

CRIMINAL JUSTICE (SCOTLAND) ACT 2016

EXPLANATORY NOTES

OVERVIEW OF THE ACT

Part 5 – Appeals and Scrc

Appeals

Section 87 – Preliminary pleas in summary cases

233. Section 174 of the 1995 Act allows for decisions disposing of certain objections and denials in summary proceedings, including objections to the competency and relevancy of the complaint, to be appealed to the High Court where the first instance court gives permission for the appeal. Section 87 of the Act amends section 174 of the 1995 Act by removing the requirement to obtain permission for an appeal by the prosecutor against a decision that has resulted in the dismissal of the complaint, or any part of it.

Section 88 – Preliminary diets in solemn cases

234. Section 74 of the 1995 Act allows for decisions taken at first diets and preliminary hearings to be appealed to the High Court where the first instance court gives permission for the appeal. Section 88 of the Act amends section 74 of the 1995 Act by removing the requirement to obtain permission for an appeal by the prosecutor against a decision that has resulted in the dismissal of the indictment, or any part of it.

Section 89 – Extending certain time limits: summary

235. [Section 89](#) amends section 181 of the 1995 Act so as to make further provision concerning applications to extend certain time limits that apply in relation to appeals from summary proceedings.
236. Subsection (2) inserts provisions prescribing the test to be applied by the High Court when determining an application to extend the period within which a convicted person may apply for a stated case. Subsections (3) and (4) omit the provisions under which the respondent in relation to an application under section 181(1) of the 1995 Act may insist on a hearing. Subsection (5) inserts section 181(5) which requires the court to give reasons in writing for a decision to extend a period on an application under section 181(1).
237. By virtue of section 186(8) of the 1995 Act, the amendments effected by section 89 of the Act also have effect in relation to certain applications to extend the period allowed for the lodging of a note of appeal under section 186.

Section 90 – Extending certain time limits: solemn

238. [Section 90](#) makes provision concerning applications to the High Court under section 111(2) of the 1995 Act, applications to extend the period within which a convicted person may lodge intimation of intention to appeal, or a note of appeal.

239. Subsections (3) to (6) amend section 111. Subsection (3) inserts provisions prescribing the test to be applied by the High Court when determining an application under section 111(2) when it is received after the expiry of the period to which it relates. Subsection (4) amends section 111(2A) so as to extend to every application under section 111(2) the requirement on the applicant to state reasons for the failure to comply with the applicable time limit and to state the proposed grounds of appeal. Subsection (6) inserts section 111(4) which provides that applications under section 111(2) are to be dealt with in chambers and, unless the court otherwise directs, without parties being present. Subsections (1) and (5) contain amendments that are consequential to this change. Subsection (6) also inserts section 111(5) which requires the court to give reasons in writing for a decision to extend a period.

Section 91 – Certain lateness not excusable

240. **Section 91** amends section 300A of the 1995 Act by inserting a new subsection (7A). Section 300A gives courts a general power to excuse failures to comply with procedural requirements. The amendment precludes a failure to timeously lodge certain documents from being excused under section 300A. The documents in question are those which the High Court can permit being lodged late by applying the tests that are to be amended by sections 89 and 90 of the Act (i.e. documents used to initiate appeals from, respectively, summary and solemn proceedings).

Section 92 – Advocation in solemn proceedings

241. **Section 92** inserts section 130A into the 1995 Act, which provides that it is not competent for a decision taken at a first diet or preliminary hearing to be appealed to the High Court by bill of advocation. The provision excludes bill of advocation as a competent method of appealing a decision that could be appealed under the procedure provided for in section 74 of the 1995 Act.

Section 93 – Advocation in summary proceedings

242. **Section 93** inserts section 191B into the 1995 Act. The new section applies to decisions disposing of certain objections and denials which require to be stated before a plea is tendered in summary proceedings, including objections to the competency or relevancy of a complaint. Such decisions can be appealed to the High Court under the procedure provided for in section 174 of the 1995 Act. The new section provides that such decisions cannot also be competently appealed by way of bill of advocation.

Section 94 – Finality of appeal proceedings

243. **Section 94** amends section 124(2) of the 1995 Act (as amended by section 36(11) of the Scotland Act 2012) by removing references to section 288ZB of the 1995 Act.

SCCRC

Section 96 – References by SCCRC

244. **Section 96** of the Act amends the 1995 Act to adjust how the High Court considers cases referred to it by the Scottish Criminal Cases Review Commission (“the SCCRC”) and to adjust the definition of the “interests of justice” test applied by the SCCRC in deciding whether to refer a case to the High Court.
245. **Section 96(4)** of the Act repeals section 194C(2) of the 1995 Act so that the SCCRC are no longer required to explicitly consider the need for finality and certainty in criminal proceedings as part of how they assess “interests of justice” when deciding whether to refer a case to the High Court.
246. **Section 96(5)** of the Act repeals section 194DA of the 1995 Act so that the High Court will no longer have the power to reject a SCCRC reference on the basis of applying

*These notes relate to the Criminal Justice (Scotland) Act 2016
(asp 1) which received Royal Assent on 13 January 2016*

an interests of justice test. Section 96(2) of the Act makes a consequential change to section 194B of the 1995 Act.