



Crime and Punishment (Scotland) Act 1997

1997 CHAPTER 48

PART II

CRIMINAL PROCEDURE

Appeals

21 Increased rights of appeal of prosecutor.

(1) For section 108 of the 1995 Act there shall be substituted the following section—

“108 Lord Advocate’s right of appeal against disposal.

(1) Where a person has been convicted on indictment, the Lord Advocate may, in accordance with subsection (2) below, appeal against any of the following disposals, namely—

- (a) a sentence passed on conviction;
- (b) a decision under section 209(1)(b) of this Act not to make a supervised release order;
- (c) a decision under section 234A(2) of this Act not to make a non-harassment order;
- (d) a probation order;
- (e) a community service order;
- (f) a decision to remit to the Principal Reporter made under section 49(1)(a) of this Act;
- (g) an order deferring sentence;
- (h) an admonition; or
- (i) an absolute discharge.

(2) An appeal under subsection (1) above may be made—

Changes to legislation: There are currently no known outstanding effects for the Crime and Punishment (Scotland) Act 1997, Section 21. (See end of Document for details)

- (a) on a point of law;
 - (b) where it appears to the Lord Advocate, in relation to an appeal under—
 - (i) paragraph (a), (h) or (i) of that subsection, that the disposal was unduly lenient;
 - (ii) paragraph (b) or (c) of that subsection, that the decision not to make the order in question was inappropriate;
 - (iii) paragraph (d) or (e) of that subsection, that the making of the order concerned was unduly lenient or was on unduly lenient terms;
 - (iv) under paragraph (f) of that subsection, that the decision to remit was inappropriate;
 - (v) under paragraph (g) of that subsection, that the deferment of sentence was inappropriate or was on unduly lenient conditions.”.
- (2) For subsection (4) of section 175 of the 1995 Act there shall be substituted the following subsections—
- “(4) The prosecutor in summary proceedings, in any class of case specified by order made by the Secretary of State, may, in accordance with subsection (4A) below, appeal to the High Court against any of the following disposals, namely—
- (a) a sentence passed on conviction;
 - (b) a decision under section 209(1)(b) of this Act not to make a supervised release order;
 - (c) a decision under section 234A(2) of this Act not to make a non-harassment order;
 - (d) a probation order;
 - (e) a community service order;
 - (f) a decision to remit to the Principal Reporter made under section 49(1) (a) or (7)(b) of this Act;
 - (g) an order deferring sentence;
 - (h) an admonition; or
 - (i) an absolute discharge.
- (4A) An appeal under subsection (4) above may be made—
- (a) on a point of law;
 - (b) where it appears to the Lord Advocate, in relation to an appeal under—
 - (i) paragraph (a), (h) or (i) of that subsection, that the disposal was unduly lenient;
 - (ii) paragraph (b) or (c) of that subsection, that the decision not to make the order in question was inappropriate;
 - (iii) paragraph (d) or (e) of that subsection, that the making of the order concerned was unduly lenient or was on unduly lenient terms;
 - (iv) under paragraph (f) of that subsection, that the decision to remit was inappropriate;

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- (v) under paragraph (g) of that subsection, that the deferment of sentence was inappropriate or was on unduly lenient conditions.”.

Changes to legislation:

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