

CRIMINAL JUSTICE (SCOTLAND) ACT 2016

EXPLANATORY NOTES

OVERVIEW OF THE ACT

Part 1 – Arrest and Custody

Chapter 2 – Custody: person not officially accused

Investigative liberation

Section 16 – Release on conditions

48. **Section 16** applies where: a person is in police custody by virtue of the authorisation under section 7 (that is, where a person has been arrested without warrant and not charged, including a case where authorisation has been reviewed and continued under section 13), a constable has reasonable grounds to suspect that the person has committed a relevant offence and the period of 28 days calculated in accordance with section 17(1) (a) has not expired. As explained further below, the effect of section 16 is to enable the police to release such persons from police custody on conditions which may be applied for a maximum period of 28 days following the conditions being imposed. It follows, that a person could not be released again on investigative liberation if arrested again after those 28 days have expired. The meaning of “relevant offence” is given in subsection (6).
49. Subsection (2) provides that a constable of the rank of sergeant or above (subsection (5)) may authorise the release of a person from custody on any condition which is necessary and proportionate for the purpose of ensuring the proper conduct of the investigation into a relevant offence. The meaning of “relevant offence” is given in subsection (6).
50. **Section 16(4)** ensures that any condition imposed is treated as a liberation condition for the purposes of schedule 1. This means that a breach of any condition may be penalised by a fine or a prison sentence as outlined in schedule 1 and, a breach which would be an offence were the person not subject to liberation conditions may be taken into account in sentencing for that offence.