



# Criminal Justice (Scotland) Act 2016

## 2016 asp 1

### PART 1

#### ARREST AND CUSTODY

#### CHAPTER 4

#### POLICE INTERVIEW

##### *Rights of suspects*

### **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.
- (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—

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**Changes to legislation:** Criminal Justice (Scotland) Act 2016, Section 33 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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- (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.

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**Commencement Information**

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

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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\(a\)](#)