



Criminal Justice (Scotland) Act 2016

2016 asp 1

PART 1

ARREST AND CUSTODY

CHAPTER 7

GENERAL

[^{F1}Modifications to Part as it applies in certain cases

Textual Amendments

- F1** Ss. 57A-57C and cross-heading inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \(S.S.I. 2017/453\)](#), regs. 1, **2(7)**

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;
 - (b) section 40 of the Prisons (Scotland) Act 1989;
 - (c) sections 19(6), 19AA(12) and 28(1) of the 1995 Act;

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- (d) section 4(1) of the Protection from Abuse (Scotland) Act 2001;
- (e) [F2sections 5 and 74A] of the Extradition Act 2003;
- (f) section 28 of the Adult Support and Protection (Scotland) Act 2007.

Textual Amendments

- F2** Words in s. 57A(3)(e) substituted (31.12.2020) by [Extradition \(Provisional Arrest\) Act 2020 \(c. 18\)](#), s. 2(4), [Sch. para. 30](#); S.I. 2020/1652, reg. 2(1)(b)

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.

Modifications etc. (not altering text)

- C1** [S. 57B](#) applied (with modifications) (25.1.2018) by [The Police Investigations and Review Commissioner \(Application and Modification of the Criminal Justice \(Scotland\) Act 2016\) Order 2017 \(S.S.I. 2017/465\)](#), arts. 14

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-
 - (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—

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- (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.”]

Modifications etc. (not altering text)

- C2** [S. 57C](#) applied (with modifications) (25.1.2018) by [The Police Investigations and Review Commissioner \(Application and Modification of the Criminal Justice \(Scotland\) Act 2016\) Order 2017 \(S.S.I. 2017/465\)](#), arts. 14

[^{F3}57D Arrest under an extradition arrest power

- (1) In a case where a person is arrested under an extradition arrest power (within the meaning of section 174(2) of the Extradition Act 2003), this Part applies subject to the following further modifications.
- (2) The following do not apply—
 - (a) sections 3 and 4,
 - (b) sections 25 to 30,
 - (c) section 50.
- (3) In section 5—
 - (a) subsection (1)(b) is to be read as if the words “in accordance with section 4” were omitted,
 - (b) subsection (2)(a) is to be read as if the words “other than to give the information specified in section 34(4)” were omitted, and
 - (c) subsection (3) is to be read as if the words “of Articles 3 and 4” were omitted.
- (4) Section 6 is to be read as if—
 - (a) in subsection (1)(c) the words “in accordance with section 4” were omitted,
 - (b) subsection (1)(d) were omitted,
 - (c) subsection (2)(a) were omitted,
 - (d) subsection (2)(c) were omitted, and
 - (e) subsections (3) to (8) were omitted.
- (6) Section 23 is to be read as if—
 - (a) subsection (1)(b) were omitted,
 - (b) subsection (2)(d) were omitted.
- (7) Section 24 is to be read as if subsection (1)(b) were omitted.
- (8) Section 48 is to be read as if—
 - (a) for subsection (2) there were substituted—
 - “(2) This subsection applies to a person who is in police custody having been arrested under an extradition arrest power (within the meaning of section 174(2) of the Extradition Act 2003).”, and
 - (b) for subsection (3) there were substituted—

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“(3) In subsection (1), “the relevant offence” means the offence that would have been committed were the act constituting the relevant offence (within the meaning of section 164(3) of the Extradition Act 2003) done in Scotland.”]

Textual Amendments

F3 S. 57D inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), **Sch. 5 para. 2**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act expiry of affecting provision 2022 asp 8, sch. para. 15 by [S.S.I. 2023/360 reg. 2\(a\)](#)