



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART X

#### APPEALS FROM SUMMARY PROCEEDINGS

##### *Disposal of appeals*

#### **189 Disposal of appeal against sentence.**

- (1) An appeal against sentence by note of appeal shall be heard by the [<sup>F1</sup>Sheriff Appeal Court] on such date as it may fix, and the [<sup>F1</sup>Sheriff Appeal Court] may, subject to section 190(1) of this Act, dispose of such appeal by—
- (a) affirming the sentence; or
  - (b) if the Court thinks that, having regard to all the circumstances, including any <sup>F2</sup> . . . evidence such as is mentioned in section 175(5) of this Act, a different sentence should have been passed, quashing the sentence and, subject to subsection (2) below, passing another sentence, whether more or less severe, in substitution therefor.

- (2) In passing another sentence under subsection (1)(b) above, the Court shall not in any case increase the sentence beyond the maximum sentence which could have been passed by the inferior court.

<sup>F3</sup>(2A) . . . . .

- (3) The [<sup>F4</sup>Sheriff Appeal Court] shall have power in an appeal by note of appeal to award such expenses both in the [<sup>F4</sup>Sheriff Appeal Court] and in the inferior court as it may think fit.

- (4) Where, following an appeal under section 175(2)(b) or (c), or by virtue of section 175(4), of this Act, the convicted person remains liable to imprisonment or detention under the sentence of the inferior court or is so liable under a sentence passed in the appeal proceedings, the [<sup>F5</sup>Sheriff Appeal Court] shall have power where at the time of disposal of the appeal the convicted person—

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- (a) was at liberty on bail, to grant warrant to apprehend and imprison or detain the appellant for a term, to run from the date of such apprehension, not longer than that part of the term or terms of imprisonment or detention specified in the sentence brought under review which remained unexpired at the date of liberation; or
  - (b) is serving a term or terms of imprisonment or detention imposed in relation to a conviction subsequent to the conviction in respect of which the sentence appealed against was imposed, to exercise the like powers in regard to him as may be exercised, in relation to an appeal which has been abandoned, by a court of summary jurisdiction in pursuance of section 177(6) of this Act.
- (5) In subsection (1) above, “appeal against sentence” shall, without prejudice to the generality of the expression, be construed as including an appeal under section 175(2)(c) [<sup>F6</sup>or (cza)], and any appeal by virtue of section 175(4), of this Act; and without prejudice to subsection (6) below, other references to sentence in that subsection and in subsection (4) above shall be construed accordingly.
- (6) In disposing of any appeal in a case where the accused has not been convicted, the [<sup>F7</sup>Sheriff Appeal Court] may proceed to convict him; and where it does, the reference in subsection (4) above to the conviction in respect of which the sentence appealed against was imposed shall be construed as a reference to the disposal or order appealed against.
- (7) In disposing of an appeal under section 175(2)(b) to (d), (3)(b) or (4) of this Act the [<sup>F8</sup>Sheriff Appeal Court] may, without prejudice to any other power in that regard, pronounce an opinion on
- [<sup>F9</sup>(a)] the sentence or other disposal or order which is appropriate in any similar case; <sup>F10</sup> ...
  - <sup>F11</sup>(b) .....

#### Textual Amendments

- F1** Words in s. 189(1) substituted (22.9.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [sch. 3 para. 18](#); S.S.I. 2015/247, [art. 2](#), [sch.](#) (with [art. 6](#))
- F2** Word in s. 189(1)(b) repealed (1.8.1997) by [1997 c. 48](#), s. 62(1)(2), [Sch. 1 para. 21\(22\)](#), [Sch. 3](#); S.I. 1997/1712, [art. 3](#), [Sch.](#) (subject to [arts. 4, 5](#))
- F3** S. 189(2A) repealed (28.2.2011) by [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\)](#), s. 101(2), [sch. 4 para. 25\(a\)](#) (with [ss. 90, 99](#)); S.S.I. 2011/157, [art. 2\(a\)](#) (with [art. 5\(1\)](#))
- F4** Words in s. 189(3) substituted (22.9.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [sch. 3 para. 18](#); S.S.I. 2015/247, [art. 2](#), [sch.](#) (with [art. 6](#))
- F5** Words in s. 189(4) substituted (22.9.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [sch. 3 para. 18](#); S.S.I. 2015/247, [art. 2](#), [sch.](#) (with [art. 6](#))
- F6** Words in s. 189(5) inserted (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 14(2), 206(1), [Sch. 2 para. 15](#); S.S.I. 2010/413, [art. 2](#), [Sch.](#) (with [art. 3](#))
- F7** Words in s. 189(6) substituted (22.9.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [sch. 3 para. 18](#); S.S.I. 2015/247, [art. 2](#), [sch.](#) (with [art. 6](#))
- F8** Words in s. 189(7) substituted (22.9.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [sch. 3 para. 18](#); S.S.I. 2015/247, [art. 2](#), [sch.](#) (with [art. 6](#))
- F9** S. 189(7): words “become” para. (a) (10.1.2005) by virtue of [Protection of Children \(Scotland\) Act 2003 \(asp 5\)](#), [ss. 16\(10\)\(b\)](#), 22(2); S.S.I. 2004/522, [art. 2](#) (as amended by S.S.I. 2004/556, [art. 2](#))
- F10** Words in s. 189(7)(a) repealed (28.2.2011) by [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\)](#), s. 101(2), [sch. 4 para. 25\(b\)\(i\)](#) (with [ss. 90, 99](#)); S.S.I. 2011/157, [art. 2\(a\)](#) (with [art. 5\(1\)](#))

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**F11** S. 189(7)(b) repealed (28.2.2011) by [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\)](#), s. 101(2), [sch. 4 para. 25\(b\)\(ii\)](#) (with ss. 90, 99); S.S.I. 2011/157, art. 2(a) (with art. 5(1))

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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.)