



# Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

## PART 3

### CRIMINAL PROCEDURE

#### *Crown appeals*

#### **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—

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*Status: This is the original version (as it was originally enacted).*

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### **“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—
    - (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”.