



# Criminal Proceedings etc. (Reform) (Scotland) Act 2007

2007 asp 6

## PART 2

### PROCEEDINGS

#### *Police functions*

#### 7 Liberation on undertaking

- (1) In section 21 (Schedule 1 offences: power of constable to take offender into custody) of the 1995 Act, subsections (2) to (5) are repealed.
- (2) In section 22 (liberation by police) of that Act—
  - (a) in subsection (1)—
    - (i) the words “arrested and” are repealed,
    - (ii) after the word “summarily,” there is inserted “the officer who charged the person or (if different)”,
    - (iii) for the words “terms of which the person undertakes to appear at a specified court at a specified time” there is substituted “the terms mentioned in subsection (1C) below”,
  - (b) after subsection (1) there is inserted—

“(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.

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*Status: This is the original version (as it was originally enacted).*

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- (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.
- (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;
  - (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.

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*Status: This is the original version (as it was originally enacted).*

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- (1H) For the purpose of any proceedings in relation to an offence under this section, an undertaking whose terms are modified under subsection (1F)(b) above shall be regarded as if given in the terms as so modified.”
- (c) in subsection (2)—
- (i) for the words “subsection (1) above” there is substituted “this section”,
  - (ii) in paragraph (b)(ii), for the word “3” there is substituted “12”,
- (d) in subsection (3)—
- (i) for the words “the officer in charge” there is substituted “an officer”,
  - (ii) for the words “subsection (1)(c) above” there is substituted “this section”,
  - (iii) for the word “tried” there is substituted “heard”,
- (e) after subsection (4) there is inserted—
- “(4A) In any proceedings relating to an offence under this section, the fact that (as the case may be) a person—
- (a) breached an undertaking given by him under this section by reason of failing to appear at court in accordance with the undertaking; or
  - (b) was subject to a particular condition imposed under subsection (1D) above,
- shall, unless challenged by preliminary objection before the person’s plea is recorded, be held as admitted.”
- (f) in subsection (5)—
- (i) for the word “section,” there is substituted “section—
    - (a) a document purporting to be a notice or copy of a notice effected under subsection (1F) above shall be sufficient evidence of the terms of the notice;
    - (b)”,  - (ii) for the words “subsection (1)(a) above” there is substituted “this section”,
  - (iii) the words “by the arrested person” are repealed,
- (g) after subsection (5) there is inserted—
- “(5A) Regulations under subsection (1E)(a) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.”
- (3) In section 135 (warrants of apprehension and search) of that Act, in subsection (3), after the word “practicable” there is inserted “(if not liberated under section 22(1B) (a) of this Act)”.