



Criminal Justice (Scotland) Act 2016

2016 asp 1

PART 1

ARREST AND CUSTODY

CHAPTER 4

POLICE INTERVIEW

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 \(S.I. 2017/465\)](#), 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)

Rights of suspects

31 Information to be given before interview

- (1) Subsection (2) applies to a person who—
 - (a) is in police custody, or
 - (b) is attending at a police station or other place voluntarily for the purpose of being interviewed by a constable.
- (2) Not more than one hour before a constable interviews the person about an offence which the constable has reasonable grounds to suspect the person of committing, the person must be informed—
 - (a) of the general nature of that offence,
 - (b) that the person is under no obligation to say anything other than to give the information specified in section 34(4),
 - (c) about the right under section 32 to have a solicitor present during the interview, and
 - (d) if the person is in police custody, about any right which the person has under Chapter 5.
- (3) A person need not be informed under subsection (2)(d) about a right to have intimation sent under either of the following sections if the person has exercised the right already—
 - (a) section 38,
 - (b) section 43.
- (4) For the purpose of subsection (2), a constable is not to be regarded as interviewing a person about an offence merely by asking the person for the information specified in section 34(4).
- (5) Where a person is to be interviewed by virtue of authorisation granted under section 35, before the interview begins the person must be informed of what was specified by the court under subsection (6) of that section.

Commencement Information

II S. 31 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#) (with arts. 4, 7)

32 Right to have solicitor present

- (1) Subsections (2) and (3) apply to a person who—
 - (a) is in police custody, or
 - (b) is attending at a police station or other place voluntarily for the purpose of being interviewed by a constable.
- (2) The person has the right to have a solicitor present while being interviewed by a constable about an offence which the constable has reasonable grounds to suspect the person of committing.

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- (3) Accordingly—
- (a) unless the person consents to being interviewed without having a solicitor present, a constable must not begin to interview the person about the offence until the person's solicitor is present, and
 - (b) the person's solicitor must not be denied access to the person at any time while a constable is interviewing the person about the offence.
- (4) Despite subsection (3)(a) a constable may, in exceptional circumstances, proceed to interview the person without a solicitor being present if it is necessary to interview the person without delay in the interests of—
- (a) the investigation or the prevention of crime, or
 - (b) the apprehension of offenders.
- (5) A decision to allow the person to be interviewed without a solicitor present by virtue of subsection (4) may be taken only by a constable who—
- (a) is of the rank of sergeant or above, and
 - (b) has not been involved in investigating the offence about which the person is to be interviewed.
- (6) For the purposes of subsections (2) and (3), a constable is not to be regarded as interviewing a person about an offence merely by asking the person for the information specified in section 34(4).
- (7) Where a person consents to being interviewed without having a solicitor present, there must be recorded—
- (a) the time at which the person consented, and
 - (b) any reason given by the person at that time for waiving the right to have a solicitor present.

Commencement Information

I2 S. 32 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#) (with arts. 4, 7)

33 Consent to interview without solicitor

- (1) Subsections (2) and (3) apply for the purpose of section 32(3)(a).
- (2) A person may not consent to being interviewed without having a solicitor present if—
- (a) the person is under 16 years of age
 - (b) the person is 16 or 17 years of age and subject to a compulsory supervision order, or an interim compulsory supervision order, made under the Children's Hearings (Scotland) Act 2011, or
 - (c) the person is 16 years of age or over and, owing to mental disorder, appears to a constable to be unable to—
 - (i) understand sufficiently what is happening, or
 - (ii) communicate effectively with the police.
- (3) A person to whom this subsection applies (referred to in subsection (5) as “person A”) may consent to being interviewed without having a solicitor present only with the agreement of a relevant person.

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- (4) Subsection (3) applies to a person who is—
 - (a) 16 or 17 years of age, and
 - (b) not precluded by subsection (2)(b) or (c) from consenting to being interviewed without having a solicitor present.
- (5) For the purpose of subsection (3), “a relevant person” means—
 - (a) if person A is in police custody, any person who is entitled to access to person A by virtue of section 40(2),
 - (b) if person A is not in police custody, a person who is—
 - (i) at least 18 years of age, and
 - (ii) reasonably named by person A.
- (6) In subsection (2)(c)—
 - (a) “mental disorder” has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003,
 - (b) the reference to the police is to any—
 - (i) constable, or
 - (ii) person appointed as a member of police staff under section 26(1) of the Police and Fire Reform (Scotland) Act 2012.

Commencement Information

I3 S. 33 in force at 25.1.2018 by [S.S.I. 2017/345](#), [art. 3](#), [sch.](#) (with [art. 4](#))

Person not officially accused

34 Questioning following arrest

- (1) Subsections (2) and (4) apply where—
 - (a) a person is in police custody in relation to an offence, and
 - (b) the person has not been officially accused of committing the offence or an offence arising from the same circumstances as the offence.
- (2) A constable may put questions to the person in relation to the offence.
- (3) For the avoidance of doubt, nothing in this section is to be taken to mean that a constable cannot put questions to the person in relation to any other matter.
- (4) The person is under no obligation to answer any question, other than to give the following information—
 - (a) the person's name,
 - (b) the person's address,
 - (c) the person's date of birth,
 - (d) the person's place of birth (in such detail as a constable considers necessary or expedient for the purpose of establishing the person's identity), and
 - (e) the person's nationality.
- (5) Subsection (2) is without prejudice to any rule of law as regards the admissibility in evidence of any answer given.

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Commencement Information

I4 S. 34 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#) (with art. 4)

Person officially accused

35 Authorisation for questioning

- (1) The court may authorise a constable to question a person about an offence after the person has been officially accused of committing the offence.
- (2) The court may grant authorisation only if it is satisfied that allowing the person to be questioned about the offence is necessary in the interests of justice.
- (3) In deciding whether to grant authorisation, the court must take into account—
 - (a) the seriousness of the offence,
 - (b) the extent to which the person could have been questioned earlier in relation to the information which the applicant believes may be elicited by the proposed questioning,
 - (c) where the person could have been questioned earlier in relation to that information, whether it could reasonably have been foreseen at that time that the information might be important to proving or disproving that the person has committed an offence.
- (4) Where subsection (5) applies, the court must give the person an opportunity to make representations before deciding whether to grant authorisation.
- (5) This subsection applies where—
 - (a) a warrant has been granted to arrest the person in respect of the offence, or
 - (b) the person has appeared before a court in relation to the offence.
- (6) Where granting authorisation, the court—
 - (a) must specify the period for which questioning is authorised, and
 - (b) may specify such other conditions as the court considers necessary to ensure that allowing the proposed questioning is not unfair to the person.
- (7) A decision of the court—
 - (a) to grant or refuse authorisation, or
 - (b) to specify, or not to specify, conditions under subsection (6)(b),is final.
- (8) In this section, “the court” means—
 - (a) where an indictment has been served on the person in respect of the High Court, a single judge of that court,
 - (b) in any other case, the sheriff.

Commencement Information

I5 S. 35 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#) (with art. 8)

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36 Authorisation: further provision

- (1) An application for authorisation may be made—
 - (a) where section 35(5) applies, by the prosecutor, or
 - (b) in any other case, by a constable.
- (2) In subsection (1)(a), “the prosecutor” means—
 - (a) where an indictment has been served on the person in respect of the High Court, Crown Counsel, or
 - (b) in any other case, the procurator fiscal.
- (3) Where an application for authorisation is made in writing (rather than orally) it must—
 - (a) be made in such form as may be prescribed by act of adjournal (or as nearly as may be in such form), and
 - (b) state whether another application has been made for authorisation to question the person about the offence or an offence arising from the same circumstances as the offence.
- (4) Authorisation ceases to apply as soon as either—
 - (a) the period specified under section 35(6)(a) expires, or
 - (b) the person's trial in respect of the offence, or an offence arising from the same circumstances as the offence, begins.
- (5) For the purpose of subsection (4)(b), a trial begins—
 - (a) in proceedings on indictment, when the jury is sworn,
 - (b) in summary proceedings, when the first witness for the prosecution is sworn.
- (6) In this section—

“authorisation” means authorisation under section 35,

“the offence” means the offence referred to in section 35(1).

Commencement Information

I6 S. 36 in force at 25.1.2018 by [S.S.I. 2017/345](#), [art. 3](#), [sch.](#) (with [art. 8](#))

37 Arrest to facilitate questioning

- (1) On granting authorisation under section 35, the court may also grant a warrant for the person's arrest if it seems to the court expedient to do so.
- (2) The court must specify in a warrant granted under subsection (1) the maximum period for which the person may be detained under it.
- (3) The person's detention under a warrant granted under subsection (1) must end as soon as—
 - (a) the period of the person's detention under the warrant becomes equal to the maximum period specified under subsection (2),
 - (b) the authorisation ceases to apply (see section 36(4)), or
 - (c) in the opinion of the constable responsible for the investigation into the offence referred to in section 35(1), there are no longer reasonable grounds for suspecting that the person has committed—
 - (i) that offence, or

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- (ii) an offence arising from the same circumstances as that offence.
- (4) For the purpose of subsection (3)(a), the period of the person's detention under the warrant begins when the person—
- (a) is arrested at a police station, or
 - (b) arrives at a police station, having been taken there in accordance with section 4.
- (5) For the avoidance of doubt—
- (a) if the person is on bail when a warrant under subsection (1) is granted, the order admitting the person to bail is not impliedly recalled by the granting of the warrant,
 - (b) if the person is on bail when arrested under a warrant granted under subsection (1)—
 - (i) despite being in custody by virtue of the warrant the person remains on bail for the purpose of section 24(5)(b) of the 1995 Act,
 - (ii) when the person's detention under the warrant ends, the bail order continues to apply as it did immediately before the person's arrest,
 - (c) if the person is subject to an undertaking given under section 25(2)(a), the person remains subject to the undertaking despite—
 - (i) the granting of a warrant under subsection (1),
 - (ii) the person's arrest and detention under it.

Commencement Information

I7 S. 37 in force at 25.1.2018 by [S.S.I. 2017/345](#), [art. 3](#), [sch.](#) (with [art. 8](#))

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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\(a\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 38(7)(a) words renumbered as s. 38(7)(a) by [2024 asp 5 s. 15\(6\)\(a\)](#)
- s. 38(7)(b) and word inserted by [2024 asp 5 s. 15\(6\)\(b\)](#)
- s. 41(1A) inserted by [2024 asp 5 s. 15\(7\)\(b\)](#)