



Criminal Justice (Scotland) Act 2016

2016 asp 1

PART 1

ARREST AND CUSTODY

CHAPTER 1

ARREST BY POLICE

Arrest without warrant

1 Power of a constable

- (1) A constable may arrest a person without a warrant if the constable has reasonable grounds for suspecting that the person has committed or is committing an offence.
- (2) In relation to an offence not punishable by imprisonment, a constable may arrest a person under subsection (1) only if the constable is satisfied that it would not be in the interests of justice to delay the arrest in order to seek a warrant for the person's arrest.
- (3) Without prejudice to the generality of subsection (2), it would not be in the interests of justice to delay an arrest in order to seek a warrant if the constable reasonably believes that unless the person is arrested without delay the person will—
 - (a) continue committing the offence, or
 - (b) obstruct the course of justice in any way, including by—
 - (i) seeking to avoid arrest, or
 - (ii) interfering with witnesses or evidence.
- (4) For the avoidance of doubt, an offence is to be regarded as not punishable by imprisonment for the purpose of subsection (2) only if no person convicted of the offence can be sentenced to imprisonment in respect of it.

Status: This is the original version (as it was originally enacted).

2 Exercise of the power

- (1) A person may be arrested under section 1 more than once in respect of the same offence.
- (2) A person may not be arrested under section 1 in respect of an offence if the person has been officially accused of committing the offence or an offence arising from the same circumstances as the offence.
- (3) Where—
 - (a) a constable who is not in uniform arrests a person under section 1, and
 - (b) the person asks to see the constable's identification,the constable must show identification to the person as soon as reasonably practicable.

Procedure following arrest

3 Information to be given on arrest

When a constable arrests a person (or as soon afterwards as is reasonably practicable), a constable must inform the person—

- (a) that the person is under arrest,
- (b) of the general nature of the offence in respect of which the person is arrested,
- (c) of the reason for the arrest,
- (d) that the person is under no obligation to say anything, other than to give the information specified in section 34(4), and
- (e) of the person's right to have—
 - (i) intimation sent to a solicitor under section 43, and
 - (ii) access to a solicitor under section 44.

4 Arrested person to be taken to police station

- (1) Where a person is arrested by a constable outwith a police station, a constable must take the person as quickly as is reasonably practicable to a police station.
- (2) Subsection (1) ceases to apply, and the person must be released from police custody immediately, if—
 - (a) the person has been arrested without a warrant,
 - (b) the person has not yet arrived at a police station in accordance with this section, and
 - (c) in the opinion of a constable there are no reasonable grounds for suspecting that the person has committed—
 - (i) the offence in respect of which the person was arrested, or
 - (ii) an offence arising from the same circumstances as that offence.
- (3) For the avoidance of doubt, subsection (1) ceases to apply if, before arriving at a police station in accordance with this section, the person is released from custody under—
 - (a) section 25(2), or
 - (b) section 28(3A) of the 1995 Act.

5 Information to be given at police station

- (1) Subsections (2) and (3) apply when—
 - (a) a person is in police custody having been arrested at a police station, or
 - (b) a person is in police custody and has been taken to a police station in accordance with section 4.
- (2) The person must be informed as soon as reasonably practicable—
 - (a) that the person is under no obligation to say anything, other than to give the information specified in section 34(4),
 - (b) of any right the person has to have intimation sent and to have access to certain persons under—
 - (i) section 38,
 - (ii) section 40,
 - (iii) section 43,
 - (iv) section 44.
- (3) The person must be provided as soon as reasonably practicable with such information (verbally or in writing) as is necessary to satisfy the requirements of Articles 3 and 4 of Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings.

6 Information to be recorded by police

- (1) There must be recorded in relation to any arrest by a constable—
 - (a) the time and place of arrest,
 - (b) the general nature of the offence in respect of which the person is arrested,
 - (c) if the person is taken from one place to another while in police custody (including to a police station in accordance with section 4)—
 - (i) the place from which, and time at which, the person is taken, and
 - (ii) the place to which the person is taken and the time at which the person arrives there,
 - (d) the time at which, and the identity of the constable by whom, the person is informed of the matters mentioned in section 3,
 - (e) the time at which the person ceases to be in police custody.
- (2) Where relevant, there must be recorded in relation to an arrest by a constable—
 - (a) the reason that the constable who released the person from custody under subsection (2) of section 4 formed the opinion mentioned in paragraph (c) of that subsection,
 - (b) the time at which, and the identity of the person by whom, the person is—
 - (i) informed of the matters mentioned in subsection (2) of section 5, and
 - (ii) provided with information in accordance with subsection (3) of that section,
 - (c) the time at which, and the identity of the person by whom, the person is informed of the matters mentioned in section 20,
 - (d) the time at which the person requests that intimation be sent under—
 - (i) section 38,
 - (ii) section 43,
 - (e) the time at which intimation is sent under—

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- (i) section 38,
 - (ii) section 41,
 - (iii) section 42,
 - (iv) section 43.
- (3) Where a person is in police custody and not officially accused of committing an offence, there must be recorded the time, place and outcome of any decision under section 7.
- (4) Where a person is held in police custody by virtue of authorisation given under section 7 there must be recorded—
 - (a) the time at which the person is informed of the matters mentioned in section 8,
 - (b) the time, place and outcome of any custody review under section 13,
 - (c) the time at which any interview in the circumstances described in section 15(6) begins and the time at which it ends.
- (5) If a constable considers whether to give authorisation under section 11 there must be recorded—
 - (a) whether a reasonable opportunity to make representations has been afforded in accordance with subsection (4)(a) of that section,
 - (b) if the opportunity referred to in paragraph (a) has not been afforded, the reason for that,
 - (c) the time, place and outcome of the constable's decision, and
 - (d) if the constable's decision is to give the authorisation—
 - (i) the grounds on which it is given,
 - (ii) the time at which, and the identity of the person by whom, the person is informed and reminded of things in accordance with section 12, and
 - (iii) the time at which the person requests that intimation be sent under section 12(3)(a) and the time at which it is sent.
- (6) Where a person is held in police custody by virtue of authorisation given under section 11 there must be recorded—
 - (a) the time, place and outcome of any custody review under section 13,
 - (b) the time at which any interview in the circumstances described in section 15(6) begins and the time at which it ends.
- (7) If a person is released from police custody on conditions under section 16, there must be recorded—
 - (a) details of the conditions imposed, and
 - (b) the identity of the constable who imposed them.
- (8) If a person is charged with an offence by a constable while in police custody, there must be recorded the time at which the person is charged.

CHAPTER 2

CUSTODY: PERSON NOT OFFICIALLY ACCUSED

Keeping person in custody

7 Authorisation for keeping in custody

- (1) Subsection (2) applies where—
 - (a) a person is in police custody having been arrested without a warrant, and
 - (b) since being arrested, the person has not been charged with an offence by a constable.
- (2) Authorisation to keep the person in custody must be sought as soon as reasonably practicable after 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.
- (3) Authorisation may be given only by a constable who—
 - (a) is of the rank of sergeant or above, and
 - (b) has not been involved in the investigation in connection with which the person is in police custody.
- (4) Authorisation may be given only if that constable is satisfied that the test in section 14 is met.
- (5) If authorisation is refused, the person may continue to be held in police custody only if—
 - (a) a constable charges the person with an offence, or
 - (b) the person is detained under section 28(1A) of the 1995 Act (which allows for detention in connection with a breach of bail conditions).

8 Information to be given on authorisation

At the time when authorisation to keep a person in custody is given under section 7, the person must be informed of—

- (a) the reason that the person is being kept in custody, and
- (b) the 12 hour limit arising by virtue of section 9 and the fact that the person may be kept in custody for a further 12 hours under section 11.

9 12 hour limit: general rule

- (1) Subsection (2) applies when—
 - (a) a person has been held in police custody for a continuous period of 12 hours, beginning with the time at which authorisation was given under section 7, and
 - (b) during that period the person has not been charged with an offence by a constable.
- (2) The person may continue to be held in police custody only if—
 - (a) a constable charges the person with an offence,

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- (b) authorisation to keep the person in custody has been given under section 11, or
- (c) the person is detained under section 28(1A) of the 1995 Act (which allows for detention in connection with a breach of bail conditions).

10 12 hour limit: previous period

- (1) Subsection (2) applies where—
 - (a) a person is being held in police custody by virtue of authorisation given under section 7,
 - (b) authorisation has been given under that section to hold the person in police custody on a previous occasion, and
 - (c) the offence in connection with which the authorisation mentioned in paragraph (a) has been given is the same offence or arises from the same circumstances as the offence in connection with which the authorisation mentioned in paragraph (b) was given.
- (2) The 12 hour period mentioned in section 9 is reduced by the length of the period during which the person was held in police custody by virtue of the authorisation mentioned in subsection (1)(b).
- (3) Subsections (5) and (6) of section 15 apply for the purpose of calculating the length of the period during which the person was held in police custody by virtue of the authorisation mentioned in subsection (1)(b).

11 Authorisation for keeping in custody beyond 12 hour limit

- (1) A constable may give authorisation for a person who is in police custody to be kept in custody for a continuous period of 12 hours, beginning when the 12 hour period mentioned in section 9 ends.
- (2) Authorisation may be given only by a constable who—
 - (a) is of, or above, the rank of—
 - (i) inspector, if a constable believes the person to be 18 years of age or over,
 - (ii) chief inspector, if a constable believes the person to be under 18 years of age, and
 - (b) has not been involved in the investigation in connection with which the person is in police custody.
- (3) Authorisation may be given only if—
 - (a) the person has not been held in police custody by virtue of authorisation given under this section in connection with—
 - (i) the offence in connection with which the person is in police custody, or
 - (ii) an offence arising from the same circumstances as that offence, and
 - (b) the constable is satisfied that—
 - (i) the test in section 14 will be met when the 12 hour period mentioned in section 9 ends,
 - (ii) the offence in connection with which the person is in police custody is an indictable offence, and
 - (iii) the investigation is being conducted diligently and expeditiously.

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- (4) Before deciding whether or not to give authorisation the constable must—
 - (a) where practicable afford a reasonable opportunity to make verbal or written representations to—
 - (i) the person, or
 - (ii) if the person so chooses, the person’s solicitor, and
 - (b) have regard to any representations made.
- (5) If authorisation is given, it is deemed to be withdrawn if the person is released from police custody before the 12 hour period mentioned in section 9 ends.
- (6) Subsection (7) applies when—
 - (a) by virtue of authorisation given under this section, a person has been held in police custody for a continuous period of 12 hours (beginning with the time at which the 12 hour period mentioned in section 9 ended), and
 - (b) during that period the person has not been charged with an offence by a constable.
- (7) The person may continue to be held in police custody only if—
 - (a) a constable charges the person with an offence, or
 - (b) the person is detained under section 28(1A) of the 1995 Act (which allows for detention in connection with a breach of bail conditions).

12 Information to be given on authorisation under section 11

- (1) This section applies when authorisation to keep a person in custody is given under section 11.
- (2) The person must be informed—
 - (a) that the authorisation has been given, and
 - (b) of the grounds on which it has been given.
- (3) The person—
 - (a) has the right to have the information mentioned in subsection (2) intimated to a solicitor, and
 - (b) must be informed of that right.
- (4) The person must be reminded about any right which the person has under Chapter 5.
- (5) Subsection (4) does not require that a person be reminded 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.
- (6) Information to be given under subsections (2), (3)(b) and (4) must be given to the person as soon as reasonably practicable after the authorisation is given.
- (7) Where the person requests that intimation be sent under subsection (3)(a), the intimation must be sent as soon as reasonably practicable.

13 Custody review

- (1) A custody review must be carried out—
 - (a) when a person has been held in police custody for a continuous period of 6 hours by virtue of authorisation given under section 7, and
 - (b) again, if authorisation to keep the person in police custody is given under section 11, when the person has been held in custody for a continuous period of 6 hours by virtue of that authorisation.
- (2) A custody review entails the consideration by a constable of whether the test in section 14 is met.
- (3) A custody review must be carried out by a constable who—
 - (a) is of the rank of inspector or above, and
 - (b) has not been involved in the investigation in connection with which the person is in police custody.
- (4) If the constable is not satisfied that the test in section 14 is met, the person may continue to be held in police custody only if—
 - (a) a constable charges the person with an offence, or
 - (b) the person is detained under section 28(1A) of the 1995 Act (which allows for detention in connection with a breach of bail conditions).

14 Test for sections 7, 11 and 13

- (1) For the purposes of sections 7(4), 11(3)(b) and 13(2), the test is that—
 - (a) there are reasonable grounds for suspecting that the person has committed an offence, and
 - (b) keeping the person in custody is necessary and proportionate for the purposes of bringing the person before a court or otherwise dealing with the person in accordance with the law.
- (2) Without prejudice to the generality of subsection (1)(b), in considering what is necessary and proportionate for the purpose mentioned in that subsection regard may be had to—
 - (a) whether the person's presence is reasonably required to enable the offence to be investigated fully,
 - (b) whether the person (if liberated) would be likely to interfere with witnesses or evidence, or otherwise obstruct the course of justice,
 - (c) the nature and seriousness of the offence.

15 Medical treatment

- (1) Subsection (2) applies when—
 - (a) a person is in police custody having been arrested without a warrant,
 - (b) since being arrested, the person has not been charged with an offence by a constable, and
 - (c) the person is at a hospital for the purpose of receiving medical treatment.
- (2) If authorisation to keep the person in custody has not been given under section 7, that section has effect as if—

- (a) each reference in subsection (2) of that section to a police station were a reference to the hospital, and
 - (b) the words after the reference to a police station in paragraph (b) of that subsection were omitted.
- (3) Where authorisation is given under section 7 when a person is at a hospital, authorisation under that section need not be sought again if, while still in custody, the person is taken to a police station in accordance with section 4.
- (4) Subsections (5) and (6) apply for the purpose of calculating the 12 hours mentioned in sections 9 and 11.
- (5) Except as provided for in subsection (6), no account is to be taken of any period during which a person is—
 - (a) at a hospital for the purpose of receiving medical treatment, or
 - (b) being taken as quickly as is reasonably practicable—
 - (i) to a hospital for the purpose of receiving medical treatment, or
 - (ii) to a police station from a hospital to which the person was taken for the purpose of receiving medical treatment.
- (6) Account is to be taken of any period during which a person is both—
 - (a) at a hospital, or being taken to or from one, and
 - (b) being interviewed by a constable in relation to an offence which the constable has reasonable grounds to suspect the person of committing.

Investigative liberation

16 Release on conditions

- (1) Subsection (2) applies where—
 - (a) a person is being held in police custody by virtue of authorisation given under section 7,
 - (b) a constable has reasonable grounds for suspecting that the person has committed a relevant offence, and
 - (c) either—
 - (i) the person has not been subject to a condition imposed under subsection (2) in connection with a relevant offence, or
 - (ii) it has not been more than 28 days since the first occasion on which a condition was imposed on the person under subsection (2) in connection with a relevant offence.
- (2) If releasing the person from custody, a constable may impose any condition that an appropriate constable considers necessary and proportionate for the purpose of ensuring the proper conduct of the investigation into a relevant offence (including, for example, a condition aimed at securing that the person does not interfere with witnesses or evidence).
- (3) A condition under subsection (2)—
 - (a) may not require the person to be in a specified place at a specified time,
 - (b) may require the person—

Status: This is the original version (as it was originally enacted).

- (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.
- (4) A condition imposed under subsection (2) is a liberation condition for the purposes of schedule 1.
- (5) In subsection (2), “an appropriate constable” means a constable of the rank of sergeant or above.
- (6) In this section, “a relevant offence” means—
 - (a) the offence in connection with which the authorisation under section 7 has been given, or
 - (b) an offence arising from the same circumstances as that offence.

17 Conditions ceasing to apply

- (1) A condition imposed on a person under section 16(2) ceases to apply—
 - (a) at the end of the day falling 28 days after the first occasion on which a condition was imposed on the person under section 16(2) in connection with a relevant offence, or
 - (b) before then, if—
 - (i) the condition is removed by a notice under section 18,
 - (ii) the person is arrested in connection with a relevant offence,
 - (iii) the person is officially accused of committing a relevant offence, or
 - (iv) the condition is removed by the sheriff under section 19.
- (2) In subsection (1), “a relevant offence” means—
 - (a) the offence in connection with which the condition was imposed, or
 - (b) an offence arising from the same circumstances as that offence.

18 Modification or removal of conditions

- (1) A constable may by notice modify or remove a condition imposed under section 16(2).
- (2) A notice under subsection (1)—
 - (a) is to be given in writing to the person who is subject to the condition,
 - (b) must specify the time from which the condition is modified or removed.
- (3) A constable of the rank of inspector or above must keep under review whether or not—
 - (a) there are reasonable grounds for suspecting that a person who is subject to a condition imposed under section 16(2) has committed a relevant offence, and
 - (b) the condition imposed remains necessary and proportionate for the purpose of ensuring the proper conduct of the investigation into a relevant offence.
- (4) Where the constable referred to in subsection (3) is no longer satisfied as to the matter mentioned in paragraph (a) of that subsection, a constable must give notice to the person removing any condition imposed in connection with a relevant offence.

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- (5) Where the constable referred to in subsection (3) is no longer satisfied as to the matter mentioned in paragraph (b) of that subsection, a constable must give notice to the person—
 - (a) modifying the condition in question, or
 - (b) removing it.
- (6) Where a duty to give notice to a person arises under subsection (4) or (5), the notice—
 - (a) is to be given in writing to the person as soon as practicable, and
 - (b) must specify, as the time from which the condition is modified or removed, the time at which the duty to give the notice arose.
- (7) The modification or removal of a condition under subsection (1), (4) or (5) requires the authority of a constable of the rank of inspector or above.
- (8) In this section, “a relevant offence” means—
 - (a) the offence in connection with which the condition was imposed, or
 - (b) an offence arising from the same circumstances as that offence.

19 Review of conditions

- (1) A person who is subject to a condition imposed under section 16(2) 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—
 - (a) remove the condition, or
 - (b) impose an alternative condition that the sheriff considers to be necessary and proportionate for that purpose.
- (4) For the purposes of sections 17 and 18, a condition imposed by the sheriff under subsection (3)(b) is to be regarded as having been imposed under section 16(2).

CHAPTER 3

CUSTODY: PERSON OFFICIALLY ACCUSED

Person to be brought before court

20 Information to be given if sexual offence

- (1) Subsection (2) applies when—
 - (a) a person is in police custody having been arrested under a warrant in respect of a sexual offence to which section 288C of the 1995 Act applies, 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 a sexual offence to which section 288C of the 1995 Act applies.

Status: This is the original version (as it was originally enacted).

- (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 (within the meaning of section 288C(1A) of the 1995 Act) 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.

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 (other than a warrant granted under section 37(1)), or
 - (b) the 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) 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).

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).
- (4) A certificate under subsection (3) must be produced to the court when the person is brought before it.

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(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.

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.

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—

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- (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.

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).

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—

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- (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—
 - (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.

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.

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.

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- (3) Notice under subsection (1) must be effected in a manner by which citation may be effected under section 141 of the 1995 Act.
- (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).

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).

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.

CHAPTER 4

POLICE INTERVIEW

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.

32 Right to have solicitor present

- (1) Subsections (2) and (3) apply to a person who—
- (a) is in police custody, or

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- (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.
- (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.

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—
 - (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.

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.

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.

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.

Status: This is the original version (as it was originally enacted).

- (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).

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
 - (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)—

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- (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.

CHAPTER 5

RIGHTS OF SUSPECTS IN POLICE CUSTODY

Intimation and access to another person

38 Right to have intimation sent to other person

- (1) A person in police custody has the right to have intimation sent to another person of—
 - (a) the fact that the person is in custody,
 - (b) the place where the person is in custody.
- (2) Intimation under subsection (1) must be sent—
 - (a) where a constable believes that the person in custody is under 16 years of age, regardless of whether the person requests that it be sent,
 - (b) in any other case, if the person requests that it be sent.
- (3) The person to whom intimation is to be sent under subsection (1) is—
 - (a) where a constable believes that the person in custody is under 16 years of age, a parent of the person,
 - (b) in any other case, an adult reasonably named by the person in custody.
- (4) Intimation under subsection (1) must be sent—
 - (a) as soon as reasonably practicable, or
 - (b) if subsection (5) applies, with no more delay than is necessary.
- (5) This subsection applies where an appropriate constable considers some delay to be necessary in the interests of—
 - (a) the investigation or prevention of crime,
 - (b) the apprehension of offenders, or
 - (c) safeguarding and promoting the wellbeing of the person in custody, where a constable believes that person to be under 18 years of age.
- (6) In subsection (5), “an appropriate constable” means a constable who—
 - (a) is of the rank of sergeant or above, and
 - (b) has not been involved in the investigation in connection with which the person is in custody.
- (7) The sending of intimation may be delayed by virtue of subsection (5)(c) only for so long as is necessary to ascertain whether a local authority will arrange for someone to visit the person in custody under section 41(2).

(8) In this section and section 39—

“adult” means person who is at least 18 years of age,

“parent” includes guardian and any person who has the care of the person in custody.

39 Right to have intimation sent: under 18s

(1) This section applies where a constable believes that a person in police custody is under 18 years of age.

(2) At the time of sending intimation to a person under section 38(1), that person must be asked to attend at the police station or other place where the person in custody is being held.

(3) Subsection (2) does not apply if—

- (a) a constable believes that the person in custody is 16 or 17 years of age, and
- (b) the person in custody requests that the person to whom intimation is to be sent under section 38(1) is not asked to attend at the place where the person in custody is being held.

(4) Subsections (5) and (6) apply where—

- (a) it is not practicable or possible to contact, within a reasonable time, the person to whom intimation is to be sent by virtue of section 38(3),
- (b) the person to whom intimation is sent by virtue of section 38(3), if asked to attend at the place where the person in custody is being held, claims to be unable or unwilling to attend within a reasonable time, or
- (c) a local authority, acting under section 41(9)(a), has advised against sending intimation to the person to whom intimation is to be sent by virtue of section 38(3).

(5) Section 38(3) ceases to have effect.

(6) Attempts to send intimation to an appropriate person under section 38(1) must continue to be made until—

- (a) an appropriate person is contacted and agrees to attend, within a reasonable time, at the police station or other place where the person in custody is being held, or
- (b) if a constable believes that the person in custody is 16 or 17 years of age, the person requests that (for the time being) no further attempt to send intimation is made.

(7) In subsection (6), “an appropriate person” means—

- (a) if a constable believes that the person in custody is under 16 years of age, a person the constable considers appropriate having regard to the views of the person in custody,
- (b) if a constable believes that the person in custody is 16 or 17 years of age, an adult who is named by the person in custody and to whom a constable is willing to send intimation without a delay by virtue of section 38(5)(a) or (b).

(8) The reference in subsection (4)(a) to its not being possible to contact a person within a reasonable time includes the case where, by virtue of section 38(5)(a) or (b), a constable delays sending intimation to the person.

40 Right of under 18s to have access to other person

- (1) Access to a person in police custody who a constable believes is under 16 years of age must be permitted to—
 - (a) a parent of the person,
 - (b) where a parent is not available, a person sent intimation under section 38 in respect of the person in custody.
- (2) Access to a person in police custody who a constable believes is 16 or 17 years of age must be permitted to a person sent intimation under section 38 in respect of the person in custody where the person in custody wishes to have access to the person sent intimation.
- (3) Access to a person in custody under subsection (1) or (2) need not be permitted to more than one person at the same time.
- (4) In exceptional circumstances, access under subsection (1) or (2) may be refused or restricted so far as the refusal or restriction is necessary—
 - (a) in the interests of—
 - (i) the investigation or prevention of crime, or
 - (ii) the apprehension of offenders, or
 - (b) for the wellbeing of the person in custody.
- (5) A decision to refuse or restrict access to a person in custody under subsection (1) or (2) may be taken only by a constable who—
 - (a) is of the rank of sergeant or above, and
 - (b) has not been involved in the investigation in connection with which the person is in custody.
- (6) In this section, “parent” includes guardian and any person who has the care of the person in custody.

41 Social work involvement in relation to under 18s

- (1) Intimation of the fact that a person is in police custody and the place where the person is in custody must be sent to a local authority as soon as reasonably practicable if—
 - (a) a constable believes that the person may be subject to a supervision order, or
 - (b) by virtue of subsection (5)(c) of section 38, a constable has delayed sending intimation in respect of the person under subsection (1) of that section.
- (2) A local authority sent intimation under subsection (1) may arrange for someone to visit the person in custody if—
 - (a) the person is subject to a supervision order, or
 - (b) the local authority—
 - (i) believes the person to be under 16 years of age, and
 - (ii) has grounds to believe that its arranging someone to visit the person would best safeguard and promote the person’s wellbeing (having regard to the effect of subsection (4)(a)).
- (3) Before undertaking to arrange someone to visit the person in custody under subsection (2), the local authority must be satisfied that anyone it arranges to visit the person in custody will be able to make the visit within a reasonable time.

- (4) Where a local authority arranges for someone to visit the person in custody under subsection (2)—
 - (a) sections 38 and 40 cease to have effect, and
 - (b) the person who the local authority has arranged to visit the person in custody must be permitted access to the person in custody.
- (5) In exceptional circumstances, access under subsection (4)(b) may be refused or restricted so far as the refusal or restriction is necessary—
 - (a) in the interests of—
 - (i) the investigation or prevention of crime, or
 - (ii) the apprehension of offenders, or
 - (b) for the wellbeing of the person in custody.
- (6) A decision to refuse or restrict access to a person in custody under subsection (4)(b) may be taken only by a constable who—
 - (a) is of the rank of sergeant or above, and
 - (b) has not been involved in the investigation in connection with which the person is in custody.
- (7) Where a local authority sent intimation under subsection (1) confirms that the person in custody is—
 - (a) over 16 years of age, and
 - (b) subject to a supervision order,
 sections 38 to 40 are to be applied in respect of the person as if a constable believes the person to be under 16 years of age.
- (8) Subsection (9) applies where a local authority might have arranged for someone to visit a person in custody under subsection (2) but—
 - (a) chose not to do so, or
 - (b) was precluded from doing so by subsection (3).
- (9) The local authority may—
 - (a) advise a constable that the person to whom intimation is to be sent by virtue of section 38(3) should not be sent intimation if the local authority has grounds to believe that sending intimation to that person may be detrimental to the wellbeing of the person in custody, and
 - (b) give advice as to who might be an appropriate person to a constable considering that matter under section 39(7) (and the constable must have regard to any such advice).
- (10) In this section, “supervision order” means compulsory supervision order, or interim compulsory supervision order, made under the Children’s Hearings (Scotland) Act 2011.

Vulnerable persons

42 Support for vulnerable persons

- (1) Subsection (2) applies where—
 - (a) a person is in police custody,
 - (b) a constable believes that the person is 16 years of age or over, and

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- (c) owing to mental disorder, the person appears to the constable to be unable to—
 - (i) understand sufficiently what is happening, or
 - (ii) communicate effectively with the police.
- (2) With a view to facilitating the provision of support of the sort mentioned in subsection (3) to the person as soon as reasonably practicable, the constable must ensure that intimation of the matters mentioned in subsection (4) is sent to a person who the constable considers is suitable to provide the support.
- (3) That is, support to—
 - (a) help the person in custody to understand what is happening, and
 - (b) facilitate effective communication between the person and the police.
- (4) Those matters are—
 - (a) the place where the person is in custody, and
 - (b) that support of the sort mentioned in subsection (3) is, in the view of the constable, required by the person.
- (5) In this section—
 - (a) “mental disorder” has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003,
 - (b) the references to the police are 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.

Intimation and access to a solicitor

43 Right to have intimation sent to solicitor

- (1) A person who is in police custody has the right to have intimation sent to a solicitor of any or all of the following—
 - (a) the fact that the person is in custody,
 - (b) the place where the person is in custody,
 - (c) that the solicitor’s professional assistance is required by the person,
 - (d) if the person has been officially accused of an offence—
 - (i) whether the person is to be released from custody, and
 - (ii) where the person is not to be released, the court before which the person is to be brought in accordance with section 21(2) and the date on which the person is to be brought before that court.
- (2) Where the person requests that intimation be sent under subsection (1), the intimation must be sent as soon as reasonably practicable.

44 Right to consultation with solicitor

- (1) A person who is in police custody has the right to have a private consultation with a solicitor at any time.
- (2) In exceptional circumstances, the person’s exercise of the right under subsection (1) may be delayed so far as that is necessary in the interests of—

- (a) the investigation or the prevention of crime, or
 - (b) the apprehension of offenders.
- (3) A decision to delay the person's exercise of the right under subsection (1) may be taken only by a constable who—
 - (a) is of the rank of sergeant or above, and
 - (b) has not been involved in the investigation in connection with which the person is in custody.
- (4) In subsection (1), “consultation” means consultation by such method as may be appropriate in the circumstances and includes (for example) consultation by telephone.

CHAPTER 6

POLICE POWERS AND DUTIES

Powers of police

45 Use of reasonable force

A constable may use reasonable force—

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

46 Common law power of entry

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

47 Common law power of search etc.

- (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.

48 Power of search etc. on arrest

- (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—
 - (a) is in police custody having been arrested without a warrant, and

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- (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.

49 Taking drunk persons to designated place

- (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.

Duties of police

50 Duty not to detain unnecessarily

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

51 Duty to consider child’s wellbeing

- (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
 - (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.

52 Duties in relation to children in custody

- (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.

53 Duty to inform Principal Reporter if child not being prosecuted

- (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).
- (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.

CHAPTER 7

GENERAL

Common law and enactments

54 Abolition of pre-enactment powers of arrest

A constable has no power to arrest a person without a warrant in respect of an offence that has been or is being committed other than—

- (a) the power of arrest conferred by section 1,
- (b) the power of arrest conferred by section 41(1) of the Terrorism Act 2000.

55 Abolition of requirement for constable to charge

Any rule of law that requires a constable to charge a person with an offence in particular circumstances is abolished.

56 Consequential modification

Schedule 2 contains repeals and other provisions consequential on this Part.

Status: This is the original version (as it was originally enacted).

Code of practice about investigative functions

57 Code of practice about investigative functions

- (1) The Lord Advocate must issue a code of practice on—
 - (a) the questioning, and recording of questioning, of persons suspected of committing offences, and
 - (b) the conduct of identification procedures involving such persons.
- (2) The Lord Advocate—
 - (a) must keep the code of practice issued under subsection (1) under review,
 - (b) may from time to time revise the code of practice.
- (3) The code of practice is to apply to the functions exercisable by or on behalf of—
 - (a) the Police Service of Scotland,
 - (b) such other bodies as are specified in the code (being bodies responsible for reporting offences to the procurator fiscal).
- (4) Before issuing the code of practice, the Lord Advocate must consult publicly on a draft of the code.
- (5) When preparing a draft of the code of practice for public consultation, the Lord Advocate must consult—
 - (a) the Lord Justice General,
 - (b) the Faculty of Advocates,
 - (c) the Law Society of Scotland,
 - (d) the Scottish Police Authority,
 - (e) the chief constable of the Police Service of Scotland,
 - (f) the Scottish Human Rights Commission,
 - (g) the Commissioner for Children and Young People in Scotland, and
 - (h) such other persons as the Lord Advocate considers appropriate.
- (6) The Lord Advocate must lay before the Scottish Parliament a copy of the code of practice issued under this section.
- (7) A court or tribunal in civil or criminal proceedings must take the code of practice into account when determining any question arising in the proceedings to which the code is relevant.
- (8) Breach of the code of practice does not of itself give rise to grounds for any legal claim whatsoever.
- (9) Subsections (3) to (8) apply to a revised code of practice under subsection (2)(b) as they apply to the code of practice issued under subsection (1).

Disapplication of Part

58 Disapplication in relation to service offences

- (1) References in this Part to an offence do not include a service offence.
- (2) Nothing in this Part applies in relation to a person who is arrested in respect of a service offence.

- (3) In this section, “service offence” has the meaning given by section 50(2) of the Armed Forces Act 2006.

59 Disapplication in relation to terrorism offences

- (1) Nothing in this Part applies in relation to a person who is arrested under section 41(1) of the Terrorism Act 2000.
- (2) Subsection (1) is subject to paragraph 18 of Schedule 8 to the Terrorism Act 2000.

Powers to modify Part

60 Further provision about application of Part

- (1) The Scottish Ministers may by regulations modify this Part to provide that some or all of it—
- (a) applies in relation to persons to whom it would otherwise not apply because of—
 - (i) section 58, or
 - (ii) section 59,
 - (b) does not apply in relation to persons arrested otherwise than under section 1.
- (2) The Scottish Ministers may by regulations make such modifications to this Part as seem to them necessary or expedient in relation to its application to persons mentioned in subsection (1).
- (3) Regulations under this section may make different provision for different purposes.
- (4) Regulations under this section are subject to the affirmative procedure.

61 Further provision about vulnerable persons

- (1) The Scottish Ministers may by regulations—
- (a) amend subsections (2)(c) and (6) of section 33,
 - (b) amend subsections (1)(c), (3) and (5) of section 42,
 - (c) specify descriptions of persons who may for the purposes of subsection (2) of section 42 be considered suitable to provide support of the sort mentioned in subsection (3) of that section (including as to training, qualifications and experience).
- (2) Regulations under subsection (1) are subject to the affirmative procedure.

Interpretation of Part

62 Meaning of constable

In this Part, “constable” has the meaning given by section 99(1) of the Police and Fire Reform (Scotland) Act 2012.

63 Meaning of officially accused

For the purposes of this Part, a person is officially accused of committing an offence if—

- (a) a constable charges the person with the offence, or
- (b) the prosecutor initiates proceedings against the person in respect of the offence.

64 Meaning of police custody

(1) For the purposes of this Part, a person is in police custody from the time the person is arrested by a constable until any one of the events mentioned in subsection (2) occurs.

(2) The events are—

- (a) the person is released from custody,
- (b) the person is brought before a court in accordance with section 21(2),
- (c) the person is brought before a court under section 28(2) or (3) of the 1995 Act,
- (d) the Principal Reporter makes a direction under section 65(2)(b) of the Children's Hearings (Scotland) Act 2011 that the person continue to be kept in a place of safety.