

CRIMINAL PROCEDURE (LEGAL ASSISTANCE, DETENTION AND APPEALS) (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Legal Assistance

Section 1 Right of suspects to have access to solicitor

4. Subsection (3)(a)(ii) amends section 15 of the 1995 Act and removes from this section the entitlement to have intimation made to a solicitor concerning a person's detention. The entitlement to this intimation is not lost however but rather is moved to a new section 15A inserted by the Act.
5. Subsection (4) inserts section 15A into the 1995 Act. This new section applies to any person suspected of committing an offence who (i) attends a police station or other place on a voluntary basis for questioning, (ii) any person detained within the meaning of section 14 of the 1995 Act and (iii) any person arrested but not charged who is being detained for the purposes of questioning. In these circumstances the person is afforded the rights contained in section 15A.
6. Section 15A(2) provides that the person has a right to have intimation sent to a solicitor of any or all of the following; the fact of the person's voluntary attendance, detention or arrest, their location and that they require the solicitor's professional assistance.
7. Section 15A(3) provides that the person has a right to have a private consultation with a solicitor prior to and during questioning by the police. Consultation is not confined to a face to face meeting and can include any means appropriate in the circumstances including a telephone consultation (section 15A(5)).
8. Section 15A(6) requires that a suspect be informed of their rights on arrival at the police station or other place, and if they are detained or arrested after their arrival, that they be informed of their rights at that point, whether they have been previously informed or not.
9. Section 15A(7) provides that intimation can be delayed if it is in the interest of the investigation, prevention of crime or apprehension of offenders to do so.
10. Section 15A(8) provides that in exceptional circumstances the suspect can be questioned without having had a private consultation with a solicitor. This can arise when it is necessary in the interest of the investigation, prevention of crime or apprehension of offenders to do so.
11. Section 14(10) of the 1995 Act requires a detained person to answer some basic questions to allow a constable to establish that person's identity. New section 15A(9)

These notes relate to the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15) which received Royal Assent on 29 October 2010

provides that the right to a private consultation with a solicitor before questioning does not apply to this type of questioning.

Section 2 Criminal advice and assistance: automatic availability in certain cases

12. This section amends the Legal Aid (Scotland) Act 1986 (“the 1986 Act”). Subsection (3) inserts a new section 8A into the 1986 Act to allow advice and assistance to be made available without reference to the financial limits under section 8 of that Act in such circumstances as the Scottish Ministers may, in regulations, prescribe. In those circumstances advice and assistance will be available to any person to whom section 15A of the 1995 Act (as inserted by section 1 of the Act) applies. Advice and assistance is a form of State funded legal assistance. It is currently only available to clients who are financially eligible to receive it in terms of section 8 of the 1986 Act.
13. Subsection (4) provides that regulations made under the new section 8A will be subject to the affirmative resolution procedure.