

CRIMINAL JUSTICE (SCOTLAND) ACT 2016

EXPLANATORY NOTES

OVERVIEW OF THE ACT

Part 1 – Arrest and Custody

Chapter 4 – Police interview

Person officially accused

Section 36 – Authorisation: further provision

111. Section 36 makes further provision in respect of questioning after a person has been officially accused of an offence.
112. Subsection (1) sets out who may make an application for authorisation. Where the case against the accused person has called in court in terms of section 35(5), subsection (1)(a) provides that the application must be made by a prosecutor; otherwise the application should be made by a constable (subsection (1)(b)). In the former case, though, even if the application is granted, the questioning will be carried out by a constable, in terms of section 35(1); the prosecutor’s limited right to question an accused person at the inception of solemn proceedings only (generally known as “judicial examination”) is abolished by section 78 of this Act.
113. Subsection (2) defines “prosecutor” for the purposes of subsection (1).
114. Subsection (3)(a) gives the High Court of Justiciary the power to prescribe, in an Act of Adjournal, the form in which a written application seeking authorisation must be made; and a written application should closely follow that form. Subsection (3)(b), by requiring an applicant to include details of any previous applications for authorisation to question the accused person, either about the same offence, or about another offence arising out of the same circumstances, will ensure that the court has information about any such previous applications.
115. Subsection (4) sets out when authorisation to question the accused person comes to an end: either when the period stipulated by the court under section 35(6)(a) expires; or, when the trial of the accused person starts. Subsection (5) defines when a trial is deemed to have started for this section.
116. Subsection (6) defines “authorisation” and “offence” for the purposes of this section.