



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART VIII

APPEALS FROM SOLEMN PROCEEDINGS

107 Leave to appeal.

- (1) The decision whether to grant leave to appeal for the purposes of section 106(1) of this Act shall be made by a judge of the High Court who shall—
 - (a) if he considers that the documents mentioned in subsection (2) below disclose arguable grounds of appeal, grant leave to appeal and make such comments in writing as he considers appropriate; and
 - (b) in any other case—
 - (i) refuse leave to appeal and give reasons in writing for the refusal; and
 - (ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.
 - (2) The documents referred to in subsection (1) above are—
 - (a) the note of appeal lodged under section 110(1)(a) of this Act;
 - (b) in the case of an appeal against conviction or sentence in a sheriff court, the certified copy or, as the case may be, the record of the proceedings at the trial;
 - (c) where the judge who presided at the trial furnishes a report under section 113 of this Act, that report; and
 - (d) where, by virtue of section 94(1) of this Act, a transcript of the charge to the jury of the judge who presided at the trial is delivered to the Clerk of Justiciary, that transcript.
- [^{F1}(2A) In respect of an appeal by virtue of section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16), the “report under section 113” in subsection (2)(c) means—
- (a) the report of the judge who presided at the trial resulting in the appellant's acquittal for an offence mentioned in section 11(2) of that Act;

Changes to legislation: Criminal Procedure (Scotland) Act 1995, Section 107 is up to date with all changes known to be in force on or before 05 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

- (b) where an appeal against conviction was taken before that acquittal, the report of the judge who presided at the trial resulting in the conviction in respect of which leave to appeal is sought prepared at that time; and
 - (c) any other report of that judge furnished under section 113.]
- (3) A warrant granted under subsection (1)(b)(ii) above shall not take effect until the expiry of the period of 14 days mentioned in subsection (4) below [^{F2}(and if that period is extended under subsection (4A) below before the period being extended expires, until the expiry of the period as so extended)] without an application to the High Court for leave to appeal having been lodged by the appellant under [^{F3}subsection (4)] .
- (4) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under [^{F4}subsection (10)] below, apply to the High Court for leave to appeal.
- [^{F5}(4A) The High Court may, on cause shown, extend the period of 14 days mentioned in subsection (4) above, or that period as extended under this subsection, whether or not the period to be extended has expired (and if that period of 14 days has expired, whether or not it expired before section 62 of the Criminal Justice (Scotland) Act 2003 (asp 7) came into force).]
- (5) In deciding an application under subsection (4) above the High Court shall—
- (a) if, after considering the documents mentioned in subsection (2) above and the reasons for the refusal, the court is of the opinion that there are arguable grounds of appeal, grant leave to appeal and make such comments in writing as the court considers appropriate; and
 - (b) in any other case—
 - (i) refuse leave to appeal and give reasons in writing for the refusal; and
 - (ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.
- (6) Consideration whether to grant leave to appeal under subsection (1) or (5) above shall take place in chambers without the parties being present.
- (7) Comments in writing made under subsection (1)(a) or (5)(a) above may, without prejudice to the generality of that provision, specify the arguable grounds of appeal (whether or not they are contained in the note of appeal) on the basis of which leave to appeal is granted.
- (8) Where the arguable grounds of appeal are specified by virtue of subsection (7) above it shall not, except by leave of the High Court on cause shown, be competent for the appellant to found any aspect of his appeal on any ground of appeal contained in the note of appeal but not so specified.
- (9) Any application by the appellant for the leave of the High Court under subsection (8) above—
- (a) shall be made [^{F6}within 14 days of the date of intimation under subsection (10) below] ; and
 - (b) shall, [^{F7}within 14 days of] that date, be intimated by the appellant to the Crown Agent.
- [^{F8}(9A) The High Court may, on cause shown, extend the periods of 14 days mentioned in subsection (9) above.]

Changes to legislation: *Criminal Procedure (Scotland) Act 1995, Section 107 is up to date with all changes known to be in force on or before 05 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*

- (10) The Clerk of Justiciary shall forthwith intimate—
- (a) a decision under subsection (1) or (5) above; and
 - (b) in the case of a refusal of leave to appeal, the reasons for the decision, to the appellant or his solicitor and to the Crown Agent.

Textual Amendments

- F1** S. 107(2A) inserted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#), s. 17(3), **sch. para. 8**; [S.S.I. 2011/365](#), art. 3
- F2** Words in s. 107(3) inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003\(asp 7\)](#), {ss. 62(a)(i)}, 89; [S.S.I. 2003.288](#), {art. 2}
- F3** Words in s. 107(3) substituted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 62(a)(ii)**, 89; [S.S.I. 2003/288](#), **art. 2**
- F4** Words in s. 107(4) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(15)**; [S.I. 1997/1712](#), art. 3, **Sch.** (subject to arts. 4, 5)
- F5** S. 107(4A) inserted (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 62(b)**, 89; [S.S.I. 2003/288](#), **art. 2**
- F6** Words in s. 107(9)(a) substituted (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 80, 84**, **Sch. para. 16(1)(a)(i)**; [S.S.I. 2007/250](#), **art. 3(i)** (subject to art. 4(2))
- F7** Words in s. 107(9)(b) substituted (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 80, 84**, **Sch. para. 16(1)(a)(ii)**; [S.S.I. 2007/250](#), **art. 3(i)** (subject to art. 4(2))
- F8** S. 107(9A) inserted (23.4.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 80, 84**, **Sch. para. 16(1)(b)**; [S.S.I. 2007/250](#), **art. 3(i)** (subject to art. 4(2))

Modifications etc. (not altering text)

- C1** S. 107 applied (with modifications) (26.8.2002) by [Act of Adjournal \(Criminal Procedure Rules\) 1996 \(S.I. 1996/513\)](#), rule 15.15(4) (as inserted (26.8.2002) by [Act of Adjournal \(Criminal Appeals\) 2002 \(S.S.I. 2002/387\)](#), **para. 3(4)**)
- C2** S. 107(1)(a) modified (27.10.2003) by [S.I. 1996/513](#), rule 19B.1(3) (as inserted by [Act of Adjournal \(Criminal Procedure Rules Amendment No. 2\) \(Miscellaneous\) 2003 \(S.S.I. 2003/468\)](#), **rule 2(10)**)

Changes to legislation:

Criminal Procedure (Scotland) Act 1995, Section 107 is up to date with all changes known to be in force on or before 05 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.

[View outstanding changes](#)

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.)