



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VIII

#### APPEALS FROM SOLEMN PROCEEDINGS

#### **109 Intimation of intention to appeal.**

(1) Subject to section 111(2) of this Act and to [<sup>F1</sup>section 99 of the Proceeds of Crime Act 2002 (postponement)], where a person desires to appeal under section 106(1)(a) or (f) of this Act, he shall within two weeks of the final determination of the proceedings, lodge with the Clerk of Justiciary written intimation of intention to appeal which shall identify the proceedings and be in as nearly as may be the form prescribed by Act of Adjournal.

[<sup>F2</sup>(1A) Where a person desires to appeal under section 106(1)(a) of this Act by virtue of section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16), subsection (1) applies with the following modifications—

- (a) for the words “two weeks of the final determination of the proceedings” substitute “two weeks of the date on which the person is acquitted of an offence mentioned in section 11(2) of the Double Jeopardy (Scotland) Act 2011 (asp 16)”; and
- (b) the reference to identifying the proceedings is to be construed as a reference to identifying—
  - (i) the proceedings which resulted in the conviction desired to be appealed; and
  - (ii) the proceedings which resulted in the person's acquittal as mentioned in section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16).

(1B) Subsections (5) to (9) of section 106 of this Act do not apply where the modifications specified in subsection (1A) apply.]

(2) A copy of intimation given under subsection (1) above shall be sent to the Crown Agent.

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Section 109 is up to date with all changes known to be in force on or before 26 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*

- (3) On intimation under subsection (1) above being lodged by a person in custody, the Clerk of Justiciary shall give notice of the intimation to the Secretary of State.
- (4) Subject to subsection (5) below, for the purposes of subsection (1) above and section 106(5) to (7) of this Act, proceedings shall be deemed finally determined on the day on which sentence is passed in open court.
- (5) Where in relation to an appeal under section 106(1)(a) of this Act sentence is deferred under section 202 of this Act, the proceedings shall be deemed finally determined on the day on which sentence is first so deferred in open court.
- (6) Without prejudice to section 10 of the said Act of 1995, the reference in subsection (4) above to “the day on which sentence is passed in open court” shall, in relation to any case in which, under subsection (1) of that section, a decision has been postponed for a period, be construed as a reference to the day on which that decision is made, whether or not a confiscation order is then made or any other sentence is then passed.

#### Textual Amendments

- F1** Words in s. 109(1) substituted (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. 456, 458, [Sch. 11 para. 29\(2\)](#); S.S.I. 2003/210, [art. 2](#), [Sch.](#) (subject to [arts. 3-7](#))
- F2** S. 109(1A)(1B) inserted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#), s. 17(3), [sch. para. 9](#); S.S.I. 2011/365, [art. 3](#)

#### Modifications etc. (not altering text)

- C1** S. 109(1) restricted (1.4.1996) by [1995 c. 43](#), [ss. 10\(4\)](#), 50(2)
- C2** S. 109(1) modified (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), [ss. 100\(6\)](#), 458; S.S.I. 2003/210, [art. 2](#) (subject to [arts. 3-7](#))

**Changes to legislation:**

Criminal Procedure (Scotland) Act 1995, Section 109 is up to date with all changes known to be in force on or before 26 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.

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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.)