



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.

Status: Point in time view as at 01/09/2015.

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 06 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)

- (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.

Status:

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