



Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

PART 3

CRIMINAL PROCEDURE

Crown appeals

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—

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- (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 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—
- (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

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(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 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.”