



Criminal Justice (Scotland) Act 2016

2016 asp 1

PART 1

ARREST AND CUSTODY

CHAPTER 7

GENERAL

Modifications etc. (not altering text)

- C1 Pt. 1 applied (with modifications) by 2003 c. 20, s. 31A (as 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. 2 para. 2](#) (with art. 6))
- C2 Pt. 1 applied (with modifications) by 1994 c. 33, s. 137ZA (as 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. 1 para. 4](#) (with art. 5(2)))
- C3 Pt. 1 applied (with modifications) by 2004 c. 20, s. 56A (as 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. 2 para. 3](#) (with art. 6))
- C4 Pt. 1 applied (with modifications) by 1987 c. 4, s. 2D (as 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. 2 para. 1](#) (with art. 6))
- C5 Pt. 1 applied (with modifications) (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), [Sch. 4](#) (with art. 8)

Common law and enactments

54 Abolition of pre-enactment powers of arrest

A constable has no power to arrest a person without a warrant in respect of an offence that has been or is being committed other than—

- (a) the power of arrest conferred by section 1,
- (b) the power of arrest conferred by section 41(1) of the Terrorism Act 2000.

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Modifications etc. (not altering text)

- C6** S. 54 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

Commencement Information

- I1** S. 54 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, **sch.** (with art. 4)

55 Abolition of requirement for constable to charge

Any rule of law that requires a constable to charge a person with an offence in particular circumstances is abolished.

Modifications etc. (not altering text)

- C7** S. 55 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

Commencement Information

- I2** S. 55 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, **sch.** (with art. 4)

56 Consequential modification

Schedule 2 contains repeals and other provisions consequential on this Part.

Commencement Information

- I3** S. 56 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, **sch.**

Code of practice about investigative functions

57 Code of practice about investigative functions

- (1) The Lord Advocate must issue a code of practice on—
 - (a) the questioning, and recording of questioning, of persons suspected of committing offences, and
 - (b) the conduct of identification procedures involving such persons.
- (2) The Lord Advocate—
 - (a) must keep the code of practice issued under subsection (1) under review,
 - (b) may from time to time revise the code of practice.
- (3) The code of practice is to apply to the functions exercisable by or on behalf of—
 - (a) the Police Service of Scotland,
 - (b) such other bodies as are specified in the code (being bodies responsible for reporting offences to the procurator fiscal).

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- (4) Before issuing the code of practice, the Lord Advocate must consult publicly on a draft of the code.
- (5) When preparing a draft of the code of practice for public consultation, the Lord Advocate must consult—
 - (a) the Lord Justice General,
 - (b) the Faculty of Advocates,
 - (c) the Law Society of Scotland,
 - (d) the Scottish Police Authority,
 - (e) the chief constable of the Police Service of Scotland,
 - (f) the Scottish Human Rights Commission,
 - (g) the Commissioner for Children and Young People in Scotland, ^{F1}...
 - ^{F2}(ga) any body which the Lord Advocate intends to specify in the code under subsection (3)(b) and (where relevant) the Secretary of State, and]
 - (h) such other persons as the Lord Advocate considers appropriate.
- (6) The Lord Advocate must lay before the Scottish Parliament a copy of the code of practice issued under this section.
- (7) A court or tribunal in civil or criminal proceedings must take the code of practice into account when determining any question arising in the proceedings to which the code is relevant.
- (8) Breach of the code of practice does not of itself give rise to grounds for any legal claim whatsoever.
- (9) Subsections (3) to (8) apply to a revised code of practice under subsection (2)(b) as they apply to the code of practice issued under subsection (1).

Textual Amendments

- F1** Word in s. 57(5)(g) omitted (17.1.2018) by virtue of [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), arts. 2(1)(b), **10(4)(a)** (with art. 10(3))
- F2** S. 57(5)(ga) inserted (17.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), arts. 2(1)(b), **10(4)(b)** (with art. 10(3))

Modifications etc. (not altering text)

- C8** S. 57 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

Commencement Information

- I4** S. 57 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, **sch.**

^{F3}Modifications to Part as it applies in certain cases

Textual Amendments

- F3** 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)**

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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;
 - (d) section 4(1) of the Protection from Abuse (Scotland) Act 2001;
 - (e) [F4sections 5 and 74A] of the Extradition Act 2003;
 - (f) section 28 of the Adult Support and Protection (Scotland) Act 2007.

Textual Amendments

- F4** 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)

- C9** [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

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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—
 - (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)

C10 [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

[^{F5}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,

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- (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—
 - “(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

- F5** 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**

Disapplication of Part

58 Disapplication in relation to service offences

- (1) References in this Part to an offence do not include a service offence.
- (2) Nothing in this Part applies in relation to a person who is arrested in respect of a service offence.

[^{F6}(2A) This section is subject to Schedule 4 to the Criminal Justice (Scotland) Act 2016 (Consequential Provisions) Order 2018 (S.I. 2018/46).]

- (3) In this section, “service offence” has the meaning given by section 50(2) of the Armed Forces Act 2006.

Textual Amendments

- F6** S. 58(2A) inserted (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), arts. 2(2)(e), **24(2)**

Commencement Information

- I5** S. 58 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, **sch.**

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59 Disapplication in relation to ^{F7}cases involving terrorism]

- (1) Nothing in this Part applies in relation to a person who is arrested under section 41(1) ^{F8}or 43B(1)] of the Terrorism Act 2000.
- (2) Subsection (1) is subject to paragraph 18 of Schedule 8 to the Terrorism Act 2000.

Textual Amendments

- F7** Words in s. 59 heading substituted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), s. 208(5)(w), [Sch. 19 para. 5\(a\)](#)
- F8** Words in s. 59(1) inserted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), s. 208(5)(w), [Sch. 19 para. 5\(b\)](#)

Commencement Information

- I6** S. 59 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, [sch.](#)

Powers to modify Part

60 Further provision about application of Part

- (1) The Scottish Ministers may by regulations modify this Part to provide that some or all of it—
 - (a) applies in relation to persons to whom it would otherwise not apply because of—
 - (i) section 58, or
 - (ii) section 59,
 - (b) does not apply in relation to persons arrested otherwise than under section 1.
- (2) The Scottish Ministers may by regulations make such modifications to this Part as seem to them necessary or expedient in relation to its application to persons mentioned in subsection (1).
- (3) Regulations under this section may make different provision for different purposes.
- (4) Regulations under this section are subject to the affirmative procedure.

Commencement Information

- I7** S. 60 in force at 17.1.2017 by [S.S.I. 2016/426](#), art. 2, [sch.](#)

61 Further provision about vulnerable persons

- (1) The Scottish Ministers may by regulations—
 - (a) amend subsections (2)(c) and (6) of section 33,
 - (b) amend subsections (1)(c), (3) and (5) of section 42,
 - (c) specify descriptions of persons who may for the purposes of subsection (2) of section 42 be considered suitable to provide support of the sort mentioned in subsection (3) of that section (including as to training, qualifications and experience).

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(2) Regulations under subsection (1) are subject to the affirmative procedure.

Commencement Information

I8 S. 61 in force at 17.1.2017 by [S.S.I. 2016/426](#), art. 2, [sch.](#)

Interpretation of Part

62 Meaning of constable

In this Part, “constable” has the meaning given by section 99(1) of the Police and Fire Reform (Scotland) Act 2012.

Commencement Information

I9 S. 62 in force at 17.1.2017 by [S.S.I. 2016/426](#), art. 2, [sch.](#)

63 Meaning of officially accused

For the purposes of this Part, a person is officially accused of committing an offence if—

- (a) a constable charges the person with the offence, or
- (b) the prosecutor initiates proceedings against the person in respect of the offence.

Modifications etc. (not altering text)

- C11** S. 63 applied (with modifications) (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), [Sch. 3 Pt. 4](#) (with art. 7, [Sch. 3 Pts. 5, 6](#))
- C12** S. 63 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
- C13** S. 63 applied (with modifications) (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), [Sch. 3 Pt. 3](#) (with art. 7, [Sch. 3 Pts. 5, 6](#))
- C14** S. 63 applied (with modifications) (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), art. 2(2)(a)(f), [Sch. 3 Pt. 2](#) (with art. 7, [Sch. 3 Pts. 5, 6](#))

Commencement Information

I10 S. 63 in force at 17.1.2017 by [S.S.I. 2016/426](#), art. 2, [sch.](#)

64 Meaning of police custody

(1) For the purposes of this Part, a person is in police custody from the time the person is arrested by a constable until any one of the events mentioned in subsection (2) occurs.

(2) The events are—

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- (a) the person is released from custody,
- (b) the person is brought before a court in accordance with section 21(2),
- (c) the person is brought before a court under section 28(2) or (3) of the 1995 Act,
- [^{F9}(ca) the person is brought before a court in accordance with—
 - (i) any other enactment or rule of law which requires that a person in custody be brought before a court, or
 - (ii) a term of the warrant under which the person was arrested,
- (cb) the person is transferred in accordance with the law into the custody of a person who is neither—
 - (i) a constable, nor
 - (ii) a member of police staff appointed under section 26(1) of the Police and Fire Reform (Scotland) Act 2012,]
- (d) the Principal Reporter makes a direction under section 65(2)(b) of the Children's Hearings (Scotland) Act 2011 that the person continue to be kept in a place of safety.

[^{F10}(3) A person who is at a police station in the custody of a prisoner custody officer is not to be regarded as having been transferred into the custody of that officer for the purposes of subsection (2)(cb).

(4) In [subsection \(3\)](#), “prisoner custody officer” has the meaning given in section 114(1) of the Criminal Justice and Public Order Act 1994.]

Textual Amendments

F9 S. 64(2)(ca)(cb) 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(8)**

F10 S. 64(3)(4) inserted (1.10.2022) by [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(asp 8\)](#), **ss. 40(6)**, 59(1)

Modifications etc. (not altering text)

C15 S. 64 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

Commencement Information

I11 S. 64 in force at 17.1.2017 by [S.S.I. 2016/426](#), art. 2, **sch.**

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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\(a\)](#)