



# Criminal Justice (Scotland) Act 2016

## 2016 asp 1

### PART 1

#### ARREST AND CUSTODY

#### CHAPTER 2

#### CUSTODY: PERSON NOT OFFICIALLY ACCUSED

##### *Keeping person in custody*

#### **7 Authorisation for keeping in custody**

- (1) Subsection (2) applies where—
  - (a) a person is in police custody having been arrested without a warrant, and
  - (b) since being arrested, the person has not been charged with an offence by a constable.
- (2) Authorisation to keep the person in custody must be sought as soon as reasonably practicable after the person—
  - (a) is arrested at a police station, or
  - (b) arrives at a police station, having been taken there in accordance with section 4.
- (3) Authorisation may be given only by a constable who—
  - (a) is of the rank of sergeant or above, and
  - (b) has not been involved in the investigation in connection with which the person is in police custody.
- (4) Authorisation may be given only if that constable is satisfied that the test in section 14 is met.
- (5) If authorisation is refused, the person may continue to be held in police custody only if—
  - (a) a constable charges the person with an offence, or

---

*Status: This is the original version (as it was originally enacted).*

---

- (b) the person is detained under section 28(1A) of the 1995 Act (which allows for detention in connection with a breach of bail conditions).

## **8 Information to be given on authorisation**

At the time when authorisation to keep a person in custody is given under section 7, the person must be informed of—

- (a) the reason that the person is being kept in custody, and
- (b) the 12 hour limit arising by virtue of section 9 and the fact that the person may be kept in custody for a further 12 hours under section 11.

## **9 12 hour limit: general rule**

- (1) Subsection (2) applies when—
  - (a) a person has been held in police custody for a continuous period of 12 hours, beginning with the time at which authorisation was given under section 7, and
  - (b) during that period the person has not been charged with an offence by a constable.
- (2) The person may continue to be held in police custody only if—
  - (a) a constable charges the person with an offence,
  - (b) authorisation to keep the person in custody has been given under section 11, or
  - (c) the person is detained under section 28(1A) of the 1995 Act (which allows for detention in connection with a breach of bail conditions).

## **10 12 hour limit: previous period**

- (1) Subsection (2) applies where—
  - (a) a person is being held in police custody by virtue of authorisation given under section 7,
  - (b) authorisation has been given under that section to hold the person in police custody on a previous occasion, and
  - (c) the offence in connection with which the authorisation mentioned in paragraph (a) has been given is the same offence or arises from the same circumstances as the offence in connection with which the authorisation mentioned in paragraph (b) was given.
- (2) The 12 hour period mentioned in section 9 is reduced by the length of the period during which the person was held in police custody by virtue of the authorisation mentioned in subsection (1)(b).
- (3) Subsections (5) and (6) of section 15 apply for the purpose of calculating the length of the period during which the person was held in police custody by virtue of the authorisation mentioned in subsection (1)(b).

## **11 Authorisation for keeping in custody beyond 12 hour limit**

- (1) A constable may give authorisation for a person who is in police custody to be kept in custody for a continuous period of 12 hours, beginning when the 12 hour period mentioned in section 9 ends.
- (2) Authorisation may be given only by a constable who—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) is of, or above, the rank of—
    - (i) inspector, if a constable believes the person to be 18 years of age or over,
    - (ii) chief inspector, if a constable believes the person to be under 18 years of age, and
  - (b) has not been involved in the investigation in connection with which the person is in police custody.
- (3) Authorisation may be given only if—
- (a) the person has not been held in police custody by virtue of authorisation given under this section in connection with—
    - (i) the offence in connection with which the person is in police custody, or
    - (ii) an offence arising from the same circumstances as that offence, and
  - (b) the constable is satisfied that—
    - (i) the test in section 14 will be met when the 12 hour period mentioned in section 9 ends,
    - (ii) the offence in connection with which the person is in police custody is an indictable offence, and
    - (iii) the investigation is being conducted diligently and expeditiously.
- (4) Before deciding whether or not to give authorisation the constable must—
- (a) where practicable afford a reasonable opportunity to make verbal or written representations to—
    - (i) the person, or
    - (ii) if the person so chooses, the person’s solicitor, and
  - (b) have regard to any representations made.
- (5) If authorisation is given, it is deemed to be withdrawn if the person is released from police custody before the 12 hour period mentioned in section 9 ends.
- (6) Subsection (7) applies when—
- (a) by virtue of authorisation given under this section, a person has been held in police custody for a continuous period of 12 hours (beginning with the time at which the 12 hour period mentioned in section 9 ended), and
  - (b) during that period the person has not been charged with an offence by a constable.
- (7) The person may continue to be held in police custody only if—
- (a) a constable charges the person with an offence, or
  - (b) the person is detained under section 28(1A) of the 1995 Act (which allows for detention in connection with a breach of bail conditions).

## **12 Information to be given on authorisation under section 11**

- (1) This section applies when authorisation to keep a person in custody is given under section 11.
- (2) The person must be informed—
  - (a) that the authorisation has been given, and
  - (b) of the grounds on which it has been given.

---

*Status: This is the original version (as it was originally enacted).*

---

- (3) The person—
  - (a) has the right to have the information mentioned in subsection (2) intimated to a solicitor, and
  - (b) must be informed of that right.
- (4) The person must be reminded about any right which the person has under Chapter 5.
- (5) Subsection (4) does not require that a person be reminded about a right to have intimation sent under either of the following sections if the person has exercised the right already—
  - (a) section 38,
  - (b) section 43.
- (6) Information to be given under subsections (2), (3)(b) and (4) must be given to the person as soon as reasonably practicable after the authorisation is given.
- (7) Where the person requests that intimation be sent under subsection (3)(a), the intimation must be sent as soon as reasonably practicable.

### **13 Custody review**

- (1) A custody review must be carried out—
  - (a) when a person has been held in police custody for a continuous period of 6 hours by virtue of authorisation given under section 7, and
  - (b) again, if authorisation to keep the person in police custody is given under section 11, when the person has been held in custody for a continuous period of 6 hours by virtue of that authorisation.
- (2) A custody review entails the consideration by a constable of whether the test in section 14 is met.
- (3) A custody review must be carried out by a constable who—
  - (a) is of the rank of inspector or above, and
  - (b) has not been involved in the investigation in connection with which the person is in police custody.
- (4) If the constable is not satisfied that the test in section 14 is met, the person may continue to be held in police custody only if—
  - (a) a constable charges the person with an offence, or
  - (b) the person is detained under section 28(1A) of the 1995 Act (which allows for detention in connection with a breach of bail conditions).

### **14 Test for sections 7, 11 and 13**

- (1) For the purposes of sections 7(4), 11(3)(b) and 13(2), the test is that—
  - (a) there are reasonable grounds for suspecting that the person has committed an offence, and
  - (b) keeping the person in custody is necessary and proportionate for the purposes of bringing the person before a court or otherwise dealing with the person in accordance with the law.

---

*Status: This is the original version (as it was originally enacted).*

---

- (2) Without prejudice to the generality of subsection (1)(b), in considering what is necessary and proportionate for the purpose mentioned in that subsection regard may be had to—
- (a) whether the person’s presence is reasonably required to enable the offence to be investigated fully,
  - (b) whether the person (if liberated) would be likely to interfere with witnesses or evidence, or otherwise obstruct the course of justice,
  - (c) the nature and seriousness of the offence.

## **15 Medical treatment**

- (1) Subsection (2) applies when—
- (a) a person is in police custody having been arrested without a warrant,
  - (b) since being arrested, the person has not been charged with an offence by a constable, and
  - (c) the person is at a hospital for the purpose of receiving medical treatment.
- (2) If authorisation to keep the person in custody has not been given under section 7, that section has effect as if—
- (a) each reference in subsection (2) of that section to a police station were a reference to the hospital, and
  - (b) the words after the reference to a police station in paragraph (b) of that subsection were omitted.
- (3) Where authorisation is given under section 7 when a person is at a hospital, authorisation under that section need not be sought again if, while still in custody, the person is taken to a police station in accordance with section 4.
- (4) Subsections (5) and (6) apply for the purpose of calculating the 12 hours mentioned in sections 9 and 11.
- (5) Except as provided for in subsection (6), no account is to be taken of any period during which a person is—
- (a) at a hospital for the purpose of receiving medical treatment, or
  - (b) being taken as quickly as is reasonably practicable—
    - (i) to a hospital for the purpose of receiving medical treatment, or
    - (ii) to a police station from a hospital to which the person was taken for the purpose of receiving medical treatment.
- (6) Account is to be taken of any period during which a person is both—
- (a) at a hospital, or being taken to or from one, and
  - (b) being interviewed by a constable in relation to an offence which the constable has reasonable grounds to suspect the person of committing.

### *Investigative liberation*

## **16 Release on conditions**

- (1) Subsection (2) applies where—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) a person is being held in police custody by virtue of authorisation given under section 7,
  - (b) a constable has reasonable grounds for suspecting that the person has committed a relevant offence, and
  - (c) either—
    - (i) the person has not been subject to a condition imposed under subsection (2) in connection with a relevant offence, or
    - (ii) it has not been more than 28 days since the first occasion on which a condition was imposed on the person under subsection (2) in connection with a relevant offence.
- (2) If releasing the person from custody, a constable may impose any condition that an appropriate constable considers necessary and proportionate for the purpose of ensuring the proper conduct of the investigation into a relevant offence (including, for example, a condition aimed at securing that the person does not interfere with witnesses or evidence).
- (3) A condition under subsection (2)—
- (a) may not require the person to be in a specified place at a specified time,
  - (b) may require the person—
    - (i) not to be in a specified place, or category of place, at a specified time, and
    - (ii) to remain outwith that place, or any place falling within the specified category (if any), for a specified period.
- (4) A condition imposed under subsection (2) is a liberation condition for the purposes of schedule 1.
- (5) In subsection (2), “an appropriate constable” means a constable of the rank of sergeant or above.
- (6) In this section, “a relevant offence” means—
- (a) the offence in connection with which the authorisation under section 7 has been given, or
  - (b) an offence arising from the same circumstances as that offence.

## **17 Conditions ceasing to apply**

- (1) A condition imposed on a person under section 16(2) ceases to apply—
- (a) at the end of the day falling 28 days after the first occasion on which a condition was imposed on the person under section 16(2) in connection with a relevant offence, or
  - (b) before then, if—
    - (i) the condition is removed by a notice under section 18,
    - (ii) the person is arrested in connection with a relevant offence,
    - (iii) the person is officially accused of committing a relevant offence, or
    - (iv) the condition is removed by the sheriff under section 19.
- (2) In subsection (1), “a relevant offence” means—
- (a) the offence in connection with which the condition was imposed, or
  - (b) an offence arising from the same circumstances as that offence.

## **18 Modification or removal of conditions**

- (1) A constable may by notice modify or remove a condition imposed under section 16(2).
- (2) A notice under subsection (1)—
  - (a) is to be given in writing to the person who is subject to the condition,
  - (b) must specify the time from which the condition is modified or removed.
- (3) A constable of the rank of inspector or above must keep under review whether or not—
  - (a) there are reasonable grounds for suspecting that a person who is subject to a condition imposed under section 16(2) has committed a relevant offence, and
  - (b) the condition imposed remains necessary and proportionate for the purpose of ensuring the proper conduct of the investigation into a relevant offence.
- (4) Where the constable referred to in subsection (3) is no longer satisfied as to the matter mentioned in paragraph (a) of that subsection, a constable must give notice to the person removing any condition imposed in connection with a relevant offence.
- (5) Where the constable referred to in subsection (3) is no longer satisfied as to the matter mentioned in paragraph (b) of that subsection, a constable must give notice to the person—
  - (a) modifying the condition in question, or
  - (b) removing it.
- (6) Where a duty to give notice to a person arises under subsection (4) or (5), the notice—
  - (a) is to be given in writing to the person as soon as practicable, and
  - (b) must specify, as the time from which the condition is modified or removed, the time at which the duty to give the notice arose.
- (7) The modification or removal of a condition under subsection (1), (4) or (5) requires the authority of a constable of the rank of inspector or above.
- (8) In this section, “a relevant offence” means—
  - (a) the offence in connection with which the condition was imposed, or
  - (b) an offence arising from the same circumstances as that offence.

## **19 Review of conditions**

- (1) A person who is subject to a condition imposed under section 16(2) may apply to the sheriff to have the condition reviewed.
- (2) Before disposing of an application under this section, the sheriff must give the procurator fiscal an opportunity to make representations.
- (3) If the sheriff is not satisfied that the condition is necessary and proportionate for the purpose for which it was imposed, the sheriff may—
  - (a) remove the condition, or
  - (b) impose an alternative condition that the sheriff considers to be necessary and proportionate for that purpose.
- (4) For the purposes of sections 17 and 18, a condition imposed by the sheriff under subsection (3)(b) is to be regarded as having been imposed under section 16(2).