



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART VIII

APPEALS FROM SOLEMN PROCEEDINGS

106 Right of appeal.

- (1) Any person convicted on indictment may, with leave granted in accordance with section 107 of this Act, appeal in accordance with this Part of this Act, to the High Court—
- (a) against such conviction;
 - (b) subject to subsection (2) below, against the sentence passed on such conviction;
 - [^{F1}(ba) against the making of an order for lifelong restriction;]
 - [^{F2}(bb) against any decision not to exercise the power conferred by section 205A(3), [^{F3}or 205B(3)] of this Act;]
 - (c) against his absolute discharge or admonition;
 - [^{F4}(d) against any drug treatment and testing order;
 - (dza) against any disposal under section 227ZC(7)(a) to (c) or (e) or (8)(a) of this Act;]
 - [^{F5}(da) against any decision to remit made under section 49(1)(a) of this Act;]
 - ^{F6}(db)
 - ^{F6}(dc)
 - (e) against any order deferring sentence; or
 - (f) against
 - [^{F7}(i)] both such conviction and, subject to subsection (2) below, such sentence or disposal or order.
 - ^{F8}(ii)
 - ^{F8}(iii)
- (2) There shall be no appeal against any sentence fixed by law.

Changes to legislation: Criminal Procedure (Scotland) Act 1995, Section 106 is up to date with all changes known to be in force on or before 18 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

- [^{F9}(3) By an appeal under subsection (1) above a person may bring under review of the High Court any alleged miscarriage of justice, which may include such a miscarriage based on—
- (a) subject to subsections (3A) to (3D) below, the existence and significance of evidence which was not heard at the original proceedings; and
 - (b) the jury’s having returned a verdict which no reasonable jury, properly directed, could have returned.
- (3A) Evidence such as is mentioned in subsection (3)(a) above may found an appeal only where there is a reasonable explanation of why it was not so heard.
- (3B) Where the explanation referred to in subsection (3A) above or, as the case may be, (3C) below is that the evidence was not admissible at the time of the original proceedings, but is admissible at the time of the appeal, the court may admit that evidence if it appears to the court that it would be in the interests of justice to do so.
- (3C) Without prejudice to subsection (3A) above, where evidence such as is mentioned in paragraph (a) of subsection (3) above is evidence—
- (a) which is—
 - (i) from a person; or
 - (ii) of a statement (within the meaning of section 259(1) of this Act) by a person,
 - who gave evidence at the original proceedings; and
 - (b) which is different from, or additional to, the evidence so given,

it may not found an appeal unless there is a reasonable explanation as to why the evidence now sought to be adduced was not given by that person at those proceedings, which explanation is itself supported by independent evidence.
- (3D) For the purposes of subsection (3C) above, “ independent evidence ” means evidence which—
- (a) was not heard at the original proceedings;
 - (b) is from a source independent of the person referred to in subsection (3C) above; and
 - (c) is accepted by the court as being credible and reliable.]
- (4) Any document, production or other thing lodged in connection with the proceedings on the trial of any person who, if convicted, is entitled or may be authorised to appeal under this Part of this Act, shall, in accordance with subsections (5) to (9) below, be kept in the custody of the court in which the conviction took place.
- (5) All documents and other productions produced at the trial of a convicted person shall be kept in the custody of the court of trial in such manner as it may direct until any period allowed under or by virtue of this Part of this Act for lodging intimation of intention to appeal has elapsed.
- (6) Where no direction is given as mentioned in subsection (5) above, such custody shall be in the hands of the sheriff clerk of the district of the court of the second diet to whom the clerk of court shall hand them over at the close of the trial, unless otherwise ordered by the High Court on an intimation of intention to appeal being lodged, and if within such period there has been such lodgement under this Part of this Act, they shall be so kept until the appeal, if it is proceeded with, is determined.

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- (7) Notwithstanding subsections (5) and (6) above, the judge of the court in which the conviction took place may, on cause shown, grant an order authorising any of such documents or productions to be released on such conditions as to custody and return as he may deem it proper to prescribe.
- (8) All such documents or other productions so retained in custody or released and returned shall, under supervision of the custodian thereof, be made available for inspection and for the purpose of making copies of documents or productions to a person who has lodged an intimation of intention to appeal or as the case may be, to the convicted person's counsel or agent, and to the Crown Agent and the procurator fiscal or his deposes.
- (9) Where no intimation of intention to appeal is lodged within the period mentioned in subsection (6) above, all such documents and productions shall be dealt with as they are dealt with according to the existing law and practice at the conclusion of a trial; and they shall be so dealt with if, there having been such intimation, the appeal is not proceeded with.

Textual Amendments

- F1** S. 106(1)(ba) inserted (19.6.2006 for certain purpose and otherwise prosp.) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), ss. 1(2), 89, [Sch. 1 para. 2\(4\)](#); S.S.I. 2006/332, [art. 2](#)
- F2** S. 106(1)(bb) inserted (20.10.1997) by 1997 c. 48, s. 18(1); S.I. 1997/2323, art. 3, [Sch. 1](#)
- F3** Words in s. 106(1)(bb) substituted (30.9.1998) by 1998 c. 37, s. 119, [Sch. 8 para. 119](#); S.I. 1998/2327, [art. 2\(1\)\(y\)\(2\)\(kk\)](#)
- F4** S. 106(1)(d)(dza) substituted for s. 106(1)(d) (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 14(2), 206(1), [Sch. 2 para. 7](#); S.S.I. 2010/413, [art. 2](#), [Sch.](#) (with art. 3)
- F5** S. 106(1)(da) inserted (1.8.1997) by 1997 c. 48, s. 23(b); S.I. 1997/1712, art. 3, [Sch.](#) (subject to arts. 4, 5)
- F6** S. 106(1)(db) (dc) repealed (28.2.2011) by [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\)](#), s. 101(2), [sch. 4 para. 14\(a\)](#) (with ss. 90, 99); S.S.I. 2011/157, art. 2(a) (with art. 5(1))
- F7** Words in s. 106(1)(f) become s. 106(1)(f)(i) (10.1.2005) by virtue of [Protection of Children \(Scotland\) Act 2003 \(asp 5\)](#), ss. 16(2)(b), 22(2); S.S.I. 2004/522, [art. 2](#)
- F8** S. 106(1)(f)(ii) repealed (28.2.2011) by [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\)](#), s. 101(2), [sch. 4 para. 14\(b\)](#) (with ss. 90, 99); S.S.I. 2011/157, art. 2(a) (with art. 5(1))
- F9** S. 106(3)-(3D) substituted (1.8.1997) for s. 106(3) by 1997 c. 48, s. 17(1); S.I. 1997/1712, art. 3, [Sch.](#) (subject to arts. 4, 5)

Modifications etc. (not altering text)

- C1** S. 106 amended (1.4.1996) by 1995 c. 43, ss. 10(5), 50(2)
S. 106 amended (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. 100(7), 458; S.S.I. 2003/210, [art. 2](#) (with arts. 3-7)
- C2** S. 106 extended (19.2.2001) by 2000 c. 11, ss. 7(4)(b), 8(1)(c)(ii); S.I. 2001/421, [art. 2](#)
S. 106 extended (11.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\)](#), s. 12(5)(c)
- C3** S. 106 extended (15.12.2011) by [Terrorism Prevention and Investigation Measures Act 2011 \(c. 23\)](#), s. 31(2), [Sch. 3 para. 4\(3\)\(c\)](#) (with [Sch. 8](#))
- C4** S. 106 extended (12.2.2015) by [Counter Terrorism and Security Act 2015 \(c. 6\)](#), s. 52(5), [Sch. 4 para. 4\(3\)\(c\)](#)
- C5** S. 106 extended (20.12.2023) by [National Security Act 2023 \(c. 32\)](#), s. 100(1), [Sch. 9 para. 4\(3\)\(c\)](#) (with s. 97); S.I. 2023/1272, [reg. 2\(b\)](#)

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.)