Criminal Procedure (Legal Assistance, Detention and Appeals) Scotland Bill

Bill Number: SP Bill 60
Introduced on: 26 October 2010
Introduced by: Kenny MacAskill MSP (Executive Bill)
Passed: 27 October 2010
Royal Assent: 29 October 2010

Passage of the Bill

The Criminal Procedure (Legal Assistance, Detention and Appeals) Scotland Bill [SP Bill 60] was introduced in the Parliament by the Scottish Executive on 27 October 2010. Following agreement by the Parliament to treat the Bill as an Emergency Bill, all 3 stages were taken, and the Bill was passed, on the same day. An Emergency Bill is an Executive Bill which needs to be enacted more rapidly than the normal legislative timetable allows, for example, to amend the law in response to a recent court judgement which has exposed a loophole or problem of interpretation in an existing enactment. An Emergency Bill must first be introduced as an Executive Bill and then be converted to an Emergency Bill by the Parliament, on a motion by a member of the Government.

Purpose and objectives of the Bill

The Cabinet Secretary for Justice introduced the Bill following the judgement by the UK Supreme Court in the case of Cadder v Her Majesty’s Advocate. The Supreme Court found that the practice in Scots law whereby the police could detain a suspect for questioning for a limited period of time (up to 6 hours) without an automatic right of access to a solicitor was contrary to the European Convention on Human Rights. The Bill, amongst other things, sought to address this issue by providing that a suspect must have automatic access to legal advice from the point of their detention by the police.
Provisions of the Bill

The Bill, as introduced, sought to:

- provide a statutory right to legal advice for suspects being questioned by the police
- extend the six-hour maximum period of detention during which a suspect could be detained by the police
- provide a mechanism that can be used (if necessary) to ensure that adequate legal aid arrangements are available for detained suspects
- reinforce the principles of certainty and finality set out in the Supreme Court’s decision in Cadder

Parliamentary consideration

All stages of the Bill were considered on the same day (27 October 2010) in accordance with emergency bill procedure. Key areas of debate during scrutiny of the Bill included:

*Right of suspects to have access to a solicitor*

The Bill, as introduced, included a provision ensuring that a suspect has a right to have a private consultation with a solicitor prior to and during questioning by the police.

The Bill also provided that a private consultation with a solicitor could be delayed where it was necessary in the interest of the investigation, or the prevention of crime, or the apprehension of offenders. A number of MSPs raised concerns that this particular provision appeared to restrict the rights of suspects to have access to a solicitor during police questioning which had been the subject of the determination in Cadder v HMA. Robert Brown MSP lodged an amendment at stage 2 which sought to delete this provision. However, after a division, the amendment was disagreed to. Robert Brown revisited this issue with an amendment at stage 3 which sought to ensure that any restriction of a suspect’s right to have access to a solicitor before and during questioning by the police could only take place in “exceptional circumstances”. The Scottish Government accepted this amendment and it was passed without division.

*Extension of detention periods*

The Bill sought to amend section 14 of the Criminal Procedure (Scotland) Act 1995 by providing that the 6 hour maximum period of detention be replaced by an initial maximum period of 12 hours which could then be extended for a further 12 hours giving a maximum detention period of 24 hours. The initial period of detention would only be extended if a “custody review officer” was satisfied that continued detention would be necessary to secure, obtain or
preserve evidence relating to an offence in connection with which the person was being detained; an offence in connection with which the detained person was being detained was an indictable offence; and that the investigation was being conducted diligently and expeditiously.

Robert Brown MSP lodged a number of amendments on this issue during stage 2 scrutiny of the bill. Amongst other things, the amendments sought to: (a) retain the six hour period of detention with the possibility of extension up to 12 hours by an officer of the rank of inspector or above only where exceptional circumstances existed; and (b) allow for further extension to the detention period up to a maximum of 24 hours but only on application to a sheriff. Following debate, these amendments were either disagreed to, not moved or withdrawn.

References by the Scottish Criminal Cases Review Commission\(^1\) (SCCRC)

The Bill sought to address the possibility of the SCCRC receiving applications on the basis that legal access was denied to a suspect during detention, applications which could potentially be made in relation to historical convictions where no other appeal route was available. The Bill provided that the Commission must have regard to finality and certainty in making referrals to the High Court. It also provided that the court may reject a reference from the Commission if it considers that it would not be in the interests of justice for any appeal arising from the reference to proceed. Finality and certainty in criminal proceedings is identified as a specific factor for the High Court to consider in making this assessment.

During the passage of the Bill, Christine Grahame MSP expressed concern that the role of the Commission would be substantially changed by the above provisions and lodged an amendment at stage 2 to remove the relevant section of the Bill. Following a division the amendment was disagreed to.

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\(^1\) The Commission's role is to review and investigate cases where it is alleged that a miscarriage of justice may have occurred in relation to conviction, sentence or both.