



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART XIII **U.K.**

MISCELLANEOUS

[^{F1}Excusal of irregularities

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

- (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—

Changes to legislation: *Criminal Procedure (Scotland) Act 1995, Section 300A is up to date with all changes known to be in force on or before 04 April 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*

- (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.](#))