



# Criminal Law (Consolidation) (Scotland) Act 1995

## 1995 CHAPTER 39

### PART III

#### [<sup>F1</sup>INVESTIGATION OF REVENUE AND CUSTOMS OFFENCES]

#### [<sup>F1</sup>Detention and questioning of suspects and witnesses]

#### <sup>X1</sup>26 **Detention in connection with certain drug smuggling offences.**

- (1) Where an officer has reasonable grounds for suspecting—
- that a person has committed or is committing a relevant offence; and
  - that, in connection with the commission of such an offence, a controlled drug is secreted in the person's body,

a superior officer may, notwithstanding that the person has been or is being detained in pursuance of any other enactment or subordinate instrument, authorise the detention of the person at a [<sup>F1</sup>an office of Revenue and Customs] or other premises in accordance with this section.

- (2) Subject to subsection (7) below, where a person is detained under subsection (1) above or is further detained in pursuance of a warrant under subsection (4) below he shall—
- provide such specimens of blood or urine for analysis;
  - submit to such intimate searches, to be carried out by a registered medical practitioner;
  - submit to such other test or examinations prescribed by the Secretary of State by regulations made under this paragraph to be carried out by, or under the supervision of, a registered medical practitioner,

as the officer may reasonably require; and regulations under paragraph (c) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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- (3) Subject to subsection (4) below, detention under subsection (1) above shall be terminated not more than 24 hours after it begins, or (if earlier)—
- (a) when the person is arrested;
  - (b) when he is detained in pursuance of any other enactment or subordinate instrument; or
  - (c) where there are no longer such grounds as are mentioned in subsection (1),
- and, when a person has been detained under subsection (1), he shall, unless further detained in pursuance of a warrant under subsection (4) below, be informed immediately upon the termination of his detention in accordance with this subsection that his detention has been terminated.
- (4) Where a person is detained under subsection (1) above and either—
- (a) he has failed or refused—
    - (i) to provide a specimen in pursuance of paragraph (a) of subsection (2) above; or
    - (ii) to submit to any search, test or examination referred to in paragraph (b) or (c) of that subsection; or
  - (b) as a result of anything done in pursuance of the said subsection (2) the officer continues to have reasonable grounds for suspecting—
    - (i) that the person has committed or is committing a relevant offence; and
    - (ii) that a controlled drug is secreted in the person's body,

the procurator fiscal may, at the request of a superior officer, apply to the sheriff for a warrant for the further detention of the person at a [<sup>F1</sup>an office of Revenue and Customs] or other premises for an additional period of not more than 7 days; and if the sheriff is satisfied that there has been such failure or refusal as is mentioned in paragraph (a) above or, as the case may be, that there are reasonable grounds as mentioned in paragraph (b) above he may grant a warrant for such further detention.
- (5) Detention in pursuance of a warrant under subsection (4) above shall be terminated at the end of the period of 7 days mentioned in that subsection or (if earlier)—
- (a) when the person is arrested;
  - (b) when he is detained in pursuance of any other enactment or subordinate instrument; or
  - (c) where there are no longer such grounds as are mentioned in paragraph (b) of that subsection,
- and when a person has been detained in pursuance of a warrant under subsection (4), he shall be informed immediately on the termination of his detention in accordance with this subsection that his detention has been terminated.
- (6) Subject to subsection (7) below, the question whether it is to be a specimen of blood or a specimen of urine which is to be provided in pursuance of subsection (2) above shall be decided by the officer making the requirement.
- (7) A person may be required, in pursuance of subsection (2) above—
- (a) to provide a specimen of blood; or
  - (b) to submit to any search, test or examination,
- only if a registered medical practitioner is of the opinion that there are no medical reasons for not making such a requirement; and, if a requirement to provide a specimen of blood is made, the specimen may be taken only by a registered medical practitioner.

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[<sup>F2</sup>(7A) An officer may use reasonable force in exercising any power conferred by this section, except as regards a requirement under subsection (2).

(7B) Sections 3 and 6(1), (2) and (8) of the Criminal Justice (Scotland) Act 2016 (giving and recording of information) apply in relation to a person detained by an officer under this section in connection with the commission of a relevant offence as they apply in relation to a person arrested by the officer in respect of that offence.

(7C) Sections 31 to 34 and 38 to 44 of that Act (questioning, and intimation and access to others) apply in relation to a person detained under this section in connection with the commission of a relevant offence as they apply in relation to a person in custody following arrest by an officer in respect of that offence.

(7D) A person may not be detained under this section on any grounds if the person has been detained under this section before on the same grounds or on grounds arising out of the same circumstances.]

(11) In this section—

“controlled drug” has the meaning assigned by section 2 of the <sup>M1</sup>Misuse of Drugs Act 1971

“intimate search” means a search which consists of the physical examination of a persons’s body orifices;

“relevant offence” means an offence involving a controlled drug under any of the following provisions of the <sup>M2</sup>Customs and Excise Management Act 1979—

- (a) section 50(2) or (3) (importation etc. of prohibited goods);
- (b) section 68(2) (exportation etc. of prohibited goods);
- (c) section 170(1) (possession or dealing with prohibited goods);
- (d) section 170(2) (being concerned in evasion or attempt at evasion of a prohibition);

[<sup>F3</sup>“superior officer” means an officer whose title is specified for the purposes of this section by the Treasury in an order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Editorial Information

- X1** The insertion of the new heading "Detention and questioning of suspects and witnesses" in Pt. III on 1.12.2007 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

#### Textual Amendments

- F1** Words in s. 26 substituted (1.12.2007) by [Finance Act 2007 \(c. 11\), s. 85, Sch. 23 paras. 6, 14; S.I. 2007/3166, art. 3](#)
- F2** S. 26(7A)-(7D) substituted for s. 26(8)-(10) (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\), arts. 2\(2\)\(c\), 16\(5\) \(with art. 16\(2\)\)](#)
- F3** Definition in s. 26(11) substituted (1.8.1997) by [1997 c. 48, s. 62\(1\), Sch. 1 para. 18\(7\); S.I. 1997/1712, art. 3, Sch.](#)

#### Marginal Citations

- M1** 1971 c. 38.

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**M2** [1979 c. 2.](#)

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

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 30(8) added by [2010 asp 13 s. 200\(2\)\(a\)](#)
- s. 45(6) added by [2010 asp 13 s. 200\(2\)\(c\)](#)
- s. 46(5) added by [2010 asp 13 s. 200\(2\)\(d\)\(ii\)](#)