



Criminal Justice (Scotland) Act 2016

2016 asp 1

PART 5 **S**

APPEALS AND SCCRC

Appeals

87 Preliminary pleas in summary cases **S**

- (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 - (a) the words from “with the leave” to “and” are repealed,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 ”.

Changes to legislation: Criminal Justice (Scotland) Act 2016, Cross Heading: Appeals is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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 **S**

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 **S**

(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.”.

Changes to legislation: Criminal Justice (Scotland) Act 2016, Cross Heading: Appeals is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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 S

(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.

Changes to legislation: Criminal Justice (Scotland) Act 2016, Cross Heading: Appeals is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

91 Certain lateness not excusable **S**

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 **S**

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 **S**

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 **S**

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 ”,

Changes to legislation: Criminal Justice (Scotland) Act 2016, Cross Heading: Appeals is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (b) the words “a reference under section 288ZB or” are repealed.

Commencement Information

18 S. 94 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

95 Courts reform: spent provisions **S**

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.

Commencement Information

19 S. 95 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

Changes to legislation:

Criminal Justice (Scotland) Act 2016, Cross Heading: Appeals is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

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\(a\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 38(7)(a) words renumbered as s. 38(7)(a) by [2024 asp 5 s. 15\(6\)\(a\)](#)
- s. 38(7)(b) and word inserted by [2024 asp 5 s. 15\(6\)\(b\)](#)
- s. 41(1A) inserted by [2024 asp 5 s. 15\(7\)\(b\)](#)