



Criminal Justice (Scotland) Act 2016

2016 asp 1

PART 1

ARREST AND CUSTODY

CHAPTER 4

POLICE INTERVIEW

Rights of suspects

32 Right to have solicitor present

- (1) Subsections (2) and (3) apply to a person who—
 - (a) is in police custody, or
 - (b) is attending at a police station or other place voluntarily for the purpose of being interviewed by a constable.
- (2) The person has the right to have a solicitor present while being interviewed by a constable about an offence which the constable has reasonable grounds to suspect the person of committing.
- (3) Accordingly—
 - (a) unless the person consents to being interviewed without having a solicitor present, a constable must not begin to interview the person about the offence until the person's solicitor is present, and
 - (b) the person's solicitor must not be denied access to the person at any time while a constable is interviewing the person about the offence.
- (4) Despite subsection (3)(a) a constable may, in exceptional circumstances, proceed to interview the person without a solicitor being present if it is necessary to interview the person without delay in the interests of—
 - (a) the investigation or the prevention of crime, or
 - (b) the apprehension of offenders.

Status: This is the original version (as it was originally enacted).

- (5) A decision to allow the person to be interviewed without a solicitor present by virtue of subsection (4) may be taken only by a constable who—
 - (a) is of the rank of sergeant or above, and
 - (b) has not been involved in investigating the offence about which the person is to be interviewed.
- (6) For the purposes of subsections (2) and (3), a constable is not to be regarded as interviewing a person about an offence merely by asking the person for the information specified in section 34(4).
- (7) Where a person consents to being interviewed without having a solicitor present, there must be recorded—
 - (a) the time at which the person consented, and
 - (b) any reason given by the person at that time for waiving the right to have a solicitor present.