



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VIII

#### APPEALS FROM SOLEMN PROCEEDINGS

##### [<sup>F1</sup>107A Prosecutor's right of appeal: decisions on section 97 and 97A submissions

- (1) The prosecutor may appeal to the High Court against—
  - (a) an acquittal under section 97 or 97B(2)(a), or
  - (b) a direction under section 97B(2)(b) or 97C(2).
- (2) If, immediately after an acquittal under section 97 or 97B(2)(a), the prosecutor moves for the trial diet to be adjourned for no more than 2 days in order to consider whether to appeal against the acquittal under subsection (1), the court of first instance must grant the motion unless the court considers that there are no arguable grounds of appeal.
- (3) If, immediately after the giving of a direction under section 97B(2)(b) or 97C(2), the prosecutor moves for the trial diet to be adjourned for no more than 2 days in order to consider whether to appeal against the direction under subsection (1), the court of first instance must grant the motion unless the court considers that it would not be in the interests of justice to do so.
- (4) In considering whether it would be in the interests of justice to grant a motion for adjournment under subsection (3), the court must have regard, amongst other things, to—
  - (a) whether, if an appeal were to be made and to be successful, continuing with the diet would have any impact on any subsequent or continued prosecution,
  - (b) whether there are any arguable grounds of appeal.
- (5) An appeal may not be brought under subsection (1) unless the prosecutor intimates intention to appeal—
  - (a) immediately after the acquittal or, as the case may be, the giving of the direction,

*Status: Point in time view as at 16/08/2013.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Section 107A is up to date with all changes known to be in force on or before 08 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)*

- (b) if a motion to adjourn the trial diet under subsection (2) or (3) is granted, immediately upon resumption of the diet, or
  - (c) if such a motion is refused, immediately after the refusal.
- (6) Subsection (7) applies if—
- (a) the prosecutor intimates an intention to appeal under subsection (1)(a), or
  - (b) the trial diet is adjourned under subsection (2).
- (7) Where this subsection applies, the court of first instance must suspend the effect of the acquittal and may—
- (a) make an order under section 4(2) of the Contempt of Court Act 1981 (c.49) (which gives a court power, in some circumstances, to order that publication of certain reports be postponed) as if proceedings for the offence of which the person was acquitted were pending or imminent,
  - (b) after giving the parties an opportunity of being heard, order the detention of the person in custody or admit him to bail.
- (8) The court may, under subsection (7)(b), order the detention of the person in custody only if the court considers that there are arguable grounds of appeal.]

#### **Textual Amendments**

- F1** Ss. 107A-107F inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 74, 206\(1\)](#); [S.S.I. 2011/178](#), [art. 2](#), [sch.](#)

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