



# Criminal Justice (Scotland) Act 2016

## 2016 asp 1

### PART 1

#### ARREST AND CUSTODY

#### CHAPTER 3

#### CUSTODY: PERSON OFFICIALLY ACCUSED

##### Modifications etc. (not altering text)

- C1 Pt. 1 applied (with modifications) by 2003 c. 20, s. 31A (as inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), **Sch. 2 para. 2** (with art. 6))
- C2 Pt. 1 applied (with modifications) by 1994 c. 33, s. 137ZA (as inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), **Sch. 1 para. 4** (with art. 5(2)))
- C3 Pt. 1 Chs. 1-6 applied (with modifications) (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), **Sch. 3 Pt. 3** (with art. 7, Sch. 3 Pts. 5, 6)
- C4 Pt. 1 applied (with modifications) by 2004 c. 20, s. 56A (as inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), **Sch. 2 para. 3** (with art. 6))
- C5 Pt. 1 Chs. 1-6 applied (with modifications) (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), **Sch. 3 Pt. 2** (with art. 7, Sch. 3 Pts. 5, 6)
- C6 Pt. 1 applied (with modifications) by 1987 c. 4, s. 2D (as inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), **Sch. 2 para. 1** (with art. 6))
- C7 Pt. 1 Chs. 1-6 applied (with modifications) (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), **Sch. 3 Pt. 4** (with art. 7, Sch. 3 Pts. 5, 6)
- C8 Pt. 1 Chs. 1-6 applied (with modifications) (25.1.2018) by [The Police Investigations and Review Commissioner \(Application and Modification of the Criminal Justice \(Scotland\) Act 2016\) Order 2017 \(S.S.I. 2017/465\)](#), arts. 14

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**C9** Pt. 1 applied (with modifications) (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), [Sch. 4](#) (with art. 8)

*Person to be brought before court*

**20** **[<sup>F1</sup>Information to be given in particular cases]**

(1) Subsection (2) applies when—

- (a) a person is in police custody having been arrested under a warrant in respect of [<sup>F2</sup>an offence listed in subsection (3)(b)], 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 by a constable with [<sup>F3</sup>an offence listed in subsection (3)(b)].

(2) The person must be informed as soon as reasonably practicable—

- (a) that the person's case at, or for the purposes of, any relevant hearing <sup>F4</sup>... in the course of the proceedings may be conducted only by a lawyer,
- (b) that it is, therefore, in the person's interests to get the professional assistance of a solicitor, and
- (c) that if the person does not engage a solicitor for the purposes of the conduct of the person's case at or for the purposes of the hearing, the court will do so.

[<sup>F5</sup>(3) For the purposes of subsections (1) and (2)—

- (a) “relevant hearing” is to be construed in accordance with section 288C(1A) or (as the case may be) 288DC(4) of the 1995 Act,
- (b) the list is—
  - (i) an offence to which section 288C of the 1995 Act applies (certain sexual offending),
  - (ii) an offence to which section 288DC of the 1995 Act applies (domestic abuse cases).]

**Textual Amendments**

- F1** S. 20 title substituted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\)](#), s. 15(2), [sch. para. 5\(3\)](#); [S.S.I. 2018/387](#), reg. 2 (with reg. 7)
- F2** Words in s. 20(1)(a) substituted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\)](#), s. 15(2), [sch. para. 5\(2\)\(a\)](#); [S.S.I. 2018/387](#), reg. 2 (with reg. 7)
- F3** Words in s. 20(1)(b)(ii) substituted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\)](#), s. 15(2), [sch. para. 5\(2\)\(a\)](#); [S.S.I. 2018/387](#), reg. 2 (with reg. 7)
- F4** Words in s. 20(2)(a) repealed (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\)](#), s. 15(2), [sch. para. 5\(2\)\(b\)](#); [S.S.I. 2018/387](#), reg. 2 (with reg. 7)
- F5** S. 20(3) inserted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\)](#), s. 15(2), [sch. para. 5\(2\)\(c\)](#); [S.S.I. 2018/387](#), reg. 2 (with reg. 7)

**Commencement Information**

- I1** S. 20 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#) (with art. 4)

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## 21 Person to be brought before court

- (1) Subsection (2) applies to a person when—
  - (a) the person is in police custody having been arrested under a warrant [<sup>F6</sup>granted for the purpose of having the person brought before a court in connection with an offence which the person is officially accused of committing], or
  - (b) the person—
    - (i) is in police custody having been arrested [<sup>F7</sup>in respect of an offence] without a warrant, and
    - (ii) since being arrested, the person has been charged with an offence by a constable.
- (2) The person must be brought before a court (unless released from custody under section 25)—
  - (a) if practicable, before the end of the first day on which the court is sitting after the day on which this subsection began to apply to the person, or
  - (b) as soon as practicable after that.
- (3) A person is deemed to be brought before a court in accordance with subsection (2) if the person appears before it by means of a live television link (by virtue of a determination by the court that the person is to do so by such means).

### Textual Amendments

- F6** Words in s. 21(1)(a) substituted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), regs. 1, **2(6)(a)**
- F7** Words in s. 21(1)(b) inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), regs. 1, **2(6)(b)**

### Commencement Information

- I2** S. 21 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, **sch.** (with art. 4)

## 22 Under 18s to be kept in place of safety prior to court

- (1) Subsection (2) applies when—
  - (a) a person is to be brought before a court in accordance with section 21(2), and
  - (b) either—
    - (i) a constable believes the person is under 16 years of age, or
    - (ii) the person is subject to a compulsory supervision order, or an interim compulsory supervision order, made under the Children's Hearings (Scotland) Act 2011.
- (2) The person must (unless released from custody under section 25) be kept in a place of safety until the person can be brought before the court.
- (3) The place of safety in which the person is kept must not be a police station unless an appropriate constable certifies that keeping the person in a place of safety other than a police station would be—
  - (a) impracticable,
  - (b) unsafe, or
  - (c) inadvisable due to the person's state of health (physical or mental).

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- (4) A certificate under subsection (3) must be produced to the court when the person is brought before it.
- (5) In this section—  
 “an appropriate constable” means a constable of the rank of inspector or above,  
 “place of safety” has the meaning given in section 202(1) of the Children's Hearings (Scotland) Act 2011.

**Modifications etc. (not altering text)**

**C10** S. 22 applied by 1995 c. 46, s. 28A(2) (as inserted (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 30](#); S.S.I. 2017/345, art. 3, sch.)

**Commencement Information**

**I3** S. 22 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#) (with art. 4)

**23 Notice to parent that under 18 to be brought before court**

- (1) Subsection (2) applies when a person who is 16 years of age or over and subject to a supervision order or under 16 years of age—  
 (a) is to be brought before a court in accordance with section 21(2), or  
 (b) is released from police custody on an undertaking given under section 25(2)  
 (a).
- (2) A parent of the person mentioned in subsection (1) (if one can be found) must be informed of the following matters—  
 (a) the court before which the person is to be brought,  
 (b) the date on which the person is to be brought before the court,  
 (c) the general nature of the offence which the person has been officially accused of committing, and  
 (d) that the parent's attendance at the court may be required under section 42 of the 1995 Act.
- (3) Subsection (2) does not require any information to be given to a parent if a constable has grounds to believe that giving the parent the information mentioned in that subsection may be detrimental to the wellbeing of the person mentioned in subsection (1).
- (4) In this section—  
 “parent” includes guardian and any person who has the care of the person mentioned in subsection (1),  
 “supervision order” means compulsory supervision order, or interim compulsory supervision order, made under the Children's Hearings (Scotland) Act 2011.

**Modifications etc. (not altering text)**

**C11** S. 23 applied (with modifications) by 1995 c. 46, s. 28A(2)(3) (as inserted (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 30](#); S.S.I. 2017/345, art. 3, sch.)

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#### Commencement Information

**I4** S. 23 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, sch. (with art. 4)

## 24 Notice to local authority that under 18 to be brought before court

- (1) The appropriate local authority must be informed of the matters mentioned in subsection (4) when—
- (a) a person to whom either subsection (2) or (3) applies is to be brought before a court in accordance with section 21(2), or
  - (b) a person to whom subsection (2) applies is released from police custody on an undertaking given under section 25(2)(a).
- (2) This subsection applies to—
- (a) a person who is under 16 years of age,
  - (b) a person who is—
    - (i) 16 or 17 years of age, and
    - (ii) subject to a compulsory supervision order, or an interim compulsory supervision order, made under the Children's Hearings (Scotland) Act 2011.
- (3) This subsection applies to a person if—
- (a) a constable believes the person is 16 or 17 years of age,
  - (b) since being arrested, the person has not exercised the right to have intimation sent under section 38, and
  - (c) on being informed or reminded of the right to have intimation sent under that section after being officially accused, the person has declined to exercise the right.
- (4) The matters referred to in subsection (1) are—
- (a) the court before which the person mentioned in paragraph (a) or (as the case may be) (b) of that subsection is to be brought,
  - (b) the date on which the person is to be brought before the court, and
  - (c) the general nature of the offence which the person has been officially accused of committing.
- (5) For the purpose of subsection (1), the appropriate local authority is the local authority in whose area the court referred to in subsection (4)(a) sits.

#### Modifications etc. (not altering text)

**C12** S. 24 applied (with modifications) by 1995 c. 46, s. 28A(2)(3) (as inserted (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 30](#); [S.S.I. 2017/345](#), art. 3, sch.)

#### Commencement Information

**I5** S. 24 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, sch. (with art. 4)

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## *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).

#### **Commencement Information**

**I6** S. 25 in force at 25.1.2018 by [S.S.I. 2017/345](#), [art. 3](#), [sch.](#) (with [art. 4](#))

### **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—

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- (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.

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**Commencement Information**

**17** S. 26 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#) (with art. 4)

## 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.

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**Commencement Information**

**18** S. 27 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#) (with art. 4)

## 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.

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- (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).

**Commencement Information**

**I9** S. 28 in force at 25.1.2018 by [S.S.I. 2017/345](#), [art. 3](#), [sch.](#) (with [art. 4](#))

## 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).

**Commencement Information**

**I10** S. 29 in force at 25.1.2018 by [S.S.I. 2017/345](#), [art. 3](#), [sch.](#) (with [art. 4](#))



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## **F8 29A Expiry of undertaking: coronavirus-related reason for non-appearance**

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### **Textual Amendments**

- F8** S. 29A inserted (temp.) (27.5.2020) by virtue of [Coronavirus \(Scotland\) \(No.2\) Act 2020 \(asp 10\)](#), s. 16(1), **sch. 2 para. 6(3)** (with s. 9) (which affecting provision expires (1.10.2022) by [Coronavirus \(Scotland\) \(No.2\) Act 2020 \(asp 10\)](#), **s. 9(1)**)

## **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.

### **Commencement Information**

- I11** S. 30 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, **sch.** (with art. 4)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act expiry of affecting provision 2022 asp 8, sch. para. 15 by [S.S.I. 2023/360 reg. 2\(a\)](#)