



Criminal Justice (Scotland) Act 2003

2003 asp 7

PART 8 **S**

EVIDENTIAL, JURISDICTIONAL AND PROCEDURAL MATTERS

Procedural matters

66 **Bail and related matters** **S**

- (1) The 1995 Act is amended as follows.
- (2) In section 103 (appeal sittings)—
 - (a) after subsection (6) there is inserted—

“(6A) Where a judge acting under subsection (5)(c) above grants an application by an appellant to exercise that power in his favour, the prosecutor shall be entitled to have the application determined by the High Court.”; and
 - (b) in subsection (7) for the words “and (6)” there is substituted “, (6) and (6A)”.
- (3) In section 105 (appeal against refusal of application), after subsection (4), there is inserted—

“(4A) An application by a convicted person for a determination by the High Court of a decision of a judge acting under section 103(5)(c) of this Act to refuse to admit him to bail shall be intimated by him immediately and in writing to the Crown Agent.”.
- (4) After section 105 there is inserted—

“105A Appeal against granting of application

- (1) Where the prosecutor desires a determination by the High Court as mentioned in subsection (6A) of section 103 of this Act, he shall apply to the judge immediately after the power in subsection (5)(c) of that section is exercised in favour of the appellant.

*Changes to legislation: There are currently no known outstanding effects for the
Criminal Justice (Scotland) Act 2003, Section 66. (See end of Document for details)*

- (2) Where a judge acting under section 103(5)(c) of this Act has exercised that power in favour of the appellant but the prosecutor has made an application under subsection (1) above—
- (a) the appellant shall not be liberated until the determination by the High Court; and
 - (b) that application by the prosecutor shall be heard not more than seven days after the making of the application,
- and the Clerk of the Justiciary shall forward to the appellant the prescribed form for completion and return forthwith if he desires to be present at the hearing.
- (3) At a hearing and determination as mentioned in subsection (2) above, if the appellant—
- (a) is not legally represented, he may be present;
 - (b) is legally represented, he shall not be entitled to be present without leave of the court.
- (4) If the appellant completes and returns the form mentioned in subsection (2) above indicating a desire to be present at the hearing, the form shall be deemed to be an application by the appellant for leave to be so present, and the Clerk of Justiciary, on receiving the form, shall take the necessary steps for placing the application before the court.
- (5) If the application to be present is refused by the court, the Clerk of Justiciary shall notify the appellant; and if the application is granted, he shall notify the appellant and the Governor of the prison where the applicant is in custody and the Scottish Ministers.
- (6) For the purposes of constituting a Court of Appeal, the judge who exercised the power in section 103(5)(c) of this Act in favour of the appellant may sit as a member of the court, and take part in determining the application of the prosecutor.”.
- (5) In section 112 (admission of appellant to bail)—
- (a) in subsection (1) for “subsection (2)” there is inserted “ subsections (2), (2A) and (9) ”;
 - (b) for subsection (2) there is substituted—
 - “(2) The High Court shall not admit a convicted person to bail under subsection (1) above unless—
 - (a) the application for bail—
 - (i) states reasons why it should be granted; and
 - (ii) where he is the appellant and has not lodged a note of appeal in accordance with section 110(1)(a) of this Act, sets out the proposed grounds of appeal; and
 - (b) the prosecutor has had an opportunity to be heard on the application.
- (2A) Where—
- (a) the convicted person is the appellant and has not lodged a note of appeal in accordance with section 110(1)(a) of this Act; or
 - (b) the Lord Advocate is the appellant,

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the High Court shall not admit the convicted person to bail under subsection (1) above unless it considers there to be exceptional circumstances justifying admitting him to bail.”;

- (c) in subsection (6) for “subsection (7)” there is inserted “ subsections (7) and (9) ”;
- (d) in subsection (7)—
 - (i) the words from “the application” to the end become paragraph (a); and
 - (ii) after that paragraph there is inserted “and
 - (b) where the appeal relates to conviction on indictment, the prosecutor has had an opportunity to be heard on the application.”; and
- (e) after subsection (8) there is added—
 - “(9) An application for the purposes of subsection (1) or (6) above by a person convicted on indictment shall be—
 - (a) intimated by him immediately and in writing to the Crown Agent; and
 - (b) heard not less than seven days after the date of that intimation.”.

Changes to legislation:

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