



# Criminal Justice (Scotland) Act 2016

## 2016 asp 1

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 8th December 2015 and received Royal Assent on 13th January 2016**

An Act of the Scottish Parliament to make provision about criminal justice including as to police powers and rights of suspects and as to criminal evidence, procedure and sentencing; to establish the Police Negotiating Board for Scotland; and for connected purposes.

### PART 1

#### ARREST AND CUSTODY

VALID FROM 25/01/2018

#### CHAPTER 1

##### ARREST BY POLICE

###### *Arrest without warrant*

#### **1 Power of a constable**

- (1) A constable may arrest a person without a warrant if the constable has reasonable grounds for suspecting that the person has committed or is committing an offence.
- (2) In relation to an offence not punishable by imprisonment, a constable may arrest a person under subsection (1) only if the constable is satisfied that it would not be in the interests of justice to delay the arrest in order to seek a warrant for the person's arrest.
- (3) Without prejudice to the generality of subsection (2), it would not be in the interests of justice to delay an arrest in order to seek a warrant if the constable reasonably believes that unless the person is arrested without delay the person will—
  - (a) continue committing the offence, or
  - (b) obstruct the course of justice in any way, including by—

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- (i) seeking to avoid arrest, or
- (ii) interfering with witnesses or evidence.

(4) For the avoidance of doubt, an offence is to be regarded as not punishable by imprisonment for the purpose of subsection (2) only if no person convicted of the offence can be sentenced to imprisonment in respect of it.

## 2 Exercise of the power

- (1) A person may be arrested under section 1 more than once in respect of the same offence.
- (2) A person may not be arrested under section 1 in respect of an offence if the person has been officially accused of committing the offence or an offence arising from the same circumstances as the offence.
- (3) Where—
  - (a) a constable who is not in uniform arrests a person under section 1, and
  - (b) the person asks to see the constable's identification,
 the constable must show identification to the person as soon as reasonably practicable.

### *Procedure following arrest*

## 3 Information to be given on arrest

When a constable arrests a person (or as soon afterwards as is reasonably practicable), a constable must inform the person—

- (a) that the person is under arrest,
- (b) of the general nature of the offence in respect of which the person is arrested,
- (c) of the reason for the arrest,
- (d) that the person is under no obligation to say anything, other than to give the information specified in section 34(4), and
- (e) of the person's right to have—
  - (i) intimation sent to a solicitor under section 43, and
  - (ii) access to a solicitor under section 44.

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

- C1** S. 3 applied (with modifications) by 1994 c. 33, s. 137D(3)(a), Sch. 7B Pt. 2 (as inserted (31.1.2017 for specified purposes, 1.3.2018 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 116(1)(3), 183(1)(5)(e), [Sch. 16](#); [S.I. 2018/227](#), art. 2(f))

## 4 Arrested person to be taken to police station

- (1) Where a person is arrested by a constable outwith a police station, a constable must take the person as quickly as is reasonably practicable to a police station.
- (2) Subsection (1) ceases to apply, and the person must be released from police custody immediately, if—

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- (a) the person has been arrested without a warrant,
  - (b) the person has not yet arrived at a police station in accordance with this section, and
  - (c) in the opinion of a constable there are no reasonable grounds for suspecting that the person has committed—
    - (i) the offence in respect of which the person was arrested, or
    - (ii) an offence arising from the same circumstances as that offence.
- (3) For the avoidance of doubt, subsection (1) ceases to apply if, before arriving at a police station in accordance with this section, the person is released from custody under—
- (a) section 25(2), or
  - (b) section 28(3A) of the 1995 Act.

## **5 Information to be given at police station**

- (1) Subsections (2) and (3) apply when—
- (a) a person is in police custody having been arrested at a police station, or
  - (b) a person is in police custody and has been taken to a police station in accordance with section 4.
- (2) The person must be informed as soon as reasonably practicable—
- (a) that the person is under no obligation to say anything, other than to give the information specified in section 34(4),
  - (b) of any right the person has to have intimation sent and to have access to certain persons under—
    - (i) section 38,
    - (ii) section 40,
    - (iii) section 43,
    - (iv) section 44.
- (3) The person must be provided as soon as reasonably practicable with such information (verbally or in writing) as is necessary to satisfy the requirements of Articles 3 and 4 of Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings.

## **6 Information to be recorded by police**

- (1) There must be recorded in relation to any arrest by a constable—
- (a) the time and place of arrest,
  - (b) the general nature of the offence in respect of which the person is arrested,
  - (c) if the person is taken from one place to another while in police custody (including to a police station in accordance with section 4)—
    - (i) the place from which, and time at which, the person is taken, and
    - (ii) the place to which the person is taken and the time at which the person arrives there,
  - (d) the time at which, and the identity of the constable by whom, the person is informed of the matters mentioned in section 3,
  - (e) the time at which the person ceases to be in police custody.

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- (2) Where relevant, there must be recorded in relation to an arrest by a constable—
- (a) the reason that the constable who released the person from custody under subsection (2) of section 4 formed the opinion mentioned in paragraph (c) of that subsection,
  - (b) the time at which, and the identity of the person by whom, the person is—
    - (i) informed of the matters mentioned in subsection (2) of section 5, and
    - (ii) provided with information in accordance with subsection (3) of that section,
  - (c) the time at which, and the identity of the person by whom, the person is informed of the matters mentioned in section 20,
  - (d) the time at which the person requests that intimation be sent under—
    - (i) section 38,
    - (ii) section 43,
  - (e) the time at which intimation is sent under—
    - (i) section 38,
    - (ii) section 41,
    - (iii) section 42,
    - (iv) section 43.
- (3) Where a person is in police custody and not officially accused of committing an offence, there must be recorded the time, place and outcome of any decision under section 7.
- (4) Where a person is held in police custody by virtue of authorisation given under section 7 there must be recorded—
- (a) the time at which the person is informed of the matters mentioned in section 8,
  - (b) the time, place and outcome of any custody review under section 13,
  - (c) the time at which any interview in the circumstances described in section 15(6) begins and the time at which it ends.
- (5) If a constable considers whether to give authorisation under section 11 there must be recorded—
- (a) whether a reasonable opportunity to make representations has been afforded in accordance with subsection (4)(a) of that section,
  - (b) if the opportunity referred to in paragraph (a) has not been afforded, the reason for that,
  - (c) the time, place and outcome of the constable's decision, and
  - (d) if the constable's decision is to give the authorisation—
    - (i) the grounds on which it is given,
    - (ii) the time at which, and the identity of the person by whom, the person is informed and reminded of things in accordance with section 12, and
    - (iii) the time at which the person requests that intimation be sent under section 12(3)(a) and the time at which it is sent.
- (6) Where a person is held in police custody by virtue of authorisation given under section 11 there must be recorded—
- (a) the time, place and outcome of any custody review under section 13,

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- (b) the time at which any interview in the circumstances described in section 15(6) begins and the time at which it ends.
- (7) If a person is released from police custody on conditions under section 16, there must be recorded—
  - (a) details of the conditions imposed, and
  - (b) the identity of the constable who imposed them.
- (8) If a person is charged with an offence by a constable while in police custody, there must be recorded the time at which the person is charged.

VALID FROM 25/01/2018

## CHAPTER 2

### CUSTODY: PERSON NOT OFFICIALLY ACCUSED

#### *Keeping person in custody*

#### **7 Authorisation for keeping in custody**

- (1) Subsection (2) applies where—
  - (a) a person is in police custody having been arrested without a warrant, and
  - (b) since being arrested, the person has not been charged with an offence by a constable.
- (2) Authorisation to keep the person in custody must be sought as soon as reasonably practicable after 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.
- (3) Authorisation may be given only by a constable who—
  - (a) is of the rank of sergeant or above, and
  - (b) has not been involved in the investigation in connection with which the person is in police custody.
- (4) Authorisation may be given only if that constable is satisfied that the test in section 14 is met.
- (5) If authorisation is refused, the person may continue to be held in police custody only if—
  - (a) a constable charges the person with an offence, or
  - (b) the person is detained under section 28(1A) of the 1995 Act (which allows for detention in connection with a breach of bail conditions).

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## **8 Information to be given on authorisation**

At the time when authorisation to keep a person in custody is given under section 7, the person must be informed of—

- (a) the reason that the person is being kept in custody, and
- (b) the 12 hour limit arising by virtue of section 9 and the fact that the person may be kept in custody for a further 12 hours under section 11.

## **9 12 hour limit: general rule**

(1) Subsection (2) applies when—

- (a) a person has been held in police custody for a continuous period of 12 hours, beginning with the time at which authorisation was given under section 7, and
- (b) during that period the person has not been charged with an offence by a constable.

(2) The person may continue to be held in police custody only if—

- (a) a constable charges the person with an offence,
- (b) authorisation to keep the person in custody has been given under section 11, or
- (c) the person is detained under section 28(1A) of the 1995 Act (which allows for detention in connection with a breach of bail conditions).

## **10 12 hour limit: previous period**

(1) Subsection (2) applies where—

- (a) a person is being held in police custody by virtue of authorisation given under section 7,
- (b) authorisation has been given under that section to hold the person in police custody on a previous occasion, and
- (c) the offence in connection with which the authorisation mentioned in paragraph (a) has been given is the same offence or arises from the same circumstances as the offence in connection with which the authorisation mentioned in paragraph (b) was given.

(2) The 12 hour period mentioned in section 9 is reduced by the length of the period during which the person was held in police custody by virtue of the authorisation mentioned in subsection (1)(b).

(3) Subsections (5) and (6) of section 15 apply for the purpose of calculating the length of the period during which the person was held in police custody by virtue of the authorisation mentioned in subsection (1)(b).

## **11 Authorisation for keeping in custody beyond 12 hour limit**

(1) A constable may give authorisation for a person who is in police custody to be kept in custody for a continuous period of 12 hours, beginning when the 12 hour period mentioned in section 9 ends.

(2) Authorisation may be given only by a constable who—

- (a) is of, or above, the rank of—

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- (i) inspector, if a constable believes the person to be 18 years of age or over,
    - (ii) chief inspector, if a constable believes the person to be under 18 years of age, and
  - (b) has not been involved in the investigation in connection with which the person is in police custody.
- (3) Authorisation may be given only if—
  - (a) the person has not been held in police custody by virtue of authorisation given under this section in connection with—
    - (i) the offence in connection with which the person is in police custody, or
    - (ii) an offence arising from the same circumstances as that offence, and
  - (b) the constable is satisfied that—
    - (i) the test in section 14 will be met when the 12 hour period mentioned in section 9 ends,
    - (ii) the offence in connection with which the person is in police custody is an indictable offence, and
    - (iii) the investigation is being conducted diligently and expeditiously.
- (4) Before deciding whether or not to give authorisation the constable must—
  - (a) where practicable afford a reasonable opportunity to make verbal or written representations to—
    - (i) the person, or
    - (ii) if the person so chooses, the person's solicitor, and
  - (b) have regard to any representations made.
- (5) If authorisation is given, it is deemed to be withdrawn if the person is released from police custody before the 12 hour period mentioned in section 9 ends.
- (6) Subsection (7) applies when—
  - (a) by virtue of authorisation given under this section, a person has been held in police custody for a continuous period of 12 hours (beginning with the time at which the 12 hour period mentioned in section 9 ended), and
  - (b) during that period the person has not been charged with an offence by a constable.
- (7) The person may continue to be held in police custody only if—
  - (a) a constable charges the person with an offence, or
  - (b) the person is detained under section 28(1A) of the 1995 Act (which allows for detention in connection with a breach of bail conditions).

## **12 Information to be given on authorisation under section 11**

- (1) This section applies when authorisation to keep a person in custody is given under section 11.
- (2) The person must be informed—
  - (a) that the authorisation has been given, and
  - (b) of the grounds on which it has been given.
- (3) The person—

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- (a) has the right to have the information mentioned in subsection (2) intimated to a solicitor, and
  - (b) must be informed of that right.
- (4) The person must be reminded about any right which the person has under Chapter 5.
- (5) Subsection (4) does not require that a person be reminded about a right to have intimation sent under either of the following sections if the person has exercised the right already—
- (a) section 38,
  - (b) section 43.
- (6) Information to be given under subsections (2), (3)(b) and (4) must be given to the person as soon as reasonably practicable after the authorisation is given.
- (7) Where the person requests that intimation be sent under subsection (3)(a), the intimation must be sent as soon as reasonably practicable.

### **13 Custody review**

- (1) A custody review must be carried out—
- (a) when a person has been held in police custody for a continuous period of 6 hours by virtue of authorisation given under section 7, and
  - (b) again, if authorisation to keep the person in police custody is given under section 11, when the person has been held in custody for a continuous period of 6 hours by virtue of that authorisation.
- (2) A custody review entails the consideration by a constable of whether the test in section 14 is met.
- (3) A custody review must be carried out by a constable who—
- (a) is of the rank of inspector or above, and
  - (b) has not been involved in the investigation in connection with which the person is in police custody.
- (4) If the constable is not satisfied that the test in section 14 is met, the person may continue to be held in police custody only if—
- (a) a constable charges the person with an offence, or
  - (b) the person is detained under section 28(1A) of the 1995 Act (which allows for detention in connection with a breach of bail conditions).

### **14 Test for sections 7, 11 and 13**

- (1) For the purposes of sections 7(4), 11(3)(b) and 13(2), the test is that—
- (a) there are reasonable grounds for suspecting that the person has committed an offence, and
  - (b) keeping the person in custody is necessary and proportionate for the purposes of bringing the person before a court or otherwise dealing with the person in accordance with the law.
- (2) Without prejudice to the generality of subsection (1)(b), in considering what is necessary and proportionate for the purpose mentioned in that subsection regard may be had to—



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- (a) whether the person's presence is reasonably required to enable the offence to be investigated fully,
- (b) whether the person (if liberated) would be likely to interfere with witnesses or evidence, or otherwise obstruct the course of justice,
- (c) the nature and seriousness of the offence.

## **15 Medical treatment**

- (1) Subsection (2) applies when—
- (a) a person is in police custody having been arrested without a warrant,
  - (b) since being arrested, the person has not been charged with an offence by a constable, and
  - (c) the person is at a hospital for the purpose of receiving medical treatment.
- (2) If authorisation to keep the person in custody has not been given under section 7, that section has effect as if—
- (a) each reference in subsection (2) of that section to a police station were a reference to the hospital, and
  - (b) the words after the reference to a police station in paragraph (b) of that subsection were omitted.
- (3) Where authorisation is given under section 7 when a person is at a hospital, authorisation under that section need not be sought again if, while still in custody, the person is taken to a police station in accordance with section 4.
- (4) Subsections (5) and (6) apply for the purpose of calculating the 12 hours mentioned in sections 9 and 11.
- (5) Except as provided for in subsection (6), no account is to be taken of any period during which a person is—
- (a) at a hospital for the purpose of receiving medical treatment, or
  - (b) being taken as quickly as is reasonably practicable—
    - (i) to a hospital for the purpose of receiving medical treatment, or
    - (ii) to a police station from a hospital to which the person was taken for the purpose of receiving medical treatment.
- (6) Account is to be taken of any period during which a person is both—
- (a) at a hospital, or being taken to or from one, and
  - (b) being interviewed by a constable in relation to an offence which the constable has reasonable grounds to suspect the person of committing.

### *Investigative liberation*

## **16 Release on conditions**

- (1) Subsection (2) applies where—
- (a) a person is being held in police custody by virtue of authorisation given under section 7,
  - (b) a constable has reasonable grounds for suspecting that the person has committed a relevant offence, and
  - (c) either—

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- (i) the person has not been subject to a condition imposed under subsection (2) in connection with a relevant offence, or
  - (ii) it has not been more than 28 days since the first occasion on which a condition was imposed on the person under subsection (2) in connection with a relevant offence.
- (2) If releasing the person from custody, a constable may impose any condition that an appropriate constable considers necessary and proportionate for the purpose of ensuring the proper conduct of the investigation into a relevant offence (including, for example, a condition aimed at securing that the person does not interfere with witnesses or evidence).
- (3) A condition under subsection (2)—
- (a) may not require the person to be in a specified place at a specified time,
  - (b) may require the person—
    - (i) not to be in a specified place, or category of place, at a specified time, and
    - (ii) to remain outwith that place, or any place falling within the specified category (if any), for a specified period.
- (4) A condition imposed under subsection (2) is a liberation condition for the purposes of schedule 1.
- (5) In subsection (2), “an appropriate constable” means a constable of the rank of sergeant or above.
- (6) In this section, “a relevant offence” means—
- (a) the offence in connection with which the authorisation under section 7 has been given, or
  - (b) an offence arising from the same circumstances as that offence.

## 17 Conditions ceasing to apply

- (1) A condition imposed on a person under section 16(2) ceases to apply—
- (a) at the end of the day falling 28 days after the first occasion on which a condition was imposed on the person under section 16(2) in connection with a relevant offence, or
  - (b) before then, if—
    - (i) the condition is removed by a notice under section 18,
    - (ii) the person is arrested in connection with a relevant offence,
    - (iii) the person is officially accused of committing a relevant offence, or
    - (iv) the condition is removed by the sheriff under section 19.
- (2) In subsection (1), “a relevant offence” means—
- (a) the offence in connection with which the condition was imposed, or
  - (b) an offence arising from the same circumstances as that offence.

## 18 Modification or removal of conditions

- (1) A constable may by notice modify or remove a condition imposed under section 16(2).

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- (2) A notice under subsection (1)—
  - (a) is to be given in writing to the person who is subject to the condition,
  - (b) must specify the time from which the condition is modified or removed.
- (3) A constable of the rank of inspector or above must keep under review whether or not—
  - (a) there are reasonable grounds for suspecting that a person who is subject to a condition imposed under section 16(2) has committed a relevant offence, and
  - (b) the condition imposed remains necessary and proportionate for the purpose of ensuring the proper conduct of the investigation into a relevant offence.
- (4) Where the constable referred to in subsection (3) is no longer satisfied as to the matter mentioned in paragraph (a) of that subsection, a constable must give notice to the person removing any condition imposed in connection with a relevant offence.
- (5) Where the constable referred to in subsection (3) is no longer satisfied as to the matter mentioned in paragraph (b) of that subsection, a constable must give notice to the person—
  - (a) modifying the condition in question, or
  - (b) removing it.
- (6) Where a duty to give notice to a person arises under subsection (4) or (5), the notice—
  - (a) is to be given in writing to the person as soon as practicable, and
  - (b) must specify, as the time from which the condition is modified or removed, the time at which the duty to give the notice arose.
- (7) The modification or removal of a condition under subsection (1), (4) or (5) requires the authority of a constable of the rank of inspector or above.
- (8) In this section, “a relevant offence” means—
  - (a) the offence in connection with which the condition was imposed, or
  - (b) an offence arising from the same circumstances as that offence.

## **19 Review of conditions**

- (1) A person who is subject to a condition imposed under section 16(2) may apply to the sheriff to have the condition reviewed.
- (2) Before disposing of an application under this section, the sheriff must give the procurator fiscal an opportunity to make representations.
- (3) If the sheriff is not satisfied that the condition is necessary and proportionate for the purpose for which it was imposed, the sheriff may—
  - (a) remove the condition, or
  - (b) impose an alternative condition that the sheriff considers to be necessary and proportionate for that purpose.
- (4) For the purposes of sections 17 and 18, a condition imposed by the sheriff under subsection (3)(b) is to be regarded as having been imposed under section 16(2).

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VALID FROM 25/01/2018

## CHAPTER 3

### CUSTODY: PERSON OFFICIALLY ACCUSED

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

#### **20 Information to be given if sexual offence**

- (1) Subsection (2) applies when—
- (a) a person is in police custody having been arrested under a warrant in respect of a sexual offence to which section 288C of the 1995 Act applies, 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 a sexual offence to which section 288C of the 1995 Act applies.
- (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 (within the meaning of section 288C(1A) of the 1995 Act) 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.

#### **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 (other than a warrant granted under section 37(1)), or
  - (b) the person—
    - (i) is in police custody having been arrested 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).

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## **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.

## **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,
  - (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),

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“supervision order” means compulsory supervision order, or interim compulsory supervision order, made under the Children's Hearings (Scotland) Act 2011.

## **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—
- (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.

### *Police liberation*

## **25 Liberation by police**

- (1) Subsection (2) applies when—
- (a) a person is in police custody having been arrested under a warrant (other than a warrant granted under section 37(1)), 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 with an offence by a constable.

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- (2) A constable may—
  - (a) if the person gives an undertaking in accordance with section 26, release the person from custody,
  - (b) release the person from custody without such an undertaking,
  - (c) refuse to release the person from custody.
- (3) Where a person is in custody as mentioned in subsection (1)(a), the person may not be released from custody under subsection (2)(b).
- (4) A constable is not to be subject to any claim whatsoever by reason of having refused to release a person from custody under subsection (2)(c).

## 26 Release on undertaking

- (1) A person may be released from police custody on an undertaking given under section 25(2)(a) only if the person signs the undertaking.
- (2) The terms of an undertaking are that the person undertakes to—
  - (a) appear at a specified court at a specified time, and
  - (b) comply with any conditions imposed under subsection (3) while subject to the undertaking.
- (3) The conditions which may be imposed under this subsection are—
  - (a) that the person does not—
    - (i) commit an offence,
    - (ii) interfere with witnesses or evidence, or otherwise obstruct the course of justice,
    - (iii) behave in a manner which causes, or is likely to cause, alarm or distress to witnesses,
  - (b) any further condition that a constable considers necessary and proportionate for the purpose of ensuring that any conditions imposed under paragraph (a) are observed.
- (4) Conditions which may be imposed under subsection (3)(b) include—
  - (a) a condition requiring the person—
    - (i) to be in a specified place at a specified time, and
    - (ii) to remain there for a specified period,
  - (b) a condition requiring the person—
    - (i) not to be in a specified place, or category of place, at a specified time, and
    - (ii) to remain outwith that place, or any place falling within the specified category (if any), for a specified period.
- (5) For the imposition of a condition under subsection (3)(b)—
  - (a) if it is of the kind described in subsection (4)(a), the authority of a constable of the rank of inspector or above is required,
  - (b) if it is of any other kind, the authority of a constable of the rank of sergeant or above is required.
- (6) The requirements imposed by an undertaking to attend at a court and comply with conditions are liberation conditions for the purposes of schedule 1.

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## **27 Modification of undertaking**

- (1) The procurator fiscal may by notice modify the terms of an undertaking given under section 25(2)(a) by—
  - (a) changing the court specified as the court at which the person is to appear,
  - (b) changing the time specified as the time at which the person is to appear at the court,
  - (c) removing or altering any condition imposed under section 26(3).
- (2) A condition may not be altered under subsection (1)(c) so as to forbid or require something not forbidden or required by the terms of the condition when the person gave the undertaking.
- (3) Notice under subsection (1) must be effected in a manner by which citation may be effected under section 141 of the 1995 Act.

## **28 Rescission of undertaking**

- (1) The procurator fiscal may by notice rescind an undertaking given under section 25(2)
  - (a) (whether or not the person who gave it is to be prosecuted).
- (2) The rescission of an undertaking by virtue of subsection (1) takes effect at the end of the day on which the notice is sent.
- (3) Notice under subsection (1) must be effected in a manner by which citation may be effected under section 141 of the 1995 Act.
- (4) A constable may arrest a person without a warrant if the constable has reasonable grounds for suspecting that the person is likely to fail to comply with the terms of an undertaking given under section 25(2)(a).
- (5) Where a person is arrested under subsection (4) or subsection (6) applies—
  - (a) the undertaking referred to in subsection (4) or (as the case may be) (6) is rescinded, and
  - (b) this Part applies as if the person, since being most recently arrested, has been charged with the offence in connection with which the person was in police custody when the undertaking was given.
- (6) This subsection applies where—
  - (a) a person who is subject to an undertaking given under section 25(2)(a) is in police custody (otherwise than as a result of having been arrested under subsection (4)), and
  - (b) a constable has reasonable grounds for suspecting that the person has failed, or (if liberated) is likely to fail, to comply with the terms of the undertaking.
- (7) The references in subsections (4) and (6)(b) to the terms of the undertaking are to the terms of the undertaking subject to any modification by—
  - (a) notice under section 27(1), or
  - (b) the sheriff under section 30(3)(b).

## **29 Expiry of undertaking**

- (1) An undertaking given under section 25(2)(a) expires—



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- (a) at the end of the day on which the person who gave it is required by its terms to appear at a court, or
  - (b) if subsection (2) applies, at the end of the day on which the person who gave it is brought before a court having been arrested under the warrant mentioned in that subsection.
- (2) This subsection applies where—
- (a) a person fails to appear at court as required by the terms of an undertaking given under section 25(2)(a), and
  - (b) on account of that failure, a warrant for the person's arrest is granted.
- (3) The references in subsections (1)(a) and (2)(a) to the terms of the undertaking are to the terms of the undertaking subject to any modification by notice under section 27(1).

### **30 Review of undertaking**

- (1) A person who is subject to an undertaking containing a condition imposed under section 26(3)(b) may apply to the sheriff to have the condition reviewed.
- (2) Before disposing of an application under this section, the sheriff must give the procurator fiscal an opportunity to make representations.
- (3) If the sheriff is not satisfied that the condition is necessary and proportionate for the purpose for which it was imposed, the sheriff may modify the terms of the undertaking by—
  - (a) removing the condition, or
  - (b) imposing an alternative condition that the sheriff considers to be necessary and proportionate for that purpose.

VALID FROM 25/01/2018

## **CHAPTER 4**

### **POLICE INTERVIEW**

#### *Rights of suspects*

### **31 Information to be given before interview**

- (1) Subsection (2) applies 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) Not more than one hour before a constable interviews the person about an offence which the constable has reasonable grounds to suspect the person of committing, the person must be informed—
  - (a) of the general nature of that offence,

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- (b) that the person is under no obligation to say anything other than to give the information specified in section 34(4),
  - (c) about the right under section 32 to have a solicitor present during the interview, and
  - (d) if the person is in police custody, about any right which the person has under Chapter 5.
- (3) A person need not be informed under subsection (2)(d) about a right to have intimation sent under either of the following sections if the person has exercised the right already—
- (a) section 38,
  - (b) section 43.
- (4) For the purpose of subsection (2), 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).
- (5) Where a person is to be interviewed by virtue of authorisation granted under section 35, before the interview begins the person must be informed of what was specified by the court under subsection (6) of that section.

### **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.
- (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.

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- (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.

### **33 Consent to interview without solicitor**

- (1) Subsections (2) and (3) apply for the purpose of section 32(3)(a).
- (2) A person may not consent to being interviewed without having a solicitor present if—
  - (a) the person is under 16 years of age
  - (b) the person is 16 or 17 years of age and subject to a compulsory supervision order, or an interim compulsory supervision order, made under the Children's Hearings (Scotland) Act 2011, or
  - (c) the person is 16 years of age or over and, owing to mental disorder, appears to a constable to be unable to—
    - (i) understand sufficiently what is happening, or
    - (ii) communicate effectively with the police.
- (3) A person to whom this subsection applies (referred to in subsection (5) as “person A”) may consent to being interviewed without having a solicitor present only with the agreement of a relevant person.
- (4) Subsection (3) applies to a person who is—
  - (a) 16 or 17 years of age, and
  - (b) not precluded by subsection (2)(b) or (c) from consenting to being interviewed without having a solicitor present.
- (5) For the purpose of subsection (3), “a relevant person” means—
  - (a) if person A is in police custody, any person who is entitled to access to person A by virtue of section 40(2),
  - (b) if person A is not in police custody, a person who is—
    - (i) at least 18 years of age, and
    - (ii) reasonably named by person A.
- (6) In subsection (2)(c)—
  - (a) “mental disorder” has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003,
  - (b) the reference to the police is to any—
    - (i) constable, or
    - (ii) person appointed as a member of police staff under section 26(1) of the Police and Fire Reform (Scotland) Act 2012.

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*Person not officially accused*

**34 Questioning following arrest**

- (1) Subsections (2) and (4) apply where—
  - (a) a person is in police custody in relation to an offence, and
  - (b) the person has not been officially accused of committing the offence or an offence arising from the same circumstances as the offence.
- (2) A constable may put questions to the person in relation to the offence.
- (3) For the avoidance of doubt, nothing in this section is to be taken to mean that a constable cannot put questions to the person in relation to any other matter.
- (4) The person is under no obligation to answer any question, other than to give the following information—
  - (a) the person's name,
  - (b) the person's address,
  - (c) the person's date of birth,
  - (d) the person's place of birth (in such detail as a constable considers necessary or expedient for the purpose of establishing the person's identity), and
  - (e) the person's nationality.
- (5) Subsection (2) is without prejudice to any rule of law as regards the admissibility in evidence of any answer given.

*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.

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- (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.

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- (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.

VALID FROM 25/01/2018

## CHAPTER 5

### RIGHTS OF SUSPECTS IN POLICE CUSTODY

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

- C2** Pt. 1 Ch. 5 applied (with modifications) by 1994 c. 33, s. 137D(3)(b), Sch. 7B Pt. 2 (as inserted (31.1.2017 for specified purposes) by [Policing and Crime Act 2017 \(c. 3\)](#), ss. 116(1)(3), 183(1)(5) (e), [Sch. 16](#))

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### *Intimation and access to another person*

#### **38 Right to have intimation sent to other person**

- (1) A person in police custody has the right to have intimation sent to another person of—
  - (a) the fact that the person is in custody,
  - (b) the place where the person is in custody.
- (2) Intimation under subsection (1) must be sent—
  - (a) where a constable believes that the person in custody is under 16 years of age, regardless of whether the person requests that it be sent,
  - (b) in any other case, if the person requests that it be sent.
- (3) The person to whom intimation is to be sent under subsection (1) is—
  - (a) where a constable believes that the person in custody is under 16 years of age, a parent of the person,
  - (b) in any other case, an adult reasonably named by the person in custody.
- (4) Intimation under subsection (1) must be sent—
  - (a) as soon as reasonably practicable, or
  - (b) if subsection (5) applies, with no more delay than is necessary.
- (5) This subsection applies where an appropriate constable considers some delay to be necessary in the interests of—
  - (a) the investigation or prevention of crime,
  - (b) the apprehension of offenders, or
  - (c) safeguarding and promoting the wellbeing of the person in custody, where a constable believes that person to be under 18 years of age.
- (6) In subsection (5), “an appropriate constable” means a constable who—
  - (a) is of the rank of sergeant or above, and
  - (b) has not been involved in the investigation in connection with which the person is in custody.
- (7) The sending of intimation may be delayed by virtue of subsection (5)(c) only for so long as is necessary to ascertain whether a local authority will arrange for someone to visit the person in custody under section 41(2).
- (8) In this section and section 39—

“adult” means person who is at least 18 years of age,  
“parent” includes guardian and any person who has the care of the person in custody.

#### **39 Right to have intimation sent: under 18s**

- (1) This section applies where a constable believes that a person in police custody is under 18 years of age.
- (2) At the time of sending intimation to a person under section 38(1), that person must be asked to attend at the police station or other place where the person in custody is being held.
- (3) Subsection (2) does not apply if—

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- (a) a constable believes that the person in custody is 16 or 17 years of age, and
  - (b) the person in custody requests that the person to whom intimation is to be sent under section 38(1) is not asked to attend at the place where the person in custody is being held.
- (4) Subsections (5) and (6) apply where—
- (a) it is not practicable or possible to contact, within a reasonable time, the person to whom intimation is to be sent by virtue of section 38(3),
  - (b) the person to whom intimation is sent by virtue of section 38(3), if asked to attend at the place where the person in custody is being held, claims to be unable or unwilling to attend within a reasonable time, or
  - (c) a local authority, acting under section 41(9)(a), has advised against sending intimation to the person to whom intimation is to be sent by virtue of section 38(3).
- (5) Section 38(3) ceases to have effect.
- (6) Attempts to send intimation to an appropriate person under section 38(1) must continue to be made until—
- (a) an appropriate person is contacted and agrees to attend, within a reasonable time, at the police station or other place where the person in custody is being held, or
  - (b) if a constable believes that the person in custody is 16 or 17 years of age, the person requests that (for the time being) no further attempt to send intimation is made.
- (7) In subsection (6), “an appropriate person” means—
- (a) if a constable believes that the person in custody is under 16 years of age, a person the constable considers appropriate having regard to the views of the person in custody,
  - (b) if a constable believes that the person in custody is 16 or 17 years of age, an adult who is named by the person in custody and to whom a constable is willing to send intimation without a delay by virtue of section 38(5)(a) or (b).
- (8) The reference in subsection (4)(a) to its not being possible to contact a person within a reasonable time includes the case where, by virtue of section 38(5)(a) or (b), a constable delays sending intimation to the person.

#### **40 Right of under 18s to have access to other person**

- (1) Access to a person in police custody who a constable believes is under 16 years of age must be permitted to—
- (a) a parent of the person,
  - (b) where a parent is not available, a person sent intimation under section 38 in respect of the person in custody.
- (2) Access to a person in police custody who a constable believes is 16 or 17 years of age must be permitted to a person sent intimation under section 38 in respect of the person in custody where the person in custody wishes to have access to the person sent intimation.
- (3) Access to a person in custody under subsection (1) or (2) need not be permitted to more than one person at the same time.



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- (4) In exceptional circumstances, access under subsection (1) or (2) may be refused or restricted so far as the refusal or restriction is necessary—
- (a) in the interests of—
    - (i) the investigation or prevention of crime, or
    - (ii) the apprehension of offenders, or
  - (b) for the wellbeing of the person in custody.
- (5) A decision to refuse or restrict access to a person in custody under subsection (1) or (2) may be taken only by a constable who—
- (a) is of the rank of sergeant or above, and
  - (b) has not been involved in the investigation in connection with which the person is in custody.
- (6) In this section, “parent” includes guardian and any person who has the care of the person in custody.

#### **41 Social work involvement in relation to under 18s**

- (1) Intimation of the fact that a person is in police custody and the place where the person is in custody must be sent to a local authority as soon as reasonably practicable if—
- (a) a constable believes that the person may be subject to a supervision order, or
  - (b) by virtue of subsection (5)(c) of section 38, a constable has delayed sending intimation in respect of the person under subsection (1) of that section.
- (2) A local authority sent intimation under subsection (1) may arrange for someone to visit the person in custody if—
- (a) the person is subject to a supervision order, or
  - (b) the local authority—
    - (i) believes the person to be under 16 years of age, and
    - (ii) has grounds to believe that its arranging someone to visit the person would best safeguard and promote the person's wellbeing (having regard to the effect of subsection (4)(a)).
- (3) Before undertaking to arrange someone to visit the person in custody under subsection (2), the local authority must be satisfied that anyone it arranges to visit the person in custody will be able to make the visit within a reasonable time.
- (4) Where a local authority arranges for someone to visit the person in custody under subsection (2)—
- (a) sections 38 and 40 cease to have effect, and
  - (b) the person who the local authority has arranged to visit the person in custody must be permitted access to the person in custody.
- (5) In exceptional circumstances, access under subsection (4)(b) may be refused or restricted so far as the refusal or restriction is necessary—
- (a) in the interests of—
    - (i) the investigation or prevention of crime, or
    - (ii) the apprehension of offenders, or
  - (b) for the wellbeing of the person in custody.

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- (6) A decision to refuse or restrict access to a person in custody under subsection (4)(b) may be taken only by a constable who—
- (a) is of the rank of sergeant or above, and
  - (b) has not been involved in the investigation in connection with which the person is in custody.
- (7) Where a local authority sent intimation under subsection (1) confirms that the person in custody is—
- (a) over 16 years of age, and
  - (b) subject to a supervision order,
- sections 38 to 40 are to be applied in respect of the person as if a constable believes the person to be under 16 years of age.
- (8) Subsection (9) applies where a local authority might have arranged for someone to visit a person in custody under subsection (2) but—
- (a) chose not to do so, or
  - (b) was precluded from doing so by subsection (3).
- (9) The local authority may—
- (a) advise a constable that the person to whom intimation is to be sent by virtue of section 38(3) should not be sent intimation if the local authority has grounds to believe that sending intimation to that person may be detrimental to the wellbeing of the person in custody, and
  - (b) give advice as to who might be an appropriate person to a constable considering that matter under section 39(7) (and the constable must have regard to any such advice).
- (10) In this section, “supervision order” means compulsory supervision order, or interim compulsory supervision order, made under the Children's Hearings (Scotland) Act 2011.

VALID FROM 10/01/2020

### *Vulnerable persons*

#### **42 Support for vulnerable persons**

- (1) Subsection (2) applies where—
- (a) a person is in police custody,
  - (b) a constable believes that the person is 16 years of age or over, and
  - (c) owing to mental disorder, the person appears to the constable to be unable to—
    - (i) understand sufficiently what is happening, or
    - (ii) communicate effectively with the police.
- (2) With a view to facilitating the provision of support of the sort mentioned in subsection (3) to the person as soon as reasonably practicable, the constable must ensure that intimation of the matters mentioned in subsection (4) is sent to a person who the constable considers is suitable to provide the support.

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- (3) That is, support to—
- (a) help the person in custody to understand what is happening, and
  - (b) facilitate effective communication between the person and the police.
- (4) Those matters are—
- (a) the place where the person is in custody, and
  - (b) that support of the sort mentioned in subsection (3) is, in the view of the constable, required by the person.
- (5) In this section—
- (a) “mental disorder” has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003,
  - (b) the references to the police are to any—
    - (i) constable, or
    - (ii) person appointed as a member of police staff under section 26(1) of the Police and Fire Reform (Scotland) Act 2012.

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

- C3** S. 42 modified by 2007 c. 11, s. 87(2B)(d) (as inserted (31.1.2017 for specified purposes) by [Policing and Crime Act 2017 \(c. 3\), s. 183\(1\)\(5\)\(e\), Sch. 17 para. 9\(2\)](#))
- C4** S. 42 modified by 2013 c. 22, Sch. 21 para. 42B(5) (as inserted (31.1.2017 for specified purposes) by [Policing and Crime Act 2017 \(c. 3\), s. 183\(1\)\(5\)\(e\), Sch. 17 para. 10\(3\)](#))
- C5** S. 42 modified by 2013 c. 22, Sch. 21 para. 42D(4) (as inserted (31.1.2017 for specified purposes) by [Policing and Crime Act 2017 \(c. 3\), s. 183\(1\)\(5\)\(e\), Sch. 17 para. 10\(3\)](#))
- C6** S. 42 modified by 2007 c. 11, s. 87(2D)(c) (as inserted (31.1.2017 for specified purposes) by [Policing and Crime Act 2017 \(c. 3\), s. 183\(1\)\(5\)\(e\), Sch. 17 para. 9\(2\)](#))

*Intimation and access to a solicitor*

**43 Right to have intimation sent to solicitor**

- (1) A person who is in police custody has the right to have intimation sent to a solicitor of any or all of the following—
- (a) the fact that the person is in custody,
  - (b) the place where the person is in custody,
  - (c) that the solicitor's professional assistance is required by the person,
  - (d) if the person has been officially accused of an offence—
    - (i) whether the person is to be released from custody, and
    - (ii) where the person is not to be released, the court before which the person is to be brought in accordance with section 21(2) and the date on which the person is to be brought before that court.
- (2) Where the person requests that intimation be sent under subsection (1), the intimation must be sent as soon as reasonably practicable.

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#### **44 Right to consultation with solicitor**

- (1) A person who is in police custody has the right to have a private consultation with a solicitor at any time.
- (2) In exceptional circumstances, the person's exercise of the right under subsection (1) may be delayed so far as that is necessary in the interests of—
  - (a) the investigation or the prevention of crime, or
  - (b) the apprehension of offenders.
- (3) A decision to delay the person's exercise of the right under subsection (1) may be taken only by a constable who—
  - (a) is of the rank of sergeant or above, and
  - (b) has not been involved in the investigation in connection with which the person is in custody.
- (4) In subsection (1), “consultation” means consultation by such method as may be appropriate in the circumstances and includes (for example) consultation by telephone.

VALID FROM 25/01/2018

## **CHAPTER 6**

### **POLICE POWERS AND DUTIES**

#### *Powers of police*

#### **45 Use of reasonable force**

A constable may use reasonable force—

- (a) to effect an arrest,
- (b) when taking a person who is in police custody to any place.

#### **46 Common law power of entry**

Nothing in this Part affects any rule of law concerning the powers of a constable to enter any premises for any purpose.

#### **47 Common law power of search etc.**

- (1) Nothing in this Part affects any rule of law by virtue of which a constable may exercise a power of the type described in subsection (2).
- (2) The type of power is a power that a constable may exercise in relation to a person by reason of the person's having been arrested and charged with an offence by a constable.
- (3) Powers of the type described in subsection (2) include the power to—
  - (a) search the person,

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- (b) seize any item in the person's possession,
- (c) cause the person to participate in an identification procedure.

#### **48 Power of search etc. on arrest**

- (1) A constable may exercise in relation to a person to whom subsection (2) applies any power of the type described in section 47(2) which the constable would be able to exercise by virtue of a rule of law if the person had been charged with the relevant offence by a constable.
- (2) This subsection applies to a person who—
  - (a) is in police custody having been arrested without a warrant, and
  - (b) has not, since being arrested, been charged with an offence by a constable.
- (3) In subsection (1), “the relevant offence” means the offence in connection with which the person is in police custody.

#### **49 Taking drunk persons to designated place**

- (1) Where—
  - (a) a person is liable to be arrested in respect of an offence by a constable without a warrant, and
  - (b) the constable is of the opinion that the person is drunk,the constable may take the person to a designated place (and do so instead of arresting the person).
- (2) Nothing done under subsection (1)—
  - (a) makes a person liable to be held unwillingly at a designated place, or
  - (b) prevents a constable from arresting the person in respect of the offence referred to in that subsection.
- (3) In this section, “designated place” is any place designated by the Scottish Ministers for the purpose of this section as a place suitable for the care of drunken persons.

#### *Duties of police*

#### **50 Duty not to detain unnecessarily**

A constable must take every precaution to ensure that a person is not unreasonably or unnecessarily held in police custody.

#### **51 Duty to consider child's wellbeing**

- (1) Subsection (2) applies when a constable is deciding whether to—
  - (a) arrest a child,
  - (b) hold a child in police custody,
  - (c) interview a child about an offence which the constable has reasonable grounds to suspect the child of committing, or
  - (d) charge a child with committing an offence.

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(2) In taking the decision, the constable must treat the need to safeguard and promote the wellbeing of the child as a primary consideration.

(3) For the purposes of this section, a child is a person who is under 18 years of age.

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

**C7** S. 51 applied (with modifications) by 1994 c. 33, s. 137D(3)(c), Sch. 7B Pt. 2 (as inserted (31.1.2017 for specified purposes, 1.3.2018 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 116(1)(3), 183(1)(5)(e), **Sch. 16**; S.I. 2018/227, art. 2(f))

**52 Duties in relation to children in custody**

(1) A child who is in police custody at a police station is, so far as practicable, to be prevented from associating with any adult who is officially accused of committing an offence other than an adult to whom subsection (2) applies.

(2) This subsection applies to an adult if a constable believes that it may be detrimental to the wellbeing of the child mentioned in subsection (1) to prevent the child and adult from associating with one another.

(3) For the purposes of this section—  
 “child” means person who is under 18 years of age,  
 “adult” means person who is 18 years of age or over.

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

**C8** S. 52 applied (with modifications) by 1994 c. 33, s. 137D(3)(d), Sch. 7B Pt. 2 (as inserted (31.1.2017 for specified purposes, 1.3.2018 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 116(1)(3), 183(1)(5)(e), **Sch. 16**; S.I. 2018/227, art. 2(f))

**53 Duty to inform Principal Reporter if child not being prosecuted**

(1) Subsections (2) and (3) apply if—

- (a) a person is being kept in a place of safety in accordance with section 22(2) when it is decided not to prosecute the person for any relevant offence, and
- (b) a constable has reasonable grounds for suspecting that the person has committed a relevant offence.

(2) The Principal Reporter must be informed, as soon as reasonably practicable, that the person is being kept in a place of safety under subsection (3).

(3) The person must be kept in a place of safety under this subsection until the Principal Reporter makes a direction under section 65(2) of the Children's Hearings (Scotland) Act 2011.

(4) An offence is a “relevant offence” for the purpose of subsection (1) if—

- (a) it is the offence with which the person was officially accused, leading to the person being kept in the place of safety in accordance with section 22(2), or
- (b) it is an offence arising from the same circumstances as the offence mentioned in paragraph (a).

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(5) In this section, “place of safety” has the meaning given in section 202(1) of the Children's Hearings (Scotland) Act 2011.

## CHAPTER 7

### GENERAL

VALID FROM 25/01/2018

#### *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.

VALID FROM 25/01/2018

#### *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
  - (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,

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- (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, <sup>F1</sup>...
- [<sup>F2</sup>(ga) any body which the Lord Advocate intends to specify in the code under subsection (3)(b) and (where relevant) the Secretary of State, 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).

#### Textual Amendments

**F1** Word in s. 57(5)(g) omitted (17.1.2018) by virtue of [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), arts. 2(1)(b), **10(4)(a)** (with art. 10(3))

**F2** S. 57(5)(ga) inserted (17.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), arts. 2(1)(b), **10(4)(b)** (with art. 10(3))

VALID FROM 25/01/2018

### *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.



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(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.

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#### **Commencement Information**

**I1** S. 60 in force at 17.1.2017 by [S.S.I. 2016/426, art. 2, sch.](#)

### **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.

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#### **Commencement Information**

**I2** S. 61 in force at 17.1.2017 by [S.S.I. 2016/426, art. 2, sch.](#)

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### 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.

##### Commencement Information

**I3** S. 62 in force at 17.1.2017 by [S.S.I. 2016/426](#), art. 2, [sch.](#)

#### 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.

##### Commencement Information

**I4** S. 63 in force at 17.1.2017 by [S.S.I. 2016/426](#), art. 2, [sch.](#)

#### 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.

##### Commencement Information

**I5** S. 64 in force at 17.1.2017 by [S.S.I. 2016/426](#), art. 2, [sch.](#)

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## PART 2

### SEARCH BY POLICE

VALID FROM 11/05/2017

#### CHAPTER 1

##### SEARCH OF PERSON NOT IN POLICE CUSTODY

###### *Lawfulness of search by constable*

#### **65 Limitation on what enables search**

- (1) This section applies in relation to a person who is not in police custody.
- (2) It is unlawful for a constable to search the person otherwise than—
  - (a) in accordance with a power of search conferred in express terms by an enactment, or
  - (b) under the authority of a warrant expressly conferring a power of search.

#### **66 Cases involving removal of person**

- (1) A person who is not in police custody may be searched by a constable while the person is to be, or is being, taken to or from any place—
  - (a) by virtue of any enactment, warrant or court order requiring or permitting the constable to do so, or
  - (b) in circumstances in which the constable believes that it is necessary to do so with respect to the care or protection of the person.
- (2) A search under this section is to be carried out for the purpose of ensuring that the person is not in, or does not remain in, possession of any item or substance that could cause harm to the person or someone else.
- (3) Anything seized by a constable in the course of a search carried out under this section may be retained by the constable.

#### **67 Public safety at premises or events**

- (1) A person who is not in police custody may be searched by a constable if—
  - (a) the person—
    - (i) is seeking to enter, or has entered, relevant premises, or
    - (ii) is seeking to attend, or is attending, a relevant event, and
  - (b) the further criteria are met.
- (2) Premises are or an event is relevant if—
  - (a) the premises may be entered, or the event may be attended, by members of the public (including where dependent on possession of a ticket or on payment of a charge), and

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- (b) the entry or the attendance is controlled, at the time of the entry or the attendance, by or on behalf of the occupier of the premises or the organiser of the event.
- (3) The further criteria to be met are that—
  - (a) the entry or the attendance is subject to a condition, imposed by the occupier of the premises or the organiser of the event, that the person consents to being searched, and
  - (b) the person informs the constable that the person consents to being searched by the constable.
- (4) A search under this section is to be carried out for the purpose of ensuring the health, safety or security of people on the premises or at the event.
- (5) Anything seized by a constable in the course of a search carried out under this section may be retained by the constable.

#### **68 Duty to consider child's wellbeing**

- (1) Subsection (2) applies when a constable is deciding whether to search a child who is not in police custody.
- (2) In taking the decision, the constable must treat the need to safeguard and promote the wellbeing of the child as a primary consideration.
- (3) For the purposes of this section, a child is a person who is under 18 years of age.

#### *Miscellaneous and definitions*

#### **69 Publication of information by police**

- (1) The Police Service of Scotland must ensure that, as soon as practicable after the end of each reporting year, information is published on how many times during the reporting year a search was carried out by a constable—
  - (a) of a person not in police custody, and
  - (b) otherwise than under the authority of a warrant expressly conferring a power of search.
- (2) So far as practicable, the information is to disclose (in addition)—
  - (a) how many persons were searched on two or more occasions,
  - (b) the age and gender, and the ethnic and national origin, of the persons searched,
  - (c) the proportion of searches that resulted in—
    - (i) something being seized by a constable,
    - (ii) a case being reported to the procurator fiscal,
  - (d) the number of complaints made to the Police Service of Scotland about the carrying out of searches (or the manner in which they were carried out).
- (3) In this section, “reporting year” means a yearly period ending on 31 March.

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**Changes to legislation:** Criminal Justice (Scotland) Act 2016 is up to date with all changes known to be in force on or before 18 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

PROSPECTIVE

## 70 Provisions about possession of alcohol

- (1) The Scottish Ministers may by regulations amend section 61 (confiscation of alcohol from persons under 18) of the Crime and Punishment (Scotland) Act 1997 so as to confer on a constable a power, exercisable in addition to the power in subsection (1) or (2) of that section—
  - (a) to search a person for alcoholic liquor,
  - (b) to dispose of anything found in the person's possession that the constable believes to be such liquor.
- (2) Prior to laying before the Scottish Parliament a draft of an instrument containing regulations under this section, the Scottish Ministers must—
  - (a) consult publicly on the regulations that they are proposing to make,
  - (b) send a copy of the proposed regulations to—
    - (i) the chief constable of the Police Service of Scotland,
    - [<sup>F3</sup>(ia) the chief constable of the British Transport Police Force,
    - (ib) the chief constable of the Civil Nuclear Constabulary,
    - (ic) the chief constable of the Ministry of Defence Police,]
    - (ii) the Scottish Human Rights Commission,
    - (iii) the Commissioner for Children and Young People in Scotland, and
    - (iv) such other persons as the Scottish Ministers consider appropriate.
- (3) When laying before the Scottish Parliament a draft of an instrument containing regulations under this section, the Scottish Ministers must also so lay a statement—
  - (a) giving reasons for wishing to make the regulations as currently framed (and confirming whether the regulations will amend the relevant enactment in the same way as shown in the proposed regulations),
  - (b) summarising—
    - (i) the responses received by them to the public consultation on the proposed regulations,
    - (ii) the representations made to them by the persons to whom a copy of the proposed regulations was sent.
- (4) Regulations under this section are subject to the affirmative procedure.

### Textual Amendments

- F3** S. 70(2)(b)(ia)-(ic) inserted (17.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), arts. 2(1)(e), **24(3)**

## 71 Matters as to effect of sections 65, 66 and 70

- (1) The day appointed for the coming into force of sections 65 and 66 is to be the same as the day from which a code of practice required by section 73(1) has effect by virtue of the first regulations made under section 77.

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- (2) If no regulations under section 70 are made before the end of the 2 years beginning with the day from which a code of practice required by section 73(1) has effect by virtue of the first regulations made under section 77, section 70 is to be regarded as repealed at the end of that period.

## 72 Meaning of constable etc.

In this Chapter—

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

“police custody” has the same meaning as given for the purposes of Part 1 (see section 64).

## CHAPTER 2

### CODE OF PRACTICE

#### *Making and status of code*

## 73 Contents of code of practice

- (1) The Scottish Ministers must make a code of practice about the carrying out of a search of a person who is not in police custody.
- (2) A code of practice must set out (in particular)—
- (a) the circumstances in which a search of such a person may be carried out,
  - (b) the procedure to be followed in carrying out such a search,
  - (c) in relation to such a search—
    - (i) the record to be kept,
    - (ii) the right of someone to receive a copy of the record.
- (3) A code of practice is to apply to the functions exercisable by a constable.
- (4) In this section—
- “constable” has the meaning given by section 99(1) of the Police and Fire Reform (Scotland) Act 2012,
- “police custody” has the same meaning as given for the purposes of Part 1 (see section 64).
- (5) In this Chapter, a reference to a code of practice means one required by subsection (1) (but see also section 74(5)).

## 74 Review of code of practice

- (1) The Scottish Ministers may revise a code of practice in light of a review conducted under subsection (2).
- (2) The Scottish Ministers must conduct a review of a code of practice as follows—
- (a) a review is to begin no later than 2 years after the code comes into effect,

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- (b) subsequently, a review is to begin no later than 4 years after—
  - (i) if the code is revised in light of the previous review under this subsection, the coming into effect of the revised code, or
  - (ii) otherwise, the completion of the previous review under this subsection.
- (3) So far as practicable, a review conducted under subsection (2) must be completed within 6 months of the day on which the review begins.
- (4) In deciding when to conduct a review in accordance with subsection (2), the Scottish Ministers must have regard to representations put to them on the matter by—
  - (a) the Scottish Police Authority,
  - (b) the chief constable of the Police Service of Scotland, or
  - (c) Her Majesty's Inspectors of Constabulary in Scotland.
- (5) For the purposes of—
  - (a) section 73(3) and this section (except subsection (2)(a)), and
  - (b) sections 75, 76 (except subsection (3)) and 77 (except subsection (3)),a reference to a code of practice includes a revised code as allowed by subsection (1).

## 75 Legal status of code of practice

- (1) A court or tribunal in civil or criminal proceedings must take a code of practice into account when determining any question arising in the proceedings to which the code is relevant.
- (2) Breach of a code of practice does not of itself give rise to grounds for any legal claim whatsoever.

### *Procedure applying to code*

## 76 Consultation on code of practice

- (1) Prior to making a code of practice, the Scottish Ministers must consult publicly on a draft of the code.
- (2) When preparing a draft of a code of practice for public consultation, the Scottish Ministers 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 Police Investigations and Review Commissioner,
  - (g) the Scottish Human Rights Commission,
  - (h) the Commissioner for Children and Young People in Scotland, and
  - (i) such other persons as the Scottish Ministers consider appropriate.
- (3) Subsection (1) or (2) is complied with in relation to a code of practice having (or to have) effect for the first time even if the consultation has been initiated before the day on which this section comes into force.

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**Changes to legislation:** *Criminal Justice (Scotland) Act 2016 is up to date with all changes known to be in force on or before 18 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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## 77 Bringing code of practice into effect

- (1) A code of practice has no effect until the day appointed for the code by regulations made by the Scottish Ministers.
- (2) When laying before the Scottish Parliament a draft of an instrument containing regulations bringing a code of practice into effect, the Scottish Ministers must also so lay a copy of the code.
- (3) No later than at the end of the 12 months beginning with the day on which this section comes into force, there must be so laid a draft of an instrument containing regulations bringing a code of practice into effect.
- (4) Regulations under this section are subject to the affirmative procedure.

## PART 3

### SOLEMN PROCEDURE

## 78 Proceedings on petition

- (1) In section 35 (judicial examination) of the 1995 Act, after subsection (6) there is inserted—
  - “(6A) In proceedings before the sheriff in examination or further examination, the accused is not to be given an opportunity to make a declaration in respect of any charge.”.
- (2) The following provisions of the 1995 Act are repealed—
  - (a) in section 35, subsections (3), (4) and (5),
  - (b) sections 36, 37 and 38,
  - (c) in section 68, subsection (1),
  - (d) in section 79, paragraph (b)(iii) of subsection (2),
  - (e) section 278.

### Commencement Information

**I6** S. 78 in force at 17.1.2017 by [S.S.I. 2016/426](#), [art. 2](#), [sch.](#) (with [art. 3](#))

VALID FROM 29/05/2017

## 79 Pre-trial time limits

- (1) The 1995 Act is amended as follows.
- (2) In section 65 (prevention of delay in trials)—
  - (a) in subsection (1), after paragraph (a) there is inserted—
    - “(aa) where an indictment has been served on the accused in respect of the sheriff court, a first diet is commenced within the period of 11 months;”.



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- (b) in subsection (1A), after the word “applies)” there is inserted “, the first diet (where subsection (1)(aa) above applies) ”,
  - (c) in subsection (4)(b), for the words “110 days” there is substituted—
    - “(i) 110 days, unless a first diet in respect of the case is commenced within that period, which failing he shall be entitled to be admitted to bail; or
    - (ii) 140 days”,
  - (d) in subsection (9)—
    - (i) the word “and” immediately following paragraph (b) is repealed,
    - (ii) after paragraph (b) there is inserted—
      - “(ba) a first diet shall be taken to commence when it is called;”.
- (3) In section 66 (service and lodging of indictment, etc.), for sub-paragraphs (i) and (ii) of paragraph (a) of subsection (6) there is substituted “ at a first diet not less than 29 clear days after the service of the indictment, ”.
- (4) In section 72C (procedure where preliminary hearing does not proceed), for paragraph (b) of subsection (4) there is substituted—
  - “(b) where the charge is one that can lawfully be tried in the sheriff court, at a first diet in that court not less than 29 clear days after the service of the notice.”.

#### Commencement Information

**17** S. 79 in force at 29.5.2017 for specified purposes by S.S.I. 2017/99, art. 3(1)(2) (with arts. 3(3)(4), 6)

VALID FROM 29/05/2017

#### **80** Duty of parties to communicate

- (1) The 1995 Act is amended as follows.
- (2) In section 71 (first diet), after subsection (1) there is inserted—
  - “(1ZA) If a written record has been lodged in accordance with section 71C, the court must have regard to the written record when ascertaining the state of preparation of the parties.”.
- (3) Before section 72 there is inserted—

#### “71C Written record of state of preparation: sheriff court

- (1) Subsection (2) applies where—
  - (a) the accused is indicted to the sheriff court, and
  - (b) a solicitor—
    - (i) has notified the court under section 72F(1) that the solicitor has been engaged by the accused for the purposes of conducting the accused's defence, and

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(ii) has not subsequently been dismissed by the accused or withdrawn.

(2) The prosecutor and the accused's legal representative must, within the period described in subsection (3), communicate with each other and jointly prepare a written record of their state of preparation with respect to their cases (referred to in this section as “the written record”).

(3) The period referred to in subsection (2) begins on the day the accused is served with an indictment and expires at the end of the day falling 14 days later.

(4) The written record must—

- (a) be in such form, or as nearly as may be in such form,
- (b) contain such information, and
- (c) be lodged in such manner,

as may be prescribed by act of adjournal.

(5) The written record must state the manner in which the communication required by subsection (2) was conducted (for example, by telephone, email or a meeting in person).

(6) In subsection (2), “the accused's legal representative” means—

- (a) the solicitor referred to in subsection (1), or
- (b) where the solicitor has instructed counsel for the purposes of the conduct of the accused's case, either the solicitor or that counsel, or both of them.

(7) In subsection (6)(b), “counsel” includes a solicitor who has a right of audience in the High Court of Justiciary under section 25A of the Solicitors (Scotland) Act 1980.”.

(4) In section 75 (computation of certain periods), after the words “67(3),” there is inserted “ 71C(3) ”.

VALID FROM 29/05/2017

## 81 First diets

(1) The 1995 Act is amended as follows.

(2) In section 66 (service and lodging of indictment, etc.)—

(a) after subsection (6AA) there is inserted—

“(6AB) A notice affixed under subsection (4)(b) or served under subsection (6), where the indictment is in respect of the sheriff court, must contain intimation to the accused that the first diet may proceed and a trial diet may be appointed in the accused's absence.”,

(b) in subsection (6B), for the words “or (6AA)” there is substituted “, (6AA) or (6AB) ”.

(3) In section 71 (first diet)—

(a) in subsection (1), the words from “whether” to “particular” are repealed,

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- (b) in subsection (5), after the word “proceed” there is inserted “, and a trial diet may be appointed,”,
- (c) in subsection (6), for the words from the beginning to “required” there is substituted “ Where the accused appears at the first diet, the accused is to be required at that diet ”,
- (d) subsection (7) is repealed,
- (e) in subsection (9), after the word “section” there is inserted “ and section 71B ”.

(4) After section 71 there is inserted—

**“71B First diet: appointment of trial diet**

- (1) At a first diet, unless a plea of guilty is tendered and accepted, the court must—
  - (a) after complying with section 71, and
  - (b) subject to subsections (3) to (7),  
appoint a trial diet.
- (2) Where a trial diet is appointed at a first diet, the accused must appear at the trial diet and answer the indictment.
- (3) In appointing a trial diet under subsection (1), in any case in which the 12 month period applies (whether or not the 140 day period also applies in the case)—
  - (a) if the court considers that the case would be likely to be ready to proceed to trial within that period, it must, subject to subsections (5) to (7), appoint a trial diet for a date within that period, or
  - (b) if the court considers that the case would not be likely to be so ready, it must give the prosecutor an opportunity to make an application to the court under section 65(3) for an extension of the 12 month period.
- (4) Where paragraph (b) of subsection (3) applies—
  - (a) if such an application as is mentioned in that paragraph is made and granted, the court must, subject to subsections (5) to (7), appoint a trial diet for a date within the 12 month period as extended, or
  - (b) if no such application is made or if one is made but is refused by the court—
    - (i) the court may desert the first diet simpliciter or pro loco et tempore, and
    - (ii) where the accused is committed until liberated in due course of law, the accused must be liberated forthwith.
- (5) Subsection (6) applies in any case in which—
  - (a) the 140 day period as well as the 12 month period applies, and
  - (b) the court is required, by virtue of subsection (3)(a) or (4)(a) to appoint a trial diet within the 12 month period.
- (6) In such a case—

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- (a) if the court considers that the case would be likely to be ready to proceed to trial within the 140 day period, it must appoint a trial diet for a date within that period as well as within the 12 month period, or
  - (b) if the court considers that the case would not be likely to be so ready, it must give the prosecutor an opportunity to make an application under section 65(5) for an extension of the 140 day period.
- (7) Where paragraph (b) of subsection (6) applies—
- (a) if such an application as is mentioned in that paragraph is made and granted, the court must appoint a trial diet for a date within the 140 day period as extended as well as within the 12 month period,
  - (b) if no such application is made or if one is made but is refused by the court—
    - (i) the court must proceed under subsection (3)(a) or (as the case may be) (4)(a) to appoint a trial diet for a date within the 12 month period, and
    - (ii) the accused is then entitled to be admitted to bail.
- (8) Where an accused is, by virtue of subsection (7)(b)(ii), entitled to be admitted to bail, the court must, before admitting the accused to bail, give the prosecutor an opportunity to be heard.
- (9) On appointing a trial diet under this section in a case where the accused has been admitted to bail (otherwise than by virtue of subsection (7)(b)(ii)), the court, after giving the parties an opportunity to be heard—
- (a) must review the conditions imposed on the accused's bail, and
  - (b) having done so, may, if it considers it appropriate to do so, fix bail on different conditions.
- (10) In this section—
- “the 12 month period” means the period specified in subsection (1)(b) of section 65 and, in any case in which that period has been extended under subsection (3) of that section, includes that period as so extended, “the 140 day period” means the period specified in subsection (4) (b)(ii) of section 65 and, in any case in which that period has been extended under subsection (5) of that section, includes that period as so extended.”
- (5) In subsection (3) of section 76 (procedure where accused desires to plead guilty), for the words from “or, where” to “Court,” there is substituted “, the first diet or (as the case may be) ”.
- (6) After section 83A there is inserted—

**“83B Continuation of trial diet in the sheriff court**

- (1) In the sheriff court a trial diet and, if it is adjourned, the adjourned diet, may, without having been commenced, be continued from sitting day to sitting day—
- (a) by minute, in such form as may be prescribed by act of adjournal, signed by the sheriff clerk,
  - (b) up to such maximum number of sitting days after the day originally appointed for the trial diet as may be so prescribed.

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- (2) The indictment falls if a trial diet, or adjourned diet, is not commenced by the end of the last sitting day to which it may be continued by virtue of subsection (1).
- (3) For the purposes of this section, a trial diet or adjourned trial diet is to be taken to commence when it is called.
- (4) In this section, “sitting day” means any day on which the court is sitting but does not include any Saturday or Sunday or any day which is a court holiday.”.
- (7) The italic heading immediately preceding section 83A becomes “ *Continuation of trial diet* ”.

## 82 Preliminary hearings

In section 72A (preliminary hearing: appointment of trial diet) of the 1995 Act—

- (a) in subsection (1), for the words from the beginning to “section” there is substituted “ In any case in which subsection (6) of section 72 ”,
- (b) subsection (1A) is repealed.

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### Commencement Information

**18** S. 82 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

## 83 Plea of guilty

In the 1995 Act—

- (a) in section 70 (proceedings against organisations), subsection (7) is repealed,
- (b) in subsection (1) of section 77 (plea of guilty), the words from “and, subject” to the end are repealed.

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### Commencement Information

**19** S. 83 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

## PART 4

### SENTENCING

#### *Maximum term for weapons offences*

## 84 Maximum term for weapons offences

- (1) The Criminal Law (Consolidation) (Scotland) Act 1995 is amended as follows.
- (2) In subsection (1)(b) of section 47 (prohibition of the carrying of offensive weapons), for the word “four” there is substituted “ 5 ”.

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- (3) In subsection (1)(b) of section 49 (offence of having in public place article with blade or point), for the word “four” there is substituted “ 5 ”.
- (4) In subsection (5) of section 49A (offence of having article with blade or point (or offensive weapon) on school premises)—
  - (a) in paragraph (a)(ii), for the word “four” there is substituted “ 5 ”,
  - (b) in paragraph (b)(ii), for the word “four” there is substituted “ 5 ”.
- (5) In subsection (6)(b) of section 49C (offence of having offensive weapon etc. in prison), for the word “4” there is substituted “ 5 ”.

#### Commencement Information

**I10** S. 84 in force at 10.3.2016 by S.S.I. 2016/95, art. 2 (with art. 3)

PROSPECTIVE

### *Prisoners on early release*

#### **85 Sentencing under the 1995 Act**

After section 200 of the 1995 Act there is inserted—

##### **“200A Sentencing prisoners on early release**

- (1) Before sentencing or otherwise dealing with a person who has been found by the court to have committed an offence punishable with imprisonment (other than an offence in respect of which life imprisonment is mandatory), the court must so far as is reasonably practicable ascertain whether the person was on early release at the time the offence was committed.
- (2) Where the court ascertains that the person was on early release at the time the offence was committed, the court must consider making an order, or as the case may be a reference, under section 16(2) of the Prisoners and Criminal Proceedings (Scotland) Act 1993.
- (3) For the purposes of this section a person is on early release if, by virtue of one of the following enactments, the person is not in custody—
  - (a) Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993,
  - (b) Part II of the Criminal Justice Act 1991, or
  - (c) Part 12 of the Criminal Justice Act 2003.”.

#### **86 Sentencing under the 1993 Act**

- (1) Section 16 (commission of offence by released prisoner) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 is amended as follows.
- (2) In subsection (1), for the words “or Part II of the Criminal Justice Act 1991” there is substituted “, Part II of the Criminal Justice Act 1991 or Part 12 of the Criminal Justice Act 2003”.

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- (3) In subsection (2)—
- (a) in paragraph (a), for the words from “other” to “below” there is substituted “to which subsection (2A) does not apply”,
  - (b) in paragraph (b), for the words from “where” to “subsection (1)(a)” there is substituted “to which subsection (2A) applies”.
- (4) After subsection (2) there is inserted—
- “(2A) This subsection applies to a case if—
- (a) the court mentioned in subsection (1)(b) is inferior to the court which imposed the original sentence, and
  - (b) the whole of the period described in subsection (2)(a) exceeds—
    - (i) if the court mentioned in subsection (1)(b) is a justice of the peace court (however constituted), 60 days,
    - (ii) if the court is the sheriff court sitting in summary proceedings, 12 months,
    - (iii) if the court is the sheriff court sitting in solemn proceedings, 5 years.”.

## PART 5

### APPEALS AND SCCRC

#### *Appeals*

#### **87 Preliminary pleas in summary cases**

- (1) Section 174 (appeals relating to preliminary pleas) of the 1995 Act is amended as follows.
- (2) In subsection (1)—
- (a) the words from “with the leave” to “and” are repealed,
  - (b) for the words “this subsection” there is substituted “subsection (1A)(b)”.
- (3) After subsection (1) there is inserted—
- “(1A) An appeal under subsection (1) may be taken—
- (a) in the case of a decision to dismiss the complaint or any part of it, by the prosecutor without the leave of the court,
  - (b) in any other case, only with the leave of the court of first instance (granted on the motion of a party or ex proprio motu).”.
- (4) After subsection (2) there is inserted—
- “(2A) Subsection (3) applies where—
- (a) the court grants leave to appeal under subsection (1), or
  - (b) the prosecutor—
    - (i) indicates an intention to appeal under subsection (1), and
    - (ii) by virtue of subsection (1A)(a), does not require the leave of the court.”.

**Status:** Point in time view as at 17/01/2017. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Criminal Justice (Scotland) Act 2016 is up to date with all changes known to be in force on or before 18 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (5) In subsection (3), for the words from the beginning to “it” there is substituted “ Where this subsection applies, the court of first instance ”.

**Commencement Information**

**I11** S. 87 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

**88 Preliminary diets in solemn cases**

In section 74 (appeals in connection with preliminary diets) of the 1995 Act—

- (a) in subsection (1), for the words from “to—” to “motu)” there is substituted “ to any right of appeal under section 106 or 108 a party may, ”,
- (b) after subsection (2) there is inserted—

“(2A) An appeal under subsection (1) may be taken—

- (a) in the case of a decision to dismiss the indictment or any part of it, by the prosecutor without the leave of the court,
- (b) in any other case, only with the leave of the court of first instance (granted on the motion of a party or ex proprio motu).”.

**Commencement Information**

**I12** S. 88 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

**89 Extending certain time limits: summary**

- (1) Section 181 (stated case: directions by Sheriff Appeal Court) of the 1995 Act is amended as follows.
- (2) After subsection (1) there is inserted—

“(1A) Where an application for a direction under subsection (1)—

- (a) is made by the person convicted, and
- (b) relates to the requirements of section 176(1),

the Sheriff Appeal Court may make a direction only if it is satisfied that doing so is justified by exceptional circumstances.

(1B) In considering whether there are exceptional circumstances for the purpose of subsection (1A), the Sheriff Appeal Court must have regard to—

- (a) the length of time that has elapsed between the expiry of the period mentioned in section 176(1)(a) and the making of the application,
- (b) the reasons stated in accordance with subsection (2A)(a)(i),
- (c) the proposed grounds of appeal.”.

- (3) Subsection (2C) is repealed.
- (4) In paragraph (a) of subsection (3), the words from “(unless” to the end are repealed.
- (5) At the end of the section there is inserted—



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- “(5) If the Sheriff Appeal Court makes a direction under subsection (1), it must—
- (a) give reasons for the decision in writing, and
  - (b) give the reasons in ordinary language.”.

**Commencement Information**

**I13** S. 89 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

**90 Extending certain time limits: solemn**

- (1) In section 105 (appeal against refusal of application) of the 1995 Act, after subsection (3) there is inserted—

“(3A) Subsection (3) does not entitle an applicant to be present at the hearing and determination of an application under section 111(2) unless the High Court has made a direction under section 111(4)(b).”.

- (2) Section 111 (provisions supplementary to sections 109 and 110) of the 1995 Act is amended as follows.

- (3) After subsection (2) there is inserted—

“(2ZA) Where an application under subsection (2) is received after the period to which it relates has expired, the High Court may extend the period only if it is satisfied that doing so is justified by exceptional circumstances.

(2ZB) In considering whether there are exceptional circumstances for the purpose of subsection (2ZA), the High Court must have regard to—

- (a) the length of time that has elapsed between the expiry of the period and the making of the application,
- (b) the reasons stated in accordance with subsection (2A)(a)(i),
- (c) the proposed grounds of appeal.”.

- (4) In subsection (2A)—

- (a) the words “seeking extension of the period mentioned in section 109(1) of this Act” are repealed,
- (b) in paragraph (a)(i)—
  - (i) after “failed” there is inserted “, or expects to fail,”,
  - (ii) the words “in section 109(1)” are repealed.

- (5) Subsection (2C) is repealed.

- (6) At the end of the section there is inserted—

“(4) An application under subsection (2) is to be dealt with by the High Court—

- (a) in chambers, and
- (b) unless the Court directs otherwise, without the parties being present.

(5) If the High Court extends a period under subsection (2), it must—

- (a) give reasons for the decision in writing, and
- (b) give the reasons in ordinary language.”.

*Status: Point in time view as at 17/01/2017. This version of this Act contains provisions that are not valid for this point in time.*

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**Commencement Information**

**I14** S. 90 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

**91 Certain lateness not excusable**

In section 300A (power of court to excuse procedural irregularities) of the 1995 Act, after subsection (7) there is inserted—

“(7A) Subsection (1) does not authorise a court to excuse a failure to do any of the following things timeously—

- (a) lodge written intimation of intention to appeal in accordance with section 109(1),
- (b) lodge a note of appeal in accordance with section 110(1)(a),
- (c) make an application for a stated case under section 176(1),
- (d) lodge a note of appeal in accordance with section 186(2)(a).”.

**Commencement Information**

**I15** S. 91 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

**92 Advocation in solemn proceedings**

After section 130 of the 1995 Act there is inserted—

**“130A Bill of advocation not competent in respect of certain decisions**

It is not competent to bring under review of the High Court by way of bill of advocation a decision taken at a first diet or a preliminary hearing.”.

**Commencement Information**

**I16** S. 92 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

**93 Advocation in summary proceedings**

After section 191A of the 1995 Act there is inserted—

**“191B Bill of advocation not competent in respect of certain decisions**

It is not competent to bring under review of the Sheriff Appeal Court by way of bill of advocation a decision of the court of first instance that relates to such objection or denial as is mentioned in section 144(4).”.

**Commencement Information**

**I17** S. 93 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

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## 94 Finality of appeal proceedings

In subsection (2) of section 124 (finality of proceedings) of the 1995 Act—

- (a) for the words “sections 288ZB and 288AA” there is substituted “section 288AA ”,
- (b) the words “a reference under section 288ZB or” are repealed.

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### Commencement Information

**I18** S. 94 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

## 95 Courts reform: spent provisions

In schedule 3 to the Courts Reform (Scotland) Act 2014, the following provisions are repealed—

- (a) in paragraph 10, sub-paragraphs (4), (5) and (8),
- (b) paragraph 22,
- (c) paragraph 25.

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### Commencement Information

**I19** S. 95 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

## SCCRC

## 96 References by SCCRC

- (1) The 1995 Act is amended as follows.
- (2) In section 194B, in subsection (1), the words “, subject to section 194DA of this Act,” are repealed.
- (3) The title of section 194B becomes “ **References by the Commission** ”.
- (4) In section 194C, subsection (2) is repealed.
- (5) Section 194DA is repealed.

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### Commencement Information

**I20** S. 96 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

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## PART 6

### MISCELLANEOUS

VALID FROM 25/01/2018

#### CHAPTER 1

##### PUBLICATION OF PROSECUTORIAL TEST

#### 97 **Publication of prosecutorial test**

- (1) The Lord Advocate must make available to the public a statement setting out in general terms the matters about which a prosecutor requires to be satisfied in order to initiate, and continue with, criminal proceedings in respect of any offence.
- (2) The reference in subsection (1) to a prosecutor is to one within the Crown Office and Procurator Fiscal Service.

#### CHAPTER 2

##### SUPPORT FOR VULNERABLE PERSONS

#### 98 **Meaning of appropriate adult support**

- (1) For the purposes of this Chapter, “appropriate adult support” means—
  - (a) support of the sort mentioned in subsection (3) of section 42 that is provided to a person about whom intimation has been sent under subsection (2) of that section, and
  - (b) such other support for vulnerable persons in connection with a criminal investigation or criminal proceedings as the Scottish Ministers specify by regulations.
- (2) In regulations under subsection (1)(b), the Scottish Ministers may, in particular, specify support by reference to—
  - (a) the purpose it is to serve,
  - (b) the description of vulnerable persons to whom it is to be available, and
  - (c) the circumstances in which it is to be available.
- (3) For the purposes of this section—
 

“vulnerable person” means a person who, owing to mental disorder, is—

  - (a) unable to understand sufficiently what is happening, or
  - (b) communicate effectively,

in the context of a criminal investigation or criminal proceedings,  
 “mental disorder” has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

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- (4) The Scottish Ministers may by regulations amend the definitions of “vulnerable person” and “mental disorder” in subsection (3) for the purpose of making them consistent with (respectively) subsections (1)(c) and (5)(a) of section 42.

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**Commencement Information**

**I21** S. 98 in force at 17.1.2017 by [S.S.I. 2016/426](#), art. 2, [sch.](#)

**99 Responsibility for ensuring availability of appropriate adults**

The Scottish Ministers may by regulations—

- (a) confer on a person the function of ensuring that people are available to provide appropriate adult support—
  - (i) throughout Scotland, or
  - (ii) in a particular part of Scotland, and
- (b) make provision about how that function may or must be discharged.

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**Commencement Information**

**I22** S. 99 in force at 17.1.2017 by [S.S.I. 2016/426](#), art. 2, [sch.](#)

**100 Assessment of quality of appropriate adult support**

The Scottish Ministers may by regulations—

- (a) confer on a person the functions of—
  - (i) assessing the quality of whatever arrangements may be in place to ensure that people are available to provide appropriate adult support, and
  - (ii) assessing the quality of any appropriate adult support that is provided, and
- (b) make provision about how those functions may or must be discharged.

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**Commencement Information**

**I23** S. 100 in force at 17.1.2017 by [S.S.I. 2016/426](#), art. 2, [sch.](#)

**101 Training for appropriate adults**

The Scottish Ministers may by regulations—

- (a) confer on a person the function of—
  - (i) giving to people who provide, or wish to provide, appropriate adult support training in how to provide that support,
  - (ii) giving to other people specified by the Scottish Ministers in the regulations training in how to deal with people who need appropriate adult support, and
- (b) make provision about how that function may or must be discharged.

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### Commencement Information

**I24** S. 101 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

VALID FROM 10/01/2020

### 102 Recommendations from quality assessor and training provider

- (1) A person upon whom a function has been conferred by virtue of section 100 or 101 may—
  - (a) make to a provider of appropriate adult support recommendations about the way that appropriate adult support is provided,
  - (b) make to the Scottish Ministers recommendations about the exercise of their powers under section 61 and the provisions of this Chapter.
- (2) A provider of appropriate adult support must have regard to any recommendation made to it under subsection (1)(a).
- (3) The Scottish Ministers must have regard to any recommendation made under subsection (1)(b).
- (4) In this section, “a provider of appropriate adult support” means a person upon whom the function of ensuring that people are available to provide appropriate adult support has been conferred by virtue of section 99.

VALID FROM 10/01/2020

### 103 Duty to ensure quality assessment takes place

If, by virtue of regulations under section 99, a person has the function of ensuring that people are available to provide appropriate adult support, it is the Scottish Ministers' duty to ensure that there is a person discharging the functions mentioned in section 100(a).

### 104 Elaboration of regulation-making powers under this Chapter

- (1) A power under this Chapter to confer a function on a person by regulations may be exercised so as to confer the function, or aspects of the function, on more than one person.
- (2) A power under this Chapter to make provision by regulations about how a function may or must be discharged may, in particular, be exercised so as to—
  - (a) require or allow the person discharging the function to enter into a contract with another person,
  - (b) require the person discharging the function to have regard to any guidance about the discharge of the function issued by the Scottish Ministers.
- (3) The powers under this Chapter to make regulations may be exercised so as to—

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- (a) make such provision as the Scottish Ministers consider necessary or expedient in consequence of, or for the purpose of giving full effect to, any regulations made in exercise of a power under this Chapter,
- (b) modify any enactment (including this Act),
- (c) make different provision for different purposes.

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**Commencement Information**

**I25** S. 104 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

### **105 Procedure for making regulations under this Chapter**

- (1) Regulations under this Chapter are subject to the affirmative procedure.
- (2) Prior to laying a draft Scottish statutory instrument containing regulations under this Chapter before the Scottish Parliament for approval by resolution, the Scottish Ministers must consult publicly.

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**Commencement Information**

**I26** S. 105 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

### **106 Other powers of Ministers unaffected**

Nothing in this Chapter is to be taken to imply that the powers it gives to the Scottish Ministers to confer functions are the only powers that they have to confer those (or similar) functions.

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**Commencement Information**

**I27** S. 106 in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

PROSPECTIVE

## **CHAPTER 3**

### **NOTIFICATION IF PARENT OF UNDER 18 IMPRISONED**

#### **107 Child's named person to be notified**

- (1) This section applies where a person is admitted to any penal institution for imprisonment or detention arising from—
  - (a) anything done by a court of criminal jurisdiction (including the imposition of a sentence, the making of an order or the issuing of a warrant),
  - (b) anything done under section 17 or 17A of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (as to the recall of a prisoner),

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- (c) anything done by virtue of the Extradition Act 2003 (particularly section 9(2) or 77(2) of that Act), or
  - (d) the operation of any other enactment concerning criminal matters (including penal matters).
- (2) The Scottish Ministers must ensure that the person is asked—
- (a) whether the person is a parent of a child, and
  - (b) if the person claims to be a parent of a child, to—
    - (i) state the identity of the child, and
    - (ii) give information enabling the identity of the service provider in relation to the child to be ascertained.
- (3) If the identity of the service provider can be ascertained by or on behalf of the Scottish Ministers without undue difficulty in light of anything disclosed by the person, they must ensure that the service provider is notified of—
- (a) the fact of the person's admission to the penal institution,
  - (b) what has been stated by the person about the identity of the child, and
  - (c) such other matters disclosed by the person as appear to them to be relevant for the purpose of the exercise of the named person functions with respect to the child.
- (4) In addition, the Scottish Ministers must ensure that the service provider is notified of anything disclosed by the person about the identity of any other child—
- (a) of whom the person claims to be a parent, and
  - (b) the service provider in relation to whom is unknown to them.
- (5) No requirement is imposed by subsection (2) if the person's admission to the penal institution is on—
- (a) returning after—
    - (i) any unauthorised absence, or
    - (ii) any temporary release in accordance with prison rules, or
  - (b) being transferred from—
    - (i) any other penal institution,
    - (ii) any secure accommodation in which the person has been kept, or
    - (iii) any hospital in which the person has been detained, so as to be given medical treatment for a mental disorder, by virtue of Part VI of the 1995 Act or the Mental Health (Care and Treatment) (Scotland) Act 2003.
- (6) Each of the requirements imposed by subsections (2) to (4) is to be fulfilled without unnecessary delay.
- (7) The references in subsections (2) to (4) to the Scottish Ministers are to them in their exercise of functions in connection with the person's imprisonment or detention in the penal institution.
- (8) The references in subsections (3) and (4) to disclosure by the person are to such disclosure in response to something asked under subsection (2).

## 108 Definition of certain expressions

In this Chapter—



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“child” means a person who is under 18 years of age,  
“named person functions” has the meaning given by section 32 of the Children and Young People (Scotland) Act 2014,  
“parent” includes any person who—  
(a) is a guardian of a child,  
(b) is liable to maintain, or has care of, a child, or  
(c) has parental responsibilities in relation to a child (as construed by reference to section 1(1) to (3) of the Children (Scotland) Act 1995),  
“penal institution” means—  
(a) any prison, other than—  
(i) a naval, military or air force prison, or  
(ii) any legalised police cells (within the meaning of section 14(1) of the Prisons (Scotland) Act 1989),  
(b) any remand centre (within the meaning of section 19(1)(a) of the Prisons (Scotland) Act 1989), or  
(c) any young offenders institution (within the meaning of section 19(1)(b) of the Prisons (Scotland) Act 1989),  
“prison rules” means rules made under section 39 of the Prisons (Scotland) Act 1989,  
“secure accommodation” means accommodation provided in a residential establishment, approved in accordance with regulations made under section 78(2) of the Public Services Reform (Scotland) Act 2010, for the purpose of restricting the liberty of children,  
“service provider” in relation to a child has the meaning given by section 32 of the Children and Young People (Scotland) Act 2014.

## CHAPTER 4

### STATEMENTS AND PROCEDURE

VALID FROM 25/01/2018

#### *Statements by accused*

#### **109 Statements by accused**

(1) After section 261 of the 1995 Act there is inserted—

##### **“261ZA Statements by accused**

- (1) Evidence of a statement to which this subsection applies is not inadmissible as evidence of any fact contained in the statement on account of the evidence's being hearsay.
- (2) Subsection (1) applies to a statement made by the accused in the course of the accused's being questioned (whether as a suspect or not) by a constable, or another official, investigating an offence.

**Status:** Point in time view as at 17/01/2017. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** *Criminal Justice (Scotland) Act 2016 is up to date with all changes known to be in force on or before 18 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) Subsection (1) does not affect the issue of whether evidence of a statement made by one accused is admissible as evidence in relation to another accused.”.

(2) The title of section 261 of the 1995 Act becomes “ **Statements by co-accused** ”.

### *Use of technology*

## 110 Live television links

(1) After section 288G of the 1995 Act there is inserted—

### *“Use of live television link*

#### **288H Participation through live television link**

- (1) Where the court so determines at any time before or at a specified hearing, a detained person is to participate in the hearing by means of a live television link.
- (2) The court—
  - (a) must give the parties in the case an opportunity to make representations before making a determination under subsection (1),
  - (b) may make such a determination only if it considers that to do so is not contrary to the interests of justice.
- (3) The court may require a detained person to participate by means of a live television link in any proceedings at a specified hearing or otherwise in the case for the sole purpose of considering whether to make a determination under subsection (1) with respect to a specified hearing.
- (4) Where a detained person participates in any specified hearing or other proceedings by means of a live television link—
  - (a) a place of detention is, for the purposes of the hearing or other proceedings, deemed to be part of the court-room, and
  - (b) accordingly, the hearing is or other proceedings are deemed to take place in the presence of the detained person.
- (5) In this section—
 

“court-room” includes chambers,

“live television link” means live television link between a place of detention and the court-room in which any specified hearing is or other proceedings are to be held or (as the case may be) any specified hearing is or other proceedings are being held.

#### **288I Evidence and personal appearance**

- (1) No evidence as to a charge on any complaint or indictment may be led or presented at a specified hearing in respect of which there is a determination under section 288H(1).

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- (2) The court—
  - (a) may, at any time before or at a specified hearing, revoke a determination under section 288H(1),
  - (b) must do so in relation to a detained person if it considers that it is in the interests of justice for the detained person to appear in person.
- (3) The court may postpone a specified hearing to a later day if, on the day on which a specified hearing takes place or is due to take place—
  - (a) the court decides not to make a determination under section 288H(1) with respect to the hearing, or
  - (b) the court revokes such a determination under subsection (2).

### **288J Effect of postponement**

- (1) Except where a postponement under section 288I(3) is while section 21(2) of the Criminal Justice (Scotland) Act 2016 applies to a detained person, the following do not count towards any time limit arising in the person's case if the postponement in the case is to the next day on which the court is sitting—
  - (a) that next day,
  - (b) any intervening Saturday, Sunday or court holiday.
- (2) Even while section 21(2) of the Criminal Justice (Scotland) Act 2016 applies to a detained person, that section does not prevent a postponement under section 288I(3) in the person's case.
- (3) In section 288I and this section, “postpone” includes adjourn.

### **288K Specified hearings**

- (1) The Lord Justice General may by directions specify types of hearing at the High Court, sheriff court and JP court in which a detained person may participate in accordance with section 288H(1).
- (2) Directions under subsection (1) may specify types of hearing by reference to—
  - (a) the venues at which they take place,
  - (b) particular places of detention,
  - (c) categories of cases or proceedings to which they relate.
- (3) Directions under subsection (1) may—
  - (a) vary or revoke earlier such directions,
  - (b) make different provision for different purposes.
- (4) The validity of any proceedings is not affected by the participation of a detained person by means of a live television link in a hearing that is not a specified hearing.
- (5) In this section, “hearing” includes any diet or hearing in criminal proceedings which may be held in the presence of an accused, a convicted person or an appellant in the proceedings.

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## 288L Defined terms

For the purpose of sections 288H to 288K—

“detained person” means person who is—

- (a) an accused, a convicted person or an appellant in the case to which a specified hearing relates, and
- (b) imprisoned or otherwise lawfully detained (whether or not in connection with an offence) at any place in Scotland,

“place of detention” means place in which a detained person is imprisoned or detained,

“specified hearing” means hearing of a type specified in directions having effect for the time being under section 288K.”.

(2) In addition—

- (a) in section 117 (presence of appellant or applicant at hearing) of the 1995 Act—
  - (i) subsection (6) is repealed,
  - (ii) in subsection (7), for the word “(6)” there is substituted “ (5) ”,
- (b) section 80 of the Criminal Justice (Scotland) Act 2003 is repealed.

### Commencement Information

**I28** S. 110(2)(a) in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

## 111 Electronic proceedings

(1) In section 305 (Acts of Adjournal) of the 1995 Act, after subsection (1) there is inserted—

“(1A) Subsection (1) above extends to making provision by Act of Adjournal for something to be done in electronic form or by electronic means.”.

(2) These provisions of the 1995 Act are repealed—

- (a) in section 141—
  - (i) subsection (3A),
  - (ii) in subsection (5), the words “(including a legible version of an electronic communication)”,
  - (iii) subsection (5ZA),
  - (iv) in subsection (5A), paragraph (b) together with the word “or” immediately preceding it,
  - (v) subsections (6A), (7A) and (7B),
- (b) section 303B together with the italic heading immediately preceding it,
- (c) section 308A.

(3) In the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, section 42 is repealed.

### Commencement Information

**I29** S. 111(1) in force at 17.1.2017 by S.S.I. 2016/426, art. 2, sch.

**Status:** Point in time view as at 17/01/2017. This version of this Act contains provisions that are not valid for this point in time.  
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## CHAPTER 5

### AUTHORISATION UNDER PART III OF THE POLICE ACT 1997

#### 112 Authorisation of persons other than constables

In section 108 (interpretation of Part III) of the Police Act 1997, after subsection (1) there is inserted—

- “(1A) A reference in this Part to a staff officer of the Police Investigations and Review Commissioner is to any person who—
- (a) is a member of the Commissioner's staff appointed under paragraph 7A of schedule 4 to the Police, Public Order and Criminal Justice (Scotland) Act 2006, or
  - (b) is a member of the Commissioner's staff appointed under paragraph 7 of that schedule to whom paragraph 7B(2) of that schedule applies.”.

#### Commencement Information

**I30** S. 112 in force at 1.7.2016 by S.S.I. 2016/199, art. 2

VALID FROM 09/03/2023

## CHAPTER 6

### POLICE NEGOTIATING BOARD FOR SCOTLAND

#### 113 Establishment and functions

(1) After section 55 of the Police and Fire Reform (Scotland) Act 2012 there is inserted—

#### “CHAPTER 8A

### POLICE NEGOTIATING BOARD FOR SCOTLAND

#### 55A Establishment of the PNBS

- (1) There is established a body to be known as the Police Negotiating Board for Scotland.
- (2) Schedule 2A makes further provision about the Police Negotiating Board for Scotland.
- (3) In this Chapter, the references to the PNBS are to the Police Negotiating Board for Scotland.

#### 55B Representations about pay etc.

- (1) The PNBS may make representations to the Scottish Ministers about—

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- (a) any draft regulations shared with it under section 54(1)(a),
  - (b) any draft determination of a kind mentioned in subsection (2),
  - (c) the matters mentioned in subsection (4) generally.
- (2) The draft determination referred to in subsection (1)(b) is a draft of a determination to be made by the Scottish Ministers—
- (a) in relation to a matter mentioned in subsection (4), and
  - (b) by virtue of regulations made under section 48.
- (3) The Scottish Ministers may, after consulting the chairperson of the PNBS—
- (a) require the PNBS to make representations under subsection (1),
  - (b) set or extend a time limit within which it must do so.
- (4) The matters referred to in subsections (1)(c) and (2)(a) are the following matters in relation to constables (other than special constables) and police cadets—
- (a) pay, allowances and expenses,
  - (b) public holidays and leave,
  - (c) hours of duty.

### **55C Representations on other matters**

- (1) The PNBS may make representations to the Scottish Ministers about—
- (a) any draft regulations shared with it under section 54(2),
  - (b) the matters mentioned in subsection (2) generally.
- (2) The matters referred to in subsection (1)(b) are matters relating to the governance, administration and conditions of service of constables (other than special constables) and police cadets.
- (3) But those matters do not include the matters mentioned in section 55B(4).

### **55D Steps following arbitration**

- (1) If representations under section 55B(1) are made in terms settled through arbitration in accordance with the PNBS's constitution, the Scottish Ministers must take all reasonable steps appearing to them to be necessary for giving effect to those representations.
- (2) However, this—
- (a) requires the Scottish Ministers to take such steps only in qualifying cases (see paragraph 8(2) of schedule 2A),
  - (b) does not require the Scottish Ministers—
    - (i) to take such steps in relation to representations that are no longer being pursued by the PNBS, or
    - (ii) where such steps would comprise or include the making of regulations under section 48, to make regulations under that section more than once with respect to the same representations.

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### **55E Reporting by the PNBS**

- (1) The PNBS must, as soon as practicable after the end of each reporting year, prepare a report on how it has carried out its functions during that year.
  - (2) The PNBS must—
    - (a) give a copy of each report to the Scottish Ministers,
    - (b) publish each report in such manner as it considers appropriate.
  - (3) In this Chapter, “reporting year” is as defined in the PNBS's constitution.”.
- (2) In section 54 (consultation on regulations) of the Police and Fire Reform (Scotland) Act 2012, in subsection (1)—
- (a) for the words from “61(1)” to “pensions)” there is substituted “ 55B(4) ”,
  - (b) in paragraph (a), for the words “the United Kingdom” there is substituted “ Scotland ”.
- (3) In section 125 (subordinate legislation) of the Police and Fire Reform (Scotland) Act 2012, after subsection (3) there is inserted—
- “(3A) Regulations under paragraph 5(7) of schedule 2A are subject to the affirmative procedure if they include provisions of the kind mentioned in paragraph 7(2) or 8(2) of that schedule.”.
- (4) After schedule 2 to the Police and Fire Reform (Scotland) Act 2012 there is inserted (as schedule 2A to that Act) the schedule set out in schedule 3.

### **114 Consequential and transitional**

- (1) In connection with section 113—
  - (a) in schedule 1 to the Freedom of Information (Scotland) Act 2002, after paragraph 50A there is inserted—

“50B The Police Negotiating Board for Scotland.”,
  - (b) in schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003, at the appropriate place under the heading referring to offices there is inserted— “ Chairperson of the Police Negotiating Board for Scotland ”.
- (2) On the coming into force of section 113—
  - (a) a person then holding office as the chairman of the Police Negotiating Board for the United Kingdom by virtue of section 61(2) of the Police Act 1996 is to be regarded as if appointed as the chairperson of the Police Negotiating Board for Scotland under paragraph 2(2) of schedule 2A to the Police and Fire Reform (Scotland) Act 2012,
  - (b) any agreements then extant within or involving the Police Negotiating Board for the United Kingdom (so far as relating to the Police Service of Scotland) of the kind for which Chapter 8A of Part 1 of the Police and Fire Reform (Scotland) Act 2012 includes provision are to be regarded as if made as agreements within or involving the Police Negotiating Board for Scotland by virtue of that Chapter.

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## PART 7

### FINAL PROVISIONS

#### *Ancillary and definition*

#### **115 Ancillary regulations**

- (1) The Scottish Ministers may by regulations make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in connection with this Act.
- (2) Regulations under this section—
  - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including this Act),
  - (b) otherwise, are subject to the negative procedure.

#### **116 Meaning of “the 1995 Act”**

In this Act, “the 1995 Act” means the Criminal Procedure (Scotland) Act 1995.

#### *Commencement and short title*

#### **117 Commencement**

- (1) The following provisions come into force on the day after Royal Assent—
  - (a) sections 71 and 73 to 77,
  - (b) this Part.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may include transitional, transitory or saving provision.

#### **118 Short title**

The short title of this Act is the Criminal Justice (Scotland) Act 2016.



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VALID FROM 25/01/2018

## SCHEDULE 1

*(introduced by sections 16(4) and 26(6))*

### BREACH OF LIBERATION CONDITION

#### *Offence of breaching condition*

- 1
- (1) A person commits an offence if, without reasonable excuse, the person breaches a liberation condition by reason of—
    - (a) failing to comply with an investigative liberation condition,
    - (b) failing to appear at court as required by the terms of an undertaking, or
    - (c) failing to comply with the terms of an undertaking, other than the requirement to appear at court.
  - (2) Sub-paragraph (1) does not apply where (and to the extent that) a person breaches a liberation condition by reason of committing an offence (in which case see paragraph 3).
  - (3) It is competent to amend a complaint to include an additional charge of an offence under sub-paragraph (1) at any time before the trial of a person in summary proceedings for—
    - (a) the original offence, or
    - (b) an offence arising from the same circumstances as the original offence.
  - (4) In sub-paragraph (3), “the original offence” is the offence in connection with which—
    - (a) an investigative liberation condition was imposed, or
    - (b) an undertaking was given.

#### *Sentencing for the offence*

- 2
- (1) A person who commits an offence under paragraph 1(1) is liable on summary conviction to—
    - (a) a fine not exceeding level 3 on the standard scale, or
    - (b) imprisonment for a period—
      - (i) where conviction is in the justice of the peace court, not exceeding 60 days,
      - (ii) where conviction is in the sheriff court, not exceeding 12 months.
  - (2) A penalty under sub-paragraph (1) may be imposed in addition to any other penalty which it is competent for the court to impose, even if the total of penalties imposed exceeds the maximum penalty which it is competent to impose in respect of the original offence.
  - (3) The reference in sub-paragraph (2) to a penalty being imposed in addition to another penalty means, in the case of sentences of imprisonment or detention—

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- (a) where the sentences are imposed at the same time (whether or not in relation to the same complaint), framing the sentences so that they have effect consecutively,
  - (b) where the sentences are imposed at different times, framing the sentence imposed later so that (if the earlier sentence has not been served) the later sentence has effect consecutive to the earlier sentence.
- (4) Sub-paragraph (3)(b) is subject to section 204A (restriction on consecutive sentences for released prisoners) of the 1995 Act.
- (5) Where a person is to be sentenced in respect of an offence under paragraph 1(1), the court may remit the person for sentence in respect of it to any court which is considering the original offence.
- (6) In sub-paragraphs (2) and (5), “the original offence” is the offence in connection with which—
- (a) the investigative liberation condition was imposed, or
  - (b) the undertaking was given.

*Breach by committing offence*

- 3 (1) This paragraph applies—
- (a) where (and to the extent that) a person breaches a liberation condition by reason of committing an offence (“offence O”), but
  - (b) only if the fact that offence O was committed while the person was subject to the liberation condition is specified in the complaint or indictment.
- (2) In determining the penalty for offence O, the court must have regard—
- (a) to the fact that offence O was committed in breach of a liberation condition,
  - (b) if the breach is by reason of the person's failure to comply with the terms of an investigative liberation condition, to the matters mentioned in paragraph 4(1),
  - (c) if the breach is by reason of the person's failure to comply with the terms of an undertaking other than the requirement to appear at court, to the matters mentioned in paragraph 5(1).
- (3) Where the maximum penalty in respect of offence O is specified by (or by virtue of) an enactment, the maximum penalty is increased—
- (a) where it is a fine, by the amount equivalent to level 3 on the standard scale,
  - (b) where it is a period of imprisonment—
    - (i) as respects conviction in the justice of the peace court, by 60 days,
    - (ii) as respects conviction in the sheriff court or the High Court, by 6 months.
- (4) The maximum penalty is increased by sub-paragraph (3) even if the penalty as so increased exceeds the penalty which it would otherwise be competent for the court to impose.
- (5) In imposing a penalty in respect of offence O, the court must state—
- (a) where the penalty is different from that which the court would have imposed had sub-paragraph (2) not applied, the extent of and the reasons for that difference,
  - (b) otherwise, the reasons for there being no such difference.

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*Matters for paragraph 3(2)(b)*

- 4 (1) For the purpose of paragraph 3(2)(b), the matters are—
- (a) the number of offences in connection with which the person was subject to investigative liberation conditions when offence O was committed,
  - (b) any previous conviction the person has for an offence under paragraph 1(1)(a),
  - (c) the extent to which the sentence or disposal in respect of any previous conviction differed, by virtue of paragraph 3(2), from that which the court would have imposed but for that paragraph.
- (2) In sub-paragraph (1)—
- (a) in paragraph (b), the reference to any previous conviction includes any previous conviction by a court in England and Wales, Northern Ireland or a member State of the European Union (other than the United Kingdom) for an offence that is equivalent to an offence under paragraph 1(1)(a),
  - (b) in paragraph (c), the references to paragraph 3(2) are to be read, in relation to a previous conviction by a court referred to in paragraph (a) of this sub-paragraph, as references to any provision that is equivalent to paragraph 3(2).
- (3) Any issue of equivalence arising under sub-paragraph (2)(a) or (b) is for the court to determine.

*Matters for paragraph 3(2)(c)*

- 5 (1) For the purpose of paragraph 3(2)(c), the matters are—
- (a) the number of undertakings to which the person was subject when offence O was committed,
  - (b) any previous conviction the person has for an offence under paragraph 1(1)(c),
  - (c) the extent to which the sentence or disposal in respect of any previous conviction differed, by virtue of paragraph 3(2), from that which the court would have imposed but for that paragraph.
- (2) In sub-paragraph (1)—
- (a) in paragraph (b), the reference to any previous conviction includes any previous conviction by a court in England and Wales, Northern Ireland or a member State of the European Union (other than the United Kingdom) for an offence that is equivalent to an offence under paragraph 1(1)(c),
  - (b) in paragraph (c), the references to paragraph 3(2) are to be read, in relation to a previous conviction by a court referred to in paragraph (a) of this sub-paragraph, as references to any provision that is equivalent to paragraph 3(2).
- (3) Any issue of equivalence arising under sub-paragraph (2)(a) or (b) is for the court to determine.

*Evidential presumptions*

- 6 (1) In any proceedings in relation to an offence under paragraph 1(1), the facts mentioned in sub-paragraph (2) are to be held as admitted unless challenged by preliminary objection before the person's plea is recorded.

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- (2) The facts are—
- (a) that the person breached an undertaking by reason of failing to appear at court as required by the terms of the undertaking,
  - (b) that the person was subject to a particular—
    - (i) investigative liberation condition, or
    - (ii) condition under the terms of an undertaking.
- (3) In proceedings to which sub-paragraph (4) applies—
- (a) something in writing, purporting to impose investigative liberation conditions and bearing to be signed by a constable, is sufficient evidence of the terms of the investigative liberation conditions imposed under section 16(2),
  - (b) something in writing, purporting to be an undertaking and bearing to be signed by the person said to have given it, is sufficient evidence of the terms of the undertaking at the time that it was given,
  - (c) a document purporting to be a notice (or a copy of a notice) under section 18, 27 or 28, is sufficient evidence of the terms of the notice.
- (4) This sub-paragraph applies to proceedings—
- (a) in relation to an offence under paragraph 1(1), or
  - (b) in which the fact mentioned in paragraph 3(1)(b) is specified in the complaint or indictment.
- (5) In proceedings in which the fact mentioned in paragraph 3(1)(b) is specified in the complaint or indictment, that fact is to be held as admitted unless challenged—
- (a) in summary proceedings, by preliminary objection before the person's plea is recorded, or
  - (b) in the case of proceedings on indictment, by giving notice of a preliminary objection in accordance with section 71(2) or 72(6)(b)(i) of the 1995 Act.

#### *Interpretation*

7

In this schedule—

- (a) references to an investigative liberation condition are to a condition imposed under section 16(2) or 19(3)(b) subject to any modification by notice under section 18(1) or (5)(a),
- (b) references to an undertaking are to an undertaking given under section 25(2)(a),
- (c) references to the terms of an undertaking are to the terms of an undertaking subject to any modification by—
  - (i) notice under section 27(1), or
  - (ii) the sheriff under section 30(3)(b).

## SCHEDULE 2

*(introduced by section 56)*

### MODIFICATIONS IN CONNECTION WITH PART 1

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 .....

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VALID FROM 09/03/2023

### SCHEDULE 3

(introduced by section 113)

## POLICE NEGOTIATING BOARD FOR SCOTLAND

PROSPECTIVE

### “SCHEDULE 2A

(introduced by section 55A)

## POLICE NEGOTIATING BOARD FOR SCOTLAND

### *Status of the PNBS*

- 1 (1) The PNBS—
  - (a) is not a servant or agent of the Crown, and
  - (b) has no status, immunity or privilege of the Crown.
- (2) The property of the PNBS is not property of, or property held on behalf of, the Crown.

### *Chairing and membership*

- 2 (1) The PNBS is to consist of—
  - (a) a chairperson,
  - (b) other persons representing the interests of each of—
    - (i) the Authority,
    - (ii) the chief constable,
    - (iii) constables (other than special constables) and police cadets,
    - (iv) the Scottish Ministers.
- (2) It is for the Scottish Ministers to appoint the chairperson.
- (3) Other members are to be appointed in accordance with the constitution prepared under paragraph 5.
- (4) A member of the PNBS holds and vacates office in accordance with the terms of the member's appointment.
- (5) The chairperson may—
  - (a) resign from office by giving notice in writing to the Scottish Ministers,
  - (b) be removed from office if, in the opinion of the Scottish Ministers, the person is unable, unfit or unwilling to perform the functions of the office.

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#### *Temporary chairperson*

- 3 (1) The PNBS may have a temporary chairperson if (for the time being)—
- (a) there is no chairperson, or
  - (b) the chairperson is unavailable to act.
- (2) A reference in this Chapter to the chairperson is to be read, where appropriate to do so by virtue of sub-paragraph (1), as meaning or including (as the context requires) the temporary chairperson.

#### *Disqualification from chairing*

- 4 A person is disqualified from appointment, and from holding office, as the chairperson of the PNBS if the person is or becomes—
- (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a member of the European Parliament,
  - (d) a Minister of the Crown,
  - (e) a member of the Scottish Government,
  - (f) a civil servant.

#### *Constitution and procedure etc.*

- 5 (1) It is for the Scottish Ministers to prepare the constitution for the PNBS.
- (2) The constitution must regulate the procedure for consensus to be reached among the members of the PNBS on the terms of representations to be made under section 55B(1) or 55C(1).
- (3) The constitution—
- (a) may require a dispute on representations to be made under section 55B(1) to be submitted to arbitration by agreement among the members to do so, and must not prevent such a dispute from being submitted to arbitration on such agreement (except prevention by way of limitation as allowed below),
  - (b) may—
    - (i) authorise the chairperson to submit such a dispute to arbitration without such agreement,
    - (ii) limit how often within a reporting year such a dispute can be submitted to arbitration (including limitation framed by reference to particular matters or circumstances).
- (4) The constitution may contain provision about—
- (a) membership (including number of members to represent each of the interests mentioned in paragraph 2(1)(b)),
  - (b) internal organisation (for example, committees and office-holders),
  - (c) procedures to be followed (including conduct of meetings),
  - (d) the content of a report required by section 55E,
  - (e) such other matters as the Scottish Ministers consider appropriate.
- (5) The Scottish Ministers—
- (a) must keep the constitution under review,

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(b) may revise it from time to time.

(6) Before preparing or revising the constitution, the Scottish Ministers must consult—

- (a) the Authority,
- (b) the chief constable, and
- (c) persons representing the interests of constables (other than special constables) and police cadets.

(7) The constitution, or any revision of it, has effect only when brought into effect by the Scottish Ministers by regulations.

#### *Process of arbitration*

6 (1) Sub-paragraph (2) applies where—

- (a) a dispute is submitted to arbitration in accordance with the constitution, and
- (b) no arbitration agreement relating to the dispute is in place.

(2) A document submitting the dispute to arbitration is deemed to be an arbitration agreement.

(3) For the application of the Arbitration (Scotland) Act 2010, a reference in this paragraph to an arbitration agreement is to such an agreement as defined by section 4 of that Act.

7 (1) Sub-paragraph (2) applies for the purpose of arbitration in accordance with the constitution (whether such arbitration arises by reason of a real or deemed arbitration agreement).

(2) Regulations under paragraph 5(7) may include provisions disapplying or modifying the mandatory rules in schedule 1 to the Arbitration (Scotland) Act 2010.

8 (1) Sub-paragraph (2) applies for the purpose of the operation of section 55D.

(2) Regulations under paragraph 5(7) may include provisions specifying, by reference to particular matters or circumstances, what are qualifying cases.

#### *Remuneration and expenses*

9 (1) The Scottish Ministers may pay—

- (a) such remuneration to the chairperson of the PNBS as they think fit,
- (b) such expenses of the members of the PNBS as they think fit.

(2) The Scottish Ministers must pay such expenses as they consider are reasonably required to be incurred to enable the PNBS to carry out its functions.”.

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