



Criminal Justice (Scotland) Act 2016

2016 asp 1

PART 1

ARREST AND CUSTODY

CHAPTER 4

POLICE INTERVIEW

Person officially accused

35 Authorisation for questioning

- (1) The court may authorise a constable to question a person about an offence after the person has been officially accused of committing the offence.
- (2) The court may grant authorisation only if it is satisfied that allowing the person to be questioned about the offence is necessary in the interests of justice.
- (3) In deciding whether to grant authorisation, the court must take into account—
 - (a) the seriousness of the offence,
 - (b) the extent to which the person could have been questioned earlier in relation to the information which the applicant believes may be elicited by the proposed questioning,
 - (c) where the person could have been questioned earlier in relation to that information, whether it could reasonably have been foreseen at that time that the information might be important to proving or disproving that the person has committed an offence.
- (4) Where subsection (5) applies, the court must give the person an opportunity to make representations before deciding whether to grant authorisation.
- (5) This subsection applies where—
 - (a) a warrant has been granted to arrest the person in respect of the offence, or
 - (b) the person has appeared before a court in relation to the offence.

Status: This is the original version (as it was originally enacted).

- (6) Where granting authorisation, the court—
 - (a) must specify the period for which questioning is authorised, and
 - (b) may specify such other conditions as the court considers necessary to ensure that allowing the proposed questioning is not unfair to the person.
- (7) A decision of the court—
 - (a) to grant or refuse authorisation, or
 - (b) to specify, or not to specify, conditions under subsection (6)(b),
is final.
- (8) In this section, “the court” means—
 - (a) where an indictment has been served on the person in respect of the High Court, a single judge of that court,
 - (b) in any other case, the sheriff.

36 Authorisation: further provision

- (1) An application for authorisation may be made—
 - (a) where section 35(5) applies, by the prosecutor, or
 - (b) in any other case, by a constable.
- (2) In subsection (1)(a), “the prosecutor” means—
 - (a) where an indictment has been served on the person in respect of the High Court, Crown Counsel, or
 - (b) in any other case, the procurator fiscal.
- (3) Where an application for authorisation is made in writing (rather than orally) it must—
 - (a) be made in such form as may be prescribed by act of adjournal (or as nearly as may be in such form), and
 - (b) state whether another application has been made for authorisation to question the person about the offence or an offence arising from the same circumstances as the offence.
- (4) Authorisation ceases to apply as soon as either—
 - (a) the period specified under section 35(6)(a) expires, or
 - (b) the person’s trial in respect of the offence, or an offence arising from the same circumstances as the offence, begins.
- (5) For the purpose of subsection (4)(b), a trial begins—
 - (a) in proceedings on indictment, when the jury is sworn,
 - (b) in summary proceedings, when the first witness for the prosecution is sworn.
- (6) In this section—
 - “authorisation” means authorisation under section 35,
 - “the offence” means the offence referred to in section 35(1).

37 Arrest to facilitate questioning

- (1) On granting authorisation under section 35, the court may also grant a warrant for the person’s arrest if it seems to the court expedient to do so.

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

- (2) The court must specify in a warrant granted under subsection (1) the maximum period for which the person may be detained under it.
- (3) The person's detention under a warrant granted under subsection (1) must end as soon as—
 - (a) the period of the person's detention under the warrant becomes equal to the maximum period specified under subsection (2),
 - (b) the authorisation ceases to apply (see section 36(4)), or
 - (c) in the opinion of the constable responsible for the investigation into the offence referred to in section 35(1), there are no longer reasonable grounds for suspecting that the person has committed—
 - (i) that offence, or
 - (ii) an offence arising from the same circumstances as that offence.
- (4) For the purpose of subsection (3)(a), the period of the person's detention under the warrant begins when 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.
- (5) For the avoidance of doubt—
 - (a) if the person is on bail when a warrant under subsection (1) is granted, the order admitting the person to bail is not impliedly recalled by the granting of the warrant,
 - (b) if the person is on bail when arrested under a warrant granted under subsection (1)—
 - (i) despite being in custody by virtue of the warrant the person remains on bail for the purpose of section 24(5)(b) of the 1995 Act,
 - (ii) when the person's detention under the warrant ends, the bail order continues to apply as it did immediately before the person's arrest,
 - (c) if the person is subject to an undertaking given under section 25(2)(a), the person remains subject to the undertaking despite—
 - (i) the granting of a warrant under subsection (1),
 - (ii) the person's arrest and detention under it.