

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Appeals

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

22. This section inserts section 111(2A) to 111(2C) into the 1995 Act. Section 111(2A) provides that when an application is made seeking an extension to the period under section 109 within which a solemn appeal can be made, reasons must be given by the applicant as to why the time limit was not complied with. The application must be intimated by the applicant to the Crown Agent.
23. Section 111(2B) and 111(2C) provide that the prosecutor may within 7 days of receiving intimation of the application make representations before the application is determined. The representations may be in writing or oral if the prosecutor requests a hearing.
24. Subsection (3) inserts section 181(2A) to 181(2C) into the 1995 Act and provides that when an application is made seeking an extension to the period under section 176 within which a summary appeal can be made, reasons must be given by the applicant as to why the time limit was not complied with. The application must be intimated by the applicant to the respondent or respondent's solicitor.
25. Section 181(2B) provides that the respondent may within 7 days of receiving intimation of the application make representations before the application is determined. The representations may be in writing or oral if the respondent requests a hearing.
26. Subsection (4) provides that the changes to section 111 and section 181 affect any application made under section 111(2) or 181(1) on or after the day on which the Act comes into force.

Section 6 Time limit for lodging bills of advocation and bills of suspension

27. This section inserts a new section 191A into the 1995 Act. This places time limits on the period allowed to lodge bills of suspension and bills of advocation. Section 191A(2) provides a 3 week period within which such bills may be lodged. That period may be extended by the High Court on application by either party (section 191A(3)).
28. Section 191A(4) sets out the content of such applications. The other party upon receiving intimation of such an application may request a hearing and be given an opportunity to make representations upon the application.

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

29. Subsection (2) provides that if the decision which is the subject of the bill of suspension or advocacy took place prior to this Act coming into force, the 3 week time limit will be taken to start from the date that this Act came into force.

Section 7 References by the Scottish Criminal Cases Review Commission

30. Subsection (3) amends section 194C of the 1995 Act to introduce a new subsection (2) which requires the Scottish Criminal Cases Review Commission to have regard to the need for finality and certainty in the determination of criminal proceedings when considering whether it is in the interests of justice to make a reference to the High Court.
31. Subsection (4) inserts section 194DA to the 1995 Act which provides that the High Court may reject a reference from the Commission if it considers that it is not in the interests of justice that any appeal arising from the reference should proceed.