



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART X

#### APPEALS FROM SUMMARY PROCEEDINGS

##### *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>F1</sup>191A Time limit for lodging bills of advocacy and bills of suspension**

- (1) This section applies where a party wishes—

*Status: Point in time view as at 10/01/2005. This version of this cross heading contains provisions that are not valid for this point in time.*

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- (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
    - (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

- F1** 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

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- (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, 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>F2</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>F3</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—

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- (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.
  - [ a community reparation order.]]
  - <sup>F4</sup>(e)

#### Textual Amendments

- F2** 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)
- F3** 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)
- F4** 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) Where a judge against whose judgement an appeal is taken—
  - (a) is temporarily absent from duty for any cause;
  - (b) is a [<sup>F5</sup>part-time] sheriff; or
  - (c) is a justice of the peace,
 the sheriff principal of the sheriffdom in which the court at which the judgement was pronounced is situated may 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

- F5** Words in s. 194(2)(b) substituted (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 7(5)

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