



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VIII

#### APPEALS FROM SOLEMN PROCEEDINGS

#### **119 Provision where High Court authorises new prosecution.**

(1) Subject to subsection (2) below, where authority is granted under section 118(1)(c) [<sup>F1</sup> or 107E(3) or 107F(5)] of this Act, a new prosecution may be brought charging the accused with the same or any similar offence arising out of the same facts; and the proceedings out of which the appeal arose shall not be a bar to such new prosecution.

[<sup>F2</sup>(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 libelled in the indictment in the earlier proceedings.]

[<sup>F3</sup>(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.]

- (3) No sentence may be passed on conviction under the new prosecution which could not have been passed on conviction under the earlier proceedings.
- (4) A new prosecution may be brought under this section, notwithstanding that any time limit, other than the time limit mentioned in subsection (5) below, for the commencement of such proceedings has elapsed.

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Section 119 is up to date with all changes known to be in force on or before 07 June 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*

- (5) Proceedings in a prosecution under this section shall be commenced within two months of the date on which authority to bring the prosecution was granted.
- (6) In proceedings in a new prosecution under this section it shall, subject to subsection (7) below, be competent for either party to lead any evidence which it was competent for him to lead in the earlier proceedings.
- (7) The indictment in a new prosecution under this section shall identify any matters as respects which the prosecutor intends to lead evidence by virtue of subsection (6) above which would not have been competent but for that subsection.
- (8) For the purposes of subsection (5) above, proceedings shall be deemed to be commenced—
- [<sup>F4</sup>(a) in a case where a warrant to apprehend the accused is granted—
- (i) on the date on which the warrant is executed; or
- (ii) if it is executed without unreasonable delay, on the date on which it is granted;
- (b) in any other case, on the date on which the accused is cited.]
- (9) Where the two months mentioned in subsection (5) above elapse and no new prosecution has been brought under this section, the order under section 118(1)(c) of this Act setting aside the verdict [<sup>F5</sup>or under section 107E(3) or 107F(5) granting authority to bring a new prosecution] shall have the effect, for all purposes, of an acquittal.
- (10) On granting authority under section 118(1)(c) [<sup>F6</sup>or 107E(3) or 107F(5)] of this Act to bring a new prosecution, the High Court shall, after giving the parties an opportunity of being heard, order the detention of the accused person in custody or admit him to bail.
- (11) [<sup>F7</sup>Section 65(4)(aa) and (b) and (4A) to (9)] of this Act (prevention of delay in trials) shall apply to an accused person who is detained under subsection (10) above as they apply to an accused person detained by virtue of being committed until liberated in due course of law.

#### Textual Amendments

- F1** Words in s. 119(1) inserted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 76(4)(a), 206(1); S.S.I. 2011/178, art. 2, sch.
- F2** S. 119(2) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 76(4)(b), 206(1); S.S.I. 2011/178, art. 2, sch.
- F3** S. 119(2A) inserted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 76(4)(c), 206(1); S.S.I. 2011/178, art. 2, sch.
- F4** S. 119(8)(a)(b) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), ss. 25, 27(1), Sch. para. 32; S.S.I. 2004/405, art. 2, Sch. 1 (with savings in arts. 3-5)
- F5** Words in s. 119(9) inserted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 76(4)(d), 206(1); S.S.I. 2011/178, art. 2, sch.
- F6** Words in s. 119(10) inserted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 76(4)(a), 206(1); S.S.I. 2011/178, art. 2, sch.
- F7** Words in s. 119(11) substituted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 80, 84, Sch. para. 16(6) (subject to art. 14); S.S.I. 2007/479, art. 3(1), Sch. (as amended by S.S. I. 2007/527)

**Changes to legislation:**

Criminal Procedure (Scotland) Act 1995, Section 119 is up to date with all changes known to be in force on or before 07 June 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.

[View outstanding changes](#)

**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.)