

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).

Section 2 – Exercise of the power

19. [Section 2](#) sets out how the power of arrest set out in section 1 can be exercised.
20. [Section 2\(1\)](#) provides that a person may be arrested under section 1 multiple times for the same offence (e.g. a person may be arrested, questioned and released and subsequently arrested again if, for example, further evidence comes to light).
21. [Section 2\(2\)](#) clarifies that the power to arrest again does not apply to persons who have been “officially accused” (defined in section 63) of having committed the offence or an offence arising from the same circumstances. For example, where the police have a warrant to arrest a person, they cannot use the power of arrest to do so.
22. [Section 2\(3\)](#) creates a requirement that a constable who is not in uniform must show his or her identification, as soon as reasonably practicable, when requested to do so by a person being arrested.

Procedure following arrest

Section 3 – Information to be given on arrest

23. **Section 3** specifies the information which must be provided by a constable, as soon as is reasonably practicable, to an arrested person. The information will normally be provided immediately upon arrest.

Section 4 – Arrested person to be taken to police station

24. **Section 4** sets out the requirement on a constable to take an arrested person to a police station as soon as is reasonably practicable after arrest (if not arrested there). By virtue of section 45 a constable may use reasonable force when doing so.
25. **Section 4(2)** provides circumstances as to when the duty to take the person to the police station can cease to apply prior to arrival at a police station. It further provides that the person must in those circumstances be released from custody.
26. **Section 4(3)** also clarifies that the requirement to take the person to the police station will also cease to apply if, before arriving at a police station, that person is released under the provisions contained within section 25(2) or 28(3A) of the 1995 Act.

Section 5 – Information to be given at police station

27. **Section 5** sets out the information that must be provided to a person taken to a police station under arrest and to those arrested whilst at a police station.
28. In particular, section 5(2) and (3) set out various matters that the arrested person must be informed of, as soon as reasonably practicable, e.g. their right not to say anything other than to provide information relating to their name, address etc.; their rights to have intimation sent, and to have access, to solicitors and, where appropriate, persons such as parents or other persons capable of giving support; and their rights under Articles 3 and 4 of Directive 2012/13/EU of the European Parliament and of the Council, including, for example, a letter of rights which contains basic information to assist persons in understanding their rights.

Section 6 – Information to be recorded by police

29. **Section 6** details the information which must be recorded by a constable when a person is arrested under section 1.
30. **Section 6(1)** provides a list of the information to be recorded in respect of all arrests.
31. **Section 6(2)(a)** requires a constable who has released a person from custody under section 4(2) to record the reasons why that constable formed the opinion that there are no reasonable grounds for suspecting that the person committed the offence for which they were arrested. Section 6(2)(b) to (5) specifies the information that must be recorded in relation to a person arrested and held in police custody (defined in section 64) but not officially charged with an offence e.g. the time the person is informed of his right to silence under section 5 and right of intimation to another person and a solicitor under sections 38 and 43; the timing and outcome of a police decision on whether to authorise their continued custody; the time and outcome of any review of continued custody; the time a person is released from custody on conditions or charged.