



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART X

APPEALS FROM SUMMARY PROCEEDINGS

General

173 Quorum of High Court in relation to appeals

- (1) For the purpose of hearing and determining any appeal under this Part of this Act, or any proceeding connected therewith, three of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and the determination of any question under this Part of this Act by the court shall be according to the votes of the majority of the members of the court sitting, including the presiding judge, and each judge so sitting shall be entitled to pronounce a separate opinion.
- (2) For the purpose of hearing and determining appeals under section 175(2)(b) or (c) of this Act, or any proceeding connected therewith, two of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and each judge shall be entitled to pronounce a separate opinion; but where the two Lords Commissioners of Justiciary are unable to reach agreement on the disposal of the appeal, or where they consider it appropriate, the appeal shall be heard and determined in accordance with subsection (1) above.

174 Appeals relating to preliminary pleas

- (1) Without prejudice to any right of appeal under section 175(1) to (6) or 191 of this Act, a party may, with the leave of the court (granted either on the motion of the party or *ex proprio motu*) and in accordance with such procedure as may be prescribed by Act of Adjournal, appeal to the High Court against a decision of the court of first instance (other than a decision not to grant leave under this subsection) which relates to such objection or denial as is mentioned in section 144(4) of this Act; but such appeal must be taken not later than two days after such decision.

Status: This is the original version (as it was originally enacted).

- (2) Where an appeal is taken under subsection (1) above, the High Court may postpone the trial diet (if one has been fixed) for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.
- (3) If leave to appeal under subsection (1) above is granted by the court it shall not proceed to trial at once under subsection (2) of section 146 of this Act; and subsection (3) of that section shall be construed as requiring sufficient time to be allowed for the appeal to be taken.
- (4) In disposing of an appeal under subsection (1) above the High Court may affirm the decision of the court of first instance or may remit the case to it with such directions in the matter as it thinks fit; and where the court of first instance had dismissed the complaint, or any part of it, may reverse that decision and direct that the court of first instance fix a trial diet (if it has not already fixed one as regards so much of the complaint as it has not dismissed.)

175 Right of appeal

- (1) This section is without prejudice to any right of appeal under section 191 of this Act.
- (2) Any person convicted, or found to have committed an offence, in summary proceedings may, with leave granted in accordance with section 180 or, as the case may be, 187 of this Act, appeal under this section to the High Court—
 - (a) against such conviction, or finding;
 - (b) against the sentence passed on such conviction;
 - (c) against his absolute discharge or admonition or any probation order or any community service order or any order deferring sentence; or
 - (d) against both such conviction and such sentence or disposal or order.
- (3) The prosecutor in summary proceedings may appeal under this section to the High Court on a point of law—
 - (a) against an acquittal in such proceedings; or
 - (b) against a sentence passed on conviction in such proceedings.
- (4) The prosecutor in such proceedings, in any class of case specified by order made by the Secretary of State under this subsection, may appeal to the High Court against the sentence passed on such conviction or, whether the person has been convicted or not, against any probation order or any community service order or against the person's absolute discharge or admonition or against any order deferring sentence if it appears to the prosecutor that, as the case may be—
 - (a) the sentence is unduly lenient;
 - (b) the making of the probation order or community service order is unduly lenient or its terms are unduly lenient;
 - (c) to dismiss with an admonition or to discharge absolutely is unduly lenient; or
 - (d) the deferment of sentence is inappropriate or on unduly lenient conditions.
- (5) By an appeal under subsection (2) above or, as the case may be, against acquittal under subsection (3) above, an appellant may bring under review of the High Court any alleged miscarriage of justice in the proceedings including, in the case of an appeal under the said subsection (2), any alleged miscarriage of justice on the basis of the

existence and significance of additional evidence which was not heard at the trial and which was not available and could not reasonably have been made available at the trial.

- (6) The power of the Secretary of State to make an order under subsection (4) above shall be exercisable by statutory instrument; and any order so made shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Where a person desires to appeal under subsection (2)(a) or (d) or (3) above, he shall pursue such appeal in accordance with sections 176 to 179, 181 to 185, 188, 190 and 192(1) and (2) of this Act.
- (8) A person who has appealed against both conviction and sentence, may abandon the appeal in so far as it is against conviction and may proceed with it against sentence alone, subject to such procedure as may be prescribed by Act of Adjournal.
- (9) Where a convicted person or as the case may be a person found to have committed an offence desires to appeal under subsection (2)(b) or (c) above, or the prosecutor desires so to appeal by virtue of subsection (4) above, he shall pursue such appeal in accordance with sections 186, 189(1) to (6), 190 and 192(1) and (2) of this Act; but nothing in this section shall prejudice any right to proceed by bill of suspension, or as the case may be advocacy, against an alleged fundamental irregularity relating to the imposition of sentence.
- (10) Where any statute provides for an appeal from summary proceedings to be taken under any public general or local enactment, such appeal shall be taken under this Part of this Act.