



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.

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.

Status: This is the original version (as it was originally enacted).

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—
 - (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.

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.

Miscellaneous and definitions

69 Publication of information by police

- (1) The Police Service of Scotland must ensure that, as soon as practicable after the end of each reporting year, information is published on how many times during the reporting year a search was carried out by a constable—
 - (a) of a person not in police custody, and
 - (b) otherwise than under the authority of a warrant expressly conferring a power of search.
- (2) So far as practicable, the information is to disclose (in addition)—
 - (a) how many persons were searched on two or more occasions,
 - (b) the age and gender, and the ethnic and national origin, of the persons searched,

- (c) the proportion of searches that resulted in—
 - (i) something being seized by a constable,
 - (ii) a case being reported to the procurator fiscal,
 - (d) the number of complaints made to the Police Service of Scotland about the carrying out of searches (or the manner in which they were carried out).
- (3) In this section, “reporting year” means a yearly period ending on 31 March.

70 Provisions about possession of alcohol

- (1) The Scottish Ministers may by regulations amend section 61 (confiscation of alcohol from persons under 18) of the Crime and Punishment (Scotland) Act 1997 so as to confer on a constable a power, exercisable in addition to the power in subsection (1) or (2) of that section—
- (a) to search a person for alcoholic liquor,
 - (b) to dispose of anything found in the person’s possession that the constable believes to be such liquor.
- (2) Prior to laying before the Scottish Parliament a draft of an instrument containing regulations under this section, the Scottish Ministers must—
- (a) consult publicly on the regulations that they are proposing to make,
 - (b) send a copy of the proposed regulations to—
 - (i) the chief constable of the Police Service of Scotland,
 - (ii) the Scottish Human Rights Commission,
 - (iii) the Commissioner for Children and Young People in Scotland, and
 - (iv) such other persons as the Scottish Ministers consider appropriate.
- (3) When laying before the Scottish Parliament a draft of an instrument containing regulations under this section, the Scottish Ministers must also so lay a statement—
- (a) giving reasons for wishing to make the regulations as currently framed (and confirming whether the regulations will amend the relevant enactment in the same way as shown in the proposed regulations),
 - (b) summarising—
 - (i) the responses received by them to the public consultation on the proposed regulations,
 - (ii) the representations made to them by the persons to whom a copy of the proposed regulations was sent.
- (4) Regulations under this section are subject to the affirmative procedure.

71 Matters as to effect of sections 65, 66 and 70

- (1) The day appointed for the coming into force of sections 65 and 66 is to be the same as the day from which a code of practice required by section 73(1) has effect by virtue of the first regulations made under section 77.
- (2) If no regulations under section 70 are made before the end of the 2 years beginning with the day from which a code of practice required by section 73(1) has effect by virtue of the first regulations made under section 77, section 70 is to be regarded as repealed at the end of that period.

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

72 Meaning of constable etc.

In this Chapter—

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

“police custody” has the same meaning as given for the purposes of Part 1 (see section 64).