



Criminal Justice (Scotland) Act 2016

2016 asp 1

PART 1

ARREST AND CUSTODY

CHAPTER 1

ARREST BY POLICE

Modifications etc. (not altering text)

- C1 Pt. 1 applied (with modifications) by 2003 c. 20, s. 31A (as inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), **Sch. 2 para. 2** (with art. 6))
- C2 Pt. 1 applied (with modifications) by 1994 c. 33, s. 137ZA (as inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), **Sch. 1 para. 4** (with art. 5(2)))
- C3 Pt. 1 Chs. 1-6 applied (with modifications) (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), **Sch. 3 Pt. 3** (with art. 7, Sch. 3 Pts. 5, 6)
- C4 Pt. 1 applied (with modifications) by 2004 c. 20, s. 56A (as inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), **Sch. 2 para. 3** (with art. 6))
- C5 Pt. 1 Chs. 1-6 applied (with modifications) (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), **Sch. 3 Pt. 2** (with art. 7, Sch. 3 Pts. 5, 6)
- C6 Pt. 1 applied (with modifications) by 1987 c. 4, s. 2D (as inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), **Sch. 2 para. 1** (with art. 6))
- C7 Pt. 1 Chs. 1-6 applied (with modifications) (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), **Sch. 3 Pt. 4** (with art. 7, Sch. 3 Pts. 5, 6)
- C8 Pt. 1 Chs. 1-6 applied (with modifications) (25.1.2018) by [The Police Investigations and Review Commissioner \(Application and Modification of the Criminal Justice \(Scotland\) Act 2016\) Order 2017 \(S.S.I. 2017/465\)](#), arts. 14

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C9 Pt. 1 applied (with modifications) (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), [Sch. 4](#) (with art. 8)

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—
 - (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.

Commencement Information

II S. 1 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#) (with art. 6)

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.

Commencement Information

II S. 2 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#)

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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 [^{F1}(if any)],
- (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.

Textual Amendments

- F1** Words in s. 3(b) inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), regs. 1, 2(2)

Modifications etc. (not altering text)

- C10** 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))

Commencement Information

- I3** S. 3 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#) (with art. 4)

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.

[^{F2}(1A) But subsection (1) need not be complied with if—

- (a) either the warrant under which the person was arrested or an enactment requires that following the arrest the person be taken to a particular place (other than a police station), and
- (b) the taking of the person to that place would be unnecessarily delayed by taking the person to a police station first.]

- (2) Subsection (1) ceases to apply, and the person must be released from police custody immediately, if—

- (a) the person has been arrested [^{F3}in respect of an offence] 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.

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- (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.

Textual Amendments

- F2** S. 4(1A) inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), regs. 1, **2(3)(a)**
- F3** Words in s. 4(2)(a) inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), regs. 1, **2(3)(b)**

Commencement Information

- I4** S. 4 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, **sch.** (with art. 4)

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 [F4 requirements placed on member States by] 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.

Textual Amendments

- F4** Words in s. 5(3) substituted (31.12.2020) by [The Criminal Justice \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2020 \(S.S.I. 2020/339\)](#), regs. 1(3), **17**

Commencement Information

- I5** S. 5 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, **sch.** (with art. 4)

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,

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- [^{F5}(b) either—
- (i) the general nature of the offence in respect of which the person is arrested, or
 - (ii) if the person is arrested otherwise than in respect of an offence, the reason for the arrest,]
- (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.
- (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,

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- (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,
 - (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.

Textual Amendments

- F5** S. 6(1)(b) substituted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), regs. 1, **2(4)**
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Commencement Information

- I6** S. 6 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, **sch.** (with art. 4)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act expiry of affecting provision 2022 asp 8, sch. para. 15 by [S.S.I. 2023/360 reg. 2\(a\)](#)