



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART VIII

APPEALS FROM SOLEMN PROCEEDINGS

118 Disposal of appeals.

- (1) The High Court may, subject to subsection (4) below, dispose of an appeal against conviction by—
 - (a) affirming the verdict of the trial court;
 - (b) setting aside the verdict of the trial court and either quashing the conviction or, subject to subsection (2) below, substituting therefor an amended verdict of guilty; or
 - (c) setting aside the verdict of the trial court and quashing the conviction and granting authority to bring a new prosecution in accordance with section 119 of this Act.

[^{F1}(1A) Where an appeal against conviction is by virtue of section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16), paragraph (c) of subsection (1) does not apply.]

- (2) An amended verdict of guilty substituted under subsection (1) above must be one which could have been returned on the indictment before the trial court.
- (3) In setting aside, under subsection (1) above, a verdict the High Court may quash any sentence imposed on the appellant (or, as the case may be, any disposal or order made) as respects the indictment, and—
 - (a) in a case where it substitutes an amended verdict of guilty, whether or not the sentence (or disposal or order) related to the verdict set aside; or
 - (b) in any other case, where the sentence (or disposal or order) did not so relate, may pass another (but not more severe) sentence or make another (but not more severe) disposal or order in substitution for the sentence, disposal or order so quashed.
- (4) The High Court may, subject to subsection (5) below, dispose of an appeal against sentence by—

Status: Point in time view as at 28/11/2011. This version of this provision has been superseded.

Changes to legislation: Criminal Procedure (Scotland) Act 1995, Section 118 is up to date with all changes known to be in force on or before 26 July 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)

- (a) affirming such sentence; or
- (b) if the Court thinks that, having regard to all the circumstances, including any ^{F2} . . . evidence such as is mentioned in section 106(3) of this Act, a different sentence should have been passed, quashing the sentence and passing another sentence whether more or less severe in substitution therefor,

and, in this subsection, “appeal against sentence” shall, without prejudice to the generality of the expression, be construed as including an appeal under [^{F3}section [^{F4}106(1)(ba), (bb), (c), (d), (da), (e) or (f)]]], and any appeal under section 108, of this Act; and other references to sentence shall be construed accordingly.

^{F5}(4AA)

[^{F6}(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

^{F7}(iii)]

(5) In relation to any appeal under section 106(1) of this Act, the High Court shall, where it appears to it that the appellant committed the act charged against him but that he was insane when he did so, dispose of the appeal by—

- (a) setting aside the verdict of the trial court and substituting therefor a verdict of acquittal on the ground of insanity; and
- (b) quashing any sentence imposed on the appellant (or disposal or order made) as respects the indictment and—
 - (i) making, in respect of the appellant, any order mentioned in section 57(2)(a) to (d) of this Act; or
 - (ii) making no order.

(6) Subsections [^{F8}(3) to (6)] of section 57 of this Act shall apply to an order made under subsection (5)(b)(i) above as they apply to an order made under subsection (2) of that section.

(7) In disposing of an appeal under section 106(1)(b) to (f) or 108 of this Act the High Court may, without prejudice to any other power in that regard, pronounce an opinion on

^{F9}(a) the sentence or other disposal or order which is appropriate in any similar case [^{F10} ; ^{F11} . . . ,

^{F12}(b)]

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(8) No conviction, sentence, judgment, order of court or other proceeding whatsoever in or for the purposes of solemn proceedings under this Act—

- (a) shall be quashed for want of form; or
- (b) where the accused had legal assistance in his defence, shall be suspended or set aside in respect of any objections to—
 - (i) the relevancy of the indictment, or the want of specification therein; or
 - (ii) the competency or admission or rejection of evidence at the trial in the inferior court,

unless such objections were timeously stated.

[^{F13}(9) The High Court may give its reasons for the disposal of any appeal in writing without giving those reasons orally.]

Textual Amendments

- F1** S. 118(1A) inserted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#), s. 17(3), [sch. para. 12](#); S.S.I. 2011/365, [art. 3](#)
- F2** S. 118(4)(b) repealed (1.8.1997) by [1997 c. 48](#), s. 62(1), [Sch. 1 para. 21\(17\)\(a\)](#); S.I. 1997/1712, [art. 3](#), [Sch.](#) (subject to [arts. 4, 5](#))
- F3** Words in s. 118(4) substituted (20.10.1997) by [1997 c. 48](#), [s. 18\(5\)\(a\)](#); S.I. 1997/2323, [art. 3](#), [Sch. 1](#)
- F4** Words in s. 118(4) substituted (28.2.2011) by [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\)](#), s. 101(2), [sch. 4 para. 18\(a\)](#) (with [ss. 90, 99](#)); S.S.I. 2011/157, [art. 2\(a\)](#) (with [art. 5\(1\)](#))
- F5** S. 118(4AA) repealed (28.2.2011) by [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\)](#), s. 101(2), [sch. 4 para. 18\(b\)](#) (with [ss. 90, 99](#)); S.S.I. 2011/157, [art. 2\(a\)](#) (with [art. 5\(1\)](#))
- F6** S. 118(4A) inserted (20.10.1997 for specified purposes and otherwise prosp.) by [1997 c. 48](#), [s. 18\(5\)\(b\)](#); S.I. 1997/2323, [art. 3](#), [Sch. 1](#)
- F7** S. 118(4A)(c)(iii) repealed (30.9.1998) by [1998 c. 37](#), [ss. 119, 120\(2\)](#), [Sch. 8 para. 121](#), [Sch. 10](#); S.I. 1998/2327, [art. 2\(1\)\(y\)\(2\)\(kk\)\(3\)\(w\)](#)
- F8** Words in s. 118(6) substituted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), [ss. 331\(1\), 333\(1\)-\(4\)](#), ([Sch. 4 para. 8\(11\)](#)); S.S.I. 2005/161, [art. 3](#)
- F9** Words in s. 118(7) becomes s. 118(7)(a) (10.1.2005) by virtue of [Protection of Children \(Scotland\) Act 2003 \(asp 5\)](#), [ss. 16\(4\)\(b\), 22\(2\)](#); S.S.I. 2004/522, [art. 2](#)
- F10** S. 118(7)(b) and words inserted (10.1.2005) by [Protection of Children \(Scotland\) Act 2003 \(asp 5\)](#), [ss. 16\(4\)\(c\), 22\(2\)](#); S.S.I. 2004/522, [art. 2](#)
- F11** Words in s. 118(7)(a) repealed (28.2.2011) by [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\)](#), s. 101(2), [sch. 4 para. 18\(c\)\(i\)](#) (with [ss. 90, 99](#)); S.S.I. 2011/157, [art. 2\(a\)](#) (with [art. 5\(1\)](#))
- F12** S. 118(7)(b) repealed (28.2.2011) by [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\)](#), s. 101(2), [sch. 4 para. 18\(c\)\(ii\)](#) (with [ss. 90, 99](#)); S.S.I. 2011/157, [art. 2\(a\)](#) (with [art. 5\(1\)](#))
- F13** S. 118(9) inserted (1.8.1997) by [1997 c. 48](#), s. 62(1), [Sch. 1 para. 21\(17\)\(b\)](#); S.I. 1997/1712, [art. 3](#), [Sch.](#) (subject to [arts. 4, 5](#))

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