

# 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 advocatation; 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*

### **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    - (ii) in paragraph (b), the words “solicitor and to one other” are repealed,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),".

## *Detention*

## **3 Extension of period of detention under section 14 of 1995 Act**

(1) In section 14 of the 1995 Act (detention and questioning at police station)—

(a) in subsection (2), for "Detention", where it first occurs, substitute "Subject to section 14A, detention", and

(b) in each of subsections (2), (4) and (5), for "six" substitute "12".

(2) After section 14 of the 1995 Act, insert—

### **"14A Extension of period of detention under section 14**

(1) This section applies in relation to a person who is being detained under section 14 of this Act ("the detained person").

- (2) Before the expiry of the period of 12 hours mentioned in section 14(2), a custody review officer may, subject to subsection (4), authorise that period to be extended in relation to the detained person by a further period of 12 hours.
- (3) The further period of 12 hours starts from the time when the period of detention would have expired but for the authorisation.
- (4) A custody review officer may authorise the extension under subsection (2) in relation to the detained person only if the officer is satisfied that—
  - (a) the continued detention of the detained person is necessary to secure, obtain or preserve evidence (whether by questioning the person or otherwise) relating to an offence in connection with which the person is being detained,
  - (b) an offence in connection with which the detained person is being detained is one that is an indictable offence, and
  - (c) the investigation is being conducted diligently and expeditiously.
- (5) Where subsection (4) or (5) of section 14 applies in relation to the detained person, the references in subsection (2) of this section to the period of 12 hours mentioned in section 14(2) are to be read as references to that period as reduced in accordance with subsection (4) or, as the case may be, (5) of section 14.
- (6) Where a custody review officer authorises the extension under subsection (2), section 14 has effect in relation to the detained person as if the references in it to the period of 12 hours were references to that period as extended by virtue of the authorisation.
- (7) In this section and section 14B, “custody review officer” means a constable—
  - (a) of the rank of inspector or above, and
  - (b) who has not been involved in the investigation in connection with which the person is detained.

#### **14B Extension under section 14A: procedure**

- (1) This section applies where a custody review officer is considering whether to authorise the extension under section 14A(2) of this Act in relation to a person who is being detained under section 14 of this Act (“the detained person”).
- (2) Before deciding whether to authorise the extension, the custody review officer must give either of the following persons an opportunity to make representations—
  - (a) the detained person, or
  - (b) any solicitor representing the detained person who is available at the time the officer is considering whether to authorise the extension.
- (3) Representations may be oral or written.
- (4) The custody review officer may refuse to hear oral representations from the detained person if the officer considers that the detained person is unfit to make representations because of the person’s condition or behaviour.

- (5) Where the custody review officer decides to authorise the extension, the officer must ensure that the following persons are informed of the decision and of the grounds on which the extension is authorised—
  - (a) the detained person, and
  - (b) any solicitor representing the detained person who is available at the time the decision is made.
- (6) Subsection (7) applies where—
  - (a) the custody review officer decides to authorise the extension, and
  - (b) at the time of the decision, the detained person has not exercised rights under section 15 or 15A.
- (7) The custody review officer must—
  - (a) ensure that the detained person is informed of the person's rights under section 15 or 15A which the person has not yet exercised, and
  - (b) decide whether there are any grounds, under section 15(1) or section 15A(7)(b) or (8) (as the case may be), for delaying the exercise of any of the rights.
- (8) The custody review officer must make a written record of—
  - (a) the officer's decision on whether to authorise the extension, and
  - (b) any of the following which apply—
    - (i) the grounds on which the extension is authorised,
    - (ii) the fact that the detained person and a solicitor have been informed as required under subsection (5),
    - (iii) the fact that the detained person has been informed as required under subsection (7)(a),
    - (iv) the officer's decision on the matter referred to in subsection (7)(b) and, if the decision is to delay the exercise of a right, the grounds for the decision.”.

*Sections 1 and 3: transitional and saving*

**4 Sections 1 and 3: transitional and saving provision**

- (1) The amendments made to the 1995 Act by section 1 have effect in relation to any person who is detained, or who attends or is arrested, as mentioned in subsection (1) of section 15A of the 1995 Act (as inserted by section 1(4)) where the period of detention, attendance or, as the case may be, arrest starts on or after the day on which this Act comes into force.
- (2) The amendments made to the 1995 Act by section 3 have effect in relation to any person who is detained under section 14 of the 1995 Act where the period of detention starts on or after the day on which this Act comes into force.
- (3) Subsection (4) applies in relation to any person who is detained under section 14 of the 1995 Act where the period of detention began before this Act comes into force.
- (4) Despite sections 1 and 3, sections 14 and 15 of the 1995 Act continue, after this Act comes into force, to have the effect they had immediately before that time.

## 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—
  - “(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—
  - (a) to appeal to the High Court under section 191(1) of this Act by bill of suspension against a conviction or by advocation 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 advocation.
- (2) The party must lodge the bill of suspension or bill of advocation 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—

**“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.