



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART X

APPEALS FROM SUMMARY PROCEEDINGS

Disposal of appeals

188 Setting aside conviction or sentence: prosecutor's consent or application.

- (1) Without prejudice to section 175(3) or (4) of this Act, where—
 - (a) an appeal has been taken under section 175(2) of this Act or by suspension or otherwise and the prosecutor is not prepared to maintain the judgment appealed against he may, by a relevant minute, consent to the conviction or sentence or, as the case may be, conviction and sentence (“sentence” being construed in this section as including disposal or order) being set aside either in whole or in part; or
 - (b) no such appeal has been taken but the prosecutor is, at any time, not prepared to maintain the judgment on which a conviction is founded or the sentence imposed following such conviction he may, by a relevant minute, apply for the conviction or sentence or, as the case may be, conviction and sentence to be set aside.
- (2) For the purposes of subsection (1) above, a “relevant minute” is a minute, signed by the prosecutor—
 - (a) setting forth the grounds on which he is of the opinion that the judgment cannot be maintained; and
 - (b) written on the complaint or lodged with the clerk of court.
- (3) A copy of any minute under subsection (1) above shall be sent by the prosecutor to the convicted person or his solicitor and the clerk of court shall—
 - (a) thereupon ascertain and note on the record, whether that person or solicitor desires to be heard by the [F1Sheriff Appeal Court] before the appeal, or as the case may be application, is disposed of; and

Changes to legislation: Criminal Procedure (Scotland) Act 1995, Section 188 is up to date with all changes known to be in force on or before 15 June 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

- (b) thereafter transmit the complaint and relative proceedings to the ^{F2}Clerk of the Sheriff Appeal Court].
- (4) The ^{F3}Clerk of the Sheriff Appeal Court], on receipt of a complaint and relative proceedings transmitted under subsection (3) above, shall lay them before any ^{F4}Appeal Sheriff] of the ^{F5}Sheriff Appeal Court] either in court or in chambers who, after hearing parties if they desire to be heard, may—
- (a) set aside the conviction or the sentence, or both, either in whole or in part and—
- (i) award such expenses to the convicted person, both in the ^{F5}Sheriff Appeal Court] and in the inferior court, as the ^{F4}Appeal Sheriff] may think fit;
 - (ii) where the conviction is set aside in part, pass another (but not more severe) sentence in substitution for the sentence imposed in respect of that conviction; and
 - (iii) where the sentence is set aside, pass another (but not more severe) sentence; or
- (b) refuse to set aside the conviction or sentence or, as the case may be, conviction and sentence, in which case the complaint and proceedings shall be returned to the clerk of the inferior court.
- (5) Where an appeal has been taken and the complaint and proceedings in respect of that appeal returned under subsection (4)(b) above, the appellant shall be entitled to proceed with the appeal as if it had been marked on the date of their being received by the clerk of the inferior court on such return.
- (6) Where an appeal has been taken and a copy minute in respect of that appeal sent under subsection (3) above, the preparation of the draft stated case shall be delayed pending the decision of the ^{F6}Sheriff Appeal Court].
- (7) The period from an application being made under subsection (1)(b) above until its disposal under subsection (4) above (including the day of application and the day of disposal) shall, in relation to the conviction to which the application relates, be disregarded in any computation of time specified in any provision of this Part of this Act.

Textual Amendments

- F1** Words in s. 188(3)(a) substituted (22.9.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [sch. 3 para. 17\(2\)](#); S.S.I. 2015/247, art. 2, sch. (with art. 6)
- F2** Words in s. 188(3)(b) substituted (22.9.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [sch. 3 para. 17\(3\)](#); S.S.I. 2015/247, art. 2, sch. (with art. 6)
- F3** Words in s. 188(4) substituted (22.9.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [sch. 3 para. 17\(3\)](#); S.S.I. 2015/247, art. 2, sch. (with art. 6)
- F4** Words in s. 188(4) substituted (22.9.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [sch. 3 para. 17\(4\)](#); S.S.I. 2015/247, art. 2, sch. (with art. 6)
- F5** Words in s. 188(4) substituted (22.9.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [sch. 3 para. 17\(2\)](#); S.S.I. 2015/247, art. 2, sch. (with art. 6)
- F6** Words in s. 188(6) substituted (22.9.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [sch. 3 para. 17\(2\)](#); S.S.I. 2015/247, art. 2, sch. (with art. 6)

Changes to legislation:

Criminal Procedure (Scotland) Act 1995, Section 188 is up to date with all changes known to be in force on or before 15 June 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.

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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. 44(5A)(5B) inserted by 2024 asp 5 s. 19(2)(c)
- s. 49(1)-(1F) substituted for s. 49(1)-(3) by 2024 asp 5 s. 17(2)(a)
- s. 49(4A)-(4C) inserted by 2024 asp 5 s. 17(2)(c)
- s. 50(7) inserted by 2024 asp 5 s. 16(2)
- s. 51(6)-(8) inserted by 2024 asp 5 s. 18(2)(e)
- s. 70B and cross-heading inserted by 2024 asp 5 s. 16(3)
- s. 73A inserted by 2004 asp 3 s. 2(3)
- s. 142A inserted by 2024 asp 5 s. 16(5)
- 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. 175(1)(ca) words substituted by 2024 asp 5 Sch. para. 7(4)(a)
- 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. 208A inserted by 2024 asp 5 s. 19(6)
- s. 210ZA inserted by 2023 asp 4 s. 5
- s. 216(8)-(11) inserted by 2024 asp 5 s. 19(7)
- 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)
- s. 288BZA inserted by 2024 asp 5 s. 33(2)

- 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.)