



Criminal Justice (Scotland) Act 2016

2016 asp 1

PART 1 **S**

ARREST AND CUSTODY

CHAPTER 6 **S**

POLICE POWERS AND DUTIES

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

Changes to legislation: Criminal Justice (Scotland) Act 2016, CHAPTER 6 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

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)

Powers of police

45 Use of reasonable force S

A constable may use reasonable force—

- (a) to effect an arrest,
- (b) when taking a person who is in police custody to any place.

Commencement Information

I1 S. 45 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#)

46 Common law power of entry S

Nothing in this Part affects any rule of law concerning the powers of a constable to enter any premises for any purpose.

Commencement Information

I2 S. 46 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#)

47 Common law power of search etc. S

- (1) Nothing in this Part affects any rule of law by virtue of which a constable may exercise a power of the type described in subsection (2).
- (2) The type of power is a power that a constable may exercise in relation to a person by reason of the person's having been arrested and charged with an offence by a constable.
- (3) Powers of the type described in subsection (2) include the power to—
 - (a) search the person,
 - (b) seize any item in the person's possession,
 - (c) cause the person to participate in an identification procedure.

Commencement Information

I3 S. 47 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#)

48 Power of search etc. on arrest S

- (1) A constable may exercise in relation to a person to whom subsection (2) applies any power of the type described in section 47(2) which the constable would be able to exercise by virtue of a rule of law if the person had been charged with the relevant offence by a constable.
- (2) This subsection applies to a person who—

Changes to legislation: Criminal Justice (Scotland) Act 2016, CHAPTER 6 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

- (a) is in police custody having been arrested without a warrant, and
 - (b) has not, since being arrested, been charged with an offence by a constable.
- (3) In subsection (1), “the relevant offence” means the offence in connection with which the person is in police custody.

Commencement Information

I4 S. 48 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#)

49 Taking drunk persons to designated place **S**

- (1) Where—
- (a) a person is liable to be arrested in respect of an offence by a constable without a warrant, and
 - (b) the constable is of the opinion that the person is drunk,
- the constable may take the person to a designated place (and do so instead of arresting the person).
- (2) Nothing done under subsection (1)—
- (a) makes a person liable to be held unwillingly at a designated place, or
 - (b) prevents a constable from arresting the person in respect of the offence referred to in that subsection.
- (3) In this section, “designated place” is any place designated by the Scottish Ministers for the purpose of this section as a place suitable for the care of drunken persons.

Commencement Information

I5 S. 49 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#)

Duties of police

50 Duty not to detain unnecessarily **S**

A constable must take every precaution to ensure that a person is not unreasonably or unnecessarily held in police custody.

Commencement Information

I6 S. 50 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#)

51 Duty to consider child's wellbeing **S**

- (1) Subsection (2) applies when a constable is deciding whether to—
- (a) arrest a child,
 - (b) hold a child in police custody,
 - (c) interview a child about an offence which the constable has reasonable grounds to suspect the child of committing, or

Changes to legislation: Criminal Justice (Scotland) Act 2016, CHAPTER 6 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

- (d) charge a child with committing an offence.
- (2) In taking the decision, the constable must treat the need to safeguard and promote the wellbeing of the child as a primary consideration.
- (3) For the purposes of this section, a child is a person who is under 18 years of age.

Modifications etc. (not altering text)

C10 S. 51 applied (with modifications) by 1994 c. 33, s. 137D(3)(c), Sch. 7B Pt. 2 (as inserted (31.1.2017 for specified purposes, 1.3.2018 in so far as not already in force) by [Policing and Crime Act 2017](#) (c. 3), s. 116(1)(3), 183(1)(5)(e), [Sch. 16](#); S.I. 2018/227, art. 2(f))

Commencement Information

I7 S. 51 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#)

52 Duties in relation to children in custody **S**

- (1) A child who is in police custody at a police station is, so far as practicable, to be prevented from associating with any adult who is officially accused of committing an offence other than an adult to whom subsection (2) applies.
- (2) This subsection applies to an adult if a constable believes that it may be detrimental to the wellbeing of the child mentioned in subsection (1) to prevent the child and adult from associating with one another.
- (3) For the purposes of this section—
 - “child” means person who is under 18 years of age,
 - “adult” means person who is 18 years of age or over.

Modifications etc. (not altering text)

C11 S. 52 applied (with modifications) by 1994 c. 33, s. 137D(3)(d), Sch. 7B Pt. 2 (as inserted (31.1.2017 for specified purposes, 1.3.2018 in so far as not already in force) by [Policing and Crime Act 2017](#) (c. 3), s. 116(1)(3), 183(1)(5)(e), [Sch. 16](#); S.I. 2018/227, art. 2(f))

Commencement Information

I8 S. 52 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#)

53 Duty to inform Principal Reporter if child not being prosecuted **S**

- (1) Subsections (2) and (3) apply if—
 - (a) a person is being kept in a place of safety in accordance with section 22(2) when it is decided not to prosecute the person for any relevant offence, and
 - (b) a constable has reasonable grounds for suspecting that the person has committed a relevant offence.
- (2) The Principal Reporter must be informed, as soon as reasonably practicable, that the person is being kept in a place of safety under subsection (3).

Changes to legislation: Criminal Justice (Scotland) Act 2016, CHAPTER 6 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](#)

- (3) The person must be kept in a place of safety under this subsection until the Principal Reporter makes a direction under section 65(2) of the Children's Hearings (Scotland) Act 2011.
- (4) An offence is a “relevant offence” for the purpose of subsection (1) if—
 - (a) it is the offence with which the person was officially accused, leading to the person being kept in the place of safety in accordance with section 22(2), or
 - (b) it is an offence arising from the same circumstances as the offence mentioned in paragraph (a).
- (5) In this section, “place of safety” has the meaning given in section 202(1) of the Children's Hearings (Scotland) Act 2011.

Commencement Information

19 S. 53 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#)

Changes to legislation:

Criminal Justice (Scotland) Act 2016, CHAPTER 6 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.

[View outstanding changes](#)

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\(a\)](#)