



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART VIII

APPEALS FROM SOLEMN PROCEEDINGS

[^{F1}105A Appeal against granting of application

- (1) Where the prosecutor desires a determination by the High Court as mentioned in subsection (6A) of section 103 of this Act, he shall apply to the judge immediately after the power in subsection (5)(c) of that section is exercised in favour of the appellant.
- (2) Where a judge acting under section 103(5)(c) of this Act has exercised that power in favour of the appellant but the prosecutor has made an application under subsection (1) above—
 - (a) the appellant shall not be liberated until the determination by the High Court; and
 - (b) that application by the prosecutor shall be heard not more than seven days after the making of the application,and the Clerk of the Justiciary shall forward to the appellant the prescribed form for completion and return forthwith if he desires to be present at the hearing.
- (3) At a hearing and determination as mentioned in subsection (2) above, if the appellant—
 - (a) is not legally represented, he may be present;
 - (b) is legally represented, he shall not be entitled to be present without leave of the court.
- (4) If the appellant completes and returns the form mentioned in subsection (2) above indicating a desire to be present at the hearing, the form shall be deemed to be an application by the appellant for leave to be so present, and the Clerk of Justiciary, on receiving the form, shall take the necessary steps for placing the application before the court.

Changes to legislation: *Criminal Procedure (Scotland) Act 1995, Section 105A is up to date with all changes known to be in force on or before 19 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*

- (5) If the application to be present is refused by the court, the Clerk of Justiciary shall notify the appellant; and if the application is granted, he shall notify the appellant and the Governor of the prison where the applicant is in custody and the Scottish Ministers.
- (6) For the purposes of constituting a Court of Appeal, the judge who exercised the power in section 103(5)(c) of this Act in favour of the appellant may sit as a member of the court, and take part in determining the application of the prosecutor.]

Textual Amendments

- F1** S. 105A inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#) , **ss. 66(4)** , 89 ; [S.S.I. 2003/288](#) , **art. 2** , [Sch.](#)

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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.)