



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART II

POLICE FUNCTIONS

Police liberation

22 Liberation by police.

- (1) Where a person has been ^{F1} . . . charged with an offence which may be tried summarily, [^{F2}the officer who charged the person or (if different)] the officer in charge of a police station may—
- (a) liberate him upon a written undertaking, signed by him and certified by the officer, in [^{F3}the terms mentioned in subsection (1C) below] ; or
 - (b) liberate him without any such undertaking; or
 - (c) refuse to liberate him.
- ^{F4}(1A) Where a person has been arrested under section 21 of this Act, the arresting officer or (if different) the officer in charge of a police station may—
- (a) liberate the person upon a written undertaking, signed by him and certified by the officer, in the terms mentioned in subsection (1C) below;
 - (b) liberate him without any such undertaking; or
 - (c) refuse to liberate him.
- (1B) Where a person has been apprehended under a summary warrant as mentioned in section 135(3) of this Act, the apprehending officer or (if different) the officer in charge of a police station may—
- (a) liberate the person upon a written undertaking, signed by him and certified by the officer, in the terms mentioned in subsection (1C) below; or
 - (b) refuse to liberate him.

Status: Point in time view as at 13/07/2016.

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(1C) For the purposes of subsections (1) to (1B) above, the terms are that the person undertakes (subject to any modification made to those terms under subsection (1F) (b) below)—

- (a) to appear at a specified court on a specified day at a specified time; and
- (b) in addition, to comply with any conditions imposed under subsection (1D) below.

(1D) The conditions which may be imposed under this subsection are—

- (a) conditions in the same terms as the standard conditions mentioned in section 24(5)(b), (c) and (ca) of this Act (but as if any reference there to bail were reference to the undertaking);
- (b) such further conditions as the officer who is certifying the undertaking considers are necessary to secure that the conditions referred to in paragraph (a) above are observed.

(1E) For the imposition of conditions under subsection (1D)(b) above, the authority of an officer of a rank no lower than inspector is required.

(1F) The procurator fiscal may by notice effected in the same manner as citation under section 141 of this Act—

- (a) rescind an undertaking given under subsection (1) or (1A) above (whether or not the person is to be prosecuted in connection with the matters to which the undertaking relates);
- (b) in relation to an undertaking given under this section—
 - (i) revise the court, day or time specified under subsection (1C)(a) above;
 - (ii) revoke or relax any conditions imposed under subsection (1D) above.

(1G) An undertaking given under this section—

- (a) if rescinded under subsection (1F)(a) above, expires at the end of the day on which the notice is sent;
- (b) otherwise—
 - (i) subject to sub-paragraph (ii) below, expires at the end of the day on which the person who gave the undertaking is required to appear at court in accordance with the undertaking;
 - (ii) if that person breaches the undertaking by reason of failing to appear at court, and a warrant is granted in relation to the breach, expires, so far as relating to conditions, at the end of the day on which the person is brought before the court in pursuance of the warrant.

^{F5}(1H)]

^{F6}(2)

(3) The refusal of [^{F7}an officer] to liberate a person under [^{F8}this section] and the detention of that person until his case is [^{F9}heard] in the usual form shall not subject the officer to any claim whatsoever.

^{F10}(4)

^{F11}[^{F12}(4A)]

^{F13}(5)

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Textual Amendments

- F1** Words in s. 22(1) repealed (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), [ss. 7\(2\)\(a\)\(i\)](#), 84; S.S.I. 2008/42, [art. 3](#), Sch. (subject to art. 4)
- F2** Words in s. 22(1) inserted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), [ss. 7\(2\)\(a\)\(ii\)](#), 84; S.S.I. 2008/42, [art. 3](#), Sch. (subject to art. 4)
- F3** Words in s. 22(1) substituted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), [ss. 7\(2\)\(a\)\(iii\)](#), 84; S.S.I. 2008/42, [art. 3](#), Sch. (subject to art. 4)
- F4** S. 22(1A)-(1H) inserted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), [ss. 7\(2\)\(b\)](#), 84 (as amended by [The Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (Supplemental Provisions) Order (S.S.I. 2008/109, {art. 3}); S.S.I. 2008/42, [art. 3](#), Sch. (subject to art. 4)
- F5** S. 22(1H) repealed (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), s. 206(1), [sch. 7 para. 34](#); S.S.I. 2011/178, art. 2, sch.
- F6** S. 22(2) repealed (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), s. 206(1), [sch. 7 para. 34](#); S.S.I. 2011/178, art. 2, sch.
- F7** Words in s. 22(3) substituted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), [ss. 7\(2\)\(d\)\(i\)](#), 84; S.S.I. 2008/42, [art. 3](#), Sch. (subject to art. 4)
- F8** Words in s. 22(3) substituted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), [ss. 7\(2\)\(d\)\(ii\)](#), 84; S.S.I. 2008/42, [art. 3](#), Sch. (subject to art. 4)
- F9** Word in s. 22(3) substituted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), [ss. 7\(2\)\(d\)\(iii\)](#), 84; S.S.I. 2008/42, [art. 3](#), Sch. (subject to art. 4)
- F10** S. 22(4) repealed (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), s. 206(1), [sch. 7 para. 34](#); S.S.I. 2011/178, art. 2, sch.
- F11** S. 22(4A) repealed (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), s. 206(1), [sch. 7 para. 34](#); S.S.I. 2011/178, art. 2, sch.
- F12** S. 22(4A) inserted (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007](#) (asp 6), [ss. 7\(2\)\(e\)](#), 84; S.S.I. 2008/42, [art. 3](#), Sch. (subject to art. 4)
- F13** S. 22(5) repealed (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), s. 206(1), [sch. 7 para. 34](#); S.S.I. 2011/178, art. 2, sch.

Modifications etc. (not altering text)

- C1** S. 22(1) excluded (19.2.2001) by [2000 c. 11](#), ss. 41, 53, Sch. 7 para. 6, [Sch. 8 para. 27\(5\)](#); S.I. 2001/421, [art. 2](#)

[^{F14}22ZA] Offences where undertaking breached

- (1) A person who without reasonable excuse breaches an undertaking given by the person under section 22—
- by reason of failing to appear at court as required under subsection (1C)(a) of section 22, or
 - by reason of failing to comply with a condition imposed under subsection (1D) of that section,
- is guilty of an offence.
- (2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to—
- a fine not exceeding level 3 on the standard scale, and
 - imprisonment for a period—
 - where conviction is in the JP court, not exceeding 60 days,

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- (ii) where conviction is in the sheriff court, not exceeding 12 months.
- (3) Despite subsection (1)(b), where (and to the extent that) the person breaches the undertaking by reason of committing an offence while subject to the undertaking—
 - (a) the person is not guilty of an offence under that subsection, and
 - (b) subsection (4) applies instead.
- (4) The court, in determining the sentence for the subsequent offence, must have regard to—
 - (a) the fact that the subsequent offence was committed in breach of the undertaking,
 - (b) the number of undertakings to which the person was subject when that offence was committed,
 - (c) any previous conviction of the person of an offence under subsection (1)(b),
 - (d) the extent to which the sentence or disposal in respect of any previous conviction differed, by virtue of this subsection, from that which the court would have imposed but for this subsection.
- (5) The reference in subsection (4)(c) to any previous conviction of an offence under subsection (1)(b) includes any previous conviction by a court in England and Wales, Northern Ireland or a member State of the European Union other than the United Kingdom of an offence that is equivalent to an offence under subsection (1)(b).
- (6) The references in subsection (4)(d) to subsection (4) are to be read, in relation to a previous conviction by a court referred to in subsection (5), as references to any provision that is equivalent to subsection (4).
- (7) Any issue of equivalence arising in pursuance of subsection (5) or (6) is for the court to determine.
- (8) Subsections (3)(b) and (4) apply only if the fact that the subsequent offence was committed while the person was subject to an undertaking is specified in the complaint or indictment.
- (9) In this section and section 22ZB, “the subsequent offence” is the offence committed by a person while the person is subject to an undertaking.

Textual Amendments

F14 Ss. 22ZA, 22ZB inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 55, 206(1); S.S.I. 2011/178, art. 2, sch.

22ZB Evidential and procedural provision

- (1) In any proceedings in relation to an offence under section 22ZA(1), the fact that a person—
 - (a) breached an undertaking given by the person under section 22 by reason of failing to appear at court as required under subsection (1C)(a) of that section, or
 - (b) was subject to any particular condition imposed under subsection (1D) of that section,

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is, unless challenged by preliminary objection before the person's plea is recorded, to be held as admitted.

- (2) In any proceedings in relation to an offence under section 22ZA(1) or (as the case may be) the subsequent offence—
 - (a) something in writing, purporting to be an undertaking given by a person under section 22 (and bearing to be signed and certified), is sufficient evidence of the terms of the undertaking so given,
 - (b) a document purporting to be a notice (or copy of a notice) effected under subsection (1F) of that section is sufficient evidence of the terms of the notice,
 - (c) an undertaking whose terms are modified under paragraph (b) of that subsection is to be regarded as if given in the terms as so modified.
- (3) The fact that the subsequent offence was committed while the person was subject to an undertaking is to be held as admitted, unless challenged—
 - (a) in summary proceedings, by preliminary objection before the person's plea is recorded, or
 - (b) in the case of proceedings on indictment, by giving notice of a preliminary objection in accordance with section 71(2) or 72(6)(b)(i) of this Act.
- (4) Where the maximum penalty in respect of the subsequent offence is specified by (or by virtue of) any enactment, that maximum penalty is, for the purposes of the court's determination of the appropriate sentence or disposal in respect of that offence, increased—
 - (a) where it is a fine, by the amount equivalent to level 3 on the standard scale, and
 - (b) where it is a period of imprisonment—
 - (i) as respects conviction in the JP court, by 60 days,
 - (ii) as respects conviction in the sheriff court or the High Court, by 6 months,

even if the maximum penalty as so increased exceeds the penalty which it would otherwise be competent for the court to impose.
- (5) A penalty under section 22ZA(2) may be imposed in addition to any other penalty which it is competent for the court to impose even if the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.
- (6) The reference in subsection (5) to a penalty being imposed in addition to another penalty means, in the case of sentences of imprisonment or detention—
 - (a) where the sentences are imposed at the same time (whether or not in relation to the same complaint), framing the sentences so that they have effect consecutively,
 - (b) where the sentences are imposed at different times, framing the sentence imposed later so that (if the earlier sentence has not been served) the later sentence has effect consecutive to the earlier sentence.
- (7) Subsection (6)(b) is subject to section 204A of this Act.
- (8) The court must state—
 - (a) where the sentence or disposal in respect of the subsequent offence is different from that which the court would have imposed but for section 22ZA(4), the extent of and the reasons for that difference, or

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- (b) otherwise, the reasons for there being no such difference.
- (9) A court which finds a person guilty of an offence under section 22ZA(1) may remit that person for sentence in respect of that offence to any court which is considering the original offence.
- (10) At any time before the trial of an accused in summary proceedings for the original offence, it is competent to amend the complaint to include an additional charge of an offence under section 22ZA(1).
- (11) In this section, “the original offence” is the offence in relation to which an undertaking is given.]

Textual Amendments

F14 Ss. 22ZA, 22ZB inserted (28.3.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 55, 206\(1\)](#); [S.S.I. 2011/178](#), [art. 2](#), [sch.](#)

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