

CRIMINAL PROCEDURE (LEGAL ASSISTANCE, DETENTION AND APPEALS) (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Detention

Section 3 Extension of period of detention under section 14 of 1995 Act

14. Subsection (1) amends section 14 of the 1995 Act and provides that the 6 hour maximum period of detention is replaced by an initial maximum period of 12 hours.
15. Subsection (2) inserts new sections 14A and 14B into the 1995 Act. Section 14A provides that the 12 hour period of detention may be extended by a further period of 12 hours. Section 14A(4) provides the criteria to be satisfied before the 12 hour period may be extended. The extension may only be authorised by a “custody review officer” who is defined in section 14A(7) as a constable of the rank of inspector or above who has not been involved with the investigation.
16. Section 14A(6) provides that where the period is extended, section 14 remains applicable to the extended period.
17. Section 14B provides further procedures that the custody review officer must adhere to when considering an extension of the 12 hour period. Section 14B(2) provides that the custody review officer must give either the detained person or the solicitor representing the detained person, if available, the opportunity to make representations on the decision to extend the period. If the detained person is unfit to make representation either through condition or behaviour the officer may refuse to hear any oral representations from that person (section 14B(4)).
18. Section 14B(5) provides that the decision to extend the period and reasons for that decision must be communicated to the detained person and, if available, the solicitor representing the detained person at that time. Where such an extension has been made the detained person must be reminded of any rights that the detained person has thus far not exercised (section 14B(7)).
19. Sections 14B(8) provides the recording procedure on the decision on whether to extend the period that the custody review officer has to follow.