



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART X

#### APPEALS FROM SUMMARY PROCEEDINGS

##### *Appeals against sentence*

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

- (1) An appeal under section 175(2)(b) or (c) [<sup>F1</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>F1</sup>or (cb)] be lodged, within one week of—
    - (i) the passing of the sentence,<sup>F2</sup> . . .
    - (ii) the making of the order disposing of the case or deferring sentence<sup>F3</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—

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- (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) Where a judge—
- (a) is temporarily absent from duty for any cause;
  - (b) is a [<sup>F4</sup>part-time] sheriff; or
  - (c) is a justice of the peace,
- the sheriff principal of the sheriffdom in which the judgment was pronounced may 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>F1</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>F1</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.

#### Textual Amendments

- F1** 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**)
- F2** 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)
- F3** 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)
- F4** Words in s. 186(5)(b) substituted (9.8.2000) by 2000 asp 9, s. 12, **Sch. para. 7(4)**

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## **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>F5</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 without an application to the High Court for leave to appeal having been lodged by the appellant under that subsection.
- (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.
- (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
    - (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 not less than seven days before the date fixed for the hearing of the appeal; and
  - (b) shall, not less than seven days before that date, be intimated by the appellant to the Crown Agent.

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- (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**

- F5** 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)

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