



Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

PART 3

CRIMINAL PROCEDURE

Crown appeals

73 Submissions as to sufficiency of evidence

After section 97 of the 1995 Act insert—

“97A Submissions as to sufficiency of evidence

- (1) Immediately after one or other (but not both) of the appropriate events, the accused may make either or both of the submissions mentioned in subsection (2) in relation to an offence libelled in an indictment (the “indicted offence”).
- (2) The submissions are—
 - (a) that the evidence is insufficient in law to justify the accused’s being convicted of the indicted offence or any other offence of which the accused could be convicted under the indictment (a “related offence”),
 - (b) that there is no evidence to support some part of the circumstances set out in the indictment.
- (3) For the purposes of subsection (1), “the appropriate events” are—
 - (a) the close of the whole of the evidence,
 - (b) the conclusion of the prosecutor’s address to the jury on the evidence.
- (4) A submission made under this section must be heard by the judge in the absence of the jury.

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97B Acquittals etc. on section 97A(2)(a) submissions

- (1) This section applies where the accused makes a submission of the kind mentioned in section 97A(2)(a).
- (2) If the judge is satisfied that the evidence is insufficient in law to justify the accused's being convicted of the indicted offence, then—
 - (a) where the judge is satisfied that the evidence is also insufficient in law to justify the accused's being convicted of a related offence—
 - (i) the judge must acquit the accused of the indicted offence, and
 - (ii) the trial is to proceed only in respect of any other offence libelled in the indictment,
 - (b) where the judge is satisfied that the evidence is sufficient in law to justify the accused's being convicted of a related offence, the judge must direct that the indictment be amended accordingly.
- (3) If the judge is not satisfied as is mentioned in subsection (2)—
 - (a) the judge must reject the submission, and
 - (b) the trial is to proceed as if the submission had not been made.
- (4) The judge may make a decision under this section only after hearing both (or all) parties.
- (5) An amendment made by virtue of this section must be sufficiently authenticated by the initials of the judge or the clerk of court.
- (6) In this section, “indicted offence” and “related offence” have the same meanings as in section 97A.

97C Directions etc. on section 97A(2)(b) submissions

- (1) This section applies where the accused makes a submission of the kind mentioned in section 97A(2)(b).
- (2) If the judge is satisfied that there is no evidence to support some part of the circumstances set out in the indictment, the judge must direct that the indictment be amended accordingly.
- (3) If the judge is not satisfied as is mentioned in subsection (2)—
 - (a) the judge must reject the submission, and
 - (b) the trial is to proceed as if the submission had not been made.
- (4) The judge may make a decision under this section only after hearing both (or all) parties.
- (5) An amendment made by virtue of this section must be sufficiently authenticated by the initials of the judge or the clerk of court.

97D No acquittal on “no reasonable jury” grounds

- (1) A judge has no power to direct the jury to return a not guilty verdict on any charge on the ground that no reasonable jury, properly directed on the evidence, could convict on the charge.

- (2) Accordingly, no submission based on that ground or any ground of like effect is to be allowed.”.

74 **Prosecutor’s right of appeal**

After section 107 of the 1995 Act insert—

“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,
 - (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

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- 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.

107B Prosecutor’s right of appeal: decisions on admissibility of evidence

- (1) The prosecutor may appeal to the High Court against a finding, made after the jury is empanelled and before the close of the evidence for the prosecution, that evidence that the prosecution seeks to lead is inadmissible.
- (2) The appeal may be made only with the leave of the court of first instance, granted—
- (a) on the motion of the prosecutor, or
- (b) on that court’s initiative.
- (3) Any motion for leave to appeal must be made before the close of the case for the prosecution.
- (4) In determining whether to grant leave to appeal the court must consider—
- (a) whether there are arguable grounds of appeal, and
- (b) what effect the finding has on the strength of the prosecutor’s case.

107C Appeals under section 107A and 107B: general provisions

- (1) In an appeal brought under section 107A or 107B the High Court may review not only the acquittal, direction or finding appealed against but also any direction, finding, decision, determination or ruling in the proceedings at first instance if it has a bearing on the acquittal, direction or finding appealed against.
- (2) The test to be applied by the High Court in reviewing the acquittal, direction or finding appealed against is whether it was wrong in law.

107D Expedited appeals

- (1) Subsection (2) applies where—
- (a) the prosecutor intimates intention to appeal under section 107A or leave to appeal is granted by the court under section 107B, and
- (b) the court is able to obtain confirmation from the Keeper of the Rolls that it would be practicable for the appeal to be heard and determined during an adjournment of the trial diet.
- (2) The court must inform both parties of that fact and, after hearing them, must decide whether or not the appeal is to be heard and determined during such an adjournment.
- (3) An appeal brought under section 107A or 107B which is heard and determined during such an adjournment is referred to in this Act as an “expedited appeal”.
- (4) If the court decides that the appeal is to be an expedited appeal the court must, pending the outcome of the appeal—

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- (a) adjourn the trial diet, and
 - (b) where the appeal is against an acquittal, suspend the effect of the acquittal.
- (5) Where the court cannot obtain from the Keeper of the Rolls confirmation of the kind mentioned in subsection (1)(b), the court must inform the parties of that fact.
- (6) Where the High Court in an expedited appeal determines that an acquittal of an offence libelled in the indictment was wrong in law it must quash the acquittal and direct that the trial is to proceed in respect of the offence.

107E Other appeals under section 107A: appeal against acquittal

- (1) This section applies where—
- (a) an appeal brought under section 107A is not an expedited appeal,
 - (b) the appeal is against an acquittal, and
 - (c) the High Court determines that the acquittal was wrong in law.
- (2) The court must quash the acquittal.
- (3) If the prosecutor seeks leave to bring a new prosecution charging the accused with the same offence as that libelled in the indictment, or a similar offence arising out of the same facts as the offence libelled in the indictment, the High Court must grant the prosecutor authority to do so in accordance with section 119, unless the court considers that it would be contrary to the interests of justice to do so.
- (4) If—
- (a) no motion is made under subsection (3), or
 - (b) the High Court does not grant a motion made under that subsection,
- the High Court must in disposing of the appeal acquit the accused of the offence libelled in the indictment.

107F Other appeals under section 107A or 107B: appeal against directions etc.

- (1) This section applies where—
- (a) an appeal brought under section 107A or 107B is not an expedited appeal, and
 - (b) the appeal is not against an acquittal.
- (2) The court of first instance must desert the diet *pro loco et tempore* in relation to any offence to which the appeal relates.
- (3) The trial is to proceed only if another offence of which the accused has not been acquitted and to which the appeal does not relate is libelled in the indictment.
- (4) However, if the prosecutor moves for the diet to be deserted *pro loco et tempore* in relation to such other offence, the court must grant the motion.
- (5) If the prosecutor seeks leave to bring a new prosecution charging the accused with the same offence as that libelled in the indictment, or a similar offence arising out of the same facts as the offence libelled in the indictment, the

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High Court must grant the prosecutor authority to do so in accordance with section 119, unless the court considers that it would be contrary to the interests of justice to do so.”.

75 Power of High Court in appeal under section 107A of 1995 Act

In section 104(1) of the 1995 Act (which makes provision as regards the power of the High Court in appeals under section 106(1) or 108 of that Act), after “106(1)” insert “, 107A, 107B”.

76 Further amendment of 1995 Act

- (1) In section 110(1) of the 1995 Act (note of appeal), after paragraph (b), add—
- “(c) where the prosecutor intimates intention to appeal under section 107A(1), within 7 days after the acquittal or direction appealed against, the prosecutor may, except in the case of an expedited appeal, lodge such a note with the Clerk of Justiciary, who must send a copy to the judge and to the accused or to the accused’s solicitor,
 - (d) within 7 days after leave to appeal under section 107B(1) is granted, the prosecutor may, except in the case of an expedited appeal, lodge such a note with the Clerk of Justiciary, who must send a copy to the judge and to the accused or to the accused’s solicitor,
 - (e) in the case of an expedited appeal, as soon as practicable after the decision as to hearing and determining the case is made under section 107D(2), the prosecutor may—
 - (i) lodge such a note with the Clerk of Justiciary, and
 - (ii) provide a copy to the judge and to the accused or to the accused’s solicitor.”.
- (2) In section 113(1) of that Act (judge’s report), after “under” insert “any of paragraphs (a) to (d) of”.
- (3) After section 113 of that Act insert—

“113A Judge’s observations in expedited appeal

- (1) On receiving a note of appeal given under section 110(1)(e), the judge who presided at the trial may give the Clerk of Justiciary any written observations that the judge thinks fit on—
- (a) the case generally,
 - (b) the grounds contained in the note of appeal.
- (2) The High Court may hear and determine the appeal without any such written observations.
- (3) If written observations are given under subsection (1), the Clerk of Justiciary must give a copy of them to—
- (a) the accused or the accused’s solicitor, and
 - (b) the prosecutor.
- (4) The written observations of the judge are available only to—

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- (a) the High Court,
 - (b) the parties, and
 - (c) any other person or classes of person prescribed by Act of Adjournal, in accordance with any conditions prescribed by Act of Adjournal.”.
- (4) In section 119 of that Act (provision where High Court authorises new prosecution)—
- (a) in each of subsections (1) and (10), after “118(1)(c)” insert “or 107E(3) or 107F(5)”,
 - (b) for subsection (2), substitute—
 - “(2) In a new prosecution under this section—
 - (a) where authority for the prosecution is granted under section 118(1)(c), the accused must not be charged with an offence more serious than that of which the accused was convicted in the earlier proceedings,
 - (b) where authority for the prosecution is granted under section 107E(3), the accused must not be charged with an offence more serious than that of which the accused was acquitted in the earlier proceedings,
 - (c) where authority for the prosecution is granted under section 107F(5), the accused must not be charged with an offence more serious than that originally labelled in the indictment in the earlier proceedings.”,
 - (c) after subsection (2) insert—
 - “(2A) In a new prosecution under this section brought by virtue of section 107F(5), the circumstances set out in the indictment are not to be inconsistent with any direction given under section 97B(2)(b) or 97C(2) in the proceedings which gave rise to the appeal in question unless the High Court, in disposing of that appeal, determined that the direction was wrong in law.”, and
 - (d) in subsection (9), after “setting aside the verdict” insert “or under section 107E(3) or 107F(5) granting authority to bring a new prosecution”.