



# Criminal Justice (Scotland) Act 2016

## 2016 asp 1

### PART 5

#### APPEALS AND SCCRC

##### *Appeals*

#### **87 Preliminary pleas in summary cases**

- (1) Section 174 (appeals relating to preliminary pleas) of the 1995 Act is amended as follows.
- (2) In subsection (1)—
  - (a) the words from “with the leave” to “and” are repealed,
  - (b) for the words “this subsection” there is substituted “ subsection (1A)(b) ”.
- (3) After subsection (1) there is inserted—

“(1A) An appeal under subsection (1) may be taken—

  - (a) in the case of a decision to dismiss the complaint or any part of it, by the prosecutor without the leave of the court,
  - (b) in any other case, only with the leave of the court of first instance (granted on the motion of a party or ex proprio motu).”.
- (4) After subsection (2) there is inserted—

“(2A) Subsection (3) applies where—

  - (a) the court grants leave to appeal under subsection (1), or
  - (b) the prosecutor—
    - (i) indicates an intention to appeal under subsection (1), and
    - (ii) by virtue of subsection (1A)(a), does not require the leave of the court.”.
- (5) In subsection (3), for the words from the beginning to “it” there is substituted “ Where this subsection applies, the court of first instance ”.

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#### Commencement Information

**I1** S. 87 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

### 88 Preliminary diets in solemn cases

In section 74 (appeals in connection with preliminary diets) of the 1995 Act—

- (a) in subsection (1), for the words from “to—” to “motu)” there is substituted “ to any right of appeal under section 106 or 108 a party may, ”,
- (b) after subsection (2) there is inserted—

“(2A) An appeal under subsection (1) may be taken—

- (a) in the case of a decision to dismiss the indictment or any part of it, by the prosecutor without the leave of the court,
- (b) in any other case, only with the leave of the court of first instance (granted on the motion of a party or ex proprio motu).”.

#### Commencement Information

**I2** S. 88 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

### 89 Extending certain time limits: summary

(1) Section 181 (stated case: directions by Sheriff Appeal Court) of the 1995 Act is amended as follows.

(2) After subsection (1) there is inserted—

“(1A) Where an application for a direction under subsection (1)—

- (a) is made by the person convicted, and
- (b) relates to the requirements of section 176(1),

the Sheriff Appeal Court may make a direction only if it is satisfied that doing so is justified by exceptional circumstances.

(1B) In considering whether there are exceptional circumstances for the purpose of subsection (1A), the Sheriff Appeal Court must have regard to—

- (a) the length of time that has elapsed between the expiry of the period mentioned in section 176(1)(a) and the making of the application,
- (b) the reasons stated in accordance with subsection (2A)(a)(i),
- (c) the proposed grounds of appeal.”.

(3) Subsection (2C) is repealed.

(4) In paragraph (a) of subsection (3), the words from “(unless” to the end are repealed.

(5) At the end of the section there is inserted—

“(5) If the Sheriff Appeal Court makes a direction under subsection (1), it must—

- (a) give reasons for the decision in writing, and
- (b) give the reasons in ordinary language.”.

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#### Commencement Information

**I3** S. 89 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

### 90 Extending certain time limits: solemn

(1) In section 105 (appeal against refusal of application) of the 1995 Act, after subsection (3) there is inserted—

“(3A) Subsection (3) does not entitle an applicant to be present at the hearing and determination of an application under section 111(2) unless the High Court has made a direction under section 111(4)(b).”.

(2) Section 111 (provisions supplementary to sections 109 and 110) of the 1995 Act is amended as follows.

(3) After subsection (2) there is inserted—

“(2ZA) Where an application under subsection (2) is received after the period to which it relates has expired, the High Court may extend the period only if it is satisfied that doing so is justified by exceptional circumstances.

(2ZB) In considering whether there are exceptional circumstances for the purpose of subsection (2ZA), the High Court must have regard to—

- (a) the length of time that has elapsed between the expiry of the period and the making of the application,
- (b) the reasons stated in accordance with subsection (2A)(a)(i),
- (c) the proposed grounds of appeal.”.

(4) In subsection (2A)—

- (a) the words “seeking extension of the period mentioned in section 109(1) of this Act” are repealed,
- (b) in paragraph (a)(i)—
  - (i) after “failed” there is inserted “, or expects to fail,”,
  - (ii) the words “in section 109(1)” are repealed.

(5) Subsection (2C) is repealed.

(6) At the end of the section there is inserted—

“(4) An application under subsection (2) is to be dealt with by the High Court—

- (a) in chambers, and
- (b) unless the Court directs otherwise, without the parties being present.

(5) If the High Court extends a period under subsection (2), it must—

- (a) give reasons for the decision in writing, and
- (b) give the reasons in ordinary language.”.

#### Commencement Information

**I4** S. 90 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

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## 91 Certain lateness not excusable

In section 300A (power of court to excuse procedural irregularities) of the 1995 Act, after subsection (7) there is inserted—

“(7A) Subsection (1) does not authorise a court to excuse a failure to do any of the following things timeously—

- (a) lodge written intimation of intention to appeal in accordance with section 109(1),
- (b) lodge a note of appeal in accordance with section 110(1)(a),
- (c) make an application for a stated case under section 176(1),
- (d) lodge a note of appeal in accordance with section 186(2)(a).”.

### Commencement Information

**I5** S. 91 in force at 17.1.2017 by [S.S.I. 2016/426, art. 2, sch.](#)

## 92 Advocation in solemn proceedings

After section 130 of the 1995 Act there is inserted—

### “130A Bill of advocation not competent in respect of certain decisions

It is not competent to bring under review of the High Court by way of bill of advocation a decision taken at a first diet or a preliminary hearing.”.

### Commencement Information

**I6** S. 92 in force at 17.1.2017 by [S.S.I. 2016/426, art. 2, sch.](#)

## 93 Advocation in summary proceedings

After section 191A of the 1995 Act there is inserted—

### “191B Bill of advocation not competent in respect of certain decisions

It is not competent to bring under review of the Sheriff Appeal Court by way of bill of advocation a decision of the court of first instance that relates to such objection or denial as is mentioned in section 144(4).”.

### Commencement Information

**I7** S. 93 in force at 17.1.2017 by [S.S.I. 2016/426, art. 2, sch.](#)

## 94 Finality of appeal proceedings

In subsection (2) of section 124 (finality of proceedings) of the 1995 Act—

- (a) for the words “sections 288ZB and 288AA” there is substituted “section 288AA ”,

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- (b) the words “a reference under section 288ZB or” are repealed.

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**Commencement Information**

**I8** S. 94 in force at 17.1.2017 by [S.S.I. 2016/426](#), art. 2, [sch.](#)

## 95 Courts reform: spent provisions

In schedule 3 to the Courts Reform (Scotland) Act 2014, the following provisions are repealed—

- (a) in paragraph 10, sub-paragraphs (4), (5) and (8),
- (b) paragraph 22,
- (c) paragraph 25.

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**Commencement Information**

**I9** S. 95 in force at 17.1.2017 by [S.S.I. 2016/426](#), art. 2, [sch.](#)

## SCCRC

## 96 References by SCCRC

- (1) The 1995 Act is amended as follows.
- (2) In section 194B, in subsection (1), the words “, subject to section 194DA of this Act,” are repealed.
- (3) The title of section 194B becomes “ **References by the Commission** ”.
- (4) In section 194C, subsection (2) is repealed.
- (5) Section 194DA is repealed.

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**Commencement Information**

**I10** S. 96 in force at 17.1.2017 by [S.S.I. 2016/426](#), art. 2, [sch.](#)

**Changes to legislation:**

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

- Act expiry of affecting provision 2022 asp 8, sch. para. 15 by [S.S.I. 2023/360 reg. 2\(a\)](#)