

CRIMINAL JUSTICE (SCOTLAND) ACT 2016

EXPLANATORY NOTES

OVERVIEW OF THE ACT

Part 1 – Arrest and Custody

Chapter 4 – Police interview

Person officially accused

Section 37 – Arrest to facilitate questioning

117. Where the police wish to question someone who has been officially accused of an offence, section 37 provides that it will be open to the court to grant a warrant for the arrest of the accused person so the person can be detained for the purposes of questioning.
118. Subsection (1) provides that, when granting authorisation for questioning, a court can grant a warrant for the accused person's arrest if it is expedient to do so.
119. Subsection (2) protects the accused person from indefinite detention, by requiring that if the court grants an application for a warrant it must put a time limit on the period for which the person can be detained to be questioned. Subsection (3) makes provision as to when the accused person's detention, under a warrant granted in terms of this section, must come to an end.
120. Subsection (4) clarifies when an accused person's detention under a warrant granted in terms of this section starts, making it possible to determine when the period specified in section 37(3)(a) has expired.
121. Subsections (5)(a) and (b) put it beyond doubt that a warrant under this section does not operate to recall or affect the operation of any bail order that the accused person might be on, whether in the same proceedings or not. While the accused person is in custody, having been detained and arrested on the warrant, subsection 24(5)(b) of the 1995 Act, which makes it a condition of bail that the accused does not commit an offence while on bail, remains in force. This means that if the person commits an offence while detained in custody under a warrant granted in terms of this section, it would be a breach of that condition of bail. Once the accused person's detention ends, the bail order applies in full, including any conditions attached to that order.
122. Similarly, subsection (5)(c) makes it clear that, where an accused person has been liberated on an undertaking in terms of section 25(2)(a) of this Act, the terms and conditions of the undertaking remain in force where a warrant is granted for the accused person, and continue in force after arrest and detention on that warrant.