



# Criminal Justice (Scotland) Act 2016

## 2016 asp 1

### PART 1

#### ARREST AND CUSTODY

#### CHAPTER 3

#### CUSTODY: PERSON OFFICIALLY ACCUSED

##### *Person to be brought before court*

#### 20 [F<sup>1</sup>Information to be given in particular cases]

(1) Subsection (2) applies when—

- (a) a person is in police custody having been arrested under a warrant in respect of [F<sup>2</sup>an offence listed in subsection (3)(b)], or
- (b) a person—
  - (i) is in police custody having been arrested without a warrant, and
  - (ii) since being arrested, the person has been charged by a constable with [F<sup>3</sup>an offence listed in subsection (3)(b)].

(2) The person must be informed as soon as reasonably practicable—

- (a) that the person's case at, or for the purposes of, any relevant hearing <sup>F<sup>4</sup></sup>... in the course of the proceedings may be conducted only by a lawyer,
- (b) that it is, therefore, in the person's interests to get the professional assistance of a solicitor, and
- (c) that if the person does not engage a solicitor for the purposes of the conduct of the person's case at or for the purposes of the hearing, the court will do so.

[F<sup>5</sup>(3) For the purposes of subsections (1) and (2)—

- (a) “relevant hearing” is to be construed in accordance with section 288C(1A) or (as the case may be) 288DC(4) of the 1995 Act,
- (b) the list is—

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- (i) an offence to which section 288C of the 1995 Act applies (certain sexual offending),
- (ii) an offence to which section 288DC of the 1995 Act applies (domestic abuse cases).]

#### Textual Amendments

- F1** S. 20 title substituted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\), s. 15\(2\), sch. para. 5\(3\)](#); [S.S.I. 2018/387, reg. 2 \(with reg. 7\)](#)
- F2** Words in s. 20(1)(a) substituted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\), s. 15\(2\), sch. para. 5\(2\)\(a\)](#); [S.S.I. 2018/387, reg. 2 \(with reg. 7\)](#)
- F3** Words in s. 20(1)(b)(ii) substituted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\), s. 15\(2\), sch. para. 5\(2\)\(a\)](#); [S.S.I. 2018/387, reg. 2 \(with reg. 7\)](#)
- F4** Words in s. 20(2)(a) repealed (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\), s. 15\(2\), sch. para. 5\(2\)\(b\)](#); [S.S.I. 2018/387, reg. 2 \(with reg. 7\)](#)
- F5** S. 20(3) inserted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\), s. 15\(2\), sch. para. 5\(2\)\(c\)](#); [S.S.I. 2018/387, reg. 2 \(with reg. 7\)](#)

#### Commencement Information

- I1** S. 20 in force at 25.1.2018 by [S.S.I. 2017/345, art. 3, sch.](#) (with art. 4)

## 21 Person to be brought before court

- (1) Subsection (2) applies to a person when—
  - (a) the person is in police custody having been arrested under a warrant [<sup>F6</sup>granted for the purpose of having the person brought before a court in connection with an offence which the person is officially accused of committing], or
  - (b) the person—
    - (i) is in police custody having been arrested [<sup>F7</sup>in respect of an offence] without a warrant, and
    - (ii) since being arrested, the person has been charged with an offence by a constable.
- (2) The person must be brought before a court (unless released from custody under section 25)—
  - (a) if practicable, before the end of the first day on which the court is sitting after the day on which this subsection began to apply to the person, or
  - (b) as soon as practicable after that.
- (3) A person is deemed to be brought before a court in accordance with subsection (2) if the person appears before it by means of a live television link (by virtue of a determination by the court that the person is to do so by such means).

#### Textual Amendments

- F6** Words in s. 21(1)(a) substituted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\), regs. 1, 2\(6\)\(a\)](#)
- F7** Words in s. 21(1)(b) inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\), regs. 1, 2\(6\)\(b\)](#)

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#### Commencement Information

**I2** S. 21 in force at 25.1.2018 by [S.S.I. 2017/345, art. 3, sch.](#) (with art. 4)

## 22 Under 18s to be kept in place of safety prior to court

- (1) Subsection (2) applies when—
- (a) a person is to be brought before a court in accordance with section 21(2), and
  - (b) either—
    - (i) a constable believes the person is under 16 years of age, or
    - (ii) the person is subject to a compulsory supervision order, or an interim compulsory supervision order, made under the Children's Hearings (Scotland) Act 2011.
- (2) The person must (unless released from custody under section 25) be kept in a place of safety until the person can be brought before the court.
- (3) The place of safety in which the person is kept must not be a police station unless an appropriate constable certifies that keeping the person in a place of safety other than a police station would be—
- (a) impracticable,
  - (b) unsafe, or
  - (c) inadvisable due to the person's state of health (physical or mental).
- (4) A certificate under subsection (3) must be produced to the court when the person is brought before it.
- (5) In this section—
- “an appropriate constable” means a constable of the rank of inspector or above,
  - “place of safety” has the meaning given in section 202(1) of the Children's Hearings (Scotland) Act 2011.

#### Modifications etc. (not altering text)

**C1** S. 22 applied by 1995 c. 46, s. 28A(2) (as inserted (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\), s. 117\(2\), sch. 2 para. 30](#); [S.S.I. 2017/345, art. 3, sch.](#))

#### Commencement Information

**I3** S. 22 in force at 25.1.2018 by [S.S.I. 2017/345, art. 3, sch.](#) (with art. 4)

## 23 Notice to parent that under 18 to be brought before court

- (1) Subsection (2) applies when a person who is 16 years of age or over and subject to a supervision order or under 16 years of age—
- (a) is to be brought before a court in accordance with section 21(2), or
  - (b) is released from police custody on an undertaking given under section 25(2)
    - (a).
- (2) A parent of the person mentioned in subsection (1) (if one can be found) must be informed of the following matters—
- (a) the court before which the person is to be brought,

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- (b) the date on which the person is to be brought before the court,
  - (c) the general nature of the offence which the person has been officially accused of committing, and
  - (d) that the parent's attendance at the court may be required under section 42 of the 1995 Act.
- (3) Subsection (2) does not require any information to be given to a parent if a constable has grounds to believe that giving the parent the information mentioned in that subsection may be detrimental to the wellbeing of the person mentioned in subsection (1).
- (4) In this section—
- “parent” includes guardian and any person who has the care of the person mentioned in subsection (1),
  - “supervision order” means compulsory supervision order, or interim compulsory supervision order, made under the Children's Hearings (Scotland) Act 2011.

**Modifications etc. (not altering text)**

**C2** S. 23 applied (with modifications) by 1995 c. 46, s. 28A(2)(3) (as inserted (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), **sch. 2 para. 30**; [S.S.I. 2017/345](#), art. 3, sch.)

**Commencement Information**

**I4** S. 23 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, **sch.** (with art. 4)

**24 Notice to local authority that under 18 to be brought before court**

- (1) The appropriate local authority must be informed of the matters mentioned in subsection (4) when—
- (a) a person to whom either subsection (2) or (3) applies is to be brought before a court in accordance with section 21(2), or
  - (b) a person to whom subsection (2) applies is released from police custody on an undertaking given under section 25(2)(a).
- (2) This subsection applies to—
- (a) a person who is under 16 years of age,
  - (b) a person who is—
    - (i) 16 or 17 years of age, and
    - (ii) subject to a compulsory supervision order, or an interim compulsory supervision order, made under the Children's Hearings (Scotland) Act 2011.
- (3) This subsection applies to a person if—
- (a) a constable believes the person is 16 or 17 years of age,
  - (b) since being arrested, the person has not exercised the right to have intimation sent under section 38, and
  - (c) on being informed or reminded of the right to have intimation sent under that section after being officially accused, the person has declined to exercise the right.
- (4) The matters referred to in subsection (1) are—

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- (a) the court before which the person mentioned in paragraph (a) or (as the case may be) (b) of that subsection is to be brought,
  - (b) the date on which the person is to be brought before the court, and
  - (c) the general nature of the offence which the person has been officially accused of committing.
- (5) For the purpose of subsection (1), the appropriate local authority is the local authority in whose area the court referred to in subsection (4)(a) sits.

**Modifications etc. (not altering text)**

**C3** S. 24 applied (with modifications) by 1995 c. 46, s. 28A(2)(3) (as inserted (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 30](#); [S.S.I. 2017/345](#), [art. 3](#), [sch.](#))

**Commencement Information**

**I5** S. 24 in force at 25.1.2018 by [S.S.I. 2017/345](#), [art. 3](#), [sch.](#) (with [art. 4](#))

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act expiry of affecting provision 2022 asp 8, sch. para. 15 by [S.S.I. 2023/360 reg. 2\(a\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 38(7)(a) words renumbered as s. 38(7)(a) by [2024 asp 5 s. 15\(6\)\(a\)](#)
- s. 38(7)(b) and word inserted by [2024 asp 5 s. 15\(6\)\(b\)](#)
- s. 41(1A) inserted by [2024 asp 5 s. 15\(7\)\(b\)](#)