



Criminal Law (Consolidation) (Scotland) Act 1995

1995 CHAPTER 39

PART III

[^{F1}INVESTIGATION OF REVENUE AND CUSTOMS OFFENCES]

Textual Amendments

- F1** Pt. 3 heading substituted (1.12.2007) by virtue of [Finance Act 2007 \(c. 11\)](#), s. 85, [Sch. 23 paras. 2, 14](#); [S.I. 2007/3166](#), [art. 3](#)

[^{F2}Investigation of offences by HMRC]

Textual Amendments

- F2** Ss. 23A-23P and cross-headings inserted (1.12.2007) by [Finance Act 2007 \(c. 11\)](#), s. 85, [Sch. 23 paras. 3, 14](#); [S.I. 2007/3166](#), [art. 3](#)

23A Investigation of offences by Her Majesty's Revenue and Customs

- (1) This Part of this Act applies to the investigation of Revenue and Customs offences.
- (2) Subject to subsection (3) below, in this Part of this Act, a “Revenue and Customs offence” is an offence which relates to a matter in relation to which Her Majesty's Revenue and Customs have functions other than any matter specified in—
 - (a) section 54(4)(b) or (f) of; or
 - (b) paragraphs 3, 7, 10, 13 to 15, 19 or 24 to 29 of Schedule 1 to, the Commissioners for Revenue and Customs Act 2005 (former Inland Revenue matters).

Status: Point in time view as at 01/12/2007. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Part III 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) In sections 23B to 23P and 26A of this Act, any reference to a “Revenue and Customs offence” shall be construed as if, in subsection (2) above, there were added at the end the words “and other than any matter relating to the movement of goods which is subject to any prohibition or restriction for the time being in force under or by virtue of any enactment”.

Production orders

23B Production orders

- (1) The sheriff may, if satisfied on information on oath given by an authorised officer as to the matters mentioned in subsection (2) below, make an order under subsection (3) below (in this Part, a “production order”).
- (2) Those matters are—
- (a) that there are reasonable grounds to suspect that a Revenue and Customs offence has been or is being committed; and
 - (b) that a person (in this Part, a “haver”) specified by the officer has possession or control of a document which may be required as evidence for the purposes of any proceedings in respect of such an offence.
- (3) A production order is an order requiring the haver, before the expiry of the period specified in the order—
- (a) to deliver the document to an officer; or
 - (b) to—
 - (i) give an officer access to the document; and
 - (ii) permit the officer to make copies of or remove the document.
- (4) The period specified in a production order is—
- (a) the period of 10 working days beginning with the day on which the order is made; or
 - (b) such other period as the sheriff considers appropriate.
- (5) A sheriff may make a production order in relation to a haver residing or having a place of business in an area of Scotland notwithstanding that it is outside the area of that sheriff and any such order shall, without being backed or endorsed by another sheriff, have effect throughout Scotland.
- (6) Subject to section 23J of this Act, a production order has effect in spite of any restriction on disclosure of information (however imposed).
- (7) Without prejudice to section 23D(1) of this Act, failure by a person to comply with a production order may be dealt with as a contempt of court.
- (8) In subsection (4)(a) above, “working day” means any day other than—
- (a) a Saturday;
 - (b) a Sunday; or
 - (c) any day which is a public holiday in the area in which the production order is to have effect.

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23C Production orders: supplementary

- (1) The sheriff may deal with an application for a production order ex parte in chambers.
- (2) The sheriff may, on the application of a person mentioned in subsection (3) below—
 - (a) vary; or
 - (b) discharge,a production order.
- (3) The persons referred to in subsection (2) above are—
 - (a) the authorised officer who applied for the production order;
 - (b) a person affected by the order.
- (4) Without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995, rules of court made by Act of Adjournal may make provision in relation to—
 - (a) proceedings relating to the making of production orders; and
 - (b) the variation or discharge of such orders.

23D Offences in relation to production orders

- (1) A person who intentionally—
 - (a) falsifies;
 - (b) conceals;
 - (c) destroys or otherwise disposes of,a document to which this section applies, or who causes or permits any of those acts, commits an offence.
- (2) This section applies to a document which the person is required, under a production order, to—
 - (a) deliver to an officer; or
 - (b) give an officer access to.
- (3) A person does not commit an offence if the person acts—
 - (a) with the written permission of—
 - (i) an officer; or
 - (ii) the sheriff who made the order,after the document has been delivered or the officer has had access to it;
 - (b) subject to subsection (4) below, after the expiry of the period of 2 years beginning with the day on which the order is made.
- (4) Subsection (3)(b) above does not apply where, before the expiry of the period referred to in that paragraph, an officer gives notice in writing to the person that the order has not been complied with to that officer's satisfaction.
- (5) A person who commits an offence under subsection (1) above is liable—
 - (a) on summary conviction, to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
 - (b) on conviction on indictment, to imprisonment for a period not exceeding 2 years or to a fine or both.

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Revenue and Customs warrants

23E Revenue and Customs warrants

- (1) The sheriff may, if satisfied on information on oath given by an authorised officer as to the matters mentioned in subsection (2) below, grant a warrant under subsection (3) below (in this Part, a “Revenue and Customs warrant”).
- (2) Those matters are—
 - (a) that there are reasonable grounds to suspect that a Revenue and Customs offence has been or is being committed; and
 - (b) that evidence of that offence is to be found in or on premises specified in the information.
- (3) A Revenue and Customs warrant is a warrant authorising an officer to—
 - (a) enter, if necessary by force, the premises specified in the information; and
 - (b) search those premises,before the expiry of the period of one month beginning with the day on which the warrant is granted.
- (4) The sheriff may, when granting a warrant, impose such conditions as the sheriff considers appropriate.
- (5) An officer who enters premises under the authority of a Revenue and Customs warrant may—
 - (a) subject to any condition imposed under subsection (4) above, take with the officer such other persons (including persons who are not officers) as appear to that officer to be necessary;
 - (b) subject to subsection (6) below, seize and remove any document or other thing found in or on the premises which the officer has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of the offence mentioned in subsection (2)(a) above; and
 - (c) subject to subsections (6) and (7) below—
 - (i) search or cause to be searched any person found in or on the premises whom the officer has reasonable cause to believe may be in possession of any such document or thing; and
 - (ii) seize and remove any such document or thing found.
- (6) An officer acting under the authority of a Revenue and Customs warrant may, if the officer considers it appropriate, make copies of any document or thing found in or on the premises or on any person searched under subsection (5)(c) above.
- (7) No person may be searched under subsection (5)(c) above except by a person of the same sex.
- (8) A sheriff may grant a Revenue and Customs warrant in relation to premises situated in an area of Scotland notwithstanding that it is outside the area of that sheriff and any such warrant may, without being backed or endorsed by another sheriff, be executed throughout Scotland in the same way as it may be executed within the sheriffdom of the sheriff who granted it.
- (9) In this section and in sections 23F to 23H of this Act, “premises” includes any place and, in particular—

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- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installation (within the meaning of section 12(1) of the Mineral Workings (Offshore Installations) Act 1971); and
- (c) any tent or other movable structure.

Orders and warrants: common provisions

23F Procedure where documents etc removed

- (1) This section applies where—
 - (a) a document is removed under a production order;
 - (b) a document or other thing is removed under a Revenue and Customs warrant.
- (2) An officer who removes any document or thing shall, if requested to do so by a person mentioned in subsection (3) below, provide that person with a record of what that officer removed.
- (3) The persons referred to in subsection (2) above are—
 - (a) in the case of a document removed under a production order, a haver;
 - (b) in the case of a document or thing removed under a Revenue and Customs warrant—
 - (i) a person who is the occupier of any premises from which the document or thing was removed; or
 - (ii) a person who had possession or control of the document or thing before it was removed.
- (4) The officer must provide the record within a reasonable time of the request for it.

23G Access to and copies of documents etc removed

- (1) This section applies where—
 - (a) a document is removed under a production order;
 - (b) a document or other thing is removed under a Revenue and Customs warrant.
- (2) A person mentioned in subsection (3) below may apply to the officer in overall charge of the investigation to which the order or warrant relates—
 - (a) for access to the document or thing; or
 - (b) for a copy or photograph of it.
- (3) The persons referred to in subsection (2) above are—
 - (a) in the case of a document removed under a production order—
 - (i) a haver; or
 - (ii) a person acting on behalf of the haver;
 - (b) in the case of a document or thing removed under a Revenue and Customs warrant, a person who had possession or control of the document or thing before it was removed.
- (4) Unless subsection (5) below applies, the officer in overall charge of the investigation shall—
 - (a) in a case to which subsection (2)(a) above applies, allow the applicant supervised access to the document or thing; or

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- (b) in a case to which subsection (2)(b) above applies—
 - (i) allow the applicant supervised access to the document or thing for the purposes of photographing or copying it; or
 - (ii) photograph or copy the document or thing (or cause it to be so photographed or copied) and provide the applicant with such a photograph or copy within a reasonable time.
- (5) The officer in overall charge need not comply with subsection (4) above where that officer has reasonable grounds for believing that to do so would prejudice—
 - (a) the investigation;
 - (b) the investigation of a Revenue and Customs offence other than the offence for the purposes of the investigation of which the document or thing was removed; or
 - (c) any criminal proceedings which may be brought as a result of any investigation mentioned in paragraph (a) or (b) above.
- (6) In subsection (4) above, “supervised access” means access under the supervision of an officer approved by the officer in overall charge of the investigation.

23H Failure to comply with requirements of section 23F and 23G

- (1) This section applies where—
 - (a) a document is removed under a production order;
 - (b) a document or other thing is removed under a Revenue and Customs warrant.
- (2) Subject to subsection (3) below, a person who claims that—
 - (a) an officer has failed to comply with the requirements of section 23F(2) or (3) of this Act; or
 - (b) an officer in overall charge of an investigation has failed to comply with the requirements of section 23G(4) of this Act,
 may apply to the sheriff for an order under subsection (4) below.
- (3) An application under subsection (2) above—
 - (a) relating to a failure mentioned in subsection (2)(a) above, may be made only by a person who is entitled to make a request under section 23F(2) of this Act;
 - (b) relating to a failure mentioned in subsection (2)(b) above, may be made only by—
 - (i) a haver;
 - (ii) a person acting on behalf of a haver but only where that person applied under section 23G(2) of this Act;
 - (iii) a person who had possession or control of the document or thing before it was removed under a Revenue and Customs warrant.
- (4) The sheriff may, if satisfied that—
 - (a) the officer has failed to comply with the requirements of section 23F(2) or (3) of this Act; or
 - (b) the officer in overall charge of the investigation has failed to comply with the requirements of section 23G(4) of this Act,
 order the officer or, as the case may be, the officer in overall charge of the investigation to comply with the requirements within such time and in such manner as the sheriff specifies in the order.

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23J Confidentiality

- (1) Neither a production order nor a Revenue and Customs warrant authorises the seizure, removal or copying of any documents or other things subject to legal privilege.
- (2) Subsection (1) above does not apply where the document or thing is held for the purposes of furthering a criminal purpose.
- (3) In this section—

“documents or other things subject to legal privilege” means—

- (a) communications between a professional legal adviser and the adviser's client; or
- (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings,

which would, in legal proceedings, be protected from disclosure by virtue of any rule of law relating to confidentiality of communications.

23K Meaning of “document” etc

- (1) In sections 23B to 23J of this Act, references to a “document” include—
 - (a) any thing in which information of any description is recorded; and
 - (b) any part of such a thing.
- (2) Where a production order or a Revenue and Customs warrant applies to a document in electronic or magnetic form, the order or, as the case may be, the warrant requires the person having possession or control of the document to deliver or, as the case may be, give access to the information in a form which is visible and legible and, if the officer executing the order or warrant wishes to remove it, in a form which can be removed.

Execution and enforcement of orders and warrants outwith Scotland

23L Cross-border exercise of powers

- (1) Section 4 of the Summary Jurisdiction Act 1881 (execution of process of Scottish courts in England and Wales) shall apply to—
 - (a) a production order; and
 - (b) a Revenue and Customs warrant,as it applies to a process mentioned in that section.
- (2) Section 29 of the Petty Sessions (Ireland) Act 1851 (execution of warrants in Northern Ireland) shall apply to—
 - (a) a production order; and
 - (b) a Revenue and Customs warrant,as it applies to a warrant mentioned in that section.

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Detention and questioning of suspects and witnesses

23M Powers relating to suspects and potential witnesses

- (1) Where an authorised officer has reasonable grounds for suspecting that a person has committed or is committing, at any place, a Revenue and Customs offence, the officer may require—
 - (a) that person, if found by the officer at that place or at any place where the officer is entitled to be, to give—
 - (i) the information mentioned in subsection (2) below; and
 - (ii) an explanation of the circumstances which have given rise to the officer's suspicion;
 - (b) any other person whom the officer finds at that place or at any place where the officer is entitled to be and who the officer believes has information relating to the offence, to give the information mentioned in subsection (2) below.
- (2) That information is—
 - (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 the officer considers necessary or expedient for the purpose of establishing that person's identity); and
 - (e) the person's nationality.
- (3) The officer may require the person mentioned in paragraph (a) of subsection (1) above to remain with the officer while the officer (any or all)—
 - (a) subject to subsection (4) below, verifies any information mentioned in subsection (2) above given by the person;
 - (b) subject to section (5) below, establishes whether the person may be a person suspected of having committed a Revenue and Customs offence other than the offence in relation to which the officer made the requirement of that person under paragraph (a) of subsection (1) above;
 - (c) notes any explanation proffered by the person.
- (4) The officer shall exercise the power under paragraph (a) of subsection (3) above only where it appears to the officer that such verification can be obtained quickly.
- (5) The officer shall exercise the power under paragraph (b) of subsection (3) above only where—
 - (a) the person mentioned in paragraph (a) of subsection (1) above has given a name and address; and
 - (b) it appears to the officer that establishing the matter mentioned in paragraph (b) of subsection (3) above can be achieved quickly.
- (6) The officer may use reasonable force to ensure that the person mentioned in paragraph (a) of subsection (1) above remains with that officer.
- (7) The officer shall inform a person, when making a requirement of that person under—
 - (a) paragraph (a) of subsection (1) above, of the officer's suspicion and of the general nature of the offence which the officer suspects that the person has committed or is committing;

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- (b) paragraph (b) of subsection (1) above, of the officer's suspicion, of the general nature of the offence which the officer suspects has been or is being committed and that the reason for the requirement is that the officer believes the person has information relating to the offence;
- (c) subsection (3) above, why the person is being required to remain with the officer;
- (d) any of the said subsections, that failure to comply with the requirement may constitute an offence.

23N Fingerprinting of persons suspected of offences

- (1) An authorised officer may, if the person mentioned in section 23M(1)(a) of this Act gives a name and address, require that person to provide—
 - (a) that person's fingerprints; or
 - (b) a record, created by an approved device, of the skin on that person's fingers.
- (2) Such fingerprints or record may be used only for the purposes of—
 - (a) verifying the name and address given by the person;
 - (b) establishing whether the person may be a person who is suspected of having committed any other Revenue and Customs offence,and all record of such fingerprints or record shall be destroyed as soon as possible after they have fulfilled those purposes.
- (3) The officer shall inform a person, when making a requirement of that person under subsection (1) above—
 - (a) of the existence of the power to make the requirement and why the officer proposes to exercise it in the person's case; and
 - (b) that failure to comply with the requirement may constitute an offence.
- (4) In subsection (1)(b) above, an “approved device” is any device approved by the Scottish Ministers under section 13(8) of the Criminal Procedure (Scotland) Act 1995.

23P Offences arising from breach of requirements under sections 23M and 23N

- (1) A person mentioned in paragraph (a) of subsection (1) of section 23M of this Act who, having been required—
 - (a) under that subsection to give the information mentioned in subsection (2) of that section;
 - (b) under subsection (3) of that section to remain with an officer; or
 - (c) under subsection (1) of section 23N of this Act to provide that person's fingerprints or a record such as is mentioned in paragraph (b) of that subsection,fails, without reasonable excuse, to do so, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) A person mentioned in paragraph (b) of subsection (1) of section 23M of this Act who, having been required under that subsection to give the information mentioned in subsection (2) of that section, fails, without reasonable excuse, to do so, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

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- (3) An authorised officer may arrest without warrant any person whom the officer has reasonable grounds for suspecting has committed an offence under subsection (1) or (2) above.

^{x1}24 [F³Detention and questioning at office of Revenue and Customs]

- (1) Where an officer has reasonable grounds for suspecting that a person has committed or is committing [F⁴a Revenue and Customs offence punishable by imprisonment], the officer may, for the purpose of facilitating the carrying out of investigations—
- (a) into the offence; and
 - (b) as to whether criminal proceedings should be instigated against the person,
- detain that person and take him as quickly as is reasonably practicable to [F⁵an office of Revenue and Customs] or other premises 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 at the [F⁶office of Revenue and Customs] 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)—
- (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 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 detained 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.
- (4) Where a person has previously been detained in pursuance of any other enactment or subordinate instrument, [F⁷and is] 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 [F⁸, the period of six hours mentioned in subsection (2) above shall be reduced by the length of that 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 [F⁹office of Revenue and Customs] or other premises to which the person is taken;
 - (b) any other place to which the person is, during the detention, thereafter taken;
 - (c) the general nature of the suspected offence;
 - (d) the time when detention under subsection (1) above begins and the time of the person's arrival at the [F⁹office of Revenue and Customs] or other premises;
 - (e) the time when the person is informed of his rights in terms of subsection (8) below and of section 25(1) of this Act and the identity of the officer so informing him;

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- (f) where the person requests such intimation to be sent as is specified in the said section 25(1), the time when such request is—
 - (i) made;
 - (ii) complied with; and
 - (g) the time of the person's release from detention or, where instead of being released he is—
 - (i) further detained under section 26 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 an 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 [^{F10}the information mentioned in subsection (8A) below], and an officer shall so inform him both on so detaining him and on arrival at the [^{F11}office of Revenue and Customs] or other premises.

[That information is—

- ^{F12}(8A) (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 the officer considers necessary or expedient for the purpose of establishing that person's identify); and
 - (e) the person's nationality.]
- (9) ^{F13}

Editorial Information

- X1** The insertion of the new heading "Detention and questioning of suspects and witnesses" in Pt. III on 1.12.2007 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

- F3** S. 24: heading substituted (1.12.2007) by virtue of [Finance Act 2007 \(c. 11\)](#), s. 85, [Sch. 23 paras. 4\(f\), 14](#); [S.I. 2007/3166](#), [art. 3](#)
- F4** Words in s. 24(1) substituted (1.12.2007) by [Finance Act 2007 \(c. 11\)](#), s. 85, [Sch. 23 paras. 4\(a\)\(i\), 14](#); [S.I. 2007/3166](#), [art. 3](#)
- F5** Words in s. 24(1) substituted (1.12.2007) by [Finance Act 2007 \(c. 11\)](#), s. 85, [Sch. 23 paras. 4\(a\)\(ii\), 14](#); [S.I. 2007/3166](#), [art. 3](#)
- F6** Words in s. 24(1) substituted (1.12.2007) by [Finance Act 2007 \(c. 11\)](#), s. 85, [Sch. 23 paras. 4\(a\)\(iii\), 14](#); [S.I. 2007/3166](#), [art. 3](#)
- F7** Words in s. 24(4) substituted (30.9.1998) by [1998 c. 37](#), s. [110\(a\)](#); [S.I. 1998/2327](#), [art. 2\(x\)](#)
- F8** Words in s. 24(4) inserted (30.9.1998) by [1998 c. 37](#), s. [110\(b\)](#); [S.I. 1998/2327](#), [art. 2\(x\)](#)

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- F9** Words in s. 24(5) substituted (1.12.2007) by Finance Act 2007 (c. 11), s. 85, **Sch. 23 paras. 4(b), 14; S.I. 2007/3166, art. 3**
- F10** Words in s. 24(8) substituted (1.12.2007) by Finance Act 2007 (c. 11), s. 85, **Sch. 23 paras. 4(c)(i), 14; S.I. 2007/3166, art. 3**
- F11** Words in s. 24(8) substituted (1.12.2007) by Finance Act 2007 (c. 11), s. 85, **Sch. 23 paras. 4(c)(ii), 14; S.I. 2007/3166, art. 3**
- F12** S. 24(8A) inserted (1.12.2007) by Finance Act 2007 (c. 11), s. 85, **Sch. 23 paras. 4(d), 14; S.I. 2007/3166, art. 3**
- F13** S. 24(9) repealed (1.12.2007) by Finance Act 2007 (c. 11), ss. 85, 114, **Sch. 23 paras. 4(e), 14, {Sch. 27 Pt. 5(2) Note}; S.I. 2007/3166, art. 3**

x²25 Right to have someone informed when detained.

- (1) Without prejudice to section 17 the ^{M1}Criminal Procedure (Scotland) Act 1995 (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 24 of this Act and has been taken to [^{F14}an office of Revenue and Customs] or other premises or place shall be entitled to have intimation of his detention and of the [^{F15}office of Revenue and Customs] 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 [^{F15}office of Revenue and Customs] or other premises; or
 - (b) where he is not detained until after such arrival, on such detention.
- (2) Without prejudice to the said section 17, 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 care of a child.

Editorial Information

- X2** The insertion of the new heading "Detention and questioning of suspects and witnesses" in Pt. III on 1.12.2007 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Status: Point in time view as at 01/12/2007. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Part III 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)

Textual Amendments

F14 Words in s. 25(1) substituted (1.12.2007) by Finance Act 2007 (c. 11), s. 85, Sch. 23 paras. 5(a), 14; S.I. 2007/3166, art. 3

F15 Words in s. 25(1) substituted (1.12.2007) by Finance Act 2007 (c. 11), s. 85, Sch. 23 paras. 5(b), 14; S.I. 2007/3166, art. 3

Marginal Citations

M1 1995 c. 46.

^{x3}26 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 [^{F16}an office of Revenue and Customs] 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 test or examinations 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

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- (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,
- 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 ^{F16}[an office of Revenue and Customs] 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 24 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 24; 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 25 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 24 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 25 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 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

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- (c) paragraph (a) of subsection (2) of the said section 25 shall cease to apply at the end of the period of 24 hours from the start of the detention,
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 ^{M2}Interpretation Act 1978, the references in section 24(5) of this Act to section 25(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 24(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—
“controlled drug” has the meaning assigned by section 2 of the ^{M3}Misuse of Drugs Act 1971
“intimate search” means a search which consists of the physical examination of a persons’s body orifices;
“relevant offence” means an offence involving a controlled drug under any of the following provisions of the ^{M4}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) (possession or dealing with prohibited goods);
(d) section 170(2) (being concerned in evasion or attempt at evasion of a prohibition);
[^{F17}“superior officer” means an officer whose title is specified for the purposes of this section by the Treasury in an order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

Editorial Information

- X3** The insertion of the new heading "Detention and questioning of suspects and witnesses" in Pt. III on 1.12.2007 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

- F16** Words in s. 26 substituted (1.12.2007) by [Finance Act 2007 \(c. 11\)](#), s. 85, [Sch. 23 paras. 6, 14](#); S.I. [2007/3166](#), [art. 3](#)
- F17** Definition in s. 26(11) substituted (1.8.1997) by [1997 c. 48](#), s. 62(1), [Sch. 1 para. 18\(7\)](#); S.I. [1997/1712](#), [art. 3](#), [Sch.](#)

Marginal Citations

- M2** [1978 c. 30](#).
M3 [1971 c. 38](#).
M4 [1979 c. 2](#).

Status: Point in time view as at 01/12/2007. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Part III 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)

F18 Power of arrest

Textual Amendments

F18 Ss. 26A, 26B and cross-headings inserted (1.12.2007) by [Finance Act 2007 \(c. 11\)](#), s. 85, [Sch. 23 paras. 7, 14](#); [S.I. 2007/3166](#), [art. 3](#)

26A Power of arrest

Where an authorised officer has reasonable grounds for suspecting that a Revenue and Customs offence has been or is being committed, the officer may arrest without warrant any person whom the officer has reasonable grounds for suspecting to be guilty of the offence.

General provisions

26B Interpretation of Part 3 etc

(1) In this Part of this Act—

“authorised officer” means an officer acting with the authority (which may be general or specific) of the Commissioners for Her Majesty's Revenue and Customs;

“office of Revenue and Customs” means premises wholly or partly occupied by Her Majesty's Revenue and Customs; and

“officer” means an officer of Revenue and Customs.

(2) In any proceedings (whether civil or criminal) under or arising from this Part of this Act, a certificate of the Commissioners for Her Majesty's Revenue and Customs that an officer had authority to exercise a power or function conferred by a provision of this Part shall be conclusive proof of that fact.

Textual Amendments

F2 Ss. 23A-23P and cross-headings inserted (1.12.2007) by [Finance Act 2007 \(c. 11\)](#), s. 85, [Sch. 23 paras. 3, 14](#); [S.I. 2007/3166](#), [art. 3](#)

F18 Ss. 26A, 26B and cross-headings inserted (1.12.2007) by [Finance Act 2007 \(c. 11\)](#), s. 85, [Sch. 23 paras. 7, 14](#); [S.I. 2007/3166](#), [art. 3](#)

VALID FROM 21/07/2009

F19 **Investigations by designated customs officials**

26C (1) In the application of this Part of this Act to investigations conducted by designated customs officials—

(a) references to an officer are to a designated customs official;

(b) references to an authorised officer are to a designated customs official acting with the authority (which may be general or specific) of—

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- (i) the Secretary of State in relation to investigations relating to general customs matters, or
 - (ii) the Director of Border Revenue in relation to investigations relating to customs revenue matters;
 - (c) references to the Commissioners for Her Majesty's Revenue and Customs are to—
 - (i) the Secretary of State in relation to investigations relating to general customs matters, or
 - (ii) the Director of Border Revenue in relation to investigations relating to customs revenue matters;
 - (d) references to an office of Revenue and Customs are to premises wholly or partly occupied by designated customs officials;
 - (e) references to a superior officer are to—
 - (i) an immigration officer not below the grade of Inspector,
 - (ii) a person of the grade of Senior Executive Officer, or
 - (iii) a person of a grade equivalent to that within sub-paragraph (i) or (ii).
- (2) In this section “customs revenue matter”, “designated customs official” and “general customs matter” have the meanings given by Part 1 of the Borders, Citizenship and Immigration Act 2009.]]]

Textual Amendments

- F2** Ss. 23A-23P and cross-headings inserted (1.12.2007) by [Finance Act 2007 \(c. 11\)](#), s. 85, [Sch. 23 paras. 3, 14](#); [S.I. 2007/3166](#), [art. 3](#)
- F18** Ss. 26A, 26B and cross-headings inserted (1.12.2007) by [Finance Act 2007 \(c. 11\)](#), s. 85, [Sch. 23 paras. 7, 14](#); [S.I. 2007/3166](#), [art. 3](#)
- F19** S. 26C inserted (21.7.2009) by [Borders, Citizenship and Immigration Act 2009 \(c. 11\)](#), [ss. 24\(1\)](#), 58(1) (with s. 36(4))

Status:

Point in time view as at 01/12/2007. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:

Criminal Law (Consolidation) (Scotland) Act 1995, Part III 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.