and
  - (b) in any other case—
    - (i) refuse leave to appeal and give reasons in writing for the refusal; and
    - (ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.
- (2) A warrant granted under subsection (1)(b)(ii) above shall not take effect until the expiry of the period of 14 days mentioned in subsection (3) below [<sup>F36</sup>(and if that period is extended under subsection (3A) below before the period being extended expires, until the expiry of the period as so extended)] without an application to the High Court for leave to appeal having been lodged by the appellant under [<sup>F37</sup>subsection (3) below]
- (3) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under subsection (9) below, apply to the High Court for leave to appeal.
- [<sup>F38</sup>(3A) The High Court may, on cause shown, extend the period of 14 days mentioned in subsection (3) above, or that period as extended under this subsection, whether or not the period to be extended has expired (and if that period of 14 days has expired, whether or not it expired before section 25(3) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) came into force).]
- (4) In deciding an application under subsection (3) above the High Court shall—
- (a) if, after considering the note of appeal and other documents mentioned in subsection (1) above and the reasons for the refusal, it is of the opinion that there are arguable grounds of appeal, grant leave to appeal and make such comments in writing as he considers appropriate; and
  - (b) in any other case—
    - (i) refuse leave to appeal and give reasons in writing for the refusal; and

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- (ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.
- (5) The question whether to grant leave to appeal under subsection (1) or (4) above shall be considered and determined in chambers without the parties being present.
- (6) Comments in writing made under subsection (1)(a) or (4)(a) above may, without prejudice to the generality of that provision, specify the arguable grounds of appeal (whether or not they are contained in the note of appeal) on the basis of which leave to appeal is granted.
- (7) Where the arguable grounds of appeal are specified by virtue of subsection (6) above it shall not, except by leave of the High Court on cause shown, be competent for the appellant to found any aspect of his appeal on any ground of appeal contained in the note of appeal but not so specified.
- (8) Any application by the appellant for the leave of the High Court under subsection (7) above—
- (a) shall be made [<sup>F39</sup>within 14 days of the date of intimation under subsection (9) below] ; and
  - (b) shall, [<sup>F40</sup>within 14 days of] that date, be intimated by the appellant to the Crown Agent.
- [<sup>F41</sup>(8A) The High Court may, on cause shown, extend the periods of 14 days mentioned in subsection (8) above.]
- (9) The Clerk of Justiciary shall forthwith intimate—
- (a) a decision under subsection (1) or (4) above; and
  - (b) in the case of a refusal of leave to appeal, the reasons for the decision, to the appellant or his solicitor and to the Crown Agent.

#### Textual Amendments

- F35** Words in s. 187(1) inserted (10.1.2005) by [Protection of Children \(Scotland\) Act 2003 \(asp 5\)](#), **ss. 16(9)**, 22(2); S.S.I. 2004/522, **art. 2** (as amended by S.S.I. 2004/556, art. 2)
- F36** Words in s. 187(2) inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 25(3)(a)(i)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)
- F37** Words in s. 187(2) substituted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 25(3)(a)(ii)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)
- F38** S. 187(3A) inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 25(3)(b)**, 84; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)
- F39** Words in s. 187(8)(a) substituted (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 80, 84, Sch. para. 18(3)(a)(i)**; S.S.I. 2007/250, **art. 3(h)(i)** (subject to art. 4(2))
- F40** Words in s. 187(8)(b) substituted (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 80, 84, Sch. para. 18(3)(a)(ii)**; S.S.I. 2007/250, **art. 3(h)(i)** (subject to art. 4(2))
- F41** S. 187(8A) inserted (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 80, 84, Sch. para. 18(3)(b)**; S.S.I. 2007/250, **art. 3(h)(i)** (subject to art. 4(2))

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### *Disposal of appeals*

#### **188 Setting aside conviction or sentence: prosecutor’s consent or application.**

- (1) Without prejudice to section 175(3) or (4) of this Act, where—
  - (a) an appeal has been taken under section 175(2) of this Act or by suspension or otherwise and the prosecutor is not prepared to maintain the judgment appealed against he may, by a relevant minute, consent to the conviction or sentence or, as the case may be, conviction and sentence (“sentence” being construed in this section as including disposal or order) being set aside either in whole or in part; or
  - (b) no such appeal has been taken but the prosecutor is, at any time, not prepared to maintain the judgment on which a conviction is founded or the sentence imposed following such conviction he may, by a relevant minute, apply for the conviction or sentence or, as the case may be, conviction and sentence to be set aside.
- (2) For the purposes of subsection (1) above, a “relevant minute” is a minute, signed by the prosecutor—
  - (a) setting forth the grounds on which he is of the opinion that the judgment cannot be maintained; and
  - (b) written on the complaint or lodged with the clerk of court.
- (3) A copy of any minute under subsection (1) above shall be sent by the prosecutor to the convicted person or his solicitor and the clerk of court shall—
  - (a) thereupon ascertain and note on the record, whether that person or solicitor desires to be heard by the High Court before the appeal, or as the case may be application, is disposed of; and
  - (b) thereafter transmit the complaint and relative proceedings to the Clerk of Justiciary.
- (4) The Clerk of Justiciary, on receipt of a complaint and relative proceedings transmitted under subsection (3) above, shall lay them before any judge of the High Court either in court or in chambers who, after hearing parties if they desire to be heard, may—
  - (a) set aside the conviction or the sentence, or both, either in whole or in part and—
    - (i) award such expenses to the convicted person, both in the High Court and in the inferior court, as the judge may think fit;
    - (ii) where the conviction is set aside in part, pass another (but not more severe) sentence in substitution for the sentence imposed in respect of that conviction; and
    - (iii) where the sentence is set aside, pass another (but not more severe) sentence; or
  - (b) refuse to set aside the conviction or sentence or, as the case may be, conviction and sentence, in which case the complaint and proceedings shall be returned to the clerk of the inferior court.
- (5) Where an appeal has been taken and the complaint and proceedings in respect of that appeal returned under subsection (4)(b) above, the appellant shall be entitled to proceed with the appeal as if it had been marked on the date of their being received by the clerk of the inferior court on such return.

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- (6) Where an appeal has been taken and a copy minute in respect of that appeal sent under subsection (3) above, the preparation of the draft stated case shall be delayed pending the decision of the High Court.
- (7) The period from an application being made under subsection (1)(b) above until its disposal under subsection (4) above (including the day of application and the day of disposal) shall, in relation to the conviction to which the application relates, be disregarded in any computation of time specified in any provision of this Part of this Act.

### **189 Disposal of appeal against sentence.**

- (1) An appeal against sentence by note of appeal shall be heard by the High Court on such date as it may fix, and the High Court may, subject to section 190(1) of this Act, dispose of such appeal by—
  - (a) affirming the sentence; or
  - (b) if the Court thinks that, having regard to all the circumstances, including any <sup>F42</sup> . . . evidence such as is mentioned in section 175(5) of this Act, a different sentence should have been passed, quashing the sentence and, subject to subsection (2) below, passing another sentence, whether more or less severe, in substitution therefor.
- (2) In passing another sentence under subsection (1)(b) above, the Court shall not in any case increase the sentence beyond the maximum sentence which could have been passed by the inferior court.
- <sup>F43</sup>(2A) The High Court may dispose of an appeal against a reference proposed under subsection (1) of section 10 of the Protection of Children (Scotland) Act 2003 (asp 5) by—
  - (a) dismissing the appeal and affirming such reference; or
  - (b) if it thinks—
    - (i) in a case to which subsection (3) of that section applies, that the court which is proposing to make the reference should not have been satisfied as to the condition mentioned in that subsection;
    - (ii) in a case to which subsection (4) of that section applies, that the court which is proposing to make the reference should have been satisfied as to the condition mentioned in that subsection,
 by directing the court not to make the reference.]
- (3) The High Court shall have power in an appeal by note of appeal to award such expenses both in the High Court and in the inferior court as it may think fit.
- (4) Where, following an appeal under section 175(2)(b) or (c), or by virtue of section 175(4), of this Act, the convicted person remains liable to imprisonment or detention under the sentence of the inferior court or is so liable under a sentence passed in the appeal proceedings, the High Court shall have power where at the time of disposal of the appeal the convicted person—
  - (a) was at liberty on bail, to grant warrant to apprehend and imprison or detain the appellant for a term, to run from the date of such apprehension, not longer than that part of the term or terms of imprisonment or detention specified in the sentence brought under review which remained unexpired at the date of liberation; or

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- (b) is serving a term or terms of imprisonment or detention imposed in relation to a conviction subsequent to the conviction in respect of which the sentence appealed against was imposed, to exercise the like powers in regard to him as may be exercised, in relation to an appeal which has been abandoned, by a court of summary jurisdiction in pursuance of section 177(6) of this Act.
- (5) In subsection (1) above, “appeal against sentence” shall, without prejudice to the generality of the expression, be construed as including an appeal under section 175(2) (c), and any appeal by virtue of section 175(4), of this Act; and without prejudice to subsection (6) below, other references to sentence in that subsection and in subsection (4) above shall be construed accordingly.
- (6) In disposing of any appeal in a case where the accused has not been convicted, the High Court may proceed to convict him; and where it does, the reference in subsection (4) above to the conviction in respect of which the sentence appealed against was imposed shall be construed as a reference to the disposal or order appealed against.
- (7) In disposing of an appeal under section 175(2)(b) to (d), (3)(b) or (4) of this Act the High Court may, without prejudice to any other power in that regard, pronounce an opinion on
- [<sup>F44</sup>(a)] the sentence or other disposal or order which is appropriate in any similar case[<sup>F45</sup>; or, as the case may be,
- (b) whether a reference is appropriate in any similar case.]

#### Textual Amendments

- F42** Word in s. 189(1)(b) repealed (1.8.1997) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 21(22), Sch. 3; S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)
- F43** S. 189(2A) inserted (10.1.2005) by Protection of Children (Scotland) Act 2003 (asp 5), ss. 16(10)(a), 22(2); S.S.I. 2004/522, art. 2 (as amended by S.S.I. 2004/556, art. 2)
- F44** S. 189(7): words “become” para. (a) (10.1.2005) by virtue of Protection of Children (Scotland) Act 2003 (asp 5), ss. 16(10)(b), 22(2); S.S.I. 2004/522, art. 2 (as amended by S.S.I. 2004/556, art. 2)
- F45** S. 189(7)(b) and preceding words inserted (10.1.2005) by Protection of Children (Scotland) Act 2003 (asp 5), ss. 16(10)(c), 22(2); S.S.I. 2004/522, art. 2 (as amended by S.S.I. 2004/556, art. 2)

### 190 Disposal of appeal where appellant insane.

- (1) In relation to any appeal under section 175(2) of this Act, the High Court shall, where it appears to it that the appellant committed the act charged against him but that he was insane when he did so, dispose of the appeal by—
- (a) setting aside the verdict of the inferior court and substituting therefor a verdict of acquittal on the ground of insanity; and
- (b) quashing any sentence imposed on the appellant as respects the complaint and—
- (i) making, in respect of the appellant, any order mentioned in section 57(2)(a) to (d) of this Act; or
- (ii) making no order.
- (2) [<sup>F46</sup>Subsections (3) to (6)] of section 57 of this Act shall apply to an order made under subsection (1)(b)(i) above as it applies to an order made under subsection (2) of that section.

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### Textual Amendments

**F46** Words in s. 190(2) substituted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. 331(1), 333(2)-(4), [Sch. 4 para. 8\(12\)](#); S.S.I. 2005/161, [art. 3](#)

### Miscellaneous

#### 191 Appeal by suspension or advocacy on ground of miscarriage of justice.

- (1) Notwithstanding section 184(2) of this Act, a party to a summary prosecution may, where an appeal under section 175 of this Act would be incompetent or would in the circumstances be inappropriate, appeal to the High Court, by bill of suspension against a conviction or, as the case may be, by advocacy against an acquittal on the ground of an alleged miscarriage of justice in the proceedings.
- (2) Where the alleged miscarriage of justice is referred to in an application under section 176(1) of this Act, for a stated case as regards the proceedings (or in a duly made amendment or addition to that application), an appeal under subsection (1) above shall not proceed without the leave of the High Court until the appeal to which the application relates has been finally disposed of or abandoned.
- (3) Sections 182(5)(a) to (e), 183(1)(d) and (4) and 185 of this Act shall apply to appeals under this section as they apply to appeals such as are mentioned in section 176(1) of this Act.
- (4) This section is without prejudice to any rule of law relating to bills of suspension or advocacy in so far as such rule of law is not inconsistent with this section.

VALID FROM 30/10/2010

#### <sup>F47</sup>191A Time limit for lodging bills of advocacy and bills of suspension

- (1) This section applies where a party wishes—
  - (a) to appeal to the High Court under section 191(1) of this Act by bill of suspension against a conviction or by advocacy against an acquittal, or
  - (b) to appeal to the High Court against, or to bring under review of the High Court, any other decision in a summary prosecution by bill of suspension or by advocacy.
- (2) The party must lodge the bill of suspension or bill of advocacy within 3 weeks of the date of the conviction, acquittal or, as the case may be, other decision to which the bill relates.
- (3) The High Court may, on the application of the party, extend the time limit in subsection (2).
- (4) An application under subsection (3) must—
  - (a) state—
    - (i) the reasons why the applicant failed to comply with the time limit in subsection (2), and
    - (ii) the proposed grounds of appeal or review, and



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- (b) be intimated in writing by the applicant to the other party to the prosecution.
- (5) If the other party so requests within 7 days of receipt of intimation of the application under subsection (4)(b), the other party must be given an opportunity to make representations before the application is determined.
- (6) Any representations may be made in writing or, if the other party so requests, orally at a hearing; and if a hearing is fixed, the applicant must also be given an opportunity to be heard.]

#### Textual Amendments

**F47** S. 191A inserted (30.10.2010) by [Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(asp 15\)](#), ss. **6(1)**, 9 (with s. 6(2))

### 192 Appeals: miscellaneous provisions.

- (1) Where an appellant has been granted bail, whether his appeal is under this Part of this Act or otherwise, he shall appear personally in court at the diet appointed for the hearing of the appeal.
- (2) Where an appellant who has been granted bail does not appear at such a diet, the High Court shall either—
  - (a) dispose of the appeal as if it had been abandoned (in which case subsection (5) of section 177 of this Act shall apply accordingly); or
  - (b) on cause shown permit the appeal to be heard in his absence.
- (3) No conviction, sentence, judgement, order of court or other proceeding whatsoever in or for the purposes of summary proceedings under this Act—
  - (a) shall be quashed for want of form; or
  - (b) where the accused had legal assistance in his defence, shall be suspended or set aside in respect of any objections to—
    - (i) the relevancy of the complaint, or to the want of specification therein; or
    - (ii) the competency or admission or rejection of evidence at the trial in the inferior court,unless such objections were timeously stated.
- (4) The provisions regulating appeals shall, subject to the provisions of this Part of this Act, be without prejudice to any other mode of appeal competent.
- (5) Any officer of law may serve any bill of suspension or other writ relating to an appeal.

### 193 Suspension of disqualification, forfeiture etc.

- (1) Where upon conviction of any person—
  - (a) any disqualification, forfeiture or disability attaches to him by reason of such conviction; or
  - (b) any property, matters or things which are the subject of the prosecution or connected therewith are to be or may be ordered to be destroyed or forfeited,

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if the court before which he was convicted thinks fit, the disqualification, forfeiture or disability or, as the case may be, destruction or forfeiture or order for destruction or forfeiture shall be suspended pending the determination of any appeal against conviction or sentence (or disposal or order).

- (2) Subsection (1) above does not apply in respect of any disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture under or by virtue of any enactment which contains express provision for the suspension of such disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture pending the determination of any appeal against conviction or sentence (or disposal or order).
- (3) Where, upon conviction, a fine has been imposed upon a person or a compensation order has been made against him under section 249 of this Act—
  - (a) the fine or compensation order shall not be enforced against him and he shall not be liable to make any payment in respect of the fine or compensation order; and
  - (b) any money paid under the compensation order shall not be paid by the clerk of court to the entitled person under subsection (9) of that section,
 pending the determination of any appeal against conviction or sentence (or disposal or order).

#### **[<sup>F48</sup>193A Suspension of certain sentences pending determination of appeal.**

- (1) Where a convicted person or the prosecutor appeals to the High Court under section 175 of this Act [<sup>F49</sup>(other than by way of an appeal under section 175(2)(cb) of this Act against a reference only)], the court may on the application of the appellant direct that the whole, or any remaining part, of a relevant sentence shall be suspended until the appeal, if it is proceeded with, is determined.
- (2) Where the court has directed the suspension of the whole or any remaining part of a person's relevant sentence, the person shall, unless the High Court otherwise directs, appear personally in court on the day or days fixed for the hearing of the appeal.
- (3) Where a person fails to appear personally in court as mentioned in subsection (2) above, the court may—
  - (a) if he is the appellant—
    - (i) decline to consider the appeal; and
    - (ii) dismiss it summarily; or
  - (b) whether or not he is the appellant—
    - (i) consider and determine the appeal; or
    - (ii) make such other order as the court thinks fit.
- (4) In this section “relevant sentence” means any one or more of the following—
  - (a) a probation order;
  - (b) a supervised attendance order made under section 236(6) of this Act;
  - (c) a community service order;
  - (d) a restriction of liberty order.
  - [<sup>F50</sup>(e) a community reparation order.]

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#### Textual Amendments

- F48** S. 193A inserted (1.8.1997 except s. 193A(4)(d) which is in force on 1.7.1998) by 1997 c. 48, s. 24(2); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5); S.I. 1997/2323, art. 5(1)
- F49** Words in s. 193A(1) inserted (10.1.2005) by Protection of Children (Scotland) Act 2003 (asp 5), ss. 16(11), 22(2); S.S.I. 2004/522, art. 2 (as amended by S.S.I. 2004/556, art. 2)
- F50** S. 193A(4)(e) inserted (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), ss. 144(1), 145(2), Sch. 4 para. 5(3); S.S.I. 2004/420, art. 3, Sch. 1

### 194 Computation of time.

- (1) If any period of time specified in any provision of this Part of this Act relating to appeals expires on a Saturday, Sunday or court holiday prescribed for the relevant court, the period shall be extended to expire on the next day which is not a Saturday, Sunday or such court holiday.
- (2) [<sup>F51</sup>The sheriff principal of the sheriffdom in which the judgment was pronounced may, on cause shown,] extend any period specified in sections 178(1) and 179(4) and (7) of this Act for such period as he considers reasonable.
- (3) For the purposes of sections 176(1)(a) and 178(1) of this Act, summary proceedings shall be deemed to be finally determined on the day on which sentence is passed in open court; except that, where in relation to an appeal—
  - (a) under section 175(2)(a) or (3)(a); or
  - (b) in so far as it is against conviction, under section 175(2)(d),of this Act sentence is deferred under section 202 of this Act, they shall be deemed finally determined on the day on which sentence is first so deferred in open court.

#### Textual Amendments

- F51** Words in s. 194(2) substituted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 25(4), 84; S.S.I. 2007/479, art. 3(1), Sch. (as amended by S.S.I. 2007/527)

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