



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XIII

MISCELLANEOUS

[^{F1}Excusal of irregularities

[^{F1}300A Power of court to excuse procedural irregularities

- (1) Any court may excuse a procedural irregularity—
 - (a) of a kind described in subsection (5) below; and
 - (b) which has occurred in relation to proceedings before that court, if the conditions mentioned in subsection (4) below are met.
- (2) In appeal proceedings, the [^{F2}court hearing the appeal] may excuse a procedural irregularity—
 - (a) of that kind; and
 - (b) which has occurred in relation to earlier proceedings in the case that is the subject of the appeal, if those conditions are met.
- (3) A court may proceed under subsection (1) or (2) above on the application of the prosecutor or an accused person (having given the other an opportunity to be heard).
- (4) The conditions are that—
 - (a) it appears to the court that the irregularity arose because of—
 - (i) mistake or oversight; or
 - (ii) other excusable reason; and
 - (b) the court is satisfied in the circumstances of the case that it would be in the interests of justice to excuse the irregularity.
- (5) A procedural irregularity is an irregularity arising at any stage of proceedings—
 - (a) from—

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- (i) failure to call or discharge a diet properly;
 - (ii) improper adjournment or continuation of a case;
 - (iii) a diet being fixed for a non-sitting day;
 - (b) from failure of—
 - (i) the court; or
 - (ii) the prosecutor or the accused,
 to do something within a particular period or otherwise comply with a time limit;
 - (c) from failure of the prosecutor to serve properly a notice or other thing;
 - (d) from failure of the accused to—
 - (i) intimate properly a preliminary objection;
 - (ii) intimate properly a plea or defence;
 - (iii) serve properly a notice or other thing;
 - (e) from failure of—
 - (i) the court; or
 - (ii) the prosecutor or the accused,
 to fulfil any other procedural requirement.
- (6) Subsection (1) above does not authorise a court to excuse an irregularity arising by reason of the detention in custody of an accused person for a period exceeding that fixed by this Act.
- (7) Subsection (1) above does not apply in relation to any requirement as to proof including, in particular, any matter relating to—
 - (a) admissibility of evidence;
 - (b) sufficiency of evidence; or
 - (c) any other evidential factor.
- [Subsection (1) does not authorise a court to excuse a failure to do any of the following ^{F3}(7A) things timeously—
 - (a) lodge written intimation of intention to appeal in accordance with section 109(1),
 - (b) lodge a note of appeal in accordance with section 110(1)(a),
 - (c) make an application for a stated case under section 176(1),
 - (d) lodge a note of appeal in accordance with section 186(2)(a).]
- (8) Where a court excuses an irregularity under subsection (1) above, it may make such order as is necessary or expedient for the purpose of—
 - (a) restoring the proceedings as if the irregularity had never occurred;
 - (b) facilitating the continuation of the proceedings as if it had never occurred, for example—
 - (i) altering a diet;
 - (ii) extending any time limit;
 - (iii) appointing a diet for further procedure or granting an adjournment or continuation of a diet;
 - (c) protecting the rights of the parties.
- (9) For the purposes of this section—

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- (a) a reference to an accused person, except the reference in subsection (6) above, includes reference to a person who has been convicted of an offence;
 - (b) something is done properly if it is done in accordance with a requirement of an enactment or any rule of law.
- (10) In subsection (5)(a)(iii) above, a “non-sitting day” is a day on which the court is under this Act not required to sit.
- (11) This section is without prejudice to any provision of this Act under which a court may—
- (a) alter a diet; or
 - (b) extend—
 - (i) a period within which something requires to be done; or
 - (ii) any other time limit.
- (12) This section is without prejudice to any rule of law by virtue of which it may be determined by a court that breach, in relation to criminal proceedings—
- (a) of a requirement of an enactment; or
 - (b) of a rule of law,
- does not render the proceedings, or anything done (or purported to have been done) for the purposes of or in connection with proceedings, invalid.]

Textual Amendments

- F1** S. 300A and cross-heading inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 40, 84**; S.S.I. 2007/479, **art. 3(1)**, Sch. (subject to **art. 11**) (as amended by S.S.I. 2007/527)
- F2** Words in s. 300A(2) substituted (22.9.2015) by [The Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions No. 2\) Order 2015 \(S.S.I. 2015/338\)](#), **art. 1**, **sch. 2 para. 5(19)** (with **art. 4**)
- F3** S. 300A(7A) inserted (17.1.2017) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **ss. 91, 117(2)**; S.S.I. 2016/426, **art. 2**, sch.

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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.)