



# Criminal Justice (Scotland) Act 2016

## 2016 asp 1

### PART 1 **S**

#### ARREST AND CUSTODY

### CHAPTER 3 **S**

#### CUSTODY: PERSON OFFICIALLY ACCUSED

##### *Person to be brought before court*

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

(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—

*Changes to legislation: Criminal Justice (Scotland) Act 2016, Cross Heading: Person to be brought before court is up to date with all changes known to be in force on or before 22 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*

- (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)

## 21 Person to be brought before court **S**

- (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\(6\)\(b\)](#)

*Changes to legislation:* Criminal Justice (Scotland) Act 2016, Cross Heading: Person to be brought before court is up to date with all changes known to be in force on or before 22 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

#### 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 **S**

- (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).
- (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)

**C1** 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 **S**

- (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,

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**Changes to legislation:** *Criminal Justice (Scotland) Act 2016, Cross Heading: Person to be brought before court is up to date with all changes known to be in force on or before 22 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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- (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)**

**C2** 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.)

**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** **S**

- (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—

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- (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.

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

**C3** 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.](#))

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**Commencement Information**

**I5** S. 24 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\(a\)](#)