

# CRIMINAL JUSTICE (SCOTLAND) ACT 2016

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## EXPLANATORY NOTES

### OVERVIEW OF THE ACT

#### Part 1 – Arrest and Custody

#### *Chapter 6 – Police powers and duties*

#### **Powers of police**

#### *Section 45 – Use of reasonable force*

144. [Section 45](#) enables a constable to use reasonable force to effect an arrest and when taking a person in custody to any place.

#### *Section 46 – Common law power of entry*

145. [Section 46](#) makes clear that any existing powers of a constable to enter any premises for any purposes are not affected by this Act. Those powers remain.

#### *Section 47 – Common law power of search etc.*

146. [Section 47\(1\)](#) similarly preserves any existing powers of a constable in relation to a person arrested and charged, for example, to search them, seize items in their possession and place them in an identification parade (this list is not exhaustive).

#### *Section 48 – Power of search etc. on arrest*

147. [Section 48](#) makes clear that the powers described in [section 47\(2\)](#) which can be exercised by a constable in relation to a person after arrest and charge can also be exercised between a person's arrest and the person being charged.

#### *Section 49 – Taking drunk persons to designated place*

148. [Section 49\(1\)](#) allows the police to take a person who is deemed to be drunk to a designated place (as designated by the Scottish Ministers) to be cared for instead of arresting the person for an offence. By using this power it does not, however, require the person to remain unwillingly at such a place nor does it prevent a constable from subsequently arresting the person.

#### **Duties of police**

#### *Section 50 – Duty not to detain unnecessarily*

149. [Section 50](#) provides that a constable must ensure that a person is not unreasonably or unnecessarily held in police custody.

***Section 51 – Duty to consider child’s wellbeing***

150. **Section 51** states that in making decisions to arrest a child (defined for this section in subsection (3) as a person under 18 years of age), hold a child in police custody, interview a child about an offence which the child is suspected of committing, or charge a child with an offence, a constable must treat the need to safeguard and promote the well-being of the child as a primary consideration. This does not mean that the interests of the child are the only consideration or that they are, in all cases, the most important consideration. For example, the need to protect others may prevail.

***Section 52 – Duties in relation to children in custody***

151. **Section 52** states that a child who is in police custody at a police station should, so far as practicable, be prevented from associating with any adult who is officially accused of committing an offence unless a constable believes it would be detrimental to the child’s wellbeing to prevent them from associating with that particular adult (subsection (2)).

***Section 53 – Duty to inform Principal Reporter if child not being prosecuted***

152. **Section 53** applies where a person is being kept in a place of safety (as defined in subsection (5)) in accordance with section 22(2) when it has been decided not to prosecute the person for any relevant offence (as defined in subsection (4)) but a constable has reasonable grounds for suspecting that the person has committed a relevant offence. The Principal Reporter must be informed as soon as reasonably practicable that the person is being kept in a place of safety until the Principal Reporter makes a direction under section 65(2) of the Children’s Hearings (Scotland) Act 2011.