

CRIMINAL JUSTICE (SCOTLAND) ACT 2016

EXPLANATORY NOTES

OVERVIEW OF THE ACT

Part 1 – Arrest and Custody

Chapter 7 – General

Common law and enactments

Section 54 – Abolition of pre-enactment powers of arrest

153. [Section 54](#) provides that the only power of arrest which the police have to bring a person into police custody comes from Section 1 of this Act and Section 41(1) of the Terrorism Act 2000.

Section 55 – Abolition of requirement for constable to charge

154. [Section 55](#) provides that a constable does not have to charge a suspect with a crime at any time and abolishes any rule of law that requires such a charge to be made.

Section 56 – Consequential modification

155. [Section 56](#) introduces schedule 2 to the Act which contains details of changes to existing legislation as a consequence of Part 1. Paragraph 313 provides further detail in regard to Schedule 2.

Code of practice about investigative function

Section 57 – Code of practice about investigative functions

156. [Section 57](#) requires the Lord Advocate to issue a code of practice on the matters set out in subsection (1) and to keep such a code of practice under review.
157. [Section 57\(3\)](#) sets out that the code will apply to the Police Service of Scotland and such other bodies specified in the code who report offences to the procurator fiscal.
158. [Section 57\(4\)](#) contains a requirement for the Lord Advocate to publicly consult on the code and subsection (5) identifies the persons or groups that the Lord Advocate is required to consult when preparing the code.
159. [Section 57\(6\)](#) obliges the Lord Advocate to lay a copy of the code of practice before the Scottish Parliament.
160. [Section 57\(7\)](#) and (8) contain provisions relating to the legal status of the code and the effect of a breach of the code of practice.

Disapplication of Part

Section 58 – Disapplication in relation to service offences

161. **Section 58** clarifies that service offences are not included in this Part. Service offences are those offences committed by service personnel under the Armed Forces Act 2006.

Section 59 – Disapplication in relation to terrorism offences

162. **Section 59** provides that Part 1 of the Act, dealing with arrest and custody, does not apply to persons arrested under section 41(1) of the Terrorism Act 2000.

Powers to modify Part

Section 60 – Further provision about application of Part

163. **Section 60** provides that the Scottish Ministers may by regulations modify Part 1 to either provide that some or all of it applies to persons to whom it otherwise does not apply because of sections 58 and 59, or to dis-apply some or all of it so that it does not operate in relation to people who have been arrested otherwise than under section 1.

Section 61 – Further provision about vulnerable persons

164. **Section 61** allows the Scottish Ministers to modify, by regulations, the provisions which provide that those aged over 16 and who have a mental disorder are unable to consent to being interviewed without a solicitor being present.
165. **Section 61** allows the modification of the description of vulnerable persons in relation to whom support is to be sought, and allows modification of the definition of the type of support to be sought for vulnerable persons as currently set out under section 33. The Scottish Ministers will also be able to specify, for the purposes of section 42, those persons to be considered suitable for providing the support mentioned in section 42, including by reference to training, qualifications and experience.
166. **Section 61** also enables the Scottish Ministers to modify those provisions in sections 33 and 42 which provide definitions of certain relevant terms, in particular references to the police and the term “mental disorder”.
167. The effect of Section 61 is to allow the Scottish Ministers to alter the conditions under which sections 33 and 42 apply and the nature of the support referred to in section 42, and to make further provisions about that support.

Interpretation of Part

Section 62 – Meaning of constable

168. **Section 62** defines the meaning of constable for the purposes of this Part.

Section 63 – Meaning of officially accused

169. **Section 63** defines the meaning of the term “officially accused” for the purposes of this Part.

Section 64 – Meaning of police custody

170. **Section 64** defines the meaning of police custody for the purposes of this Part.