



# Criminal Justice (Scotland) Act 2016

## 2016 asp 1

### PART 1

#### ARREST AND CUSTODY

#### CHAPTER 3

#### CUSTODY: PERSON OFFICIALLY ACCUSED

##### *Police liberation*

#### **25 Liberation by police**

- (1) Subsection (2) applies when—
- (a) a person is in police custody having been arrested under a warrant (other than a warrant granted under section 37(1)), or
  - (b) a person—
    - (i) is in police custody having been arrested without a warrant, and
    - (ii) since being arrested, the person has been charged with an offence by a constable.
- (2) A constable may—
- (a) if the person gives an undertaking in accordance with section 26, release the person from custody,
  - (b) release the person from custody without such an undertaking,
  - (c) refuse to release the person from custody.
- (3) Where a person is in custody as mentioned in subsection (1)(a), the person may not be released from custody under subsection (2)(b).
- (4) A constable is not to be subject to any claim whatsoever by reason of having refused to release a person from custody under subsection (2)(c).

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*Status: This is the original version (as it was originally enacted).*

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## **26 Release on undertaking**

- (1) A person may be released from police custody on an undertaking given under section 25(2)(a) only if the person signs the undertaking.
- (2) The terms of an undertaking are that the person undertakes to—
  - (a) appear at a specified court at a specified time, and
  - (b) comply with any conditions imposed under subsection (3) while subject to the undertaking.
- (3) The conditions which may be imposed under this subsection are—
  - (a) that the person does not—
    - (i) commit an offence,
    - (ii) interfere with witnesses or evidence, or otherwise obstruct the course of justice,
    - (iii) behave in a manner which causes, or is likely to cause, alarm or distress to witnesses,
  - (b) any further condition that a constable considers necessary and proportionate for the purpose of ensuring that any conditions imposed under paragraph (a) are observed.
- (4) Conditions which may be imposed under subsection (3)(b) include—
  - (a) a condition requiring the person—
    - (i) to be in a specified place at a specified time, and
    - (ii) to remain there for a specified period,
  - (b) a condition requiring the person—
    - (i) not to be in a specified place, or category of place, at a specified time, and
    - (ii) to remain outwith that place, or any place falling within the specified category (if any), for a specified period.
- (5) For the imposition of a condition under subsection (3)(b)—
  - (a) if it is of the kind described in subsection (4)(a), the authority of a constable of the rank of inspector or above is required,
  - (b) if it is of any other kind, the authority of a constable of the rank of sergeant or above is required.
- (6) The requirements imposed by an undertaking to attend at a court and comply with conditions are liberation conditions for the purposes of schedule 1.

## **27 Modification of undertaking**

- (1) The procurator fiscal may by notice modify the terms of an undertaking given under section 25(2)(a) by—
  - (a) changing the court specified as the court at which the person is to appear,
  - (b) changing the time specified as the time at which the person is to appear at the court,
  - (c) removing or altering any condition imposed under section 26(3).
- (2) A condition may not be altered under subsection (1)(c) so as to forbid or require something not forbidden or required by the terms of the condition when the person gave the undertaking.

- (3) Notice under subsection (1) must be effected in a manner by which citation may be effected under section 141 of the 1995 Act.

## **28 Rescission of undertaking**

- (1) The procurator fiscal may by notice rescind an undertaking given under section 25(2)(a) (whether or not the person who gave it is to be prosecuted).
- (2) The rescission of an undertaking by virtue of subsection (1) takes effect at the end of the day on which the notice is sent.
- (3) Notice under subsection (1) must be effected in a manner by which citation may be effected under section 141 of the 1995 Act.
- (4) A constable may arrest a person without a warrant if the constable has reasonable grounds for suspecting that the person is likely to fail to comply with the terms of an undertaking given under section 25(2)(a).
- (5) Where a person is arrested under subsection (4) or subsection (6) applies—
- (a) the undertaking referred to in subsection (4) or (as the case may be) (6) is rescinded, and
  - (b) this Part applies as if the person, since being most recently arrested, has been charged with the offence in connection with which the person was in police custody when the undertaking was given.
- (6) This subsection applies where—
- (a) a person who is subject to an undertaking given under section 25(2)(a) is in police custody (otherwise than as a result of having been arrested under subsection (4)), and
  - (b) a constable has reasonable grounds for suspecting that the person has failed, or (if liberated) is likely to fail, to comply with the terms of the undertaking.
- (7) The references in subsections (4) and (6)(b) to the terms of the undertaking are to the terms of the undertaking subject to any modification by—
- (a) notice under section 27(1), or
  - (b) the sheriff under section 30(3)(b).

## **29 Expiry of undertaking**

- (1) An undertaking given under section 25(2)(a) expires—
- (a) at the end of the day on which the person who gave it is required by its terms to appear at a court, or
  - (b) if subsection (2) applies, at the end of the day on which the person who gave it is brought before a court having been arrested under the warrant mentioned in that subsection.
- (2) This subsection applies where—
- (a) a person fails to appear at court as required by the terms of an undertaking given under section 25(2)(a), and
  - (b) on account of that failure, a warrant for the person's arrest is granted.
- (3) The references in subsections (1)(a) and (2)(a) to the terms of the undertaking are to the terms of the undertaking subject to any modification by notice under section 27(1).

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### **30 Review of undertaking**

- (1) A person who is subject to an undertaking containing a condition imposed under section 26(3)(b) may apply to the sheriff to have the condition reviewed.
- (2) Before disposing of an application under this section, the sheriff must give the procurator fiscal an opportunity to make representations.
- (3) If the sheriff is not satisfied that the condition is necessary and proportionate for the purpose for which it was imposed, the sheriff may modify the terms of the undertaking by—
  - (a) removing the condition, or
  - (b) imposing an alternative condition that the sheriff considers to be necessary and proportionate for that purpose.