

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

2010 asp 15

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 27th October 2010 and received Royal Assent on 29th October 2010**

An Act of the Scottish Parliament to make provision for persons being questioned by the police on suspicion of having committed an offence to have a right of access to legal assistance; to enable provision to be made for criminal advice and assistance under the Legal Aid (Scotland) Act 1986 to be available for such persons in certain circumstances without reference to financial limits; to extend the period during which a person may be detained under section 14 of the Criminal Procedure (Scotland) Act 1995, and to enable that period to be further extended in certain circumstances; to provide for a right to make representations in relation to applications for extension of time limits for bringing appeals; to provide a time limit for lodging bills of suspension or advocation; to make provision about the grounds for references made to the High Court by the Scottish Criminal Cases Review Commission and to confer power on the High Court to reject such references in certain circumstances; and for connected purposes.

## *Legal assistance*

### **<sup>F1</sup> Right of suspects to have access to a solicitor**

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#### **Textual Amendments**

**F1** S. 1 repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 39](#); [S.S.I. 2017/345](#), art. 3, [sch.](#) (with art. 4)

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

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

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*Changes to legislation:* There are currently no known outstanding effects for the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010. (See end of Document for details)

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- (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), ”.

*Detention*

**F<sup>2</sup>3 Extension of period of detention under section 14 of 1995 Act**

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**Textual Amendments**

- F2** S. 3 repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 39](#); [S.S.I. 2017/345](#), art. 3, sch. (with art. 4)

*Sections 1 and 3: transitional and saving*

**F<sup>3</sup>4 Sections 1 and 3: transitional and saving provision**

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**Textual Amendments**

- F3** S. 4 repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 39](#); [S.S.I. 2017/345](#), art. 3, sch. (with art. 4)

*Appeals*

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

- (1) The 1995 Act is amended as follows.
- (2) In section 111 (supplementary provision about appeals in solemn cases), after subsection (2) insert—

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- “(2A) An application under subsection (2) seeking extension of the period mentioned in section 109(1) of this Act must—
- (a) state—
    - (i) the reasons why the applicant failed to comply with the time limit in section 109(1), and
    - (ii) the proposed grounds of appeal, and
  - (b) be intimated in writing by the applicant to the Crown Agent.
- (2B) If the prosecutor so requests within 7 days of receipt of intimation of the application under subsection (2A)(b), the prosecutor must be given an opportunity to make representations before the application is determined.
- (2C) Any representations may be made in writing or, if the prosecutor so requests, orally at a hearing; and if a hearing is fixed, the applicant must also be given an opportunity to be heard.”.
- (3) In section 181 (extension of time for appeals in summary cases)—
- (a) after subsection (2) insert—

“(2A) An application for a direction under subsection (1) in relation to the requirements of section 176(1) of this Act must—

    - (a) state—
      - (i) the reasons why the applicant failed to comply with the requirements of section 176(1), and
      - (ii) the proposed grounds of appeal, and
    - (b) be intimated in writing by the applicant to the respondent or the respondent's solicitor.

(2B) If the respondent so requests within 7 days of receipt of intimation of the application under subsection (2A)(b), the respondent must be given an opportunity to make representations before the application is determined.

(2C) Any representations may be made in writing or, if the respondent so requests, orally at a hearing; and if a hearing is fixed, the applicant must also be given an opportunity to be heard.”, and

  - (b) in subsection (3)(a), after “hearing” insert “ (unless the respondent has requested a hearing under subsection (2C)) ”.
- (4) The amendments made by this section have effect in relation to any application made under section 111(2) or, as the case may be, 181(1) of the 1995 Act on or after the day on which this Act comes into force.

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

- (1) After section 191 (appeal by suspension or advocation) of the 1995 Act, insert—

### **“191A Time limit for lodging bills of advocation and bills of suspension**

- (1) This section applies where a party wishes—

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- (a) to appeal to the High Court under section 191(1) of this Act by bill of suspension against a conviction or by advocacy against an acquittal, or
  - (b) to appeal to the High Court against, or to bring under review of the High Court, any other decision in a summary prosecution by bill of suspension or by advocacy.
- (2) The party must lodge the bill of suspension or bill of advocacy within 3 weeks of the date of the conviction, acquittal or, as the case may be, other decision to which the bill relates.
- (3) The High Court may, on the application of the party, extend the time limit in subsection (2).
- (4) An application under subsection (3) must—
- (a) state—
    - (i) the reasons why the applicant failed to comply with the time limit in subsection (2), and
    - (ii) the proposed grounds of appeal or review, and
  - (b) be intimated in writing by the applicant to the other party to the prosecution.
- (5) If the other party so requests within 7 days of receipt of intimation of the application under subsection (4)(b), the other party must be given an opportunity to make representations before the application is determined.
- (6) Any representations may be made in writing or, if the other party so requests, orally at a hearing; and if a hearing is fixed, the applicant must also be given an opportunity to be heard.”
- (2) In the case where the date of the conviction, acquittal or other decision referred to in subsection (1) of section 191A of the 1995 Act (as inserted by subsection (1) of this section) is before the date on which this Act comes into force, subsection (2) of section 191A (as so inserted) has effect as if, for the reference to the date of the conviction, acquittal or, as the case may be, other decision, there were substituted a reference to the date on which this Act comes into force.

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

- (1) The 1995 Act is amended as follows.
- (2) In section 194B (SCCRC's power to refer cases to the High Court), in subsection (1), before “the case” insert “ , subject to section 194DA of this Act, ”.
- (3) In section 194C (grounds for reference)—
- (a) the existing words become subsection (1), and
  - (b) after that subsection, insert—
    - “(2) In determining whether or not it is in the interests of justice that a reference should be made, the Commission must have regard to the need for finality and certainty in the determination of criminal proceedings.”.
- (4) After section 194D, insert—

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**Changes to legislation:** There are currently no known outstanding effects for the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010. (See end of Document for details)

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### **“194DA High Court's power to reject a reference made by the Commission**

- (1) Where the Commission has referred a case to the High Court under section 194B of this Act, the High Court may, despite section 194B(1), reject the reference if the Court considers that it is not in the interests of justice that any appeal arising from the reference should proceed.
- (2) In determining whether or not it is in the interests of justice that any appeal arising from the reference should proceed, the High Court must have regard to the need for finality and certainty in the determination of criminal proceedings.
- (3) On rejecting a reference under this section, the High Court may make such order as it considers necessary or appropriate.”.

### *General*

#### **8 Interpretation**

In this Act, “the 1995 Act” means the Criminal Procedure (Scotland) Act 1995 (c.46).

#### **9 Commencement**

This Act comes into force at the beginning of the day after the day on which the Bill for this Act receives Royal Assent.

#### **10 Short title**

This Act may be cited as the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010.

**Changes to legislation:**

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