

CRIMINAL JUSTICE (SCOTLAND) ACT 2016

EXPLANATORY NOTES

OVERVIEW OF THE ACT

Part 1 – Arrest and Custody

Chapter 1 – Arrest by police

Arrest without warrant

Section 1 – Power of a constable

15. **Section 1** sets out new powers of a police constable to arrest, without a warrant, a person suspected of having committed or to be committing an offence in Scotland. (Note, however, that the arrest regime under section 41(1) of the Terrorism Act 2000 is unaffected by this Act (see section 59)).
16. **Section 1(1)** provides that a constable (defined in section 62) who has reasonable grounds to suspect that a person has committed or is committing an offence may arrest that person without a warrant.
17. **Section 1(2)** qualifies the power of a constable to arrest a person without warrant for having committed an offence which is not punishable by imprisonment. Not only must a constable have reasonable grounds for suspecting the person, the constable must also be satisfied that the “interests of justice” would not be met if the person was not immediately arrested for the offence. Section 1(3) sets out factors that may be relevant in applying the “interests of justice” test referred to in section 1(2).
18. **Section 1(4)** provides clarity that an offence is only to be considered as not punishable by imprisonment in terms of subsection (2) if, as a matter of general application, a person, when convicted, cannot be sentenced to imprisonment. This means that the power operates even where the particular person arrested may not be imprisoned (due, most likely, to the person’s age).