



Crime and Punishment (Scotland) Act 1997

1997 CHAPTER 48

PART II

CRIMINAL PROCEDURE

Appeals

18 Automatic sentences: jurisdiction and appeals

(1) In section 106(1) of the 1995 Act (right of appeal), after paragraph (b) there shall be inserted the following paragraph—

“(bb) against any decision not to exercise the power conferred by section 205A(3), 205B(3) or 209(1A) of this Act;”.

(2) After section 108 of the 1995 Act, there shall be inserted the following section—

“108A Lord Advocate’s appeal against decision not to impose automatic sentence in certain cases

Where the court has exercised the power conferred by section 205A(3), 205B(3) or 209(1A) of this Act, the Lord Advocate may appeal against that decision.”

(3) In section 112(1) of the 1995 Act (bail for appellants), in paragraph (b) after the words “section 108” there shall be inserted the words “or 108A”.

(4) In section 116(2) of the 1995 Act (abandonment of part of appeal)—

(a) after the word “against”, in the second place where it occurs, there shall be inserted the words “both conviction and a decision such as is mentioned in section 106(1)(bb) or”; and

Status: This is the original version (as it was originally enacted).

- (b) for the words “or disposal” there shall be substituted the words “or, as the case may be, decision, disposal”.
- (5) In section 118 of the 1995 Act (disposal of appeals)—
- (a) in subsection (4), for the words “section 106(1)(c)” there shall be substituted the words “section 106(1)(bb)”; and
 - (b) after subsection (4) there shall be inserted the following subsection—
 - “(4A) On an appeal under section 108A of this Act, the High Court may dispose of the appeal—
 - (a) by affirming the decision and any sentence or order passed;
 - (b) where it is of the opinion mentioned in section 205A(3) or, as the case may be, 205B(3) of this Act but it considers that a different sentence or order should have been passed, by affirming the decision but quashing any sentence or order passed and passing another sentence or order whether more or less severe in substitution therefor; or
 - (c) in any other case, by setting aside the decision appealed against and any sentence or order passed by the trial court and where the decision appealed against was taken under—
 - (i) subsection (3) of section 205A of this Act, by passing the sentence mentioned in subsection (2) of that section;
 - (ii) subsection (3) of section 205B of this Act, by passing a sentence of imprisonment of at least the length mentioned in subsection (2) of that section; or
 - (iii) subsection (1A) of section 209 of this Act, by making a supervised release order as required by paragraph (a) of subsection (1) of that section.”
- (6) In section 121 of the 1995 Act (suspension of disqualification)—
- (a) in paragraph (b) of subsection (1), for the words “or 108” there shall be substituted the words “, 108 or 108A”;
 - (b) in paragraph (b) of subsection (2), for the words “or 108” there shall be substituted the words “, 108 or 108A”;
 - (c) in subsection (4), for the words “or 108” there shall be substituted the words “, 108 or 108A”.
- (7) In section 125 of the 1995 Act (reckoning of time spent pending appeal)—
- (a) in paragraph (b) of subsection (1), after the words “section 108” there shall be inserted the words “or 108A”; and
 - (b) in subsection (2), after the words “section 108” there shall be inserted the words “or 108A”.
- (8) In section 126 of the 1995 Act (extract convictions), in paragraph (b) for the words “or 108” there shall be substituted the words “, 108 or 108A”.