

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

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or a part of a section does not seem to require any explanation or comment, none is given.

### **THE ACT**

3. The Act makes provisions in respect of persons being questioned by the police on suspicion of having committed an offence. Various amendments to the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) are made. The amendments and stand alone provisions within the Act affect the period of detention and the right of access to legal assistance before and during questioning. The Act also makes provision to provide a right to make representations in relation to applications for extension of time limits for making appeals, and creates a time limit for lodging bills of suspension and advocacy. It also makes provision about the grounds for references made to the High Court by the Scottish Criminal Cases Review Commission and enables the High Court to reject references in certain circumstances.

### **COMMENTARY ON SECTIONS**

#### ***Legal Assistance***

#### ***Section 1 Right of suspects to have access to solicitor***

4. Subsection (3)(a)(ii) amends section 15 of the 1995 Act and removes from this section the entitlement to have intimation made to a solicitor concerning a person’s detention. The entitlement to this intimation is not lost however but rather is moved to a new section 15A inserted by the Act.
5. Subsection (4) inserts section 15A into the 1995 Act. This new section applies to any person suspected of committing an offence who (i) attends a police station or other place on a voluntary basis for questioning, (ii) any person detained within the meaning of section 14 of the 1995 Act and (iii) any person arrested but not charged who is being detained for the purposes of questioning. In these circumstances the person is afforded the rights contained in section 15A.

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6. Section 15A(2) provides that the person has a right to have intimation sent to a solicitor of any or all of the following; the fact of the person's voluntary attendance, detention or arrest, their location and that they require the solicitor's professional assistance.
7. Section 15A(3) provides that the person has a right to have a private consultation with a solicitor prior to and during questioning by the police. Consultation is not confined to a face to face meeting and can include any means appropriate in the circumstances including a telephone consultation (section 15A(5)).
8. Section 15A(6) requires that a suspect be informed of their rights on arrival at the police station or other place, and if they are detained or arrested after their arrival, that they be informed of their rights at that point, whether they have been previously informed or not.
9. Section 15A(7) provides that intimation can be delayed if it is in the interest of the investigation, prevention of crime or apprehension of offenders to do so.
10. Section 15A(8) provides that in exceptional circumstances the suspect can be questioned without having had a private consultation with a solicitor. This can arise when it is necessary in the interest of the investigation, prevention of crime or apprehension of offenders to do so.
11. Section 14(10) of the 1995 Act requires a detained person to answer some basic questions to allow a constable to establish that person's identity. New section 15A(9) provides that the right to a private consultation with a solicitor before questioning does not apply to this type of questioning.

### ***Section 2 Criminal advice and assistance: automatic availability in certain cases***

12. This section amends the Legal Aid (Scotland) Act 1986 ("the 1986 Act"). Subsection (3) inserts a new section 8A into the 1986 Act to allow advice and assistance to be made available without reference to the financial limits under section 8 of that Act in such circumstances as the Scottish Ministers may, in regulations, prescribe. In those circumstances advice and assistance will be available to any person to whom section 15A of the 1995 Act (as inserted by section 1 of the Act) applies. Advice and assistance is a form of State funded legal assistance. It is currently only available to clients who are financially eligible to receive it in terms of section 8 of the 1986 Act.
13. Subsection (4) provides that regulations made under the new section 8A will be subject to the affirmative resolution procedure.

## ***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

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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.

### ***Sections 1 and 3: transitionals and savings***

#### ***Section 4 Sections 1 and 3: transitional and saving provision***

20. Subsections (1) and (2) of this section provide that the rights contained within sections 1 and 3 apply to any person whose detention or arrest begins on or after the day on which the Act comes into force.
21. Subsections (3) and (4) provide that if the detention period began before the day on which the Act comes into force, the person will remain subject to sections 14 and 15 of the 1995 Act as they existed at the time detention began.

### ***Appeals***

#### ***Section 5 Extension of time limit for late appeals: right to make representations***

22. This section inserts section 111(2A) to 111(2C) into the 1995 Act. Section 111(2A) provides that when an application is made seeking an extension to the period under section 109 within which a solemn appeal can be made, reasons must be given by the applicant as to why the time limit was not complied with. The application must be intimated by the applicant to the Crown Agent.
23. Section 111(2B) and 111(2C) provide that the prosecutor may within 7 days of receiving intimation of the application make representations before the application is determined. The representations may be in writing or oral if the prosecutor requests a hearing.
24. Subsection (3) inserts section 181(2A) to 181(2C) into the 1995 Act and provides that when an application is made seeking an extension to the period under section 176 within which a summary appeal can be made, reasons must be given by the applicant as to why the time limit was not complied with. The application must be intimated by the applicant to the respondent or respondent's solicitor.
25. Section 181(2B) provides that the respondent may within 7 days of receiving intimation of the application make representations before the application is determined. The representations may be in writing or oral if the respondent requests a hearing.
26. Subsection (4) provides that the changes to section 111 and section 181 affect any application made under section 111(2) or 181(1) on or after the day on which the Act comes into force.

#### ***Section 6 Time limit for lodging bills of advocation and bills of suspension***

27. This section inserts a new section 191A into the 1995 Act. This places time limits on the period allowed to lodge bills of suspension and bills of advocation. Section 191A(2) provides a 3 week period within which such bills may be lodged. That period may be extended by the High Court on application by either party (section 191A(3)).

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28. Section 191A(4) sets out the content of such applications. The other party upon receiving intimation of such an application may request a hearing and be given an opportunity to make representations upon the application.
29. Subsection (2) provides that if the decision which is the subject of the bill of suspension or advocacy took place prior to this Act coming into force, the 3 week time limit will be taken to start from the date that this Act came into force.

### **Section 7 References by the Scottish Criminal Cases Review Commission**

30. Subsection (3) amends section 194C of the 1995 Act to introduce a new subsection (2) which requires the Scottish Criminal Cases Review Commission to have regard to the need for finality and certainty in the determination of criminal proceedings when considering whether it is in the interests of justice to make a reference to the High Court.
31. Subsection (4) inserts section 194DA to the 1995 Act which provides that the High Court may reject a reference from the Commission if it considers that it is not in the interests of justice that any appeal arising from the reference should proceed.

### **General**

#### **Section 8 Interpretation**

32. This section provides that references to the 1995 Act within the Act refer to the Criminal Procedure (Scotland) Act 1995.

#### **Section 9 Commencement**

33. This section provides when the Act comes into force. It will come into force at the beginning of the day after the day on which the Bill for the Act receives Royal Assent.

#### **Section 10 Short title**

34. This section provides the short title of the Act

### **PARLIAMENTARY HISTORY**

35. The following table sets out for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings at that Stage took place, the references to the Official Report of those proceedings and the dates on which Committee Reports and other papers relating to the Bill were published, and references to those Reports and other papers.

<i><b>Proceedings and Reports</b></i>	<i><b>Reference</b></i>
<b>Introduction</b>	
Bill as introduced	SP Bill 60
<b>Emergency Bill procedure</b>	
Motion to treat Bill as emergency Bill	Cols, 29553 to 29556 Decision Time, Col 29556
<b>Stage 1</b>	
Stage 1 debate, 27 October 2010	Debate, Cols 29557to 29583 & Minutes Financial resolution, Cols 29585 to 29586 Decision time, Col 29583
<b>Stage 2</b>	

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<b><i>Proceedings and Reports</i></b>	<b><i>Reference</i></b>
Committee in Parliament	27 October 2010 Cols 29611 to 29655 & Minutes
<b>Stage 3</b>	
Stage 3 debate, 27 October 2010	Amendments, Cols 29656 to 29659
	Debate, Cols 29659 to 29674
	Decision Time, Cols 29677
Bill as passed, 27 October 2010	SP Bill 60
<b>Royal Assent</b>	
Royal Assent, 29 October 2010	Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010