



# Criminal Justice (Scotland) Act 2016

## 2016 asp 1

### PART 1

#### ARREST AND CUSTODY

#### CHAPTER 1

#### ARREST BY POLICE

#### *Procedure following arrest*

### 3 Information to be given on arrest

When a constable arrests a person (or as soon afterwards as is reasonably practicable), a constable must inform the person—

- (a) that the person is under arrest,
- (b) of the general nature of the offence in respect of which the person is arrested [<sup>F1</sup>(if any)],
- (c) of the reason for the arrest,
- (d) that the person is under no obligation to say anything, other than to give the information specified in section 34(4), and
- (e) of the person's right to have—
  - (i) intimation sent to a solicitor under section 43, and
  - (ii) access to a solicitor under section 44.

#### Textual Amendments

- F1** Words in s. 3(b) 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(2)

#### Modifications etc. (not altering text)

- C1** S. 3 applied (with modifications) by 1994 c. 33, s. 137D(3)(a), Sch. 7B Pt. 2 (as inserted (31.1.2017 for specified purposes, 1.3.2018 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 116(1)(3), 183(1)(5)(e), [Sch. 16](#); [S.I. 2018/227](#), art. 2(f))

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#### Commencement Information

**I1** S. 3 in force at 25.1.2018 by [S.S.I. 2017/345](#), [art. 3](#), [sch.](#) (with [art. 4](#))

## 4 Arrested person to be taken to police station

(1) Where a person is arrested by a constable outwith a police station, a constable must take the person as quickly as is reasonably practicable to a police station.

[<sup>F2</sup>(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.]

(2) Subsection (1) ceases to apply, and the person must be released from police custody immediately, if—

- (a) the person has been arrested [<sup>F3</sup>in respect of an offence] without a warrant,
- (b) the person has not yet arrived at a police station in accordance with this section, and
- (c) in the opinion of a constable there are no reasonable grounds for suspecting that the person has committed—
  - (i) the offence in respect of which the person was arrested, or
  - (ii) an offence arising from the same circumstances as that offence.

(3) For the avoidance of doubt, subsection (1) ceases to apply if, before arriving at a police station in accordance with this section, the person is released from custody under—

- (a) section 25(2), or
- (b) section 28(3A) of the 1995 Act.

#### Textual Amendments

**F2** S. 4(1A) 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\(3\)\(a\)](#)

**F3** Words in s. 4(2)(a) 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\(3\)\(b\)](#)

#### Commencement Information

**I2** S. 4 in force at 25.1.2018 by [S.S.I. 2017/345](#), [art. 3](#), [sch.](#) (with [art. 4](#))

## 5 Information to be given at police station

(1) Subsections (2) and (3) apply when—

- (a) a person is in police custody having been arrested at a police station, or
- (b) a person is in police custody and has been taken to a police station in accordance with section 4.

(2) The person must be informed as soon as reasonably practicable—

- (a) that the person is under no obligation to say anything, other than to give the information specified in section 34(4),

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- (b) of any right the person has to have intimation sent and to have access to certain persons under—
  - (i) section 38,
  - (ii) section 40,
  - (iii) section 43,
  - (iv) section 44.
- (3) The person must be provided as soon as reasonably practicable with such information (verbally or in writing) as is necessary to satisfy the [F4 requirements placed on member States by] Articles 3 and 4 of Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings.

#### Textual Amendments

- F4** Words in s. 5(3) substituted (31.12.2020) by [The Criminal Justice \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2020 \(S.S.I. 2020/339\)](#), regs. 1(3), 17

#### Commencement Information

- I3** S. 5 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, sch. (with art. 4)

## 6 Information to be recorded by police

- (1) There must be recorded in relation to any arrest by a constable—
  - (a) the time and place of arrest,
  - [F5](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,]
  - (c) if the person is taken from one place to another while in police custody (including to a police station in accordance with section 4)—
    - (i) the place from which, and time at which, the person is taken, and
    - (ii) the place to which the person is taken and the time at which the person arrives there,
  - (d) the time at which, and the identity of the constable by whom, the person is informed of the matters mentioned in section 3,
  - (e) the time at which the person ceases to be in police custody.
- (2) Where relevant, there must be recorded in relation to an arrest by a constable—
  - (a) the reason that the constable who released the person from custody under subsection (2) of section 4 formed the opinion mentioned in paragraph (c) of that subsection,
  - (b) the time at which, and the identity of the person by whom, the person is—
    - (i) informed of the matters mentioned in subsection (2) of section 5, and
    - (ii) provided with information in accordance with subsection (3) of that section,
  - (c) the time at which, and the identity of the person by whom, the person is informed of the matters mentioned in section 20,
  - (d) the time at which the person requests that intimation be sent under—

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- (i) section 38,
  - (ii) section 43,
- (e) the time at which intimation is sent under—
  - (i) section 38,
  - (ii) section 41,
  - (iii) section 42,
  - (iv) section 43.
- (3) Where a person is in police custody and not officially accused of committing an offence, there must be recorded the time, place and outcome of any decision under section 7.
- (4) Where a person is held in police custody by virtue of authorisation given under section 7 there must be recorded—
  - (a) the time at which the person is informed of the matters mentioned in section 8,
  - (b) the time, place and outcome of any custody review under section 13,
  - (c) the time at which any interview in the circumstances described in section 15(6) begins and the time at which it ends.
- (5) If a constable considers whether to give authorisation under section 11 there must be recorded—
  - (a) whether a reasonable opportunity to make representations has been afforded in accordance with subsection (4)(a) of that section,
  - (b) if the opportunity referred to in paragraph (a) has not been afforded, the reason for that,
  - (c) the time, place and outcome of the constable's decision, and
  - (d) if the constable's decision is to give the authorisation—
    - (i) the grounds on which it is given,
    - (ii) the time at which, and the identity of the person by whom, the person is informed and reminded of things in accordance with section 12, and
    - (iii) the time at which the person requests that intimation be sent under section 12(3)(a) and the time at which it is sent.
- (6) Where a person is held in police custody by virtue of authorisation given under section 11 there must be recorded—
  - (a) the time, place and outcome of any custody review under section 13,
  - (b) the time at which any interview in the circumstances described in section 15(6) begins and the time at which it ends.
- (7) If a person is released from police custody on conditions under section 16, there must be recorded—
  - (a) details of the conditions imposed, and
  - (b) the identity of the constable who imposed them.
- (8) If a person is charged with an offence by a constable while in police custody, there must be recorded the time at which the person is charged.

#### **Textual Amendments**

- F5** S. 6(1)(b) substituted (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(4)

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#### **Commencement Information**

**I4** S. 6 in force at 25.1.2018 by [S.S.I. 2017/345](#), [art. 3](#), [sch.](#) (with [art. 4](#))

**Changes to legislation:**

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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\(a\)](#)