Police and Criminal Evidence Act 1984

1984 CHAPTER 60

PART IV

DETENTION

Detention—conditions and duration

34 Limitations on police detention.

(1) A person arrested for an offence shall not be kept in police detention except in accordance with the provisions of this Part of this Act.

(2) Subject to subsection (3) below, if at any time a custody officer—

(a) becomes aware, in relation to any person in police detention, that the grounds for the detention of that person have ceased to apply; and

(b) is not aware of any other grounds on which the continued detention of that person could be justified under the provision of this part of this Act,

it shall be the duty of the custody officer, subject to subsection (4) below, to order his immediate release from custody.

(3) No person in police detention shall be released except on the authority of a custody officer at the police station where his detention was authorised or, if it was authorised at more than one station, a custody officer at the station where it was last authorised.

(4) A person who appears to the custody officer to have been unlawfully at large when he was arrested is not to be released under subsection (2) above.

(5) A person whose release is ordered under subsection (2) above shall be released without bail unless it appears to the custody officer—

(a) that there is a need for further investigation of any matter in connection with which he was detained at any time during that period of his detention; or

[[F1](b) that, in respect of any such matter, proceedings may be taken against him or he may be reprimanded or warned under section 65 of the [M1]Crime and Disorder Act 1998]

and, if it so appears, he shall be released on bail.

(6) For the purposes of this Part of this Act a person arrested under **[**[F2]section 6(5) of the Road Traffic Act 1988**][**[F3]or section 30(2) of the Transport and Works Act 1992 (c. 42)**]** is arrested for an offence.

[[F4](7) For the purposes of this Part a person who—

(a) attends a police station to answer to bail granted under section 30A,

(b) returns to a police station to answer to bail granted under this Part, or

(c) is arrested under section 30D or 46A,

is to be treated as arrested for an offence and that offence is the offence in connection with which he was granted bail.

[[F5]But this subsection is subject to section 47(6) (which provides for the calculation of certain periods, where a person has been granted bail under this Part, by reference to time when the person is in police detention only).**]]**

Textual Amendments

F1 S. 34(5)(b) substituted (1.2.2001) by 2000 c. 43, **s. 56(2)**; S.I. 2000/3302, **art. 3(a)**

F2 Words substituted by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), s. 4, **Sch. 3 para. 27(2)**

F3 Words in s. 34(6) inserted (1.4.2003) by Police Reform Act 2002 (c. 30), **ss. 53(1)**, 108(2)-(5); S.I. 2003/808, **art. 2(d)**

F4 S. 34(7) substituted (20.1.2004) by Criminal Justice Act 2003 (c. 44), ss. 12, 336, **Sch. 1 para. 5**; S.I. 2004/81, **art. 2(1)(2)(a)**

F5 Words in s. 34(7) inserted (retrospectively) by Police (Detention and Bail) Act 2011 (c. 9), **s. 1(2)(3)**

Modifications etc. (not altering text)

C1 Ss. 8, 9, 15, 16, 17(1)(b)(2) (4), 18-20, 21, 22(1)-(4), 28, 29, 30(1)-(4)(a)(5)-(11), 31, 32(1)-(9), 34(1)-(5), 35, 36, 37, 39, 40-44, 50, 51(d), 52, 54, 55, 64(1)-(4)(5)(6), Sch. 1 applied with modifications by S.I. 1985/1800, arts. 3-11, Schs. 1, **2**

C2 S. 34(1)-(5) modified (2.8.1993) by S.I. 1993/1813, art. 6, **Sch. 3 para. 3(3)**.

Marginal Citations

M1 1998 c. 37.

35 Designated police stations.

(1) The chief officer of police for each police area shall designate the police stations in his area which, subject to **[**[F6]sections 30(3) and (5), 30A(5) and 30D(2)**]** , are to be the stations in that area to be used for the purpose of detaining arrested persons.

(2) A chief officer's duty under subsection (1) above is to designate police stations appearing to him to provide enough accommodation for that purpose.

[[F7](2A) The Chief Constable of the British Transport Police Force may designate police stations which (in addition to those designated under subsection (1) above) may be used for the purpose of detaining arrested persons.**]**

(3) Without prejudice to section 12 of the [M2]Interpretation Act 1978 (continuity of duties) a chief officer—

(a) may designate a station which was not previously designated; and

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(b) may direct that a designation of a station previously made shall cease to operate.

(4) In this Act "designated police station" means a police station for the time being designated under this section.

Textual Amendments

F6 Words in s. 35(1) substituted (20.1.2004) by Criminal Justice Act 2003 (c. 44), ss. 12, 336, **Sch. 1 para. 6**; S.I. 2004/81, **art. 2(1)(2)(a)**

F7 S. 35(2A) inserted (14.12.2001) by 2001 c. 24, ss. 101, **Sch. 7 para. 12**

Modifications etc. (not altering text)

C3 Ss. 8, 9, 15, 16, 17(1)(b)(2) (4), 18-20, 21, 22(1)-(4), 28, 29, 30(1)-(4)(a)(5)-(11), 31, 32(1)-(9), 34(1)-(5), 35, 36, 37, 39, 40-44, 50, 51(d), 52, 54, 55, 64(1)-(4)(5)(6), Sch. 1 applied with modifications by S.I. 1985/1800, arts. 3-11, Schs. 1, **2**

C4 S. 35 amended (1.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 73, 120, **Sch. 5 para. 4** (with s. 72); S.I. 2004/1572, **art. 3(ddd)(jjj)**

Marginal Citations

M2 1978 c. 30.

36 Custody officers at police stations.

(1) One or more custody officers shall be appointed for each designated police station.

(2) A custody officer for **[**[F8]a police station designated under section 35(1) above**]** shall be appointed—

(a) by the chief officer of police for the area in which the designated police station is situated; or

(b) by such other police officer as the chief officer of police for that area may direct.

[[F9](2A) A custody officer for a police station designated under section 35(2A) above shall be appointed—

(a) by the Chief Constable of the British Transport Police Force; or

(b) by such other member of that Force as that Chief Constable may direct.**]**

(3) No officer may be appointed a custody officer unless he is of at least the rank of sergeant.

(4) An officer of any rank may perform the functions of a custody officer at a designated police station if a custody officer is not readily available to perform them.

(5) Subject to the following provisions of this section and to section 39(2) below, none of the functions of a custody officer in relation to a person shall be performed by an officer who at the time when the function falls to be performed is involved in the investigation of an offence for which that person is in police detention at that time.

(6) Nothing in subsection (5) above is to be taken to prevent a custody officer—

(a) performing any function assigned to custody officers—

(i) by this Act; or

(ii) by a code of practice issued under this Act;

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(b) carrying out the duty imposed on custody officers by section 39 below;

(c) doing anything in connection with the identification of a suspect; or

(d) doing anything under **[**[F10]sections 7 and 8 of the Road Traffic Act 1988**]**.

(7) Where an arrested person is taken to a police station which is not a designated police station, the functions in relation to him which at a designated police station would be the functions of a custody officer shall be performed—

(a) by an officer who is not involved in the investigation of an offence for which he is in police detention, if such an officer is readily available; and

(b) if no such officer is readily available, by the officer who took him to the station or any other officer.

[[F11](7A) Subject to subsection (7B), subsection (7) applies where a person attends a police station which is not a designated station to answer to bail granted under section 30A as it applies where a person is taken to such a station.

(7B) Where subsection (7) applies because of subsection (7A), the reference in subsection (7)(b) to the officer who took him to the station is to be read as a reference to the officer who granted him bail.**]**

(8) References to a custody officer in the following provisions of this Act include references to an officer other than a custody officer who is performing the functions of a custody officer by virtue of subsection (4) or (7) above.

(9) Where by virtue of subsection (7) above an officer of a force maintained by a police authority who took an arrested person to a police station is to perform the functions of a custody officer in relation to him, the officer shall inform an officer who—

(a) is attached to a designated police station; and

(b) is of at least the rank of inspector,

that he is to do so.

(10) The duty imposed by subsection (9) above shall be performed as soon as it is practicable to perform it.

Textual Amendments

F8 Words in s. 36(2) substituted (14.12.2001) by 2001 c. 24, s. 107, **Sch. 7 para. 13(2)**

F9 S. 36(2A) inserted (14.12.2001) by 2001 c. 24, s. 107, **Sch. 7 para. 13(3)**

F10 Words substituted by Road Traffic (Consequential Provisions) Act 1988 (c.54, SIF 107:1), s. 4, **Sch. 3 para. 27(3)**

F11 S. 36(7A)(7B) inserted (20.1.2004) by Criminal Justice Act 2003 (c. 44), ss. 12, 336, **Sch. 1 para. 7**; S.I. 2004/81, **art. 2(1)(2)(a)**

Modifications etc. (not altering text)

C5 Ss. 8, 9, 15, 16, 17(1)(b)(2) (4), 18-20, 21, 22(1)-(4), 28, 29, 30(1)-(4)(a)(5)-(11), 31, 32(1)-(9), 34(1)-(5), 35, 36, 37, 39, 40-44, 50, 51(d), 52, 54, 55, 64(1)-(4)(5)(6), Sch. 1 applied with modifications by S.I. 1985/1800, arts. 3-11, Schs. 1, **2**

C6 S. 36 modified (2.8.1993) by S.I. 1993/1813, art. 6, **Sch. 3 para. 3(3)**; s. 36 modified by the said S.I.1993/1813, art. 6, **Sch. 3 para. 3(3)** as incorporated (with modifications) (1.12.1997) by S.I. 1994/1405, art. 6, **Sch. 3 para. 4(b)**

C7 S. 36 applied (with modifications) by Criminal Justice Act 2003 (c. 44), s. 24B(1)-(3) (as inserted (29.6.2007) by Police and Justice Act 2006 (c. 48), **ss. 18(1)**, 53 (with s. 18(2)); S.I. 2007/1614, **art. 2(e)**)

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C8 S. 36 amended (1.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 73, 120, **Sch. 5 para. 4** (with s. 72); S.I. 2004/1572, **art. 3(ddd)(jjj)**

C9 S. 36(7)(8) extended (2.8.1993) by S.I. 1993/1813, art. 6, Sch. 3 paras. 1(2)(b), **3(2)**; s. 36(7)(8) extended by the said S.I. 1993/1813, art. 6, Sch. 3 paras. 3(2), **4** as incorporated (with modifications) (1.12.1997) by S.I. 1994/1405, art. 6, Sch. 3 paras. 4(b), **5**

37 Duties of custody officer before charge.

(1) Where—

(a) a person is arrested for an offence—

(i) without a warrant; or

(ii) under a warrant not endorsed for bail, [F12]. . .

(b) . . . . . .

the custody officer at each police station where he is detained after his arrest shall determine whether he has before him sufficient evidence to charge that person with the offence for which he was arrested and may detain him at the police station for such period as is necessary to enable him to do so.

(2) If the custody officer determines that he does not have such evidence before him, the person arrested shall be released either on bail or without bail, unless the custody officer has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him.

(3) If the custody officer has reasonable grounds for so believing, he may authorise the person arrested to be kept in police detention.

(4) Where a custody officer authorises a person who has not been charged to be kept in police detention, he shall, as soon as is practicable, make a written record of the grounds for the detention.

(5) Subject to subsection (6) below, the written record shall be made in the presence of the person arrested who shall at that time be informed by the custody officer of the grounds for his detention.

(6) Subsection (5) above shall not apply where the person arrested is, at the time when the written record is made—

(a) incapable of understanding what is said to him;

(b) violent or likely to become violent; or

(c) in urgent need of medical attention.

(7) Subject to section 41(7) below, if the custody officer determines that he has before him sufficient evidence to charge the person arrested with the offence for which he was arrested, the person arrested—

[[F13](a) shall be released without charge and on bail for the purpose of enabling the Director of Public Prosecutions to make a decision under section 37B below,

(b) shall be released without charge and on bail but not for that purpose,

(c) shall be released without charge and without bail, or

(d) shall be charged.**]**

[[F14](7A) The decision as to how a person is to be dealt with under subsection (7) above shall be that of the custody officer.

(7B) Where a person is released under subsection (7)(a) above, it shall be the duty of the custody officer to inform him that he is being released to enable the Director of Public Prosecutions to make a decision under section 37B below.**]**

(8) Where—

(a) a person is released under subsection (7)(b) **[**[F15]or (c)**]** above; and

(b) at the time of his release a decision whether he should be prosecuted for the offence for which he was arrested has not been taken,

it shall be the duty of the custody officer so to inform him.

(9) If the person arrested is not in a fit state to be dealt with under subsection (7) above, he may be kept in police detention until he is.

(10) The duty imposed on the custody officer under subsection (1) above shall be carried out by him as soon as practicable after the person arrested arrives at the police station or, in the case of a person arrested at the police station, as soon as practicable after the arrest.

[F16](11) . . . . . .

[F16](12) . . . . . .

[F16](13) . . . . . .

[F16](14) . . . . . .

(15) In this Part of this Act—

"arrested juvenile" means a person arrested with or without a warrant who appears to be under the age of 17 [F17] . . .;

"endorsed for bail" means endorsed with a direction for bail in accordance with section 117(2) of the [M3]Magistrates' Courts Act 1980.

Textual Amendments

F12 S. 37(1)(b) and the word "or" preceeding it repealed (10.4.1995) by 1994 c. 33, ss. 29(4)(a)(5), 168(3), **Sch.11**; S.I. 1995/721, art. 2, **Sch.** AppendixB

F13 S. 37(7)(a)-(d) substituted for s. 37(7)(a)(b) (29.1.2004) by Criminal Justice Act 2003 (c. 44), ss. 28, 336, **Sch. 2 para. 2(2)**; S.I. 2004/81, **art. 4(1)(2)(c)**

F14 S. 37(7A)(7B) inserted (29.1.2004) by Criminal Justice Act 2003 (c. 44), ss. 28, 336, **Sch. 2 para. 2(3)**; S.I. 2004/81, **art. 4(1)(2)(c)**

F15 Words in s. 37(8)(a) inserted (29.1.2004) by Criminal Justice Act 2003 (c. 44), ss. 28, 336, **Sch. 2 para. 2(4)**; S.I. 2004/81, **art. 4(1)(2)(c)**

F16 S. 37(11)-(14) repealed (1.10.1992) by Criminal Justice Act 1991 (c. 53), s. 72, 101(2), **Sch. 13**; S.I. 1992/333, art. 2(2), **Sch. 2**.

F17 Words in s. 37(15) repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(7), **Sch. 15** (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, **art. 3(2)**

Modifications etc. (not altering text)

C10 Ss. 8, 9, 15, 16, 17(1)(*b*(2) (4), 18–20, 21, 22(1)–(4), 28, 29, 30(1)–(4)(*a*)(5)–(11), 31, 32(1)–(9), 34(1)–(5), 35, 36, 37, 39, 40–44, 50, 51(*d*), 52, 54, 55, 64(1)–(4)(5)(6), Sch. 1 applied with modifications by S.I. 1985/1800, arts. 3–11, Schs. 1, **2**

C11 S. 37 modified (2.8.1993) by S.I. 1993/1813, art. 6, Sch. 3 paras. 3(3), 4(4)(a), 5(7)(a), **6(7)(a)**; s. 37 modified by the said S.I. 1993/1813, art. 6, Sch. 3 paras. 4, 5, **6** as incorporated (with modifications) (1.12.1997) by S.I. 1994/1405, art. 6, Sch. 3 paras. 5, 6, **7**

C12 Ss. 37-37B modified (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), ss. 50, 53(1) {Sch. 4 para. 30}; S.I. 2005/1126, **art. 2(2)(h)**

Marginal Citations

M3 1980 c. 43.

[F18 37A Guidance

(1) The Director of Public Prosecutions may issue guidance—

(a) for the purpose of enabling custody officers to decide how persons should be dealt with under section 37(7) above or 37C(2) below, and

(b) as to the information to be sent to the Director of Public Prosecutions under section 37B(1) below.

(2) The Director of Public Prosecutions may from time to time revise guidance issued under this section.

(3) Custody officers are to have regard to guidance under this section in deciding how persons should be dealt with under section 37(7) above or 37C(2) below.

(4) A report under section 9 of the Prosecution of Offences Act 1985 (report by DPP to Attorney General) must set out the provisions of any guidance issued, and any revisions to guidance made, in the year to which the report relates.

(5) The Director of Public Prosecutions must publish in such manner as he thinks fit—

(a) any guidance issued under this section, and

(b) any revisions made to such guidance.

(6) Guidance under this section may make different provision for different cases, circumstances or areas.**]**

Textual Amendments

F18 S. 37A inserted (29.1.2004) by Criminal Justice Act 2003 (c. 44), ss. 28, 336, **Sch. 2 para. 3**; S.I. 2004/81, **art. 4(1)(2)(c)**

Modifications etc. (not altering text)

C13 Ss. 37-37B modified (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), ss. 50, 53(1) {Sch. 4 para. 30}; S.I. 2005/1126, **art. 2(2)(h)**
Ss. 37-37B modified (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 40**, 178; S.I. 2006/378, **art. 4(1)**, Sch. para. 6 (subject to art. 4(2)-(7))

[F19 37B Consultation with the Director of Public Prosecutions

(1) Where a person is released on bail under section 37(7)(a) above, an officer involved in the investigation of the offence shall, as soon as is practicable, send to the Director of Public Prosecutions such information as may be specified in guidance under section 37A above.

(2) The Director of Public Prosecutions shall decide whether there is sufficient evidence to charge the person with an offence.

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(3) If he decides that there is sufficient evidence to charge the person with an offence, he shall decide—

(a) whether or not the person should be charged and, if so, the offence with which he should be charged, and

(b) whether or not the person should be given a caution and, if so, the offence in respect of which he should be given a caution.

(4) The Director of Public Prosecutions shall give written notice of his decision to an officer involved in the investigation of the offence.

(5) If his decision is—

(a) that there is not sufficient evidence to charge the person with an offence, or

(b) that there is sufficient evidence to charge the person with an offence but that the person should not be charged with an offence or given a caution in respect of an offence,

a custody officer shall give the person notice in writing that he is not to be prosecuted.

(6) If the decision of the Director of Public Prosecutions is that the person should be charged with an offence, or given a caution in respect of an offence, the person shall be charged or cautioned accordingly.

(7) But if his decision is that the person should be given a caution in respect of the offence and it proves not to be possible to give the person such a caution, he shall instead be charged with the offence.

(8) For the purposes of this section, a person is to be charged with an offence either—

(a) when he is in police detention after returning to a police station to answer bail or is otherwise in police detention at a police station, or

(b) in accordance with section 29 of the Criminal Justice Act 2003.

(9) In this section "caution" includes—

(a) a conditional caution within the meaning of Part 3 of the Criminal Justice Act 2003, and

(b) a warning or reprimand under section 65 of the Crime and Disorder Act 1998.**]**

Textual Amendments

F19 S. 37B inserted (29.1.2004 for certain purposes, 3.7.2004 for certain further purposes and 1.10.2007 otherwise) by Criminal Justice Act 2003 (c. 44), ss. 28, 336, **Sch. 2 para. 3**; S.I. 2004/81, **art. 4(1)(2)(c)**; S.I. 2004/1629, **art. 2(1)(2)(b)(c)**: S.I. 2007/2874, **art. 2**

Modifications etc. (not altering text)

C14 Ss. 37-37B modified (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), ss. 50, 53(1) {Sch. 4 para. 30}; S.I. 2005/1126, **art. 2(2)(h)**
Ss. 37-37B modified (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 40**, 178; S.I. 2006/378, **art. 4(1)**, Sch. para. 6 (subject to art. 4(2)-(7))

[F20 37C Breach of bail following release under section 37(7)(a)

(1) This section applies where—

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(a) a person released on bail under section 37(7)(a) above or subsection (2)(b) below is arrested under section 46A below in respect of that bail, and

(b) at the time of his detention following that arrest at the police station mentioned in section 46A(2) below, notice under section 37B(4) above has not been given.

(2) The person arrested—

(a) shall be charged, or

(b) shall be released without charge, either on bail or without bail.

(3) The decision as to how a person is to be dealt with under subsection (2) above shall be that of a custody officer.

(4) A person released on bail under subsection (2)(b) above shall be released on bail subject to the same conditions (if any) which applied immediately before his arrest.**]**

Textual Amendments

F20 S. 37C inserted (29.1.2004) by Criminal Justice Act 2003 (c. 44), ss. 28, 336, **Sch. 2 para. 3**; S.I. 2004/81, **art. 4(1)(2)(c)**

37CA Breach of bail following release under section 37(7)(b)

(1) This section applies where a person released on bail under section 37(7)(b) above or subsection (2)(b) below—

(a) is arrested under section 46A below in respect of that bail, and

(b) is being detained following that arrest at the police station mentioned in section 46A(2) below.

(2) The person arrested—

(a) shall be charged, or

(b) shall be released without charge, either on bail or without bail.

(3) The decision as to how a person is to be dealt with under subsection (2) above shall be that of a custody officer.

(4) A person released on bail under subsection (2)(b) above shall be released on bail subject to the same conditions (if any) which applied immediately before his arrest.**]**

[F22 37D Release under section 37(7)(a): further provision

(1) Where a person is released on bail under section 37(7)(a) or section 37C(2)(b) above, a custody officer may subsequently appoint a different time, or an additional time, at which the person is to attend at the police station to answer bail.

(2) The custody officer shall give the person notice in writing of the exercise of the power under subsection (1).

(3) The exercise of the power under subsection (1) shall not affect the conditions (if any) to which bail is subject.

(4) Where a person released on bail under section 37(7)(a) or 37C(2)(b) above returns to a police station to answer bail or is otherwise in police detention at a police station,

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he may be kept in police detention to enable him to be dealt with in accordance with section 37B or 37C above or to enable the power under subsection (1) above to be exercised.

(5) If the person is not in a fit state to enable him to be so dealt with or to enable that power to be exercised, he may be kept in police detention until he is.

(6) Where a person is kept in police detention by virtue of subsection (4) or (5) above, section 37(1) to (3) and (7) above (and section 40(8) below so far as it relates to section 37(1) to (3)) shall not apply to the offence in connection with which he was released on bail under section 37(7)(a) or 37C(2)(b) above.**]**

Textual Amendments

F22 S. 37D inserted (29.1.2004) by Criminal Justice Act 2003 (c. 44), ss. 28, 336, **Sch. 2 para. 3**; S.I. 2004/81, **art. 4(1)(2)(c)**

Modifications etc. (not altering text)

C15 S. 37D(1)-(3) applied (with modifications) by Criminal Justice Act 2003 (c. 44), s. 24B(5)(a) (as inserted (29.6.2007) by Police and Justice Act 2006 (c. 48), **ss. 18(1)**, 53 (with s. 18(2)); S.I. 2007/1614, **art. 2(e)**)

38 Duties of custody officer after charge.

(1) Where a person arrested for an offence otherwise than under a warrant endorsed for bail is charged with an offence, the custody officer shall **[**[F23], subject to section 25 of the Criminal Justice and Public Order Act 1994,**]** order his release from police detention, either on bail or without bail, unless—

(a) If the person arrested is not an arrested juvenile—

(i) his name or address cannot be ascertained or the custody officer has reasonable grounds for doubting whether a name or address furnished by him as his name or address is his real name or address;

[[F24F25](ii) the custody officer has reasonable grounds for believing that the person arrested will fail to appear in court to answer to bail;

(iii) in the case of a person arrested for an imprisonable offence, the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from committing an offence;

[F24](iiia) **[** in the case of a person who has attained the age of 18, the custody officer has reasonable grounds for believing that the detention of the person is necessary to enable a sample to be taken from him under section 63B below**]]**

(iv) in the case of a person arrested for an offence which is not an imprisonable offence, the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from causing physical injury to any other person or from causing loss of or damage to property;

(v) the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from interfering with the administration of justice or with the investigation of offences or of a particular offence; or

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(vi) the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary for his own protection;

(b) if he is an arrested juvenile—

(i) any of the requirements of paragraph (a) above is satisfied; or

(ii) the custody officer has reasonable grounds for believing that he ought to be detained in his own interests.

(2) If the release of a person arrested is not required by subsection (1) above, the custody officer may authorise him to be kept in police detention **[**[F26]but may not authorise a person to be kept in police detension by virtue of subsection (1)(a)(iiia) after the end of the period of six hours beginning when he was charged with the offence**]**.

[[F27](2A) The custody officer, in taking the decisions required by subsection (1)(a) and (b) above (except (a)(i) and (vi) and (b)(ii)), shall have regard to the same considerations as those which a court is required to have regard to in taking the corresponding decisions under paragraph 2 of Part I of Schedule 1 to the [M4]Bail Act 1976.**]**

(3) Where a custody officer authorises a person who has been charged to be kept in police detention, he shall, as soon as practicable, make a written record of the grounds for the detention.

(4) Subject to subsection (5) below, the written record shall be made in the presence of the person charged who shall at that time be informed by the custody officer of the grounds for his detention.

(5) Subsection (4) above shall not apply where the person charged is, at the time when the written record is made—

(a) incapable of understanding what is said to him;

(b) violent or likely to become violent; or

(c) in urgent need of medical attention.

[[F28](6) Where a custody officer authorises an arrested juvenile to be kept in police detention under subsection (1) above, the custody officer shall, unless he certifies—

(a) that, by reason of such circumstances as are specified in the certificate, it is impracticable for him to do so; or

(b) in the case of an arrested juvenile who has attained the **[**[F29]age of 12 years**]**, that no secure accommodation is available and that keeping him in other local authority accommodation would not be adequate to protect the public from serious harm from him,

secure that the arrested juvenile is moved to local authority accommodation.**]**

[[F30F28](6A) In this section—

"local authority accommodation" means accommodation provided by or on behalf of a local authority (within the meaning of the Children Act 1989);

"secure accommodation" means accommodation provided for the purpose of restricting liberty;

"sexual offence" and "violent offence" have the same meanings as in **[**[F31]the Powers of Criminal Courts (Sentencing) Act 2000**]**;

and any reference, in relation to an arrested juvenile charged with a violent or sexual offence, to protecting the public from serious harm from him shall be construed as a reference to protecting members of the public from death or serious personal injury, whether physical or psychological, occasioned by further such offences committed by him.**]**

[[F30](6B) Where an arrested juvenile is moved to local authority accommodation under subsection (6) above, it shall be lawful for any person acting on behalf of the authority to detain him.**]**

(7) A certificate made under subsection (6) above in respect of an arrested juvenile shall be produced to the court before which he is first brought thereafter.

[[F32](7A) In this section "imprisonable offence" has the same meaning as in Schedule 1 to the Bail Act 1976.**]**

(8) In this Part of this Act "local authority" has the same meaning as in the **[**[F33]Children Act 1989**]**.

Textual Amendments

F23 Words in s. 38(1) inserted (10.4.1995) by 1994 c. 33, s. 168(2), **Sch. 10 para. 54**; S.I. 1995/721, art. 2, **Sch.**

F24 S. 38(1)(a)(iiia) inserted (for certain purposes on 20.6.2001, 2.7.2001, 20.5.2002, 2.9.2002, 1.4.2003, 1.4.2004 and otherwise prosp.) by 2000 c. 43, ss. 57(3)(a), 80(1); S.I. 2001/2232, art. 2(f); S.I. 2002/1149, **art. 2**; S.I. 2002/1862, **art. 2**; S.I. 2003/709, **art. 2**; S.I. 2004/780, **art. 2**

F25 S. 38(1)(a)(ii)-(vi) substituted (10.4.1995) for sub-paras (ii)(iii) by 1994 c. 33, **s. 28(2)**; S.I. 1995/721, art. 2, **Sch.**

F26 Words in s. 38(2) inserted (for certain purposes on 20.6.2001, 2.7.2001, 20.5.2002, 2.9.2002, 1.4.2003, 1.4.2004 and otherwise prosp.) by 2000 c. 43, ss. 57(3)(b), 80(1); S.I. 2001/2232, art. 2(f); S.I. 2002/1149, **art. 2**; S.I. 2002/1862, **art. 2**; S.I. 2003/709, **art. 2**; S.I. 2004/780, **art. 2**

F27 S. 38(2A) inserted (10.4.1995) by 1994 c. 33, **s. 28(3)**; S.I. 1995/721, art. 2, **Sch.**

F28 S. 38(6)(6A) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53), **s. 59**; S.I. 1992/333, art. 2(2), **Sch. 2**.

F29 Words in s. 38(6)(b) substituted (3.2.1995) by 1994 c. 33, **s. 24**; S.I. 1995/127, art. 2(1), **Sch. 1**

F30 S. 38(6A)(6B) inserted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(5), **Sch. 13 para. 53(2)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**

F31 Words in s. 38(6A) substituted (25.8.2000) by 2000 c. 6, ss. 165, 168(1), **Sch. 9 para. 96**

F32 S. 38(7A) inserted (10.4.1995) by 1994 c. 33, **s. 28(4)**; S.I. 1995/721, art. 2, **Sch.**

F33 Words in s. 38(8) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(5), **Sch. 13 para. 53(3)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**

Marginal Citations

M4 1976 c. 63.

39 Responsibilities in relation to persons detained.

(1) Subject to subsections (2) and (4) below, it shall be the duty of the custody officer at a police station to ensure—

(a) that all persons in police detention at that station are treated in accordance with this Act and any code of practice issued under it and relating to the treatment of persons in police detention; and

(b) that all matters relating to such persons which are required by this Act or by such codes of practice to be recorded are recorded in the custody records relating to such persons.

(2) If the custody officer, in accordance with any code of practice issued under this Act, transfers or permits the transfer of a person in police detention—

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(a) to the custody of a police officer investigating an offence for which that person is in police detention; or

(b) to the custody of an officer who has charge of that person outside the police station,

the custody officer shall cease in relation to that person to be subject to the duty imposed on him by subsection (1)(a) above; and it shall be the duty of the officer to whom the transfer is made to ensure that he is treated in accordance with the provisions of this Act and of any such codes of practice as are mentioned in subsection (1) above.

(3) If the person detained is subsequently returned to the custody officer, it shall be the duty of the officer investigating the offence to report to the custody officer as to the manner in which this section and the codes of practice have been complied with while that person was in his custody.

(4) If an arrested juvenile is **[**[F34]moved to local authority accommodation**]** under section 38(6) above, the custody officer shall cease in relation to that person to be subject to the duty imposed on him by subsection (1) above.

[F35](5) . . . . . .

(6) Where—

(a) an officer of higher rank than the custody officer gives directions relating to a person in police detention; and

(b) the directions are at variance—

(i) with any decision made or action taken by the custody officer in the performance of a duty imposed on him under this Part of this Act; or

(ii) with any decision or action which would but for the directions have been made or taken by him in the performance of such a duty,

the custody officer shall refer the matter at once to an officer of the rank of superintendent or above who is responsible for the police station for which the custody officer is acting as custody officer.

Textual Amendments

F34 Words in s. 39(4) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(5), **Sch. 13**, para. 54; S.I. 1991/828, **art. 3(2)**

F35 S. 39(5) repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(7), **Sch.15**; S.I. 1991/828, **art. 3(2)**

Modifications etc. (not altering text)

C16 Ss. 8, 9, 15, 16, 17(1)(*b*(2) (4), 18–20, 21, 22(1)–(4), 28, 29, 30(1)–(4)(*a*)(5)–(11), 31, 32(1)–(9), 34(1)–(5), 35, 36, 37, 39, 40–44, 50, 51(*d*), 52, 54, 55, 64(1)–(4)(5)(6), Sch. 1 applied with modifications by S.I. 1985/1800, arts. 3–11, Schs. 1, **2**

C17 S. 39 modified (2.8.1993) by S.I. 1993/1813, art. 6, **Sch. 3 para. 3(3)**.
S. 39 extended (27.7.1999) by 1999 c. 23, **ss. 61(3)**, 68(4)(e) (with s. 63(2), Sch. 7 paras. 3(3), 5(2))

C18 S. 39 applied (with modifications) by Criminal Justice Act 2003 (c. 44), s. 24B(1)-(3) (as inserted (29.6.2007) by Police and Justice Act 2006 (c. 48), **ss. 18(1)**, 53 (with s. 18(2)); S.I. 2007/1614, **art. 2(e)**)

C19 S. 39(2) modified (2.12.2002) by Police Reform Act 2002 (c. 30), s. 38, **Sch. 4 Pt. 4 para. 35(5)**; S.I. 2002/2750, **art. 2(a)(ii)(d)**
S. 39(2)(3) modified (2.12.2002) by Police Reform Act 2002 (c. 30), s. 38, **Sch. 4 Pt. 2 para. 22(3)**; S.I. 2002/2750, **art. 2(a)(ii)(d)**

Status: *Point in time view as at 29/01/2004.*
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40 Review of police detention.

(1) Reviews of the detention of each person in police detention in connection with the investigation of an offence shall be carried out periodically in accordance with the following provisions of this section—

(a) in the case of a person who has been arrested and charged, by the custody officer; and

(b) in the case of a person who has been arrested but not charged, by an officer of at least the rank of inspector who has not been directly involved in the investigation.

(2) The officer to whom it falls to carry out a review is referred to in this section as a "review officer".

(3) Subject to subsection (4) below—

(a) the first review shall be not later than six hours after the detention was first authorised;

(b) the second review shall be not later than nine hours after the first;

(c) subsequent reviews shall be at intervals of not more than nine hours.

(4) A review may be postponed—

(a) if, having regard to all the circumstances prevailing at the latest time for it specified in subsection (3) above, it is not practicable to carry out the review at that time;

(b) without prejudice to the generality of paragraph (a) above—

(i) if at that time the person in detention is being questioned by a police officer and the review officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned; or

(ii) if at that time no review officer is readily available.

(5) If a review is postponed under subsection (4) above it shall be carried out as soon as practicable after the latest time specified for it in subsection (3) above.

(6) If a review is carried out after postponement under subsection (4) above, the fact that it was so carried out shall not affect any requirement of this section as to the time at which any subsequent review is to be carried out.

(7) The review officer shall record the reasons for any postponement of a review in the custody record.

(8) Subject to subsection (9) below, where the person whose detention is under review has not been charged before the time of the review, section 37(1) to (6) above shall have effect in relation to him, but with **[**[F36]the modifications specified in subsection (8A)**]**

[[F37](8A) The modifications are—

(a) the substitution of references to the person whose detention is under review for references to the person arrested;

(b) the substitution of references to the review officer for references to the custody officer; and

(c) in subsection (6), the insertion of the following paragraph after paragraph (a)—

("') asleep;"**]**

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(9) Where a person has been kept in police detention by virtue of section 37(9) **[**[F38]or 37D(5)**]** above, section 37(1) to (6) shall not have effect in relation to him but it shall be the duty of the review officer to determine whether he is yet in a fit state.

(10) Where the person whose detention is under review has been charged before the time of the review, section 38(1) to **[**[F39](6B)**]** above shall have effect in relation to him, but with **[**[F40]the modifications specified in subsection (10A)**]** .

[[F41](10A) The modifications are—

(a) the substitution of a reference to the person whose detention is under review for any reference to the person arrested or to the person charged; and

(b) in subsection (5), the insertion of the following paragraph after paragraph (a)—

(“) asleep;”**]**

(11) Where—

(a) an officer of higher rank than the review officer gives directions relating to a person in police detention; and

(b) the directions are at variance—

(i) with any decision made or action taken by the review officer in the performance of a duty imposed on him under this Part of this Act; or

(ii) with any decision or action which would but for the directions have been made or taken by him in the performance of such a duty,

the review officer shall refer the matter at once to an officer of the rank of superintendent or above who is responsible for the police station for which the review officer is acting as review officer in connection with the detention.

(12) Before determining whether to authorise a person’s continued detention the review officer shall give—

(a) that person (unless he is asleep); or

(b) any solicitor representing him who is available at the time of the review,

an opportunity to make representations to him about the detention.

(13) Subject to subsection (14) below, the person whose detention is under review or his solicitor may make representations under subsection (12) above either orally or in writing.

(14) The review officer may refuse to hear oral representations from the person whose detention is under review if he considers that he is unfit to make such representations by reason of his condition or behaviour.

Textual Amendments

F36 Words in s. 40(8) substituted (1.4.2003) by Police Reform Act 2002 (c. 30), ss. {52(1)}, 108(2)-(5); S.I. 2003/808, **art. 2(d)**

F37 S. 40(8A) inserted (1.4.2003) by Police Reform Act 2002 (c. 30), ss. {52(2)}, 108(2)-(5); S.I. 2003/808, **art. 2(d)**

F38 Words in s. 40(9) inserted (29.1.2004) by Criminal Justice Act 2003 (c. 44), ss. 28, 336, **Sch. 2 para. 4**; S.I. 2004/81, **art. 4(1)(2)(c)**

F39 Word in s. 40(10) substituted (1.4.2003) by Police Reform Act 2002 (c. 30), ss. {52(3)(a)}, 108(2)-(5); S.I. 2003/808, **art. 2(d)**

F40 Words in s. 40(10) substituted (1.4.2003) by Police Reform Act 2002 (c. 30), ss. {52(3)(b)}, 108(2)-(5); S.I. 2003/808, **art. 2(d)**

F41 S. 40(10A) inserted (1.4.2003) by Police Reform Act 2002 (c. 30), ss. {52(4)}, 108(2)-(5); S.I. 2003/808, **art. 2(d)**

Modifications etc. (not altering text)

C20 Ss. 8, 9, 15, 16, 17(1)(*b*(2) (4), 18–20, 21, 22(1)–(4), 28, 29, 30(1)–(4)(*a*)(5)–(11), 31, 32(1)–(9), 34(1)–(5), 35, 36, 37, 39, 40–44, 50, 51(*d*), 52, 54, 55, 64(1)–(4)(5)(6), Sch. 1 applied with modifications by S.I. 1985/1800, arts. 3–11, Schs. 1, **2**

C21 S. 40 modified (2.8.1993) by S.I. 1993/1813, art. 6, Sch. 3 paras. 3(3), 4(4)(b), 5(7)(b), **6(7)(b)**; s. 40 modified by the said S.I. 1993/1813, art. 6, Sch. 3 paras. 4, 5, **6** as incorporated (with modifications) (1.12.1997) by S.I. 1994/1405, art. 6, Sch. 3 paras. 5, 6, **7**

C22 S. 40 applied (with modifications) by Criminal Justice Act 2003 (c. 44), s. 24B(4) (as inserted (29.6.2007) by Police and Justice Act 2006 (c. 48), **ss. 18(1)**, 53 (with s. 18(2)); S.I. 2007/1614, **art. 2(e)**)

C23 S. 40(13) amended by S.I. 1991/2684, **arts. 1**, 2, 4 and Sch.1

[[F42]40A Use of telephone for review under s. 40

[[F43](1) A review under section 40(1)(b) may be carried out by means of a discussion, conducted by telephone, with one or more persons at the police station where the arrested person is held.

(2) But subsection (1) does not apply if—

(a) the review is of a kind authorised by regulations under section 45A to be carried out using video-conferencing facilities; and

(b) it is reasonably practicable to carry it out in accordance with those regulations.]

(3) Where any review is carried out under this section by an officer who is not present at the station where the arrested person is held—

(a) any obligation of that officer to make a record in connection with the carrying out of the review shall have effect as an obligation to cause another officer to make the record;

(b) any requirement for the record to be made in the presence of the arrested person shall apply to the making of that record by that other officer; and

(c) the requirements under section 40(12) and (13) above for—

(i) the arrested person, or

(ii) a solicitor representing him,

to be given any opportunity to make representations (whether in writing or orally) to that officer shall have effect as a requirement for that person, or such a solicitor, to be given an opportunity to make representations in a manner authorised by subsection (4) below.

(4) Representations are made in a manner authorised by this subsection—

(a) in a case where facilities exist for the immediate transmission of written representations to the officer carrying out the review, if they are made either—

(i) orally by telephone to that officer; or

(ii) in writing to that officer by means of those facilities;

and

(b) in any other case, if they are made orally by telephone to that officer.

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(5) In this section "video-conferencing facilities" has the same meaning as in section 45A below.**]**

Textual Amendments

F42 S. 40A inserted (1.10.2001) by 2001 c. 16, **s. 72(3)**; S.I. 2001/3150, **art. 2(a)**

F43 S. 40A(1)(2) substituted (20.1.2004) by Criminal Justice Act 2003 (c. 44), **ss. 6**, 336; S.I. 2004/81, **art. 2(1)(2)(a)**

41 Limits on period of detention without charge.

(1) Subject to the following provisions of this section and to sections 42 and 43 below, a person shall not be kept in police detention for more than 24 hours without being charged.

(2) The time from which the period of detention of a person is to be calculated (in this Act referred to as "the relevant time")—

(a) in the case of a person to whom this paragraph applies, shall be—

(i) the time at which that person arrives at the relevant police station; or

(ii) the time 24 hours after the time of that person's arrest,

whichever is the earlier;

(b) in the case of a person arrested outside England and Wales, shall be—

(i) the time at which that person arrives at the first police station to which he is taken in the police area in England or Wales in which the offence for which he was arrested is being investigated; or

(ii) the time 24 hours after the time of that person's entry into England and Wales,

whichever is the earlier;

(c) in the case of a person who—

(i) attends voluntarily at a police station; or

(ii) accompanies a constable to a police station without having been arrested,

and is arrested at the police station, the time of his arrest;

[[F44](ca) in the case of a person who attends a police station to answer to bail granted under section 30A, the time when he arrives at the police station;**]**

(d) in any other case, except where subsection (5) below applies, shall be the time at which the person arrested arrives at the first police station to which he is taken after his arrest.

(3) Subsection (2)(a) above applies to a person if—

(a) his arrest is sought in one police area in England and Wales;

(b) he is arrested in another police area; and

(c) he is not questioned in the area in which he is arrested in order to obtain evidence in relation to an offence for which he is arrested;

and in sub-paragraph (i) of that paragraph "the relevant police station" means the first police station to which he is taken in the police area in which his arrest was sought.

(4) Subsection (2) above shall have effect in relation to a person arrested under section 31 above as if every reference in it to his arrest or his being arrested were a reference to his arrest or his being arrested for the offence for which he was originally arrested.

(5) If—

(a) a person is in police detention in a police area in England and Wales ("the first area"); and

(b) his arrest for an offence is sought in some other police area in England and Wales ("the second area"); and

(c) he is taken to the second area for the purposes of investigating that offence, without being questioned in the first area in order to obtain evidence in relation to it,

the relevant time shall be—

(i) the time 24 hours after he leaves the place where he is detained in the first area; or

(ii) the time at which he arrives at the first police station to which he is taken in the second area,

whichever is the earlier.

(6) When a person who is in police detention is removed to hospital because he is in need of medical treatment, any time during which he is being questioned in hospital or on the way there or back by a police officer for the purpose of obtaining evidence relating to an offence shall be included in any period which falls to be calculated for the purposes of this Part of this Act, but any other time while he is in hospital or on his way there or back shall not be so included.

(7) Subject to subsection (8) below, a person who at the expiry of 24 hours after the relevant time is in police detention and has not been charged shall be released at that time either on bail or without bail.

(8) Subsection (7) above does not apply to a person whose detention for more than 24 hours after the relevant time has been authorised or is otherwise permitted in accordance with section 42 or 43 below.

(9) A person released under subsection (7) above shall not be re-arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release **[**[F45]; but this subsection does not prevent an arrest under section 46A below.**]**

Textual Amendments

F44 S. 41(2)(ca) inserted (20.1.2004) by Criminal Justice Act 2003 (c. 44), ss. 12, 336, **Sch. 1 para. 8**; S.I. 2004/81, **art. 2(1)(2)(a)**

F45 Words in s. 41(9) inserted (10.4.1995) by 1994 c. 33, **s. 29(4)(b)(5)**; S.I. 1995/721, **art. 2**,Sch.

Modifications etc. (not altering text)

C24 Ss. 8, 9, 15, 16, 17(1)(*b*)(2) (4), 18–20, 21, 22(1)–(4), 28, 29, 30(1)–(4)(*a*)(5)–(11), 31, 32(1)–(9), 34(1)–(5), 35, 36, 37, 39, 40–44, 50, 51(*d*), 52, 54, 55, 64(1)–(4)(5)(6), Sch. 1 applied with modifications by S.I. 1985/1800, arts. 3–11, Schs. 1, **2**

C25 S. 41 extended (2.8.1993) by S.I. 1993/1813, art. 6, **Sch. 3 para. 2(6)**; s. 41 extended by the said S.I. 1993/1813, art. 6, Sch. 3 paras. 2, 5, **6** as incorporated (with modifications) (1.12.1997) by S.I. 1994/1405, art. 6, Sch. 3 paras. 3, 6, **7**

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S. 41 modified (2.8.1993) by S.I. 1993/1813, art. 6, Sch. 3 paras. 3(3), 4(4)(b), 5(7)(b), **6(7)(b)**; s. 41 modified by the said S.I. 1993/1813, art. 6, Sch. 3 paras. 4, 5, **6** as incorporated (with modifications) (1.12.1997) by S.I. 1994/1405, art. 6, Sch. 3 paras. 5, 6, **7**

42 Authorisation of continued detention.

(1) Where a police officer of the rank of superintendent or above who is responsible for the police station at which a person is detained has reasonable grounds for believing that—

(a) the detention of that person without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;

[[F46](b) an offence for which he is under arrest is an arrestable offence; and**]**

(c) the investigation is being conducted diligently and expeditiously,

he may authorise the keeping of that person in police detention for a period expiring at or before 36 hours after the relevant time.

(2) Where an officer such as is mentioned in subsection (1) above has authorised the keeping of a person in police detention for a period expiring less than 36 hours after the relevant time, such an officer may authorise the keeping of that person in police detention for a further period expiring not more than 36 hours after that time if the conditions specified in subsection (1) above are still satisfied when he gives the authorisation.

(3) If it is proposed to transfer a person in police detention to another police area, the officer determining whether or not to authorise keeping him in detention under subsection (1) above shall have regard to the distance and the time the journey would take.

(4) No authorisation under subsection (1) above shall be given in respect of any person—

(a) more than 24 hours after the relevant time; or

(b) before the second review of his detention under section 40 above has been carried out.

(5) Where an officer authorises the keeping of a person in police detention under subsection (1) above, it shall be his duty—

(a) to inform that person of the grounds for his continued detention; and

(b) to record the grounds in that person's custody record.

(6) Before determining whether to authorise the keeping of a person in detention under subsection (1) or (2) above, an officer shall give—

(a) that person; or

(b) any solicitor representing him who is available at the time when it falls to the officer to determine whether to give the authorisation,

an opportunity to make representations to him about the detention.

(7) Subject to subsection (8) below, the person in detention or his solicitor may make representations under subsection (6) above either orally or in writing.

(8) The officer to whom it falls to determine whether to give the authorisation may refuse to hear oral representations from the person in detention if he considers that he is unfit to make such representations by reason of his condition or behaviour.

(9) Where—

(a) an officer authorises the keeping of a person in detention under subsection (1) above; and

(b) at the time of the authorisation he has not yet exercised a right conferred on him by section 56 or 58 below,

the officer—

(i) shall inform him of that right;

(ii) shall decide whether he should be permitted to exercise it;

(iii) shall record the decision in his custody record; and

(iv) if the decision is to refuse to permit the exercise of the right, shall also record the grounds for the decision in that record.

(10) Where an officer has authorised the keeping of a person who has not been charged in detention under subsection (1) or (2) above, he shall be released from detention, either on bail or without bail, not later than 36 hours after the relevant time, unless—

(a) he has been charged with an offence; or

(b) his continued detention is authorised or otherwise permitted in accordance with section 43 below.

(11) A person released under subsection (10) above shall not be re-arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release **[**[F47]; but this subsection does not prevent an arrest under section 46A below.**]**

Textual Amendments

F46 S. 42(1)(b) substituted (20.1.2004) by Criminal Justice Act 2003 (c. 44), **ss. 7**, 336; S.I. 2004/81, **art. 2(1)(2)(a)**

F47 Words in s. 42(11) inserted (10.4.1995) by 1994 c. 33, **s. 29(4)(b)(5)**; S.I. 1995/721, art. 2, **Sch.**

Modifications etc. (not altering text)

C26 Ss. 8, 9, 15, 16, 17(1)(*b*(2) (4), 18–20, 21, 22(1)–(4), 28, 29, 30(1)–(4)(*a*)(5)–(11), 31, 32(1)–(9), 34(1)–(5), 35, 36, 37, 39, 40–44, 50, 51(*d*), 52, 54, 55, 64(1)–(4)(5)(6), Sch. 1 applied with modifications by S.I. 1985/1800, arts. 3–11, Schs. 1, **2**

C27 s. 42 modified (2.8.1993) by S.I. 1993/1813, art. 6, Sch. 3 paras. 3(3), 4(4)(b), 5(7)(b), **6(7)(b)**; s. 42 modified by the said S.I. 1993/1813, art. 6, Sch. 3 paras. 4, 5, **6** as incorporated (with modifications) (1.12.1997) by S.I. 1994/1405, art. 6, Sch. 3 paras. 5, 6, **7**

C28 S. 42(7) amended by S.I. 1991/2684, **arts. 1**, 2, 4 and Sch. 1

43 Warrants of further detention.

(1) Where, on an application on oath made by a constable and supported by an information, a magistrates' court is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified, it may issue a warrant of further detention authorising the keeping of that person in police detention.

(2) A court may not hear an application for a warrant of further detention unless the person to whom the application relates—

(a) has been furnished with a copy of the information; and

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(b) has been brought before the court for the hearing.

(3) The person to whom the application relates shall be entitled to be legally represented at the hearing and, if he is not so represented but wishes to be so represented—
(a) the court shall adjourn the hearing to enable him to obtain representation; and
(b) he may be kept in police detention during the adjournment.

(4) A person's further detention is only justified for the purposes of this section or section 44 below if—
(a) his detention without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;
(b) an offence for which he is under arrest is a serious arrestable offence; and
(c) the investigation is being conducted diligently and expeditiously.

(5) Subject to subsection (7) below, an application for a warrant of further detention may be made—
(a) at any time before the expiry of 36 hours after the relevant time; or
(b) in a case where—
(i) it is not practicable for the magistrates' court to which the application will be made to sit at the expiry of 36 hours after the relevant time; but
(ii) the court will sit during the 6 hours following the end of that period,
at any time before the expiry of the said 6 hours.

(6) In a case to which subsection (5)(b) above applies—
(a) the person to whom the application relates may be kept in police detention until the application is heard; and
(b) the custody officer shall make a note in that person's custody record—
(i) of the fact that he was kept in police detention for more than 36 hours after the relevant time; and
(ii) of the reason why he was so kept.

(7) If—
(a) an application for a warrant of further detention is made after the expiry of 36 hours after the relevant time; and
(b) it appears to the magistrates' court that it would have been reasonable for the police to make it before the expiry of that period,
the court shall dismiss the application.

(8) Where on an application such as is mentioned in subsection (1) above a magistrates' court is not satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified, it shall be its duty—
(a) to refuse the application; or
(b) to adjourn the hearing of it until a time not later than 36 hours after the relevant time.

(9) The person to whom the application relates may be kept in police detention during the adjournment.

(10) A warrant of further detention shall—
(a) state the time at which it is issued;

(b) authorise the keeping in police detention of the person to whom it relates for the period stated in it.

(11) Subject to subsection (12) below, the period stated in a warrant of further detention shall be such period as the magistrates' court thinks fit, having regard to the evidence before it.

(12) The period shall not be longer than 36 hours.

(13) If it is proposed to transfer a person in police detention to a police area other than that in which he is detained when the application for a warrant of further detention is made, the court hearing the application shall have regard to the distance and the time the journey would take.

(14) Any information submitted in support of an application under this section shall state—

(a) the nature of the offence for which the person to whom the application relates has been arrested;

(b) the general nature of the evidence on which that person was arrested;

(c) what inquiries relating to the offence have been made by the police and what further inquiries are proposed by them;

(d) the reasons for believing the continued detention of that person to be necessary for the purposes of such further inquiries.

(15) Where an application under this section is refused, the person to whom the application relates shall forthwith be charged or, subject to subsection (16) below, released, either on bail or without bail.

(16) A person need not be released under subsection (15) above—

(a) before the expiry of 24 hours after the relevant time; or

(b) before the expiry of any longer period for which his continued detention is or has been authorised under section 42 above.

(17) Where an application under this section is refused, no further application shall be made under this section in respect of the person to whom the refusal relates, unless supported by evidence which has come to light since the refusal.

(18) Where a warrant of further detention is issued, the person to whom it relates shall be released from police detention, either on bail or without bail, upon or before the expiry of the warrant unless he is charged.

(19) A person released under subsection (18) above shall not be re-arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release **[**[F48]; but this subsection does not prevent an arrest under section 46A below.**]**

Textual Amendments

F48 Words in s. 43(19) inserted (10.4.1995) by 1994 c. 33, **s. 29(4)(b)(5)**; S.I. 1995/721, art. 2, **Sch.**

Modifications etc. (not altering text)

C29 Ss. 8, 9, 15, 16, 17(1)(*b*(2) (4), 18–20, 21, 22(1)–(4), 28, 29, 30(1)–(4)(*a*)(5)–(11), 31, 32(1)–(9), 34(1)–(5), 35, 36, 37, 39, 40–44, 50, 51(*d*), 52, 54, 55, 64(1)–(4)(5)(6), Sch. 1 applied with modifications by S.I. 1985/1800, arts. 3–11, Schs. 1, **2**

C30 S. 43 modified (2.8.1993) by S.I. 1993/1813, art. 6, Sch. 3 paras. 4(4)(b), 5(7)(b), **6(7)(b)**; s. 43 modified by the said S.I. 1993/1813, art. 6, Sch. 3 paras. 4, 5, **6** as incorporated (with modifications) (1.12.1997) by S.I. 1994/1405, art. 6, Sch. 3 paras. 5, 6, **7**

44 Extension of warrants of further detention.

(1) On an application on oath made by a constable and supported by an information a magistrates' court may extend a warrant of further detention issued under section 43 above if it is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified.

(2) Subject to subsection (3) below, the period for which a warrant of further detention may be extended shall be such period as the court thinks fit, having regard to the evidence before it.

(3) The period shall not—
  (a) be longer than 36 hours; or
  (b) end later than 96 hours after the relevant time.

(4) Where a warrant of further detention has been extended under subsection (1) above, or further extended under this subsection, for a period ending before 96 hours after the relevant time, on an application such as is mentioned in that subsection a magistrates' court may further extend the warrant if it is satisfied as there mentioned; and subsections (2) and (3) above apply to such further extensions as they apply to extensions under subsection (1) above.

(5) A warrant of further detention shall, if extended or further extended under this section, be endorsed with a note of the period of the extension.

(6) Subsections (2), (3) and (14) of section 43 above shall apply to an application made under this section as they apply to an application made under that section.

(7) Where an application under this section is refused, the person to whom the application relates shall forthwith be charged or, subject to subsection (8) below, released, either on bail or without bail.

(8) A person need not be released under subsection (7) above before the expiry of any period for which a warrant of further detention issued in relation to him has been extended or further extended on an earlier application made under this section.

Modifications etc. (not altering text)

C31 Ss. 8, 9, 15, 16, 17(1)(*b*(2) (4), 18–20, 21, 22(1)–(4), 28, 29, 30(1)–(4)(*a*)(5)–(11), 31, 32(1)–(9), 34(1)–(5), 35, 36, 37, 39, 40–44, 50, 51(*d*), 52, 54, 55, 64(1)–(4)(5)(6), Sch. 1 applied with modifications by S.I. 1985/1800, arts. 3–11, Schs. 1, **2**

45 Detention before charge—supplementary.

(1) In sections 43 and 44 of this Act "magistrates' court" means a court consisting of two or more justices of the peace sitting otherwise than in open court.

(2) Any reference in this Part of this Act to a period of time or a time of day is to be treated as approximate only.

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Police and Criminal Evidence Act 1984, Cross Heading: Detention—conditions and duration is up to date with all changes known to be in force on or before 23 June 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.