

# **CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 3 - Criminal Procedure**

##### ***Section 76 – Further amendment of the 1995 Act***

361. This section makes a number of amendments to the 1995 Act. The amendments made by subsections (1) to (3) relate to the lodging of notes of appeal and the provision of the trial judge's report. Subsection (4) makes amendments concerned with the procedure following the granting of the High Court's authority to bring further proceedings following a successful Crown appeal.
362. Section 110 of the 1995 Act makes provision for notes of appeal. Subsection (1) of that section contains time limits for lodging such notes and provides for the transmission of copies of notes to the court and to the parties concerned in the appeal. Subsection (3) of that section requires that a note of appeal identify the proceedings, contain a full statement of the ground of appeal, and be in as nearly as may be the form prescribed by Act of Adjournal. Subsection (4) of that section provides that, except by leave of the High Court on cause shown, it shall not be competent for an appellant to found any aspect of his appeal on a ground not contained in the note of appeal.
363. Subsection (1) of section 76 inserts new paragraphs (c), (d) and (e) into section 110(1) of the 1995 Act. Paragraphs (c) and (d) make provision for appeals which have not been expedited using the procedure in section 107D. They provide an overall deadline of 7 days for the lodging of an appeal. In relation to appeals against an acquittal or direction made under section 107A(1), the 7 day period runs from the day of intimation by the acquittal or direction. In relation to appeals under section 107B(1), the seven day period runs from the granting of leave. Paragraph (e) makes provision for expedited appeals and requires the lodging of the appeal to be as soon as practicable after a decision under section 107D(2) that an appeal be expedited. An effect of these paragraphs is that subsections (3) and (4) (of section 110 of the 1995 Act) apply to Crown appeals as they do to appeals by a convicted person under section 106 and by the Lord Advocate against disposal under section 108. (Note, however, that while the time limits for appeals by convicted persons may be extended under either section 110(2) or 111(2), the time limit imposed upon a Crown appeal by inserted paragraphs (c) and (d) of section 110(1) cannot be extended).
364. Section 113 of the 1995 Act requires the trial judge, on receiving the copy note of appeal sent to him under section 110(1), to furnish the Clerk of Justiciary with a written report giving the judge's opinion on the case generally and on the grounds contained in the note of appeal. It is appropriate that such a note should be provided to assist the High Court in considering a Crown appeal; but in an expedited appeal, where the appeal is to be heard during an adjournment of the trial, it will often be impractical to require a full report.

*These notes relate to the Criminal Justice and Licensing (Scotland)  
Act 2010 (asp 13) which received Royal Assent on 6 August 2010*

365. Subsections (2) and (3) of section 76 of this Act address these points. The effect of subsection (2), together with subsection (1), is to apply section 113 of the 1995 Act to non-expedited appeals: in any such appeal, the trial judge will be required to provide a full report. Subsection (3) inserts a new section 113A into the 1995 Act, permitting the trial judge in an expedited appeal to furnish the Clerk of Justiciary with such written observations as he or she thinks fit. However the High Court may hear and determine an appeal without any written observations.
366. Subsection (4) of section 76 makes amendments to ensure section 119 of the 1995 Act (provision where High Court authorises new prosecution) applies to Crown appeals. Paragraph (a) inserts reference to new prosecutions authorised under section 107E(3) and section 107F(5) in relation to non expedited appeals arising under section 107A or 107B.
367. Paragraph (b) replaces subsection (2) of section 119 of the 1995 Act. New subsection (2) (a) reproduces the existing law which states that a new prosecution granted where a conviction is quashed under section 118 of the 1995 Act (following a successful appeal by the defence) may not proceed upon the basis of a more serious charge than that on which the accused was convicted in the earlier proceedings.
368. New subsection (2)(b) provides, where a new prosecution is granted after a successful appeal against an acquittal under section 107A or 107B, that a new prosecution may not proceed upon the basis of a more serious charge than that on which the accused was acquitted in the earlier proceedings.
369. New subsection (2)(c) places a similar restriction in relation to a new prosecution authorised under section 107F(5) resulting from an appeal against a direction as to sufficiency, admissibility or lack of evidence. By virtue of this subsection a new indictment may not contain a more serious charge than that labelled in the original proceedings.
370. Where a successful appeal under section 107A has resulted in a new prosecution, new subsection 2A of section 119 of the 1995 Act (inserted by paragraph (c)) ensures that the circumstances set out in the new indictment are not to be inconsistent with any direction made by a trial judge to amend the old indictment under section 97B(2)(b) or 97C(2). A direction under those provisions would have been to either include a related offence within the indictment (the judge having ruled that the evidence was insufficient in law to justify a conviction under the indicted offence) or to reflect a ruling that there was no evidence to support some part of the circumstances set out in the indictment. However, this requirement does not apply if the High Court determines that the direction under section 97B(2)(b) or 97C(2) was wrong in law.
371. Subsection (4)(d) amends subsection (9) of section 119 of the 1995 Act. The effect of this amendment is that where two months elapse following the date upon which the High Court grants authority under section 107E(3) or section 107F(5) and no new prosecution has been brought, the order granting authority to bring a new prosecution shall have the effect, for all purposes, of an acquittal.