



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART VIII

APPEALS FROM SOLEMN PROCEEDINGS

[^{F1}108 Lord Advocate's right of appeal against disposal.

(1) Where a person has been convicted on indictment, the Lord Advocate may, in accordance with subsection (2) below, appeal 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;
- [^{F2}(ca) a decision under section 92 of the Proceeds of Crime Act 2002 not to make a confiscation order;]
- [^{F3}(cb) a decision under section 22A of the Serious Crime Act 2007 not to make a serious crime prevention order;]
- [^{F4}(cb) a decision under section 36(2) of the Regulatory Reform (Scotland) Act 2014 not to make a publicity order;
- (cc) a decision under section 41(2) of that Act not to make a remediation order;]
- [^{F5}(cd) a decision under section 97B(2) of the Proceeds of Crime Act 2002 to make or not to make a compliance order;]
- [^{F6}(ce) a decision under section 30(2) of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 not to make a remedial order,
- (cf) a decision under section 30(2) of that Act not to make a publicity order,]
- [^{F7}(d)]
- [^{F8}(dd) a drug treatment and testing order;]
- [^{F7}(e)]

Changes to legislation: Criminal Procedure (Scotland) Act 1995, Section 108 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (f) a decision to remit to the Principal Reporter made under section 49(1)(a) of this Act;
 - (g) an order deferring sentence;
 - (h) an admonition; or
 - (i) an absolute discharge.
- (2) An appeal under subsection (1) 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) ^{F9}, (c) ^{F10}, (ca), (cb) ^{F11}, (cc) ^{F12}, (cd), (ce) or (cf) ^{F13} of that subsection, that the decision not to make the order in question was inappropriate;
 - (iii) paragraph ^{F13}(cd) or ^{F14}(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.
- ^{F15} [In deciding whether to appeal under subsection (1) in any case, the Lord Advocate (2A) must have regard to any sentencing guidelines which are applicable in relation to the case.]
- ^{F16} [For the purposes of subsection (2)(b)(i) above in its application to a confiscation order (3) 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.]]

Textual Amendments

- F1** S. 108 substituted (1.8.1997) by 1997 c. 48, s. 21(1); S.I. 1997/1712, art. 3, Sch. (subject to arts. 4, 5)
- F2** S. 108(1)(ca) inserted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 115(2), 458; S.S.I. 2003/210, art. 2 (subject to arts. 3-7)
- F3** S. 108(1)(cb) inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), s. 88(1), Sch. 4 para. 14; S.I. 2016/148, reg. 3(g)
- F4** S. 108(1)(cb)(cc) inserted (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), ss. 44(2)(a), 61(2); S.S.I. 2014/160, art. 2(1)(2), sch.
- F5** S. 108(1)(cd) inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), ss. 17(2)(a), 88(2)(a); S.S.I. 2016/11, reg. 2(b)
- F6** S. 108(1)(ce)(cf) inserted (1.10.2017) by Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (asp 14), ss. 31(2)(a), 36(2); S.S.I. 2017/294, reg. 2, sch.
- F7** S. 108(1)(d)(e) repealed (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), Sch. 2 para. 8(a); S.S.I. 2010/413, art. 2, Sch. (with art. 3)
- F8** S. 108(1)(dd) inserted (30.9.1998) by 1998 c. 37, s. 94(2), Sch. 6 Pt. II para. 6(2); S.I. 1998/2327, art. 2(1)(s)
- F9** Words in s. 108(2)(b)(ii) substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 115(3), 458; S.S.I. 2003/210, art. 2 (subject to arts. 3-7)
- F10** Words in s. 108(2)(b)(ii) substituted (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), ss. 44(2)(b), 61(2); S.S.I. 2014/160, art. 2(1)(2), sch.

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- F11** Words in s. 108(2)(b)(ii) substituted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\), ss. 17\(2\)\(b\)\(i\), 88\(2\)\(a\); S.S.I. 2016/11, reg. 2\(b\)](#)
- F12** Words in s. 108(2)(b)(ii) substituted (1.10.2017) by [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(asp 14\), ss. 31\(2\)\(b\), 36\(2\); S.S.I. 2017/294, reg. 2, sch.](#)
- F13** Words in s. 108(2)(b)(iii) inserted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\), ss. 17\(2\)\(b\)\(ii\), 88\(2\)\(a\); S.S.I. 2016/11, reg. 2\(b\)](#)
- F14** Words in s. 108(2)(b)(iii) substituted (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\), ss. 14\(2\), 206\(1\), Sch. 2 para. 8\(b\); S.S.I. 2010/413, art. 2, Sch. \(with art. 3\)](#)
- F15** S. 108(2A) inserted (19.10.2015) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\), ss. 6\(7\), 206\(1\); S.S.I. 2015/336, art. 2\(a\)](#)
- F16** S. 108(3) inserted (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\), ss. 115\(4\), 458; S.S.I. 2003/210, art. 2](#) (subject to arts. 3-7)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5A inserted by [2010 asp 13 Sch. 7 para. 26](#)
- s. 13(1B)(1C) inserted by [2006 asp 10 s. 82\(2\)](#)
- s. 13(2)(aa) inserted by [2006 asp 10 s. 82\(3\)\(b\)](#)
- s. 13(3A) inserted by [2006 asp 10 s. 82\(4\)](#)
- s. 13(5)(ba) inserted by [2006 asp 10 s. 82\(5\)\(a\)](#)
- s. 13(6)(a)(iii) and word inserted by [2006 asp 10 s. 82\(6\)\(b\)](#)
- s. 13(8) inserted by [2006 asp 10 s. 82\(7\)](#)
- s. 22(5A) inserted by [2007 asp 6 s. 7\(2\)\(g\)](#)
- s. 22A(1A) inserted by [2023 asp 4 s. 1\(2\)](#)
- s. 23B(1)(1A) substituted for s. 23B(1) by [2023 asp 4 s. 2\(2\)\(a\)](#)
- s. 23B(6A) inserted by [2023 asp 4 s. 1\(3\)\(c\)](#)
- s. 23B(8)-(10) inserted by [2023 asp 4 s. 2\(2\)\(c\)](#)
- s. 23C(1A) inserted by [2023 asp 4 s. 2\(3\)\(b\)](#)
- s. 23C(3) inserted by [2023 asp 4 s. 2\(3\)\(c\)](#)
- s. 24(2C) inserted by [2023 asp 4 s. 4\(4\)](#)
- s. 24(2AA) inserted by [2023 asp 4 s. 4\(2\)](#)
- s. 73A inserted by [2004 asp 3 s. 2\(3\)](#)
- s. 167(7D)(7E) inserted by [2007 asp 17 sch. 4 para. 1\(3\)](#)
- s. 167(7D) words substituted by [2010 asp 13 Sch. 3 para. 16\(2\)](#)
- s. 167(7E) words substituted by [2010 asp 13 Sch. 3 para. 16\(3\)](#)
- s. 194ZA repealed by [2014 asp 18 sch. 3 para. 25](#)
- s. 200A inserted by [2016 asp 1 s. 85](#)
- s. 205A added by [1997 c. 48 s. 1\(1\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by 2003 asp 7, s. 19(3); S.S.I. 2003/288, art. 2, Sch.)
- s. 210ZA inserted by [2023 asp 4 s. 5](#)
- s. 249(4A)-(4D) inserted by [2014 asp 1 s. 24](#)
- s. 271D(4A) inserted by [2019 asp 8 s. 6\(4\)](#)
- s. 271F(2)(aa) inserted by [2019 asp 8 s. 10\(4\)](#)
- s. 271AA inserted by [2019 asp 8 s. 6\(2\)](#)
- s. 271BZD inserted by [2019 asp 8 s. 3\(2\)](#)
- s. 288AB288AC inserted by [2024 asp 1 s. 32\(3\)](#)
- Sch. 5A added by [1997 c. 48 s. 1\(2\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by 2003 asp 7, s. 19(3); S.S.I. 2003/288, art. 2, Sch.)