

CRIMINAL JUSTICE (SCOTLAND) ACT 2016

EXPLANATORY NOTES

OVERVIEW OF THE ACT

Part 6 - Miscellaneous

Chapter 4 – Statements and procedure

Statements by accused

Section 109 – Statements by accused

272. Section 109 inserts new section 261ZA into the 1995 Act. New section 261ZA will modify the common-law rule on the admissibility of hearsay evidence in criminal proceedings, as it applies to certain types of statement made by an accused.
273. Section 261ZA(1) and (2) provides that evidence of a statement made by an accused in certain circumstances is not inadmissible as evidence of a fact contained in the statement on account of the evidence being hearsay. The provision applies to a statement made by the accused in the course of being questioned (whether as a suspect or not) by a constable or another official investigating an offence.
274. The provision modifies the law relating to hearsay. As explained by the High Court of Justiciary in *Morrison v HM Advocate* 1991 SLT 57, “The general rule is that hearsay, that is evidence of what another person has said, is inadmissible as evidence of the facts contained in the statement”. That general rule is subject to exceptions. The existing common-law exceptions (discussed in *McCutcheon v HM Advocate* 2002 SLT 27) allow for a statement made by the accused to be admitted as evidence of a fact contained in the statement if it is inculpatory of the accused (e.g. a confession) or “mixed” (e.g. a statement in which the accused puts himself or herself at the locus at the time the offence was committed, but does so in the context of proffering an innocent explanation for why the accused was there). The common-law does not, however, allow evidence of a statement made by the accused to be admitted as evidence of a fact asserted in the statement if the statement is purely exculpatory of the accused.
275. Subject to subsection (3), section 261ZA extends the exceptions by dispensing with the distinctions between inculpatory, exculpatory and mixed statements. The effect is that any statement made by an accused person to a constable or another official investigating an offence is excepted from the general rule that hearsay evidence is not admissible as evidence of a fact contained in the statement, regardless of whether it is inculpatory, exculpatory or “mixed”.
276. By virtue of subsection (3), section 261ZA does not affect the admissibility of evidence of a statement made by an accused as evidence in relation to a co-accused. Section 261 of the 1995 Act lays down special rules which apply before hearsay evidence of a statement by one accused can be admitted in evidence in relation to another accused. Those rules will continue to apply before evidence of a statement made by accused A can be treated as evidence of fact in the case for or against accused B.

*These notes relate to the Criminal Justice (Scotland) Act 2016
(asp 1) which received Royal Assent on 13 January 2016*

277. New section 261ZA is restricted in its effect to superseding objections to the admissibility of evidence based on its hearsay quality. The provision does not override any other objections to the admissibility of evidence of a statement, such as objections to its admissibility based on the fairness of the circumstances in which the statement was made, or based on the content of the statement (for example, section 274 of the 1995 Act, which concerns the admissibility of evidence relating to the sexual history or character of a complainer in a sexual offence case, will still apply).