

Criminal Justice (Scotland) Act 2016

2016 asp 1

PART 2

SEARCH BY POLICE

Modifications etc. (not altering text)

- C1** Pt. 2 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. 2 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))
- C3** Pt. 2 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))

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.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 2016, PART 2. (See end of Document for details)

Modifications etc. (not altering text)

- C4** S. 65 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)
- C5** S. 65 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)
- C6** S. 65 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
- C7** S. 65 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)

Commencement Information

- I1** S. 65 in force at 11.5.2017 by [S.S.I. 2017/99](#), **art. 2(a)** (with art. 6)

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.

Modifications etc. (not altering text)

- C8** S. 66 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
- C9** S. 66 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)
- C10** S. 66 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)
- C11** S. 66 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)

Commencement Information

- I2** S. 66 in force at 11.5.2017 by [S.S.I. 2017/99](#), **art. 2(b)** (with art. 6)

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 2016, PART 2. (See end of Document for details)

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
 - (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.

Commencement Information

I3 S. 67 in force at 11.5.2017 by [S.S.I. 2017/99](#), [art. 2\(c\)](#) (with [art. 6](#))

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.

Modifications etc. (not altering text)

- C12** S. 68 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](#))
- C13** S. 68 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](#))

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Criminal Justice (Scotland) Act 2016, PART 2 . (See end of Document for details)

- C14** S. 68 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
- C15** S. 68 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)

Commencement Information

- I4** S. 68 in force at 11.5.2017 by [S.S.I. 2017/99](#), **art. 2(d)** (with art. 6)

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.

Commencement Information

- I5** S. 69 in force at 11.5.2017 by [S.S.I. 2017/99](#), **art. 2(e)** (with art. 6)

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.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 2016, PART 2. (See end of Document for details)

- (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,
 - [^{F1}(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

- F1** 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.
- (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).

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Criminal Justice (Scotland) Act 2016, PART 2 . (See end of Document for details)

Commencement Information

I6 S. 72 in force at 11.5.2017 by S.S.I. 2017/99, art. 2(f) (with art. 6)

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,
 - (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.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 2016, PART 2 . (See end of Document for details)

- (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, ^{F2}...
 - (c) Her Majesty's Inspectors of Constabulary in Scotland.
 - [^{F3}(d) the British Transport Police Authority,
 - (e) the chief constable of the British Transport Police Force,
 - (f) the Civil Nuclear Police Authority,
 - (g) the chief constable of the Civil Nuclear Constabulary,
 - (h) the chief constable of the Ministry of Defence Police, or
 - (i) the Secretary of State.]
- (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).

Textual Amendments

- F2** Word in s. 74(4)(b) 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), **11(2)(a)**
- F3** S. 74(4)(d)-(i) inserted (17.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), arts. 2(1)(b), **11(2)(b)**

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,
 - [^{F4}(ea) the British Transport Police Authority,

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- (eb) the chief constable of the British Transport Police Force,
 - (ec) the Civil Nuclear Police Authority,
 - (ed) the chief constable of the Civil Nuclear Constabulary,
 - (ee) the chief constable of the Ministry of Defence Police,
 - (ef) the Commissioners for Her Majesty’s Revenue and Customs,
 - (eg) the Director of Border Revenue,
 - (eh) the National Crime Agency,
 - (ei) for each of the persons mentioned in paragraphs (ea) to (eh), the Secretary of State.]
 - (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.

Textual Amendments

- F4** S. 76(2)(ea)-(ei) inserted (17.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), arts. 2(1)(b), **11(3)**

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.

Status:

This version of this part contains provisions that are prospective.

Changes to legislation:

There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 2016, PART 2 .