



Criminal Justice (Scotland) Act 2016

2016 asp 1

PART 1

ARREST AND CUSTODY

CHAPTER 7

GENERAL

Common law and enactments

54 Abolition of pre-enactment powers of arrest

A constable has no power to arrest a person without a warrant in respect of an offence that has been or is being committed other than—

- (a) the power of arrest conferred by section 1,
- (b) the power of arrest conferred by section 41(1) of the Terrorism Act 2000.

55 Abolition of requirement for constable to charge

Any rule of law that requires a constable to charge a person with an offence in particular circumstances is abolished.

56 Consequential modification

Schedule 2 contains repeals and other provisions consequential on this Part.

Code of practice about investigative functions

57 Code of practice about investigative functions

(1) The Lord Advocate must issue a code of practice on—

- (a) the questioning, and recording of questioning, of persons suspected of committing offences, and

Status: This is the original version (as it was originally enacted).

- (b) the conduct of identification procedures involving such persons.
- (2) The Lord Advocate—
 - (a) must keep the code of practice issued under subsection (1) under review,
 - (b) may from time to time revise the code of practice.
- (3) The code of practice is to apply to the functions exercisable by or on behalf of—
 - (a) the Police Service of Scotland,
 - (b) such other bodies as are specified in the code (being bodies responsible for reporting offences to the procurator fiscal).
- (4) Before issuing the code of practice, the Lord Advocate must consult publicly on a draft of the code.
- (5) When preparing a draft of the code of practice for public consultation, the Lord Advocate must consult—
 - (a) the Lord Justice General,
 - (b) the Faculty of Advocates,
 - (c) the Law Society of Scotland,
 - (d) the Scottish Police Authority,
 - (e) the chief constable of the Police Service of Scotland,
 - (f) the Scottish Human Rights Commission,
 - (g) the Commissioner for Children and Young People in Scotland, and
 - (h) such other persons as the Lord Advocate considers appropriate.
- (6) The Lord Advocate must lay before the Scottish Parliament a copy of the code of practice issued under this section.
- (7) A court or tribunal in civil or criminal proceedings must take the code of practice into account when determining any question arising in the proceedings to which the code is relevant.
- (8) Breach of the code of practice does not of itself give rise to grounds for any legal claim whatsoever.
- (9) Subsections (3) to (8) apply to a revised code of practice under subsection (2)(b) as they apply to the code of practice issued under subsection (1).

Disapplication of Part

58 Disapplication in relation to service offences

- (1) References in this Part to an offence do not include a service offence.
- (2) Nothing in this Part applies in relation to a person who is arrested in respect of a service offence.
- (3) In this section, “service offence” has the meaning given by section 50(2) of the Armed Forces Act 2006.

59 Disapplication in relation to terrorism offences

- (1) Nothing in this Part applies in relation to a person who is arrested under section 41(1) of the Terrorism Act 2000.
- (2) Subsection (1) is subject to paragraph 18 of Schedule 8 to the Terrorism Act 2000.

*Powers to modify Part***60 Further provision about application of Part**

- (1) The Scottish Ministers may by regulations modify this Part to provide that some or all of it—
 - (a) applies in relation to persons to whom it would otherwise not apply because of—
 - (i) section 58, or
 - (ii) section 59,
 - (b) does not apply in relation to persons arrested otherwise than under section 1.
- (2) The Scottish Ministers may by regulations make such modifications to this Part as seem to them necessary or expedient in relation to its application to persons mentioned in subsection (1).
- (3) Regulations under this section may make different provision for different purposes.
- (4) Regulations under this section are subject to the affirmative procedure.

61 Further provision about vulnerable persons

- (1) The Scottish Ministers may by regulations—
 - (a) amend subsections (2)(c) and (6) of section 33,
 - (b) amend subsections (1)(c), (3) and (5) of section 42,
 - (c) specify descriptions of persons who may for the purposes of subsection (2) of section 42 be considered suitable to provide support of the sort mentioned in subsection (3) of that section (including as to training, qualifications and experience).
- (2) Regulations under subsection (1) are subject to the affirmative procedure.

*Interpretation of Part***62 Meaning of constable**

In this Part, “constable” has the meaning given by section 99(1) of the Police and Fire Reform (Scotland) Act 2012.

63 Meaning of officially accused

For the purposes of this Part, a person is officially accused of committing an offence if—

- (a) a constable charges the person with the offence, or
- (b) the prosecutor initiates proceedings against the person in respect of the offence.

64 Meaning of police custody

- (1) For the purposes of this Part, a person is in police custody from the time the person is arrested by a constable until any one of the events mentioned in subsection (2) occurs.
- (2) The events are—
 - (a) the person is released from custody,
 - (b) the person is brought before a court in accordance with section 21(2),
 - (c) the person is brought before a court under section 28(2) or (3) of the 1995 Act,
 - (d) the Principal Reporter makes a direction under section 65(2)(b) of the Children's Hearings (Scotland) Act 2011 that the person continue to be kept in a place of safety.