



Criminal Law (Consolidation) (Scotland) Act 1995

1995 CHAPTER 39

PART III

[^{F1}INVESTIGATION OF REVENUE AND CUSTOMS OFFENCES]

[^{F1}Detention and questioning of suspects and witnesses

Textual Amendments

- F1** Ss. 23A-23P and cross-headings inserted (1.12.2007) by [Finance Act 2007 \(c. 11\), s. 85, Sch. 23 paras. 3, 14; S.I. 2007/3166, art. 3](#)

23M Powers relating to suspects and potential witnesses

- (1) Where an authorised officer has reasonable grounds for suspecting that a person has committed or is committing, at any place, a Revenue and Customs offence, the officer may require—
 - (a) that person, if found by the officer at that place or at any place where the officer is entitled to be, to give—
 - (i) the information mentioned in subsection (2) below; and
 - (ii) an explanation of the circumstances which have given rise to the officer's suspicion;
 - (b) any other person whom the officer finds at that place or at any place where the officer is entitled to be and who the officer believes has information relating to the offence, to give the information mentioned in subsection (2) below.
- (2) That information is—
 - (a) the person's name;
 - (b) the person's address;

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Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Cross Heading: Detention and questioning of suspects and witnesses is up to date with all changes known to be in force on or before 28 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (c) the person's date of birth;
 - (d) the person's place of birth (in such detail as the officer considers necessary or expedient for the purpose of establishing that person's identity); and
 - (e) the person's nationality.
- (3) The officer may require the person mentioned in paragraph (a) of subsection (1) above to remain with the officer while the officer (any or all)—
- (a) subject to subsection (4) below, verifies any information mentioned in subsection (2) above given by the person;
 - (b) subject to section (5) below, establishes whether the person may be a person suspected of having committed a Revenue and Customs offence other than the offence in relation to which the officer made the requirement of that person under paragraph (a) of subsection (1) above;
 - (c) notes any explanation proffered by the person.
- (4) The officer shall exercise the power under paragraph (a) of subsection (3) above only where it appears to the officer that such verification can be obtained quickly.
- (5) The officer shall exercise the power under paragraph (b) of subsection (3) above only where—
- (a) the person mentioned in paragraph (a) of subsection (1) above has given a name and address; and
 - (b) it appears to the officer that establishing the matter mentioned in paragraph (b) of subsection (3) above can be achieved quickly.
- (6) The officer may use reasonable force to ensure that the person mentioned in paragraph (a) of subsection (1) above remains with that officer.
- (7) The officer shall inform a person, when making a requirement of that person under—
- (a) paragraph (a) of subsection (1) above, of the officer's suspicion and of the general nature of the offence which the officer suspects that the person has committed or is committing;
 - (b) paragraph (b) of subsection (1) above, of the officer's suspicion, of the general nature of the offence which the officer suspects has been or is being committed and that the reason for the requirement is that the officer believes the person has information relating to the offence;
 - (c) subsection (3) above, why the person is being required to remain with the officer;
 - (d) any of the said subsections, that failure to comply with the requirement may constitute an offence.

23N Fingerprinting of persons suspected of offences

- (1) An authorised officer may, if the person mentioned in section 23M(1)(a) of this Act gives a name and address, require that person to provide—
- (a) that person's fingerprints; or
 - (b) a record, created by an approved device, of the skin on that person's fingers.
- (2) Such fingerprints or record may be used only for the purposes of—
- (a) verifying the name and address given by the person;
 - (b) establishing whether the person may be a person who is suspected of having committed any other Revenue and Customs offence,

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and all record of such fingerprints or record shall be destroyed as soon as possible after they have fulfilled those purposes.

- (3) The officer shall inform a person, when making a requirement of that person under subsection (1) above—
 - (a) of the existence of the power to make the requirement and why the officer proposes to exercise it in the person's case; and
 - (b) that failure to comply with the requirement may constitute an offence.
- (4) In subsection (1)(b) above, an “approved device” is any device approved by the Scottish Ministers under section 13(8) of the Criminal Procedure (Scotland) Act 1995.

23P Offences arising from breach of requirements under sections 23M and 23N

- (1) A person mentioned in paragraph (a) of subsection (1) of section 23M of this Act who, having been required—
 - (a) under that subsection to give the information mentioned in subsection (2) of that section;
 - (b) under subsection (3) of that section to remain with an officer; or
 - (c) under subsection (1) of section 23N of this Act to provide that person's fingerprints or a record such as is mentioned in paragraph (b) of that subsection,fails, without reasonable excuse, to do so, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) A person mentioned in paragraph (b) of subsection (1) of section 23M of this Act who, having been required under that subsection to give the information mentioned in subsection (2) of that section, fails, without reasonable excuse, to do so, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (3) An authorised officer may arrest without warrant any person whom the officer has reasonable grounds for suspecting has committed an offence under subsection (1) or (2) above.]

^{x1}24 [^{F2}Detention and questioning] [^{F3}: Revenue and Customs, immigration and nationality offences]

^{F4}(A1) The powers conferred by subsection (1) are exercisable—

- (a) by an officer of Revenue and Customs where the officer has reasonable grounds for suspecting that a person has committed or is committing a Revenue and Customs offence punishable by imprisonment, or
 - (b) by an immigration officer where the officer has reasonable grounds for suspecting that a person has committed or is committing an immigration offence or nationality offence punishable by imprisonment.
- (1) The officer may] , for the purpose of facilitating the carrying out of investigations—
 - (a) into the offence; and
 - (b) as to whether criminal proceedings should be instigated against the person, detain that person and take him as quickly as is reasonably practicable to [^{F5}an office of Revenue and Customs] [^{F6}(in a case falling within subsection (A1)(a)) or police station (in a case falling within subsection (A1)(b)) or other premises [^{F7}(in either of those

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cases)] and may thereafter for that purpose take him to any other place and, subject to the following provisions of this section, the detention may continue at the [F⁸ office of Revenue and Customs][F⁹ or police station, or] the other premises or place [F¹⁰(as the case may be)] .

(2) [F¹¹Subject to section 24A, detention] under subsection (1) above shall be terminated not more than [F¹²12 hours] after it begins or (if earlier)—

- (a) when the person is arrested;
- (b) when he is detained in pursuance of any other enactment or subordinate instrument; or
- (c) where there are no longer such grounds as are mentioned in the said subsection (1),

and when a person has been detained under subsection (1) above, he shall be informed immediately upon the termination of his detention in accordance with this subsection that his detention has been terminated.

(3) Where a person has been detained under subsection (1) above, he shall not thereafter be detained under that subsection on the same grounds or on any grounds arising out of the same circumstances.

(4) Where a person has previously been detained in pursuance of any other enactment or subordinate instrument, [F¹³and is] detained under subsection (1) above on the same grounds or on grounds arising from the same circumstances as those which led to his earlier detention [F¹⁴, the period of [F¹⁵12 hours] mentioned in subsection (2) above shall be reduced by the length of that earlier detention].

(5) At the time when an officer detains a person under subsection (1) above, he shall inform the person of his suspicion, of the general nature of the offence which he suspects has been or is being committed and of the reason for the detention; and there shall be recorded—

- (a) the place where detention begins and the [F¹⁶office of Revenue and Customs][F¹⁷(in a case falling within subsection (A1)(a)) or police station (in a case falling within subsection (A1)(b))] or other premises [F¹⁸(in either of those cases)] to which the person is taken;
- (b) any other place to which the person is, during the detention, thereafter taken;
- (c) the general nature of the suspected offence;
- (d) the time when detention under subsection (1) [F¹⁹or (1A)] above begins and the time of the person's arrival at the [F¹⁶office of Revenue and Customs][F²⁰(in a case falling within subsection (A1)(a)) or police station (in a case falling within subsection (A1)(b))] or other premises [F²¹(in either of those cases)] ;
- (e) the time when the person is informed of his rights in terms of subsection (8) below and of [F²²sections 25(1) and 25A(2) and (3)] of this Act and the identity of the officer so informing him;
- (f) where the person requests such intimation to be sent as is specified in the said section 25(1) [F²³or 25A(2)] , the time when such request is—
 - (i) made;
 - (ii) complied with; and
- (g) the time of the person's release from detention or, where instead of being released he is—
 - (i) further detained under section 26 of this Act, the time of commencement of the further detention; or
 - (ii) arrested in respect of the alleged offence, the time of such arrest.

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- (6) Where a person is detained under subsection (1) above, an officer may—
- (a) without prejudice to any existing rule of law as regards the admissibility in evidence of an answer given, put questions to him in relation to the suspected offence;
 - (b) exercise the same powers of search as are available following an arrest.
- (7) An officer may use reasonable force in exercising any power conferred by subsection (1) or (6)(b) above.
- (8) A person detained under subsection (1) above shall be under no obligation to answer any question other than to give [^{F24}the information mentioned in subsection (8A) below], and an officer shall so inform him both on so detaining him and on arrival at the [^{F25}office of Revenue and Customs] or other premises.

[^{F26}(8A) That information is—

- (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 the officer considers necessary or expedient for the purpose of establishing that person's identify); and
 - (e) the person's nationality.]
- (9) ^{F27}

Editorial Information

- X1** The insertion of the new heading "Detention and questioning of suspects and witnesses" in Pt. III on 1.12.2007 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

- F2** S. 24: heading substituted (1.12.2007) by virtue of Finance Act 2007 (c. 11), s. 85, **Sch. 23 paras. 4(f), 14**; S.I. 2007/3166, **art. 3**
- F3** Words in s. 24 substituted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 45(2)** (with **Sch. 21 paras. 40, 49(1)**); S.I. 2013/1042, art. 4(l)
- F4** Words in s. 24(1) substituted (25.6.2013) by Crime and Courts Act 2013 (c. 22), **ss. 55(10)(a)**, 61(2) (with **Sch. 21 paras. 40, 49(1)**); S.I. 2013/1042, art. 4(g)
- F5** Words in s. 24(1) substituted (1.12.2007) by Finance Act 2007 (c. 11), s. 85, **Sch. 23 paras. 4(a)(ii), 14**; S.I. 2007/3166, **art. 3**
- F6** Words in s. 24(1) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), **ss. 55(10)(b)(i)**, 61(2) (with **Sch. 21 paras. 40, 49(1)**); S.I. 2013/1042, art. 4(g)
- F7** Words in s. 24(1) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), **ss. 55(10)(b)(ii)**, 61(2) (with **Sch. 21 paras. 40, 49(1)**); S.I. 2013/1042, art. 4(g)
- F8** Words in s. 24(1) substituted (1.12.2007) by Finance Act 2007 (c. 11), s. 85, **Sch. 23 paras. 4(a)(iii), 14**; S.I. 2007/3166, **art. 3**
- F9** Words in s. 24(1) substituted (25.6.2013) by Crime and Courts Act 2013 (c. 22), **ss. 55(10)(b)(iii)**, 61(2) (with **Sch. 21 paras. 40, 49(1)**); S.I. 2013/1042, art. 4(g)
- F10** Words in s. 24(1) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), **ss. 55(10)(b)(iv)**, 61(2) (with **Sch. 21 paras. 40, 49(1)**); S.I. 2013/1042, art. 4(g)
- F11** Words in s. 24(2) substituted (15.7.2011) by The Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (Consequential Provisions) Order 2011 (S.I. 2011/1739), art. 1(2), **Sch. 1 para. 5(2)(a)** (with art. 2(4))

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- F12** Words in s. 24(2) substituted (15.7.2011) by The Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (Consequential Provisions) Order 2011 (S.I. 2011/1739), art. 1(2), **Sch. 1 para. 5(2)(b)** (with art. 2(4))
- F13** Words in s. 24(4) substituted (30.9.1998) by 1998 c. 37, s. 110(a); S.I. 1998/2327, art. 2(x)
- F14** Words in s. 24(4) inserted (30.9.1998) by 1998 c. 37, s. 110(b); S.I. 1998/2327, art. 2(x)
- F15** Words in s. 24(4) substituted (15.7.2011) by The Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (Consequential Provisions) Order 2011 (S.I. 2011/1739), art. 1(2), **Sch. 1 para. 5(3)** (with art. 2(4))
- F16** Words in s. 24(5) substituted (1.12.2007) by Finance Act 2007 (c. 11), s. 85, **Sch. 23 paras. 4(b), 14; S.I. 2007/3166, art. 3**
- F17** Words in s. 24(5)(a) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 45(3)(a)(i)** (with Sch. 21 paras. 40, 49(1)); S.I. 2013/1042, art. 4(l)
- F18** Words in s. 24(5)(a) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 45(3)(a)(ii)** (with Sch. 21 paras. 40, 49(1)); S.I. 2013/1042, art. 4(l)
- F19** Words in s. 24(5)(d) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 45(3)(b)(i)** (with Sch. 21 paras. 40, 49(1)); S.I. 2013/1042, art. 4(l)
- F20** Words in s. 24(5)(d) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 45(3)(b)(ii)** (with Sch. 21 paras. 40, 49(1)); S.I. 2013/1042, art. 4(l)
- F21** Words in s. 24(5)(d) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 45(3)(b)(iii)** (with Sch. 21 paras. 40, 49(1)); S.I. 2013/1042, art. 4(l)
- F22** Words in s. 24(5)(e) substituted (15.7.2011) by The Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (Consequential Provisions) Order 2011 (S.I. 2011/1739), art. 1(2), **Sch. 1 para. 2(a)** (with art. 2(2)(4))
- F23** Words in s. 24(5)(f) inserted (15.7.2011) by The Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (Consequential Provisions) Order 2011 (S.I. 2011/1739), art. 1(2), **Sch. 1 para. 2(b)** (with art. 2(2)(4))
- F24** Words in s. 24(8) substituted (1.12.2007) by Finance Act 2007 (c. 11), s. 85, **Sch. 23 paras. 4(c)(i), 14; S.I. 2007/3166, art. 3**
- F25** Words in s. 24(8) substituted (1.12.2007) by Finance Act 2007 (c. 11), s. 85, **Sch. 23 paras. 4(c)(ii), 14; S.I. 2007/3166, art. 3**
- F26** S. 24(8A) inserted (1.12.2007) by Finance Act 2007 (c. 11), s. 85, **Sch. 23 paras. 4(d), 14; S.I. 2007/3166, art. 3**
- F27** S. 24(9) repealed (1.12.2007) by Finance Act 2007 (c. 11), ss. 85, 114, Sch. 23 paras. 4(e), 14, {Sch. 27 Pt. 5(2) Note}; S.I. 2007/3166, art. 3

^{F28}24A. Extension of period of detention under section 24

- (1) This section applies in relation to a person who is being detained under section 24 (“the detained person”).
- (2) Before the expiry of the period of 12 hours mentioned in section 24(2), a custody review officer may, subject to subsection (4), authorise that period to be extended in relation to the detained person by a further period of 12 hours.
- (3) The further period of 12 hours starts from the time when the period of detention would have expired but for the authorisation.
- (4) A custody review officer may authorise the extension under subsection (2) in relation to the detained person only if the officer is satisfied that—
 - (a) the continued detention of the detained person is necessary to secure, obtain or preserve evidence (whether by questioning the person or otherwise) relating to an offence in connection with which the person is being detained;

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- (b) the offence in connection with which the detained person is being detained is one that is an indictable offence; and
 - (c) the investigation is being conducted diligently and expeditiously.
- (5) Where section 24(4) applies in relation to the detained person, the references in subsection (2) of this section to the period of 12 hours mentioned in section 24(2) are to be read as references to that period as reduced in accordance with section 24(4).
- (6) Where a custody review officer authorises the extension of the period of detention under subsection (2), section 24 has effect in relation to the detained person as if the references in it to the period of 12 hours were references to that period as extended by virtue of the authorisation.
- [^{F29}(7) In this section and section 24B, “custody review officer” means—
- (a) an officer who—
 - (i) is of a rank at least equivalent to that of police inspector, and
 - (ii) has not been involved in the investigation in connection with which the person is detained, or
 - (b) in relation to the detention of a person under section 24 by an immigration officer, a constable—
 - (i) of the rank of inspector or above, and
 - (ii) who has not been involved in the investigation in connection with which the person is detained.]

Textual Amendments

F28 Ss. 24A, 24B inserted (15.7.2011) by [The Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(Consequential Provisions\) Order 2011 \(S.I. 2011/1739\)](#), art. 1(2), **Sch. 1 para. 6** (with art. 2(4))

F29 S. 24A(7) substituted (12.7.2016) by [Immigration Act 2016 \(c. 19\)](#), **ss. 56(2)**, 94(1); S.I. 2016/603, reg. 3(i)

24B Extension under section 24A: procedure

- (1) This section applies where a custody review officer is considering whether to authorise the extension under section 24A(2) of the period of detention of a person who is being detained under section 24 (“the detained person”).
- (2) Before deciding whether to authorise the extension, the custody review officer must give either of the following persons an opportunity to make representations—
 - (a) the detained person; or
 - (b) any solicitor representing the detained person who is available at the time the officer is considering whether to authorise the extension.
- (3) Representations may be oral or written.
- (4) The custody review officer may refuse to hear oral representations from the detained person if the officer considers that the detained person is unfit to make representations because of the person’s condition or behaviour.

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- (5) Where the custody review officer decides to authorise the extension, the officer must ensure that the following persons are informed of the decision and the grounds on which the extension is authorised—
- (a) the detained person; and
 - (b) any solicitor representing the detained person who is available at the time the decision is made.
- (6) Subsection (7) applies where—
- (a) the custody review officer decides to authorise the extension; and
 - (b) at the time of the decision, the detained person has not exercised all the person's rights under sections 25 and 25A.
- (7) The custody review officer must—
- (a) ensure that the detained person is informed of the rights under sections 25 and 25A which the person has not yet exercised; and
 - (b) if the officer considers there are possible grounds under section 25(1) or 25A(7)(b) or (8) (as the case may be) for delaying the exercise of any such right, decide whether or not to delay the exercise of the right.
- (8) The custody review officer must make a written record of—
- (a) the officer's decision on whether to authorise the extension; and
 - (b) any of the following which apply—
 - (i) the grounds on which the extension is authorised;
 - (ii) the fact that the detained person and a solicitor have been informed as required by subsection (5);
 - (iii) the fact that the detained person has been informed as required by subsection (7)(a);
 - (iv) any decision on the matter referred to in subsection (7)(b) and, if the decision is to delay the exercise of a right, the grounds for the decision.]

Textual Amendments

F28 Ss. 24A, 24B inserted (15.7.2011) by [The Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(Consequential Provisions\) Order 2011 \(S.I. 2011/1739\)](#), art. 1(2), [Sch. 1 para. 6](#) (with art. 2(4))

^{x2}25 **Right to have someone informed when detained.**

- (1) Without prejudice to section 17 the ^{M1}Criminal Procedure (Scotland) Act 1995 (intimation to solicitor following arrest), a person who, not being a person in respect of whose detention subsection (2) below applies, is being detained under section 24 of this Act and has been taken to [^{F30}an office of Revenue and Customs] [^{F31}(in a case falling within subsection (A1)(a)) or police station (in a case falling within subsection (A1)(b))] or other premises or place [^{F32}(in either of those cases)] shall be entitled to have intimation of his detention and of the [^{F33}office of Revenue and Customs] [^{F34}, police station] or other premises or place sent to a ^{F35}... person reasonably named by him without delay or, where some delay is necessary in the interest of the investigation or the prevention of crime or the apprehension of

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- offenders, with no more delay than is so necessary; and the person shall be informed of such entitlement—
- (a) on arrival at the [^{F33}office of Revenue and Customs][^{F36}, police station] or other premises; or
 - (b) where he is not detained until after such arrival, on such detention.
- (2) Without prejudice to the said section 17, an officer shall, where a person who is being detained as is mentioned in subsection (1) above appears to him to be a child, send without delay such intimation as is mentioned in that subsection to that person's parent if known; and the parent—
- (a) in a case where there is reasonable cause to suspect that he has been involved in the alleged offence in respect of which the person has been detained, may; and
 - (b) in any other case shall,
- be permitted access to the person.
- (3) The nature and extent of any access permitted under subsection (2), above shall be subject to any restriction essential for the furtherance of the investigation or the well-being of the person.
- (4) In subsection (2) above—
- (a) “child” means a person under 16 years of age; and
 - (b) “parent” includes a guardian and any person who has the care of a child.

Editorial Information

- X2** The insertion of the new heading "Detention and questioning of suspects and witnesses" in Pt. III on 1.12.2007 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

- F30** Words in s. 25(1) substituted (1.12.2007) by Finance Act 2007 (c. 11), s. 85, **Sch. 23 paras. 5(a)**, 14; S.I. 2007/3166, **art. 3**
- F31** Words in s. 25(1) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 46(a)(i)** (with Sch. 21 paras. 40, 49(2)); S.I. 2013/1042, art. 4(l)
- F32** Words in s. 25(1) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 46(a)(ii)** (with Sch. 21 paras. 40, 49(2)); S.I. 2013/1042, art. 4(l)
- F33** Words in s. 25(1) substituted (1.12.2007) by Finance Act 2007 (c. 11), s. 85, **Sch. 23 paras. 5(b)**, 14; S.I. 2007/3166, **art. 3**
- F34** Words in s. 25(1) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 46(a)(iii)** (with Sch. 21 paras. 40, 49(2)); S.I. 2013/1042, art. 4(l)
- F35** Words in s. 25(1) repealed (15.7.2011) by The Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (Consequential Provisions) Order 2011 (S.I. 2011/1739), art. 1(2), **Sch. 1 para. 3** (with art. 2(3)(4))
- F36** Words in s. 25(1)(a) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 46(b)** (with Sch. 21 paras. 40, 49(2)); S.I. 2013/1042, art. 4(l)

Marginal Citations

- M1** 1995 c. 46.

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Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Cross Heading: Detention and questioning of suspects and witnesses is up to date with all changes known to be in force on or before 28 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

[^{F37}25A. Right of suspects to have access to a solicitor

- (1) This section applies to a person (“the suspect”) who—
 - (a) is detained under section 24;
 - (b) attends voluntarily at an office of Revenue and Customs or any other premises or place for the purpose of being questioned by [^{F38}an officer of Revenue and Customs] on suspicion of having committed a Revenue and Customs offence;
^{F39} ...
 - (c) is arrested (but not charged) by [^{F40}an officer of Revenue and Customs] in connection with a Revenue and Customs offence and is being detained at an office of Revenue and Customs or any other premises or place for the purpose of being questioned by [^{F40}an officer of Revenue and Customs] in connection with the offence.
 - [^{F41}(d) attends voluntarily at a police station or any other premises or place for the purpose of being questioned by an immigration officer on suspicion of having committed an immigration offence or nationality offence; or
 - (e) is arrested (but not charged) by an immigration officer in connection with an immigration offence or nationality offence and is being detained at a police station or any other premises or place for the purpose of being questioned by an immigration officer in connection with the offence.]
- (2) The suspect has the right to have intimation sent to a solicitor of any or all of the following—
 - (a) the fact of the suspect’s detention, voluntary attendance or arrest (as the case may be);
 - (b) the office of Revenue and Customs [^{F42}, police station] or other premises or place at which the suspect is being detained or is attending; and
 - (c) that the solicitor’s professional assistance is required by the suspect.
- (3) The suspect also has a right to a private consultation with a solicitor—
 - (a) before any questioning of the suspect by an officer begins; and
 - (b) at any other time during such questioning.
- (4) Subsection (3) is subject to subsections (8) and (9).
- (5) In subsection (3) “consultation” means consultation by such means as may be appropriate in the circumstances (and may include, for example, consultation by means of telephone).
- (6) The suspect must be informed of the rights under subsections (2) and (3)—
 - (a) on arrival at the office of Revenue and Customs [^{F43}, police station] or other premises or place;
 - (b) in the case where the suspect is detained under section 24 after such arrival, on the suspect’s detention; and
 - (c) in the case where the suspect is arrested as mentioned in subsection (1)(c) after such arrival, on arrest;

and it is immaterial in a case to which paragraph (b) or (c) applies whether or not the suspect has previously been informed of the rights.
- (7) Where a suspect wishes to exercise the right to have intimation sent under subsection (2), the intimation must be sent by an officer—
 - (a) without delay; or

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- (b) if some delay is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders, with no more delay than is necessary.
- (8) In exceptional circumstances, an officer may delay the suspect's exercise of the right under subsection (3) on any occasion so far as it is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders that the questioning of the suspect by an officer begins or continues without the suspect having exercised that right on that occasion.
- (9) Subsection (3) does not apply in relation to the questioning of the suspect by an officer for the purpose of obtaining the information mentioned in section 24(8A).]

Textual Amendments

- F37** S. 25A inserted (15.7.2011) by [The Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(Consequential Provisions\) Order 2011 \(S.I. 2011/1739\)](#), art. 1(2), **Sch. 1 para. 4** (with art. 2(4))
- F38** Words in s. 25A(1)(b) substituted (25.6.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 21 para. 47(2)(a)(i)** (with [Sch. 21 para. 40](#)); S.I. 2013/1042, art. 4(l)
- F39** Word in s. 25A(1)(b) omitted (25.6.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 21 para. 47(2)(a)(ii)** (with [Sch. 21 para. 40](#)); S.I. 2013/1042, art. 4(l)
- F40** Words in s. 25A(1)(c) substituted (25.6.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 21 para. 47(2)(b)** (with [Sch. 21 paras. 40, 49\(2\)](#)); S.I. 2013/1042, art. 4(l)
- F41** S. 25A(1)(d)(e) inserted (25.6.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 21 para. 47(2)(c)** (with [Sch. 21 para. 40](#)); S.I. 2013/1042, art. 4(l)
- F42** Words in s. 25A(2)(b) inserted (25.6.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 21 para. 47(3)** (with [Sch. 21 para. 40](#)); S.I. 2013/1042, art. 4(l)
- F43** Words in s. 25A(6)(a) inserted (25.6.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 21 para. 47(4)** (with [Sch. 21 para. 40](#)); S.I. 2013/1042, art. 4(l)

^{x3}26 Detention in connection with certain drug smuggling offences.

- (1) Where an officer has reasonable grounds for suspecting—
 - (a) that a person has committed or is committing a relevant offence; and
 - (b) that, in connection with the commission of such an offence, a controlled drug is secreted in the person's body,a superior officer may, notwithstanding that the person has been or is being detained in pursuance of any other enactment or subordinate instrument, authorise the detention of the person at a [F44an office of Revenue and Customs] or other premises in accordance with this section.
- (2) Subject to subsection (7) below, where a person is detained under subsection (1) above or is further detained in pursuance of a warrant under subsection (4) below he shall—
 - (a) provide such specimens of blood or urine for analysis;
 - (b) submit to such intimate searches, to be carried out by a registered medical practitioner;
 - (c) submit to such other test or examinations prescribed by the Secretary of State by regulations made under this paragraph to be carried out by, or under the supervision of, a registered medical practitioner,

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as the officer may reasonably require; and regulations under paragraph (c) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Subject to subsection (4) below, detention under subsection (1) above shall be terminated not more than 24 hours after it begins, or (if earlier)—

- (a) when the person is arrested;
- (b) when he is detained in pursuance of any other enactment or subordinate instrument; or
- (c) where there are no longer such grounds as are mentioned in subsection (1), and, when a person has been detained under subsection (1), he shall, unless further detained in pursuance of a warrant under subsection (4) below, be informed immediately upon the termination of his detention in accordance with this subsection that his detention has been terminated.

(4) Where a person is detained under subsection (1) above and either—

- (a) he has failed or refused—
 - (i) to provide a specimen in pursuance of paragraph (a) of subsection (2) above; or
 - (ii) to submit to any search, test or examination referred to in paragraph (b) or (c) of that subsection; or
- (b) as a result of anything done in pursuance of the said subsection (2) the officer continues to have reasonable grounds for suspecting—
 - (i) that the person has committed or is committing a relevant offence; and
 - (ii) that a controlled drug is secreted in the person's body,

the procurator fiscal may, at the request of a superior officer, apply to the sheriff for a warrant for the further detention of the person at a ^{F44}an office of Revenue and Customs] or other premises for an additional period of not more than 7 days; and if the sheriff is satisfied that there has been such failure or refusal as is mentioned in paragraph (a) above or, as the case may be, that there are reasonable grounds as mentioned in paragraph (b) above he may grant a warrant for such further detention.

(5) Detention in pursuance of a warrant under subsection (4) above shall be terminated at the end of the period of 7 days mentioned in that subsection or (if earlier)—

- (a) when the person is arrested;
- (b) when he is detained in pursuance of any other enactment or subordinate instrument; or
- (c) where there are no longer such grounds as are mentioned in paragraph (b) of that subsection,

and when a person has been detained in pursuance of a warrant under subsection (4), he shall be informed immediately on the termination of his detention in accordance with this subsection that his detention has been terminated.

(6) Subject to subsection (7) below, the question whether it is to be a specimen of blood or a specimen of urine which is to be provided in pursuance of subsection (2) above shall be decided by the officer making the requirement.

(7) A person may be required, in pursuance of subsection (2) above—

- (a) to provide a specimen of blood; or
- (b) to submit to any search, test or examination,

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only if a registered medical practitioner is of the opinion that there are no medical reasons for not making such a requirement; and, if a requirement to provide a specimen of blood is made, the specimen may be taken only by a registered medical practitioner.

- (8) Subsections (3), (5), (6) and (8) of section 24 of this Act shall apply in respect of a person detained under this section as they apply in respect of a person detained under the said section 24; and, except as regards a requirement under subsection (2) above, an officer may use reasonable force in exercising any power conferred by this section.
- (9) Section 25 of this Act shall, subject to the following modifications, apply in respect of a person detained under this section as it applies to a person detained under section 24 of this Act—
- (a) any delay in informing a solicitor and one other person of such detention as is mentioned in subsection (1) of the said section 25 shall not extend longer than the period of 24 hours from the start of the detention, and shall only be permitted on the authorisation of a superior officer;
 - (b) the person detained shall be entitled to consult a solicitor at any time without delay, and he shall be informed of such entitlement at the commencement of the detention, but, if a superior officer considers it necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders, he may authorise a delay not extending longer than the period of 24 hours from the start of the detention; and
 - (c) paragraph (a) of subsection (2) of the said section 25 shall cease to apply at the end of the period of 24 hours from the start of the detention,
- but any delay authorised by virtue of this subsection shall be for no longer than is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders.
- (10) Without prejudice to section 20(2) of the ^{M2}Interpretation Act 1978, the references in section 24(5) of this Act to section 25(1) of this Act shall be construed as including references to subsection (9) above; and the requirement to record certain matters under the said section 24(5) shall include a requirement to record the time when a person detained makes a request to consult a solicitor and the time when the solicitor is contacted for the purpose of arranging a consultation.
- (11) In this section—

“controlled drug” has the meaning assigned by section 2 of the ^{M3}Misuse of Drugs Act 1971

“intimate search” means a search which consists of the physical examination of a persons’s body orifices;

“relevant offence” means an offence involving a controlled drug under any of the following provisions of the ^{M4}Customs and Excise Management Act 1979—

- (a) section 50(2) or (3) (importation etc. of prohibited goods);
- (b) section 68(2) (exportation etc. of prohibited goods);
- (c) section 170(1) (possession or dealing with prohibited goods);
- (d) section 170(2) (being concerned in evasion or attempt at evasion of a prohibition);

[^{F45}“superior officer” means an officer whose title is specified for the purposes of this section by the Treasury in an order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

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Editorial Information

- X3** The insertion of the new heading "Detention and questioning of suspects and witnesses" in Pt. III on 1.12.2007 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

- F44** Words in s. 26 substituted (1.12.2007) by [Finance Act 2007 \(c. 11\)](#), s. 85, [Sch. 23 paras. 6, 14](#); S.I. [2007/3166](#), [art. 3](#)
- F45** Definition in s. 26(11) substituted (1.8.1997) by [1997 c. 48](#), s. 62(1), [Sch. 1 para. 18\(7\)](#); S.I. [1997/1712](#), [art. 3](#), [Sch.](#)

Marginal Citations

- M2** [1978 c. 30](#).
- M3** [1971 c. 38](#).
- M4** [1979 c. 2](#).

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