

CRIMINAL JUSTICE (SCOTLAND) ACT 2016

EXPLANATORY NOTES

OVERVIEW OF THE ACT

Part 1 – Arrest and Custody

Chapter 2 – Custody: person not officially accused

Keeping person in custody

Section 7 – Authorisation for keeping in custody

32. **Section 7(1)** sets out the procedure for keeping a person in custody where the person has been not been arrested under a warrant or charged with an offence by a constable.
33. **Section 7(2)** provides that authorisation to keep the person in custody must be sought as soon as reasonably practicable after the person is arrested at a police station or arrives at a police station following arrest.
34. **Sections 7(3) and (4)** provide that authorisation to keep a person in custody may only be given by a constable of the rank of sergeant or above who has not been involved in the investigation in connection with which the person is in custody and if the test set out in section 14 is met. **Section 7(5)** provides that if authorisation is refused then the person can continue to be held in custody only if charged with an offence or the person is detained under section 28(1A) of the 1995 Act. **Section 28(1A)** allows for the detention of an arrested person in connection with a breach of bail conditions.

Section 8 – Information to be given on authorisation

35. **Section 8** provides that at the time when authorisation is given to keep a person in custody under section 7, the person must be informed of the reason they are being kept in custody and that they may only be kept in custody without charge for a period of 12 hours. That person must also be informed when authorisation is given under section 7 that a further extension of 12 hours may be authorised under section 11.

Section 9 – 12 hour limit: general rule

36. **Section 9** provides that a person may not continue to be held in custody after a continuous period of 12 hours unless that person is then charged with an offence by a constable or authorisation has been given to extend that arrest for a further 12 hours under section 11. The period of 12 hours begins at the point when authorisation to keep a person in custody is given by a constable in accordance with section 7. After the expiry of 12 hours, if the person is not charged, they must be released, perhaps conditionally, if appropriate (see section 16). A person may also be detained in custody beyond 12 hours without charge where they are held for a bail review court hearing under section 28(1A) of the 1995 Act.

Section 10 – 12 hour limit: previous period

37. Where a person is held in custody on more than one occasion for the same or a related offence, section 10 provides that the 12 hour maximum period of custody (set out in section 9) is reduced by any earlier period during which the person was held in custody for that offence.

Section 11 – Authorisation for keeping in custody beyond 12 hour limit

38. **Section 11(1)** contains provisions to allow for an extension of the time in which a person may be kept in police custody for a further 12 hours after the initial 12 hours ends.
39. **Section 11(2)** provides that the authorisation to extend that custody must be given by a constable of the rank of inspector or above who has not been involved in the investigation in connection with which the person is in custody. Authorisation to extend custody may only be given if the tests set out in section 11(3)(a) and (b) are met. Further, for a person under 18 years of age authorisation must be given by an officer of the rank of Chief Inspector or above who has not been involved in the investigation in connection with which the person is in custody.
40. **Section 11(4)** places a duty on the authorising constable to, where practicable, allow the person or if the person wishes, the person's solicitor, to make representations either orally or in writing, and to have regard to any such representations.
41. **Section 11(5)** clarifies that any authorisation to extend beyond the initial 12 hours is deemed to have been withdrawn if the person is released prior to those initial 12 hours elapsing.
42. **Section 11(6)** and (7) provide that after the expiry of the further 12 hours the person can only continue to be held in police custody if charged; but permits a person to be detained beyond 12 hours when they are held for a bail review under section 28(1A) of the 1995 Act.

Section 12 – Information to be given on authorisation under section 11

43. **Section 12** specifies the information which must be provided by a constable to an arrested person when authorisation to extend the arrest under section 11 is granted. This information will be given as soon as reasonably practicable after authorisation is given.

Section 13 – Custody review

44. **Section 13(1)** and (2) provide that where a person has been held in police custody for a continuous period of six hours and has not been charged with an offence, a decision must be made on whether to continue to keep that person in custody. That decision must be made as soon as reasonably practicable after the expiry of the period of six hours which started when the authorisation under section 7 was given. In making that decision, the test set out in section 14 is applied (referred to below). Under section 13(3) the decision must be made by a constable of the rank of inspector or above, who has not been involved in the investigation in connection with which the person is in custody. If the test set out in section 14 is not met, the person may continue to be held in custody only if they are charged with an offence or the person is held under section 28(1A) of the 1995 Act for a bail review. This section also provides that where an arrest has been extended under 11, and if the person remains in custody, that there must be a further 6 hour review after this extension period has begun.

Section 14 – Test for sections 7, 11 and 13

45. **Section 14** sets out the test for keeping a person in custody under sections 7(4) and 11(3)(b), and reviewing continuation of that period of custody after six hours under section 13(2).

*These notes relate to the Criminal Justice (Scotland) Act 2016
(asp 1) which received Royal Assent on 13 January 2016*

46. **Section 14(1)** provides that the test is that there are reasonable grounds for suspecting that the person has committed an offence and keeping the person in custody is necessary and proportionate for the purposes of bringing the person before a court or otherwise dealing with the person under the law. In considering what is “necessary and proportionate” regard may be had to (among others) the factors detailed in section 14(2).

Section 15 – Medical treatment

47. **Sections 15(1) and (2)** apply to a person who is taken into police custody having been arrested without a warrant, has not been charged with an offence and is at a hospital for the purpose of receiving medical treatment. They provide that authority to keep a person in custody may be given as though section 7 applies in the hospital as it does in a police station. For the purpose of calculating the 12 hour maximum period of custody set out in sections 9 and 11, account will be taken of any time during which a person is at a hospital or travelling to or from one and is being questioned by a constable (section 15(5) to (6)). The same rules apply in calculating any previous period of custody (section 10(3)).