



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART X

APPEALS FROM SUMMARY PROCEEDINGS

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 [F1 175(2)(b), (c) or (cza)] [F2 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.

Textual Amendments

- F1** Words in s. 173(2) substituted (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 14(2), 206(1), [Sch. 2 para. 11](#); S.S.I. 2010/413, [art. 2](#), Sch. (with art. 3)
- F2** 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](#)

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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 [F³drug treatment and testing order] or any order deferring sentence;^{F4} . . .
 - [F⁵(cza) against any disposal under section 227ZC(7)(a) to (c) or (e) or (8)(a) of this Act;]
 - [F⁶(ca) against any decision to remit made under section 49(1)(a) or (7)(b) of this Act;]
 - [F⁷(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
 - [F⁸(i) both such conviction and such sentence or disposal or order.
 - [F⁹(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—

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- (a) against an acquittal in such proceedings; or
- (b) against a sentence passed on conviction in such proceedings.

[^{F10}(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
- ^{F11}(ca) a confiscation order;]
- (d) ^{F12}
- [a drug treatment and testing order;]
- ^{F13}(dd) ^{F12}
- (e) ^{F12}
- (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) [^{F14}, (c) or (ca)] of that subsection, that the decision not to make the order in question was inappropriate;
 - (iii) paragraph [^{F15}(dd)] 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.]

[^{F16}(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.]

[^{F17}(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 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.

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- (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 ^{F18} . . . 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 [^{F19} 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) [^{F20} 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) 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.

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- (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

- F3** Words in s. 175(2)(c) substituted (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 14(2), 206(1), **Sch. 2 para. 12(a)(i)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F4** 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)
- F5** S. 175(2)(cza) inserted (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 14(2), 206(1), **Sch. 2 para. 12(a)(ii)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F6** 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)
- F7** 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)
- F8** 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)
- F9** 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)
- F10** 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)
- F11** 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)
- F12** S. 175(4)(d)(e) repealed (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 14(2), 206(1), **Sch. 2 para. 12(b)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F13** 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)
- F14** 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)
- F15** Words in s. 175(4A)(b)(iii) substituted (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 14(2), 206(1), **Sch. 2 para. 12(c)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F16** 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)
- F17** 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)
- F18** 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)
- F19** 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)
- F20** 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)

- C1** 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)
- C2** 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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