



Criminal Justice (Scotland) Act 2016

2016 asp 1

PART 2

SEARCH BY POLICE

CHAPTER 1

SEARCH OF PERSON NOT IN POLICE CUSTODY

Lawfulness of search by constable

65 Limitation on what enables search

- (1) This section applies in relation to a person who is not in police custody.
- (2) It is unlawful for a constable to search the person otherwise than—
 - (a) in accordance with a power of search conferred in express terms by an enactment, or
 - (b) under the authority of a warrant expressly conferring a power of search.

Modifications etc. (not altering text)

- C1** Pt. 2 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. 2 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))
- C3** Pt. 2 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))
- C4** S. 65 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)

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- C5** S. 65 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)
- C6** S. 65 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
- C7** S. 65 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

- I1** S. 65 in force at 11.5.2017 by [S.S.I. 2017/99](#), **art. 2(a)** (with art. 6)

66 Cases involving removal of person

- (1) A person who is not in police custody may be searched by a constable while the person is to be, or is being, taken to or from any place—
- (a) by virtue of any enactment, warrant or court order requiring or permitting the constable to do so, or
 - (b) in circumstances in which the constable believes that it is necessary to do so with respect to the care or protection of the person.
- (2) A search under this section is to be carried out for the purpose of ensuring that the person is not in, or does not remain in, possession of any item or substance that could cause harm to the person or someone else.
- (3) Anything seized by a constable in the course of a search carried out under this section may be retained by the constable.

Modifications etc. (not altering text)

- C8** S. 66 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
- C9** S. 66 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)
- C10** S. 66 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)
- C11** S. 66 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)

Commencement Information

- I2** S. 66 in force at 11.5.2017 by [S.S.I. 2017/99](#), **art. 2(b)** (with art. 6)

67 Public safety at premises or events

- (1) A person who is not in police custody may be searched by a constable if—
- (a) the person—

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- (i) is seeking to enter, or has entered, relevant premises, or
 - (ii) is seeking to attend, or is attending, a relevant event, and
 - (b) the further criteria are met.
- (2) Premises are or an event is relevant if—
- (a) the premises may be entered, or the event may be attended, by members of the public (including where dependent on possession of a ticket or on payment of a charge), and
 - (b) the entry or the attendance is controlled, at the time of the entry or the attendance, by or on behalf of the occupier of the premises or the organiser of the event.
- (3) The further criteria to be met are that—
- (a) the entry or the attendance is subject to a condition, imposed by the occupier of the premises or the organiser of the event, that the person consents to being searched, and
 - (b) the person informs the constable that the person consents to being searched by the constable.
- (4) A search under this section is to be carried out for the purpose of ensuring the health, safety or security of people on the premises or at the event.
- (5) Anything seized by a constable in the course of a search carried out under this section may be retained by the constable.

Commencement Information

I3 S. 67 in force at 11.5.2017 by S.S.I. 2017/99, art. 2(c) (with art. 6)

68 Duty to consider child's wellbeing

- (1) Subsection (2) applies when a constable is deciding whether to search a child who is not in police custody.
- (2) In taking the decision, the constable must treat the need to safeguard and promote the wellbeing of the child as a primary consideration.
- (3) For the purposes of this section, a child is a person who is under 18 years of age.

Modifications etc. (not altering text)

- C12** S. 68 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)
- C13** S. 68 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. 68 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

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C15 S. 68 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

I4 S. 68 in force at 11.5.2017 by [S.S.I. 2017/99](#), [art. 2\(d\)](#) (with art. 6)

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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\(a\)](#)