



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VIII

#### APPEALS FROM SOLEMN PROCEEDINGS

#### **104 Power of High Court in appeals.**

- (1) Without prejudice to any existing power of the High Court, it may for the purposes of an appeal under section 106(1)<sup>F1</sup>, 107A, 107B] or 108 of this Act—
  - (a) order the production of any document or other thing connected with the proceedings;
  - (b) hear any <sup>F2</sup> . . . evidence relevant to any alleged miscarriage of justice or order such evidence to be heard by a judge of the High Court or by such other person as it may appoint for that purpose;
  - (c) take account of any circumstances relevant to the case which were not before the trial judge;
  - (d) remit to any fit person to enquire and report in regard to any matter or circumstance affecting the appeal;
  - (e) appoint a person with expert knowledge to act as assessor to the High Court in any case where it appears to the court that such expert knowledge is required for the proper determination of the case.
- (2) The evidence of any witnesses ordered to be examined before the High Court or before any judge of the High Court or other person appointed by the High Court shall be taken in accordance with the existing law and practice as to the taking of evidence in criminal trials in Scotland.
- (3) The appellant or applicant and the respondent or counsel on their behalf shall be entitled to be present at and take part in any examination of any witness to which this section relates.

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**Changes to legislation:** *Criminal Procedure (Scotland) Act 1995, Section 104 is up to date with all changes known to be in force on or before 27 April 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*

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#### **Textual Amendments**

- F1** Words in s. 104(1) inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 75**, 206(1); S.S.I. 2011/178, art. 2, sch.
- F2** Word in s. 104(1)(b) repealed (1.8.1997) by 1997 c. 48 , s. 62(1)(2) , Sch. 1 para. 21(14) , **Sch. 3** ; S.I. 1997/1712 , art. 3 , **Sch.** (subject to arts. 4 , 5 )

**Changes to legislation:**

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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.)