
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2017 No.

**The Criminal Justice (Scotland) Act 2016 (Modification
of Part 1 and Ancillary Provision) Regulations 2017**

Modification of the Criminal Justice (Scotland) Act 2016

- 2.—(1) The Criminal Justice (Scotland) Act 2016 is amended as follows.
- (2) In section 3(b), after “arrested” insert “(if any)”.
- (3) In section 4—
- (a) after subsection (1) insert—
- “(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.”;
- (b) in subsection (2)(a), after “arrested” insert “in respect of an offence”.
- (4) In section 6(1), for paragraph (b) substitute—
- “(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.”.
- (5) In section 7(1)(a), after “arrested” insert “in respect of an offence”.
- (6) In section 21(1)—
- (a) in paragraph (a), for the words from “(other” to “37(1))”, substitute “granted for the purpose of having the person brought before a court in connection with an offence which the person is officially accused of committing”;
- (b) in paragraph (b), after “arrested” insert “in respect of an offence”.
- (7) After section 57 insert—

“Modifications to Part as it applies in certain cases

57A Arrest without warrant otherwise than in respect of an offence

- (1) In a case where—
- (a) a constable arrests a person without a warrant, and
- (b) the arrest is not in respect of an offence,
- this Part applies subject to the modifications set out in section 57C.

(2) For the avoidance of doubt, where it is stated (in whatever terms) that a provision applies in the case of a person arrested without a warrant only if the arrest is in respect of an offence, subsection (1) does not cause that provision to apply in the case of a person who has been arrested otherwise than in respect of an offence.

(3) For the avoidance of doubt, the powers of arrest conferred by the following enactments are (for the purposes of this Part) powers to arrest otherwise than in respect of an offence—

- (a) sections 6D and 7(5A) of the Road Traffic Act 1988(1);
- (b) section 40 of the Prisons (Scotland) Act 1989(2);
- (c) sections 19(6), 19AA(12) and 28(1) of the 1995 Act(3);
- (d) section 4(1) of the Protection from Abuse (Scotland) Act 2001(4);
- (e) section 5 of the Extradition Act 2003(5);
- (f) section 28 of the Adult Support and Protection (Scotland) Act 2007(6).

57B Arrest under warrant other than an initiating warrant

(1) In a case where a person is arrested by a constable under a relevant warrant, this Part applies subject to the modifications set out in section 57C.

(2) For the avoidance of doubt, subsection (1) does not cause section 21(2) to apply in the case of a person arrested under a relevant warrant.

(3) In this section, “relevant warrant” means any warrant other than one granted for the purpose of having a person brought before a court in connection with an offence which the person is officially accused of committing.

57C Modifications applying by virtue of sections 57A and 57B

(1) The modifications referred to in sections 57A(1) and 57B(1) are as follows.

(2) Chapter 3 applies as though for the words “brought before a court in accordance with section 21(2)” (in each place where they occur) there were substituted “brought before a court in accordance with an enactment, rule of law or a term of the warrant under which the person was arrested”.

(3) Section 23(2) applies as though—

- (a) paragraph (c) read “the reason that the person is to be brought before the court,”, and
- (b) paragraph (d) were omitted.

(4) Section 24 applies as though-

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- (1) 1988 c.52. Section 6D was inserted by the Railways and Transport Safety Act 2003 (c.20) schedule 7 paragraph 1 and amended by the Serious Organised Crime and Police Act 2005 (c.15) section 154(1) to (3). Section 7(5A) was inserted by the Deregulation Act 2015 (c.20) schedule 11 paragraph 3(5).
 - (2) 1989 c.45. Section 40 was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) schedule 5 paragraph 6(7), the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40) schedule 4 paragraph 75(5) and the Criminal Justice (Scotland) Act 2003 (asp 7) section 23(2).
 - (3) 1995 c.46. Section 19 was amended by the Crime and Punishment (Scotland) Act 1997 (c.48) sections 47(2) and 48(1) and schedule 3; the Criminal Justice (Scotland) Act 2003 (asp 7) section 55(3); the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) section 77(3); the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) schedule 7 paragraph 31 and the Police and Fire Reform (Scotland) Act 2012 (asp 8) schedule 7 paragraph 12(7). Section 19AA was inserted by the Police, Public Order and Criminal Justice (Scotland) Act 2006 section 77(2) and amended by the Anti-social Behaviour, Crime and Policing Act 2014 (c.12) schedule 11 paragraph 51. Section 28 was amended by the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5) schedule 1 paragraph 9 and the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) section 3(2).
 - (4) 2001 asp 14.
 - (5) 2003 c.41. Section 5 was amended by the Armed Forces Act 2006 (c.52) schedule 16 paragraph 201.
 - (6) 2007 asp 10.

- (a) in subsection (3)(c), for the words “officially accused” there were substituted “informed that the person is to be brought before a court”, and
- (b) subsection (4)(c) read “the reason that the person is to be brought before the court.”.
- (5) Section 43(1) applies as though for paragraph (d) there were substituted—
 - “(d) if there is a requirement to bring the person before a court in accordance with an enactment, rule of law or a term of the warrant under which the person was arrested—
 - (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 the requirement and the date on which the person is to be brought before that court.”
- (8) In section 64(2), after paragraph (c) insert—
 - “(ca) the person is brought before a court in accordance with—
 - (i) any other enactment or rule of law which requires that a person in custody be brought before a court, or
 - (ii) a term of the warrant under which the person was arrested,
 - (cb) the person is transferred in accordance with the law into the custody of a person who is neither—
 - (i) a constable, nor
 - (ii) a member of police staff appointed under section 26(1) of the Police and Fire Reform (Scotland) Act 2012(7).”.