

CRIMINAL JUSTICE (SCOTLAND) ACT 2016

EXPLANATORY NOTES

OVERVIEW OF THE ACT

Part 1 – Arrest and Custody

Chapter 4 – Police interview

Rights of suspects

Section 32 – Right to have solicitor present

90. This section provides for the right of a person reasonably suspected of committing an offence to have a solicitor present during police interview. It applies to a person who is either in police custody or has voluntarily attended a police station, or other place, for the purpose of being interviewed by a constable.
91. [Section 32\(3\)](#) provides that unless a person has consented to be interviewed without a solicitor present, a constable must not start to interview the person about the alleged offence until a solicitor is present and must not deny the solicitor access to the person at any time during interview.
92. Under subsection (4), a constable may in exceptional circumstances start to interview the person without a solicitor present if satisfied it is necessary to interview the person without delay in the interests of the investigation or prevention of crime, or the apprehension of offenders. This is a high test and may only be authorised by a constable of the rank of sergeant or above who has not been involved in the investigation of the offence about which the person is to be interviewed. If a solicitor becomes available during such time as the police are interviewing a person, the solicitor must be allowed access to that person.
93. For the purpose of this section, a constable is not to be regarded as interviewing a person about an offence merely by asking for the person's name, address, date of birth, place of birth and nationality. As such, a constable does not have to wait for a solicitor to be present before asking a person for these details.
94. Subsection [\(7\)\(a\)](#) and [\(b\)](#) provides for a record to be made of the time at which a person consents to be interviewed without a solicitor present and any reason the person gives for waiving the right to have a solicitor present. A person may revoke their consent at any time and in such a case the police must record the time at which a person requests that intimation is sent to a solicitor and the time that intimation is sent (section [6\(2\)\(d\)](#) and [\(e\)](#)).