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**Changes to legislation:** Criminal Justice Act 2003, SCHEDULE 2 is up to date with all changes known to be in force on or before 22 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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## SCHEDULES

### SCHEDULE 2

Section 28

#### CHARGING OR RELEASE OF PERSONS IN POLICE DETENTION

- 1 The Police and Criminal Evidence Act 1984 (c. 60) is amended as follows.
- 2 (1) Section 37 (duties of custody officers before charge) is amended as follows.
- (2) In subsection (7) for paragraphs (a) and (b) there is substituted—
- “(a) shall be released without charge and on bail for the purpose of enabling the Director of Public Prosecutions to make a decision under section 37B below,
  - (b) shall be released without charge and on bail but not for that purpose,
  - (c) shall be released without charge and without bail, or
  - (d) shall be charged.”
- (3) After that subsection there is inserted—
- “(7A) The decision as to how a person is to be dealt with under subsection (7) above shall be that of the custody officer.
  - (7B) Where a person is released under subsection (7)(a) above, it shall be the duty of the custody officer to inform him that he is being released to enable the Director of Public Prosecutions to make a decision under section 37B below.”
- (4) In subsection (8)(a) after “(7)(b)” there is inserted “ or (c) ”.
- 3 After that section there is inserted—

#### “37A Guidance

- (1) The Director of Public Prosecutions may issue guidance—
  - (a) for the purpose of enabling custody officers to decide how persons should be dealt with under section 37(7) above or 37C(2) below, and
  - (b) as to the information to be sent to the Director of Public Prosecutions under section 37B(1) below.
- (2) The Director of Public Prosecutions may from time to time revise guidance issued under this section.
- (3) Custody officers are to have regard to guidance under this section in deciding how persons should be dealt with under section 37(7) above or 37C(2) below.
- (4) A report under section 9 of the Prosecution of Offences Act 1985 (report by DPP to Attorney General) must set out the provisions of any guidance issued, and any revisions to guidance made, in the year to which the report relates.

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- (5) The Director of Public Prosecutions must publish in such manner as he thinks fit—
  - (a) any guidance issued under this section, and
  - (b) any revisions made to such guidance.
- (6) Guidance under this section may make different provision for different cases, circumstances or areas.

### **37B Consultation with the Director of Public Prosecutions**

- (1) Where a person is released on bail under section 37(7)(a) above, an officer involved in the investigation of the offence shall, as soon as is practicable, send to the Director of Public Prosecutions such information as may be specified in guidance under section 37A above.
- (2) The Director of Public Prosecutions shall decide whether there is sufficient evidence to charge the person with an offence.
- (3) If he decides that there is sufficient evidence to charge the person with an offence, he shall decide—
  - (a) whether or not the person should be charged and, if so, the offence with which he should be charged, and
  - (b) whether or not the person should be given a caution and, if so, the offence in respect of which he should be given a caution.
- (4) The Director of Public Prosecutions shall give written notice of his decision to an officer involved in the investigation of the offence.
- (5) If his decision is—
  - (a) that there is not sufficient evidence to charge the person with an offence, or
  - (b) that there is sufficient evidence to charge the person with an offence but that the person should not be charged with an offence or given a caution in respect of an offence,
 a custody officer shall give the person notice in writing that he is not to be prosecuted.
- (6) If the decision of the Director of Public Prosecutions is that the person should be charged with an offence, or given a caution in respect of an offence, the person shall be charged or cautioned accordingly.
- (7) But if his decision is that the person should be given a caution in respect of the offence and it proves not to be possible to give the person such a caution, he shall instead be charged with the offence.
- (8) For the purposes of this section, a person is to be charged with an offence either—
  - (a) when he is in police detention after returning to a police station to answer bail or is otherwise in police detention at a police station, or
  - (b) in accordance with section 29 of the Criminal Justice Act 2003.
- (9) In this section “caution” includes—

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- (a) a conditional caution within the meaning of Part 3 of the Criminal Justice Act 2003, and
- (b) a warning or reprimand under section 65 of the Crime and Disorder Act 1998.

### **37C Breach of bail following release under section 37(7)(a)**

- (1) This section applies where—
  - (a) a person released on bail under section 37(7)(a) above or subsection (2)(b) below is arrested under section 46A below in respect of that bail, and
  - (b) at the time of his detention following that arrest at the police station mentioned in section 46A(2) below, notice under section 37B(4) above has not been given.
- (2) The person arrested—
  - (a) shall be charged, or
  - (b) shall be released without charge, either on bail or without bail.
- (3) The decision as to how a person is to be dealt with under subsection (2) above shall be that of a custody officer.
- (4) A person released on bail under subsection (2)(b) above shall be released on bail subject to the same conditions (if any) which applied immediately before his arrest.

### **37D Release under section 37(7)(a): further provision**

- (1) Where a person is released on bail under section 37(7)(a) or section 37C(2)(b) above, a custody officer may subsequently appoint a different time, or an additional time, at which the person is to attend at the police station to answer bail.
- (2) The custody officer shall give the person notice in writing of the exercise of the power under subsection (1).
- (3) The exercise of the power under subsection (1) shall not affect the conditions (if any) to which bail is subject.
- (4) Where a person released on bail under section 37(7)(a) or 37C(2)(b) above returns to a police station to answer bail or is otherwise in police detention at a police station, he may be kept in police detention to enable him to be dealt with in accordance with section 37B or 37C above or to enable the power under subsection (1) above to be exercised.
- (5) If the person is not in a fit state to enable him to be so dealt with or to enable that power to be exercised, he may be kept in police detention until he is.
- (6) Where a person is kept in police detention by virtue of subsection (4) or (5) above, section 37(1) to (3) and (7) above (and section 40(8) below so far as it relates to section 37(1) to (3)) shall not apply to the offence in connection with which he was released on bail under section 37(7)(a) or 37C(2)(b) above.”

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### Commencement Information

**II** Sch. 2 para. 3 wholly in force at 1.10.2007; Sch. 2 para. 3 not in force at Royal Assent, see s. 336(3); Sch. 2 para. 3 in force for certain purposes at 29.1.2004 by [S.I. 2004/81](#), [art. 4](#); Sch. 2 para. 3 in force for certain purposes at 3.7.2004 by [S.I. 2004/1629](#), [art. 2](#) and Sch. 2 para. 3 in force for certain further purposes at 1.10.2007 by [S.I. 2007/2874](#), [art. 2\(1\)\(3\)](#)

- 4 In section 40 (review of police detention) in subsection (9) after “37(9)” there is inserted “ or 37D(5) ”.
- 5 In section 46A (power of arrest for failure to answer police bail) after subsection (1) insert—
- “(1A) A person who has been released on bail under section 37(7)(a) or 37C(2)(b) above may be arrested without warrant by a constable if the constable has reasonable grounds for suspecting that the person has broken any of the conditions of bail.”
- 6 (1) Section 47 (bail after arrest) is amended as follows.
- (2) In subsection (1) (release on bail under Part 4 shall be release on bail granted in accordance with certain provisions of the Bail Act 1976) for “Subject to subsection (2) below” there is substituted “ Subject to the following provisions of this section ”.
- (3) In subsection (1A) (bail conditions may be imposed when a person is released under section 38(1)) after “section”, in the first place where it occurs, there is inserted “ 37(7)(a) above or section ”.
- (4) After that subsection there is inserted—
- “(1B) No application may be made under section 5B of the Bail Act 1976 if a person is released on bail under section 37(7)(a) or 37C(2)(b) above.
- (1C) Subsections (1D) to (1F) below apply where a person released on bail under section 37(7)(a) or 37C(2)(b) above is on bail subject to conditions.
- (1D) The person shall not be entitled to make an application under section 43B of the Magistrates' Courts Act 1980.
- (1E) A magistrates' court may, on an application by or on behalf of the person, vary the conditions of bail; and in this subsection “vary” has the same meaning as in the Bail Act 1976.
- (1F) Where a magistrates' court varies the conditions of bail under subsection (1E) above, that bail shall not lapse but shall continue subject to the conditions as so varied.”

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing SI 2012/2574, Sch. by [S.I. 2012/2761 art. 2](#)

**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. 150(aa) inserted by [2012 c. 10 Sch. 26 para. 19\(2\)](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 26 para. 19 omitted (11.12.2013) by virtue of 2013 c. 22, Sch. 16 para. 23(2); S.I. 2013/2981, art. 2(d))
- s. 150(ba) inserted by [2012 c. 10 Sch. 26 para. 19\(3\)](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 26 para. 19 omitted (11.12.2013) by virtue of 2013 c. 22, Sch. 16 para. 23(2); S.I. 2013/2981, art. 2(d))
- s. 151(A1) inserted by [2008 c. 4 s. 11\(3\)](#)
- s. 151(1A) inserted by [2008 c. 4 s. 11\(5\)](#)
- s. 151(1A)(b) word substituted by [2008 c. 4 Sch. 4 para. 76\(3\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 151(1A) is still only prospectively inserted by 2008 c. 4, s. 11(5))
- s. 151(1A)(c) substituted by [2009 c. 25 Sch. 17 para. 8\(3\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 151(1A) is still only prospectively inserted by 2008 c. 4, s. 11(5))
- s. 151(2A)(b) substituted by [2009 c. 25 Sch. 17 para. 8\(4\)](#)
- s. 151(4A) inserted by [2009 c. 25 Sch. 17 para. 8\(5\)](#)
- s. 151(8)(a) words substituted by [2009 c. 25 Sch. 17 para. 8\(6\)\(a\)](#)
- s. 151(8)(b) words inserted by [2009 c. 25 Sch. 17 para. 8\(6\)\(b\)\(i\)](#)
- s. 151(8)(b) words substituted by [2009 c. 25 Sch. 17 para. 8\(6\)\(b\)\(ii\)](#)
- s. 151(8)(c)-(f) inserted by [2009 c. 25 Sch. 17 para. 8\(6\)\(c\)](#)
- s. 165(5) inserted by [2014 c. 12 s. 179\(3\)](#)
- s. 237(1A) inserted by [2006 c. 48 s. 34\(3\)](#)
- s. 237(1B)(f)(g) inserted by [2021 c. 11 Sch. 13 para. 40\(b\)](#)
- s. 239A inserted by [2015 c. 2 s. 8\(1\)](#)
- s. 239A cross-heading inserted by [2015 c. 2 Sch. 3 para. 5](#)
- s. 250(5C) inserted by [2015 c. 2 Sch. 3 para. 7\(4\)](#)
- s. 255A(4A) inserted by [2015 c. 2 s. 9\(2\)](#)
- s. 255B(3A) inserted by [2015 c. 2 s. 9\(3\)\(b\)](#)
- s. 255B(4A)-(4C) inserted by [2015 c. 2 s. 9\(3\)\(d\)](#)
- s. 255C(3A) inserted by [2015 c. 2 s. 9\(4\)\(b\)](#)
- s. 255C(4A)-(4C) inserted by [2015 c. 2 s. 9\(4\)\(d\)](#)
- s. 256A(1)-(1B) substituted for s. 256A(1) by [2015 c. 2 s. 9\(6\)\(a\)](#)
- s. 256A(4A)(4B) inserted by [2015 c. 2 s. 9\(6\)\(f\)](#)
- s. 256A(5)(6) substituted for s. 256A(5) by [2015 c. 2 s. 9\(6\)\(g\)](#)
- s. 256AZA inserted by [2015 c. 2 s. 10\(1\)](#)
- s. 257(3) inserted by [2006 c. 48 s. 34\(4\)](#)
- s. 258(1A) inserted by [2006 c. 48 s. 34\(5\)](#)
- s. 260(4)(aa) substituted for word by [2008 c. 4 s. 34\(7\)\(b\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 34(2)(4)(b)(7)(10) omitted (3.12.2012) by virtue of 2012 c. 10, s. 118(4)(b); S.I. 2012/2906, art. 2(d))

- Sch. 15B para. 49A omitted by [S.I. 2019/780 reg. 26\(4\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Regs. 21, 25, 26, 27, 30 revoked (1.12.2020) by 2020 c. 17, Sch. 28; S.I. 2020/1236, reg. 2)
- Sch. 15B para. 49B omitted by [S.I. 2019/780 reg. 26\(4\)\(d\)](#) (This amendment not applied to legislation.gov.uk. Regs. 21, 25, 26, 27, 30 revoked (1.12.2020) by 2020 c. 17, Sch. 28; S.I. 2020/1236, reg. 2)
- Sch. 20B para. 34(6)(7) substituted for Sch. 20B para. 34(6) by [2015 c. 2 Sch. 3 para. 10](#)