



# Criminal Justice (Scotland) Act 1987

## 1987 CHAPTER 41

### PART II

#### MISCELLANEOUS

##### *Detention by customs officers*

#### **48 Detention and questioning by customs officers.**

- (1) Where an officer has reasonable grounds for suspecting that a person has committed or is committing an offence punishable by imprisonment relating to an assigned matter, the officer may, for the purpose of facilitating the carrying out of investigations—
- into the offence; and
  - as to whether criminal proceedings should be instigated against the person,
- detain that person and take him as quickly as is reasonably practicable to a customs office or other premises [<sup>F1</sup>and may thereafter for that purpose take him to any other place] and, subject to the following provisions of this section, the detention may continue [<sup>F2</sup>at the customs office, or as the case may be the other premises or place].
- (2) Detention under subsection (1) above shall be terminated not more than six hours after it begins or (if earlier)—
- when the person is arrested;
  - when he is detained in pursuance of any other enactment or subordinate instrument; or
  - where there are no longer such grounds as are mentioned in the said subsection (1),
- and when a person has been detained under subsection (1) above, he shall be informed immediately upon the termination of his detention in accordance with this subsection that his detention has been terminated.
- (3) Where a person has been released at the termination of a period of detention under subsection (1) above he shall not thereafter be detained, under that subsection, on the same grounds or on any grounds arising out of the same circumstances.

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*Changes to legislation:* There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part II. (See end of Document for details)

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- (4) Where a person has previously been detained in pursuance of any other enactment or subordinate instrument, he may not be detained under subsection (1) above on the same grounds or on grounds arising from the same circumstances as those which led to his earlier detention.
- (5) At the time when an officer detains a person under subsection (1) above, he shall inform the person of his suspicion, of the general nature of the offence which he suspects has been or is being committed and of the reason for the detention; and there shall be recorded—
- (a) the place where detention begins and the customs office or other premises to which the person is taken;
  - [<sup>F3</sup>(aa) any other place to which the person is, during the detention, thereafter taken;]
  - (b) the general nature of the suspected offence;
  - (c) the time when detention under subsection (1) above begins and the time of the person's arrival at the customs office or other premises;
  - (d) the time when the person is informed of his rights in terms of subsection (8) below and of section 49(1) of this Act and the identity of the officer so informing him;
  - (e) where the person requests such intimation to be sent as is specified in section 49(1) of this Act, the time when such request is—
    - (i) made;
    - (ii) complied with; and
  - (f) the time of the person's [<sup>F4</sup>release from detention] or, where instead of being released he is—
    - (i) further detained under section 50 of this Act, the time of commencement of the further detention; or
    - (ii) arrested in respect of the alleged offence, the time of such arrest.
- (6) Where a person is detained under subsection (1) above, an officer may—
- (a) without prejudice to any existing rule of law as regards the admissibility in evidence of any answer given, put questions to him in relation to the suspected offence;
  - (b) exercise the same powers of search as are available following an arrest.
- (7) An officer may use reasonable force in exercising any power conferred by subsection (1) or (6)(b) above.
- (8) A person detained under subsection (1) above shall be under no obligation to answer any question other than to give his name and address, and an officer shall so inform him both on so detaining him and on arrival at the customs office or other premises.
- (9) In this section and in sections 49 and 50 of this Act “assigned matter” and “officer” have the meanings given to them by section 1 of the <sup>M1</sup>Customs and Excise Management Act 1979, and “customs office” means a place for the time being occupied by Her Majesty's Customs and Excise.

#### Textual Amendments

- F1** Words in s. 48(1) inserted (3.2.1995) by 1994 c. 33, s. 129(4)(a) (with Sch. 9 para. 17); S.I. 1995/127, art. 2(1), Sch. 1

*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Part II. (See end of Document for details)*

- F2** Words in s. 48(1) substituted (3.2.1995) by 1994 c. 33, s. 129(4)(b) (with Sch. 9 para. 17); S.I. 1995/127, art. 2(1), Sch. 1
- F3** S. 48(5)(aa) inserted (3.2.1995) by 1994 c. 33, s. 129(5)(a) (with Sch. 9 para. 17); S.I. 1995/127, art. 2(1), Sch. 1
- F4** Words in s. 48(5)(f) substituted (3.2.1995) by 1994 c. 33, s. 129(5)(b) (with Sch. 9 para. 17); S.I. 1995/127, art. 2(1), Sch. 1

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

- C1** S. 48(4) excluded by Customs and Excise Management Act 1979 (c. 2, SIF 40:1), s. 164(4) (as added by Finance Act 1988 (c. 39, SIF 40:1), s. 10(3))

**Marginal Citations**

- M1** 1979 c. 2.

**49 Right to have someone informed when detained**

- (1) Without prejudice to section 19 or 305 of the <sup>M2</sup>1975 Act (intimation to solicitor following arrest), a person who, not being a person in respect of whose detention subsection (2) below applies, is being detained under section 48 of this Act [<sup>F5</sup>and has been taken to a customs office or other premises or place] shall be entitled to have intimation of his detention and of the [<sup>F5</sup>customs office or other premises or place] sent to a solicitor and to one other person reasonably named by him without delay or, where some delay is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders, with no more delay than is so necessary; and the person shall be informed of such entitlement—
- (a) on arrival at the customs office or other premises; or
- (b) where he is not detained until after such arrival, on such detention.
- (2) Without prejudice to the said section 19 or 305, an officer shall, where a person who is being detained as is mentioned in subsection (1) above appears to him to be a child, send without delay such intimation as is mentioned in that subsection to that person's parent if known; and the parent—
- (a) in a case where there is reasonable cause to suspect that he has been involved in the alleged offence in respect of which the person has been detained, may; and
- (b) in any other case shall,
- be permitted access to the person.
- (3) The nature and extent of any access permitted under subsection(2) above shall be subject to any restriction essential for the furtherance of the investigation or the well-being of the person.
- (4) In subsection (2) above—
- (a) “child” means a person under 16 years of age; and
- (b) “parent” includes a guardian and any person who has the [<sup>F6</sup>care] of a child.

**Textual Amendments**

- F5** Words in s. 49(1) substituted (3.2.1995) by 1994 c. 33, s. 129(6)(with Sch. 9 para. 17); S.I. 1995/127, art. 2(1), Sch. 1

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**F6** Word in s. 49(4)(b) substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 43** (with s. 103(1)); S.I. 1995/2203, art. 3(3), **Sch.**

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**Marginal Citations**

**M2** 1975 c.21.

**50 Detention in connection with certain drug smuggling offences.**

- (1) Where an officer has reasonable grounds for suspecting—
- (a) that a person has committed or is committing a relevant offence; and
  - (b) that, in connection with the commission of such an offence, a controlled drug is secreted in the person's body,
- a superior officer may, notwithstanding that the person has been or is being detained in pursuance of any other enactment or subordinate instrument, authorise the detention of the person at a customs office or other premises in accordance with this section.
- (2) Subject to subsection (7) below, where a person is detained under subsection (1) above or is further detained in pursuance of a warrant under subsection (4) below he shall—
- (a) provide such specimens of blood or urine for analysis;
  - (b) submit to such intimate searches, to be carried out by a registered medical practitioner;
  - (c) submit to such other tests or examination prescribed by the Secretary of State by regulations made under this paragraph to be carried out by, or under the supervision of, a registered medical practitioner,
- as the officer may reasonably require; and regulations under paragraph (c) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Subject to subsection (4) below, detention under subsection (1) above shall be terminated not more than 24 hours after it begins, or (if earlier)—
- (a) when the person is arrested;
  - (b) when he is detained in pursuance of any other enactment or subordinate instrument; or
  - (c) where there are no longer such grounds as are mentioned in subsection (1),
- and, when a person has been detained under subsection (1), he shall, unless further detained in pursuance of a warrant under subsection (4) below, be informed immediately upon the termination of his detention in accordance with this subsection that his detention has been terminated.
- (4) Where a person is detained under subsection (1) above and either—
- (a) he has failed or refused—
    - (i) to provide a specimen in pursuance of paragraph (a) of subsection (2) above; or
    - (ii) to submit to any search, test or examination referred to in paragraph (b) or (c) of that subsection; or
  - (b) as a result of anything done in pursuance of the said subsection (2) the officer continues to have reasonable grounds for suspecting—
    - (i) that the person has committed or is committing a relevant offence; and
    - (ii) that a controlled drug is secreted in the person's body,

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the procurator fiscal may, at the request of a superior officer, apply to the sheriff for a warrant for the further detention of the person at a customs office or other premises for an additional period of not more than 7 days; and if the sheriff is satisfied that there has been such failure or refusal as is mentioned in paragraph (a) above or, as the case may be, that there are reasonable grounds as mentioned in paragraph (b) above he may grant a warrant for such further detention.

(5) Detention in pursuance of a warrant under subsection (4) above shall be terminated at the end of the period of 7 days mentioned in that subsection or (if earlier)—

- (a) when the person is arrested;
- (b) when he is detained in pursuance of any other enactment or subordinate instrument; or
- (c) where there are no longer such grounds as are mentioned in paragraph (b) of that subsection,

and when a person has been detained in pursuance of a warrant under subsection (4), he shall be informed immediately on the termination of his detention in accordance with this subsection that his detention has been terminated.

(6) Subject to subsection (7) below, the question whether it is to be a specimen of blood or a specimen of urine which is to be provided in pursuance of subsection (2) above shall be decided by the officer making the requirement.

(7) A person may be required, in pursuance of subsection (2) above—

- (a) to provide a specimen of blood; or
- (b) to submit to any search, test or examination,

only if a registered medical practitioner is of the opinion that there are no medical reasons for not making such a requirement; and, if a requirement to provide a specimen of blood is made, the specimen may be taken only by a registered medical practitioner.

(8) Subsections (3), (5), (6) and (8) of section 48 of this Act shall apply in respect of a person detained under this section as they apply in respect of a person detained under the said section 48; and, except as regards a requirement under subsection (2) above, an officer may use reasonable force in exercising any power conferred by this section.

(9) Section 49 of this Act shall, subject to the following modifications, apply in respect of a person detained under this section as it applies to a person detained under section 48 of this Act—

- (a) any delay in informing a solicitor and one other person of such detention as is mentioned in subsection (1) of the said section 49 shall not extend longer than the period of 24 hours from the start of the detention, and shall only be permitted on the authorisation of a superior officer;
- (b) the person detained shall be entitled to consult a solicitor at any time without delay, and he shall be informed of such entitlement at the commencement of the detention; but, if a superior officer considers it necessary in the interest of the investigation or the prevention of a crime or the apprehension of offenders, he may authorise a delay not extending longer than the period of 24 hours from the start of the detention; and
- (c) paragraph (a) of subsection (2) of the said section 49 shall cease to apply at the end of the period of 24 hours from the start of the detention,

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but any delay authorised by virtue of this subsection shall be for no longer than is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders.

(10) Without prejudice to section 20(2) of the <sup>M3</sup>Interpretation Act 1978, the references in section 48(5) of this Act to section 49(1) of this Act shall be construed as including references to subsection (9) above; and the requirement to record certain matters under the said section 48(5) shall include a requirement to record the time when a person detained makes a request to consult a solicitor and the time when the solicitor is contacted for the purpose of arranging a consultation.

(11) In this section—

“intimate search” means a search which consists of the physical examination of a person’s body orifices;

“relevant offence” means an offence involving a controlled drug under any of the following provisions of the <sup>M4</sup>Customs and Excise Management Act 1979—

- (a) section 50(2) or (3) (importation etc. of prohibited goods);
- (b) section 68(2) (exportation etc. of prohibited goods);
- (c) section 170(1) (possessing or dealing with prohibited goods);
- (d) section 170(2) (being concerned in evasion or attempt at evasion of a prohibition);

“superior officer” means an officer of the graded of senior executive officer or above.

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**Marginal Citations**

**M3** 1978 c. 30

**M4** 1979 c. 2.

*Investigation of serious or complex fraud*

**<sup>F7</sup>51 Lord Advocate’s direction.**

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**Textual Amendments**

**F7** Ss. 51-53 repealed (31.1.2013) by [Statute Law \(Repeals\) Act 2013 \(c. 2\)](#), s. 3(2), [Sch. 1 Pt. 2](#) Group 5

**<sup>F7</sup>52 Powers of investigation.**

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**Textual Amendments**

**F7** Ss. 51-53 repealed (31.1.2013) by [Statute Law \(Repeals\) Act 2013 \(c. 2\)](#), s. 3(2), [Sch. 1 Pt. 2](#) Group 5

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**<sup>F7</sup>53 Offences in relation to investigations under section 52.**

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**Textual Amendments**

**F7** Ss. 51-53 repealed (31.1.2013) by Statute Law (Repeals) Act 2013 (c. 2), s. 3(2), **Sch. 1 Pt. 2** Group 5

**<sup>F8</sup>54 Disclosure of Information.**

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**Textual Amendments**

**F8** S. 54 repealed (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **Sch. 7 para. 17**; S.S.I. 2011/178, art. 2, Sch.

**55 Power to petition for winding up etc. on information obtained under section 52.**

The words “or section 52 of the Criminal Justice (Scotland) Act 1987” shall be inserted

- <sup>F9</sup>(a) in section 440 of the Companies Act 1985, after the words “that Act”;
- (b) in section 8(1) of the <sup>M5</sup>Company Directors Disqualification Act 1986, after the words “the Financial Services Act 1986”, in the second place where they occur; and
- <sup>F10</sup>(c) .....

**Extent Information**

**E1** S. 55(a)(b) extends to England and Wales and Scotland see s. 72(1)(4)

**Textual Amendments**

**F9** S. 55(a) repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 215, **Sch. 24**  
**F10** S. 55(c) repealed (N.I.)(01.10.1991) by S.I. 1990/1504 (N.I. 10), art. 113, **Sch. 6**; S.R. 1991/438, **art.5** (c).

**Marginal Citations**

**M5** 1986 c. 46.

*Conditional offer by procurator fiscal*

**[<sup>F11</sup>56 Conditional offer of fixed penalty by procurator fiscal.**

(1) .....

<sup>F11</sup>(2) .....

<sup>F11</sup>(2A) .....

<sup>F11</sup>(3) .....

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- F11(3A) .....
- F11(4) .....
- F11(5) .....
- F11(6) .....
- F11(7) .....
- F11(7A) .....
- F11(8) .....
- F11(9) .....
- F11(10) .....

F11(11) The Secretary of State may, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, make such provision as he considers necessary for the enforcement in England and Wales or Northern Ireland of any penalty (treated, in pursuance of subsection (8) above, as a fine). which is transferred as a fine to a court in England and Wales or, as the case may be, Northern Ireland.]

**Extent Information**  
 E2 S. 56 (except s. 56(11) which extends to the U.K.) extends to Scotland

**Textual Amendments**  
 F11 S. 56 repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1.3, 6, 16 and 17)

*Sittings of the High Court*

F12 57 .....

**Textual Amendments**  
 F12 Ss. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16, 17)

*Sentencing power of the sheriff*

F13 58 .....

**Textual Amendments**  
 F13 Ss. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)



### *Detention of children*

#### [<sup>F14</sup>59] **Detention of children in summary proceedings.**

- (1) For section 413 of the 1975 Act (committal for residential training) there shall be substitute the following new section—

##### **“ Detention of children.**

- (1) Where a child appears before the sheriff in summary proceedings and pleads guilty to, or is found guilty of, an offence to which this section applies, the sheriff may order that he be detained in residential care by the appropriate local authority for such period, not exceeding one year, as the sheriff may determine in such place (in any part of the United Kingdom) as the local authority may, from time to time, consider appropriate.
- (2) This section applies to any offence in respect of which it is competent to impose imprisonment on a person of the age of 21 years or more.
- (3) In this section—
- “the appropriate local authority” means—
- (a) where the child usually resides in Scotland, the regional or islands council for the area in which he usually resides;
- (b) in any other case, the regional or islands council for the area in which the offence was committed;
- “care” shall be construed in accordance with section 32(3) of the 1968 Act, and the provisions of that Act specified in section 44(5) of that Act shall apply in respect of a child who is detained in residential care in pursuance of this section as they apply in respect of a child who is subject to a supervision requirement;
- “the 1968 Act” means the Social Work (Scotland) Act 1968.
- (4) Where a child in respect of whom an order is made under this section is also subject to a supervision requirement within the meaning of the 1968 Act, subject to subsection (6) below, the supervision requirement shall be of no effect during any period for which he is required to be detained under the order.
- (5) The Secretary of State may, by regulations made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, make such provision as he considers necessary as regards the detention in secure accommodation (within the meaning of the 1968 Act) of children in respect of whom orders have been made under this section.
- (6) Section 20A of the 1968 Act (review of children in care) shall apply to a child detained in residential care in pursuance of an order under this section as if the references to care in that section were references to care within the meaning of this section; and, without prejudice to their duty to do so by virtue of the said section 20A, the local authority may, at any time, review the case of such a child and may, in consequence of such a review and after having regard to the best interests of the child and the need to protect members of the public, release the child—

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(a) for such period and on such conditions as they consider appropriate; or

(b) unconditionally,

and where a child who is released unconditionally is subject to a supervision requirement within the meaning of the 1968 Act, the effect of the supervision requirement shall, in the case of a supervision requirement imposed during the period of detention, commence or, in any other case, resume upon such release.

(7) Where a local authority consider it appropriate that a child in respect of whom an order has been made under subsection (1) above should be detained in a place in any part of the United Kingdom outside Scotland, the order shall be a like authority as in Scotland to the person in charge of the place to restrict the child’s liberty to such an extent as that person may consider appropriate having regard to the terms of the order.”

(2) In section 463 of the 1975 Act—

(a) in subsection (1)(b) for the words “and 390” there shall be substituted the words “, 390 and 413”; and

(b) in subsection (1A) for the words “and 374” there shall be substituted the words “, 374 and 413”.

(3) Notwithstanding the repeal by this Act of section 58A of the <sup>M6</sup>Children and Young Persons (Scotland) Act 1937, any child who, before the commencement of this section, has been ordered to be detained pursuant to the directions of the Secretary of State under section 413 of the 1975 Act—

(a) shall, while so detained after such commencement, continue to be deemed to be in legal custody; and

(b) may at any time be released conditionally or unconditionally by the Secretary of State, and any such child conditionally released shall be liable to recall on the directions of the Secretary of State and if he fails to comply with any conditions of his release he may be apprehended without warrant and taken to the place from which he was released.]

**Textual Amendments**

**F14** Ss. 56-68 repealed (S.) (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

**Marginal Citations**

**M6** 1937 c.37.

*Evidence*

<sup>F15</sup>**60** .....

**Textual Amendments**

**F15** s. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with Sch. 3 paras. 1, 3, 6, 16 and 17)

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F16 **61** .....

**Textual Amendments**

F16 s. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

*Miscellaneous*

F17 **62** .....

**Textual Amendments**

F17 s. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

F18 **63** .....

**Textual Amendments**

F18 s. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

F19 **64** .....

**Textual Amendments**

F19 s. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

F20 **65** .  
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**Textual Amendments**

F20 s. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

F21 **66** .....

**Textual Amendments**

F21 s. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

F22 **67** .....

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|   |           |
|---|-----------|
| Exceeding £50,000 but not exceeding £100,000    | 2 years   |
| Exceeding £100,000 but not exceeding £250,000   | 3 years   |
| Exceeding £250,000 but not exceeding £1 million | 5 years   |
| Exceeding £1 million                            | 10 years. |

**Textual Amendments**

**F22** s. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

<sup>F23</sup> **68** .....

**Textual Amendments**

**F23** s. 56-68 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 paras. 1, 3, 6, 16 and 17)

**Changes to legislation:**

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