



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART II

POLICE FUNCTIONS

Lord Advocate's instructions

12 Instructions by Lord Advocate as to reporting of offences

The Lord Advocate may, from time to time, issue instructions to a chief constable with regard to the reporting, for consideration of the question of prosecution, of offences alleged to have been committed within the area of such chief constable, and it shall be the duty of a chief constable to whom any such instruction is issued to secure compliance therewith.

Detention and questioning

13 Powers relating to suspects and potential witnesses

- (1) Where a constable has reasonable grounds for suspecting that a person has committed or is committing an offence at any place, he may require—
 - (a) that person, if the constable finds him at that place or at any place where the constable is entitled to be, to give his name and address and may ask him for an explanation of the circumstances which have given rise to the constable's suspicion;
 - (b) any other person whom the constable finds at that place or at any place where the constable is entitled to be and who the constable believes has information relating to the offence, to give his name and address.
- (2) The constable may require the person mentioned in paragraph (a) of subsection (1) above to remain with him while he (either or both)—
 - (a) subject to subsection (3) below, verifies any name and address given by the person;

- (b) notes any explanation proffered by the person.
- (3) The constable shall exercise his power under paragraph (a) of subsection (2) above only where it appears to him that such verification can be obtained quickly.
- (4) A constable may use reasonable force to ensure that the person mentioned in paragraph (a) of subsection (1) above remains with him.
- (5) A constable shall inform a person, when making a requirement of that person under—
 - (a) paragraph (a) of subsection (1) above, of his suspicion and of the general nature of the offence which he suspects that the person has committed or is committing;
 - (b) paragraph (b) of subsection (1) above, of his suspicion, of the general nature of the offence which he suspects has been or is being committed and that the reason for the requirement is that he believes the person has information relating to the offence;
 - (c) subsection (2) above, why the person is being required to remain with him;
 - (d) either of the said subsections, that failure to comply with the requirement may constitute an offence.
- (6) A person mentioned in—
 - (a) paragraph (a) of subsection (1) above who having been required—
 - (i) under that subsection to give his name and address; or
 - (ii) under subsection (2) above to remain with a constable,
 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;
 - (b) paragraph (b) of the said subsection (1) who having been required under that subsection to give his name and address 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.
- (7) A constable may arrest without warrant any person who he has reasonable grounds for suspecting has committed an offence under subsection (6) above.

14 Detention and questioning at police station

- (1) Where a constable has reasonable grounds for suspecting that a person has committed or is committing an offence punishable by imprisonment, the constable 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 a police station or other premises 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 police station or, as the case may be, the other premises or place.
- (2) Detention under subsection (1) above shall be terminated not more than six 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

- (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 released at the termination of a period of detention 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) Subject to subsection (5) below, where a person has previously been detained in pursuance of any other enactment, and 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, the period of six hours mentioned in subsection (2) above shall be reduced by the length of that earlier detention.
- (5) Subsection (4) above shall not apply in relation to detention under section 41(3) of the Prisons (Scotland) Act 1989 (detention in relation to introduction etc. into prison of prohibited article), but where a person was detained under section 41(3) immediately prior to his detention under subsection (1) above the period of six hours mentioned in subsection (2) above shall be reduced by the length of that earlier detention.
- (6) At the time when a constable 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 police station or other premises 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) above begins and the time of the person's arrival at the police station or other premises;
 - (e) the time when the person is informed of his rights in terms of subsection (9) below and of subsection (1)(b) of section 15 of this Act and the identity of the constable so informing him;
 - (f) where the person requests such intimation to be sent as is specified in section 15(1)(b) of this Act, 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 arrested in respect of the alleged offence, the time of such arrest.
- (7) Where a person is detained under subsection (1) above, a constable may—
- (a) without prejudice to any relevant rule of law as regards the admissibility in evidence of any 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.
- (8) A constable may use reasonable force in exercising any power conferred by subsection (1), or by paragraph (b) of subsection (7), above.

- (9) A person detained under subsection (1) above shall be under no obligation to answer any question other than to give his name and address, and a constable shall so inform him both on so detaining him and on arrival at the police station or other premises.

15 Rights of person arrested or detained

- (1) Without prejudice to section 17 of this Act, a person who, not being a person in respect of whose custody or detention subsection (4) below applies—
- (a) has been arrested and is in custody in a police station or other premises, shall be entitled to have intimation of his custody and of the place where he is being held sent to a person reasonably named by him;
 - (b) is being detained under section 14 of this Act and has been taken to a police station or other premises or place, shall be entitled to have intimation of his detention and of the police station or other premises or place sent to a solicitor and to one other 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 offenders, with no more delay than is so necessary.
- (2) A person shall be informed of his entitlement under subsection (1) above—
- (a) on arrival at the police station or other premises; or
 - (b) where he is not arrested, or as the case may be detained, until after such arrival, on such arrest or detention.
- (3) Where the person mentioned in paragraph (a) of subsection (1) above requests such intimation to be sent as is specified in that paragraph there shall be recorded the time when such request is—
- (a) made;
 - (b) complied with.
- (4) Without prejudice to the said section 17, a constable shall, where a person who has been arrested and is in such custody as is mentioned in paragraph (a) of subsection (1) above or who is being detained as is mentioned in paragraph (b) of that subsection appears to him to be a child, send without delay such intimation as is mentioned in the said paragraph (a), or as the case may be paragraph (b), 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 arrested or detained, may; and
 - (b) in any other case shall,
- be permitted access to the person.
- (5) The nature and extent of any access permitted under subsection (4) above shall be subject to any restriction essential for the furtherance of the investigation or the well-being of the person.
- (6) In subsection (4) above —
- (a) “child” means a person under 16 years of age; and
 - (b) “parent” includes guardian and any person who has the actual custody of a child.

16 Drunken persons: power to take to designated place

- (1) Where a constable has power to arrest a person without a warrant for any offence and the constable has reasonable grounds for suspecting that that person is drunk, the constable may, if he thinks fit, take him to any place designated by the Secretary of State for the purposes of this section as a place suitable for the care of drunken persons.
- (2) A person shall not by virtue of this section be liable to be detained in any such place as is mentioned in subsection (1) above, but the exercise in his case of the power conferred by this section shall not preclude his being charged with any offence.

Arrest: access to solicitor

17 Right of accused to have access to solicitor

- (1) Where an accused has been arrested on any criminal charge, he shall be entitled immediately upon such arrest —
 - (a) to have intimation sent to a solicitor that his professional assistance is required by the accused, and informing the solicitor—
 - (i) of the place where the person is being detained;
 - (ii) whether the person is to be liberated; and
 - (iii) if the person is not to be liberated, the court to which he is to be taken and the date when he is to be so taken; and
 - (b) to be told what rights there are under—
 - (i) paragraph (a) above;
 - (ii) subsection (2) below; and
 - (iii) section 35(1) and (2) of this Act.
- (2) The accused and the solicitor shall be entitled to have a private interview before the examination or, as the case may be, first appearance.

Prints and samples

18 Prints, samples etc. in criminal investigations

- (1) This section applies where a person has been arrested and is in custody or is detained under section 14(1) of this Act.
- (2) A constable may take from the person fingerprints, palm prints and such other prints and impressions of an external part of the body as the constable may, having regard to the circumstances of the suspected offence in respect of which the person has been arrested or detained, reasonably consider it appropriate to take.
- (3) Subject to subsection (4) below, all record of any prints or impressions taken under subsection (2) above, all samples taken under subsection (6) below and all information derived from such samples shall be destroyed as soon as possible following a decision not to institute criminal proceedings against the person or on the conclusion of such proceedings otherwise than with a conviction or an order under section 246(3) of this Act.
- (4) The duty under subsection (3) above to destroy samples taken under subsection (6) below and information derived from such samples shall not apply—

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- (a) where the destruction of the sample or the information could have the effect of destroying any sample, or any information derived therefrom, lawfully held in relation to a person other than the person from whom the sample was taken; or
 - (b) where the record, sample or information in question is of the same kind as a record, a sample or, as the case may be, information lawfully held by or on behalf of any police force in relation to the person.
- (5) No sample, or information derived from a sample, retained by virtue of subsection (4) above shall be used—
- (a) in evidence against the person from whom the sample was taken; or
 - (b) for the purposes of the investigation of any offence.
- (6) A constable may, with the authority of an officer of a rank no lower than inspector, take from the person—
- (a) from the hair of an external part of the body other than pubic hair, by means of cutting, combing or plucking, a sample of hair or other material;
 - (b) from a fingernail or toenail or from under any such nail, a sample of nail or other material;
 - (c) from an external part of the body, by means of swabbing or rubbing, a sample of blood or other body fluid, of body tissue or of other material;
 - (d) from the inside of the mouth, by means of swabbing, a sample of saliva or other material.
- (7) A constable may use reasonable force in exercising any power conferred by subsection (2) or (6) above.
- (8) Nothing in this section shall prejudice—
- (a) any power of search;
 - (b) any power to take possession of evidence where there is imminent danger of its being lost or destroyed; or
 - (c) any power to take prints, impressions or samples under the authority of a warrant.

19 Prints, samples etc. in criminal investigations: supplementary provisions

- (1) This section applies where a person convicted of an offence—
- (a) has not, since the conviction, had a sample, print or impression taken from him; or
 - (b) has (whether before or after the conviction) had a sample, print or impression taken from him but it was not suitable for the means of analysis for which it was taken or, though suitable, was insufficient (either in quantity or in quality) to enable information to be obtained by that means of analysis.
- (2) Where this section applies, a constable may, within the permitted period—
- (a) take from the convicted person fingerprints, palmprints and such other prints and impressions of an external part of the body as the constable reasonably considers it appropriate to take; and
 - (b) with the authority of an officer of a rank no lower than inspector, take from the person any sample mentioned in any of paragraphs (a) to (d) of subsection (6) of section 18 of this Act by the means specified in that paragraph in relation to that sample.

- (3) A constable—
- (a) may require the convicted person to attend a police station for the purposes of subsection (2) above;
 - (b) may, where the convicted person is in legal custody by virtue of section 295 of this Act, exercise the powers conferred by subsection (2) above in relation to the person in the place where he is for the time being.
- (4) In subsection (2) above, “the permitted period” means—
- (a) in a case to which paragraph (a) of subsection (1) above applies, the period of one month beginning with the date of the conviction;
 - (b) in a case to which paragraph (b) of that subsection applies, the period of one month beginning with the date on which a constable of the police force which instructed the analysis receives written intimation that the sample, print or impression was unsuitable or, as the case may be, insufficient as mentioned in that paragraph.
- (5) A requirement under subsection (3)(a) above—
- (a) shall give the person at least seven days' notice of the date on which he is required to attend;
 - (b) may direct him to attend at a specified time of day or between specified times of day.
- (6) Any constable may arrest without warrant a person who fails to comply with a requirement under subsection (3)(a) above.

20 Use of prints, samples etc

Without prejudice to any power to do so apart from this section, prints, impressions and samples lawfully held by or on behalf of any police force or in connection with or as a result of an investigation of an offence and information derived therefrom may be checked against other such prints, impressions, samples and information.

Schedule 1 offences

21 Schedule 1 offences: power of constable to take offender into custody

- (1) Without prejudice to any other powers of arrest, a constable may take into custody without warrant—
- (a) any person who within his view commits any of the offences mentioned in Schedule 1 to this Act, if the constable does not know and cannot ascertain his name and address;
 - (b) any person who has committed, or whom he had reason to believe to have committed, any of the offences mentioned in that Schedule, if the constable does not know and cannot ascertain his name and address or has reasonable ground for believing that he will abscond.
- (2) Where a person has been arrested under this section, the officer in charge of a police station may—
- (a) liberate him upon a written undertaking, signed by him and certified by the said officer, in terms of which that person undertakes to appear at a specified court at a specified time; or

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- (b) liberate him without any such undertaking; or
 - (c) refuse to liberate him, and such refusal and the detention of that person until his case is tried in the usual form shall not subject the officer to any claim whatsoever.
- (3) A person in breach of an undertaking given by him under subsection (2)(a) above without reasonable excuse shall be guilty of an offence and liable to the following penalties—
- (a) a fine not exceeding level 3 on the standard scale; and
 - (b) imprisonment for a period—
 - (i) where conviction is in the district court, not exceeding 60 days; or
 - (ii) in any other case, not exceeding 3 months.
- (4) The penalties provided for in subsection (3) above may be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.
- (5) In any proceedings relating to an offence under this section, a writing, purporting to be such an undertaking as is mentioned in subsection (2)(a) above and bearing to be signed and certified, shall be sufficient evidence of the terms of the undertaking given by the arrested person.

Police liberation

22 Liberation by police

- (1) Where a person has been arrested and charged with an offence which may be tried summarily, the officer in charge of a police station may—
- (a) liberate him upon a written undertaking, signed by him and certified by the officer, in terms of which the person undertakes to appear at a specified court at a specified time; or
 - (b) liberate him without any such undertaking; or
 - (c) refuse to liberate him.
- (2) A person in breach of an undertaking given by him under subsection (1) above without reasonable excuse shall be guilty of an offence and liable on summary conviction to the following penalties—
- (a) a fine not exceeding level 3 on the standard scale; and
 - (b) imprisonment for a period—
 - (i) where conviction is in the district court, not exceeding 60 days; or
 - (ii) where conviction is in the sheriff court, not exceeding 3 months.
- (3) The refusal of the officer in charge to liberate a person under subsection (1)(c) above and the detention of that person until his case is tried in the usual form shall not subject the officer to any claim whatsoever.
- (4) The penalties provided for in subsection (2) above may be imposed in addition to any other penalty which it is competent for the court to impose, notwithstanding that the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.

- (5) In any proceedings relating to an offence under this section, a writing, purporting to be such an undertaking as is mentioned in subsection (1)(a) above and bearing to be signed and certified, shall be sufficient evidence of the terms of the undertaking given by the arrested person.