



# Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010

2010 asp 15

## *Legal assistance*

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

- (1) The 1995 Act is amended as follows.
- (2) In section 14 (detention and questioning at police station), in subsection (6)—
  - (a) in paragraph (e), for “subsection (1)(b) of section 15” substitute “sections 15(1)(b) and 15A(2) and (3)”, and
  - (b) in paragraph (f), after “15(1)(b)” insert “or 15A(2)”.
- (3) In section 15 (rights of person arrested or detained)—
  - (a) in subsection (1)—
    - (i) for “section 17” substitute “sections 15A and 17”, and
    - (ii) in paragraph (b), the words “solicitor and to one other” are repealed,
  - (b) in subsection (4), for “section 17” substitute “sections 15A and 17”, and
  - (c) the title of the section becomes “Right of persons arrested or detained to have intimation sent to another person”.
- (4) After section 15, insert—

#### **“15A Right of suspects to have access to a solicitor**

- (1) This section applies to a person (“the suspect”) who—
  - (a) is detained under section 14 of this Act,
  - (b) attends voluntarily at a police station or other premises or place for the purpose of being questioned by a constable on suspicion of having committed an offence, or
  - (c) is—
    - (i) arrested (but not charged) in connection with an offence, and

- (ii) being detained at a police station or other premises or place for the purpose of being questioned by a constable in connection with the offence.
- (2) The suspect has the right to have intimation sent to a solicitor of any or all of the following—
- (a) the fact of the suspect’s—
    - (i) detention,
    - (ii) attendance at the police station or other premises or place, or
    - (iii) arrest,(as the case may be),
  - (b) the police station or other premises or place where the suspect is being detained or is attending, and
  - (c) that the solicitor’s professional assistance is required by the suspect.
- (3) The suspect also has the right to have a private consultation with a solicitor—
- (a) before any questioning of the suspect by a constable begins, and
  - (b) at any other time during such questioning.
- (4) Subsection (3) is subject to subsections (8) and (9).
- (5) In subsection (3), “consultation” means consultation by such means as may be appropriate in the circumstances, and includes, for example, consultation by means of telephone.
- (6) The suspect must be informed of the rights under subsections (2) and (3)—
- (a) on arrival at the police station or other premises or place, and
  - (b) in the case where the suspect is detained as mentioned in subsection (1)(a), or arrested as mentioned in subsection (1)(c), after such arrival, on detention or arrest (whether or not, in either case, the suspect has previously been informed of the rights by virtue of this subsection).
- (7) Where the suspect wishes to exercise a right to have intimation sent under subsection (2), the intimation must be sent by a constable—
- (a) without delay, or
  - (b) if some delay is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders, with no more delay than is necessary.
- (8) In exceptional circumstances, a constable may delay the suspect’s exercise of the right under subsection (3) so far as it is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders that the questioning of the suspect by a constable begins or continues without the suspect having had a private consultation with a solicitor.
- (9) Subsection (3) does not apply in relation to the questioning of the suspect by a constable for the purpose of obtaining the information mentioned in section 14(10) of this Act.”.

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

- (1) The Legal Aid (Scotland) Act 1986 (c.47) is amended as follows.

- (2) In section 8 (availability of advice and assistance), after “to” in the first place where it occurs insert “any provision made in regulations under section 8A(1) and”.
- (3) After section 8, insert—

**“8A Criminal advice and assistance: automatic availability in certain circumstances**

- (1) The Scottish Ministers may by regulations provide that, in such circumstances as may be prescribed in the regulations, advice and assistance in relation to criminal matters is to be available for any relevant client without reference to the financial limits in section 8.
  - (2) In subsection (1), “relevant client” means a client who is a person to whom section 15A of the Criminal Procedure (Scotland) Act 1995 (right of suspects to have access to a solicitor) applies.”.
- (4) In section 37(2) (parliamentary procedure), after “7,” insert “8A(1),”.