



# Criminal Justice (Scotland) Act 2016

## 2016 asp 1

### CRIMINAL JUSTICE (SCOTLAND) ACT 2016

#### PART 1

#### ARREST AND CUSTODY

#### CHAPTER 1

#### ARREST BY POLICE

##### *Arrest without warrant*

- 1 Power of a constable
- 2 Exercise of the power

##### *Procedure following arrest*

- 3 Information to be given on arrest
- 4 Arrested person to be taken to police station
- 5 Information to be given at police station
- 6 Information to be recorded by police

#### CHAPTER 2

#### CUSTODY: PERSON NOT OFFICIALLY ACCUSED

##### *Keeping person in custody*

- 7 Authorisation for keeping in custody
- 8 Information to be given on authorisation
- 9 12 hour limit: general rule
- 10 12 hour limit: previous period
- 11 Authorisation for keeping in custody beyond 12 hour limit
- 12 Information to be given on authorisation under section 11
- 13 Custody review
- 14 Test for sections 7, 11 and 13

*Changes to legislation:* Criminal Justice (Scotland) Act 2016 is up to date with all changes known to be in force on or before 22 May 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

---

15 Medical treatment

*Investigative liberation*

- 16 Release on conditions
- 17 Conditions ceasing to apply
- 18 Modification or removal of conditions
- 19 Review of conditions

**CHAPTER 3**

**CUSTODY: PERSON OFFICIALLY ACCUSED**

*Person to be brought before court*

- 20 Information to be given in particular cases
- 21 Person to be brought before court
- 22 Under 18s to be kept in place of safety prior to court
- 23 Notice to parent that under 18 to be brought before court
- 24 Notice to local authority that under 18 to be brought before court

*Police liberation*

- 25 Liberation by police
- 26 Release on undertaking
- 27 Modification of undertaking
- 28 Rescission of undertaking
- 29 Expiry of undertaking
- 29A Expiry of undertaking: coronavirus-related reason for non-appearance
- 30 Review of undertaking

**CHAPTER 4**

**POLICE INTERVIEW**

*Rights of suspects*

- 31 Information to be given before interview
- 32 Right to have solicitor present
- 33 Consent to interview without solicitor

*Person not officially accused*

- 34 Questioning following arrest

*Person officially accused*

- 35 Authorisation for questioning
- 36 Authorisation: further provision
- 37 Arrest to facilitate questioning

**CHAPTER 5**

**RIGHTS OF SUSPECTS IN POLICE CUSTODY**

**Changes to legislation:** Criminal Justice (Scotland) Act 2016 is up to date with all changes known to be in force on or before 22 May 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

---

*Intimation and access to another person*

- 38 Right to have intimation sent to other person
- 39 Right to have intimation sent: under 18s
- 40 Right of under 18s to have access to other person
- 41 Social work involvement in relation to under 18s

*Vulnerable persons*

- 42 Support for vulnerable persons

*Intimation and access to a solicitor*

- 43 Right to have intimation sent to solicitor
- 44 Right to consultation with solicitor

**CHAPTER 6**

**POLICE POWERS AND DUTIES**

*Powers of police*

- 45 Use of reasonable force
- 46 Common law power of entry
- 47 Common law power of search etc.
- 48 Power of search etc. on arrest
- 49 Taking drunk persons to designated place

*Duties of police*

- 50 Duty not to detain unnecessarily
- 51 Duty to consider child's wellbeing
- 52 Duties in relation to children in custody
- 53 Duty to inform Principal Reporter if child not being prosecuted

**CHAPTER 7**

**GENERAL**

*Common law and enactments*

- 54 Abolition of pre-enactment powers of arrest
- 55 Abolition of requirement for constable to charge
- 56 Consequential modification

*Code of practice about investigative functions*

- 57 Code of practice about investigative functions

*Modifications to Part as it applies in certain cases*

- 57A Arrest without warrant otherwise than in respect of an offence
- 57B Arrest under warrant other than an initiating warrant
- 57C Modifications applying by virtue of sections 57A and 57B
- 57D Arrest under an extradition arrest power

*Changes to legislation:* Criminal Justice (Scotland) Act 2016 is up to date with all changes known to be in force on or before 22 May 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

---

### *Disapplication of Part*

- 58 Disapplication in relation to service offences
- 59 Disapplication in relation to cases involving terrorism

### *Powers to modify Part*

- 60 Further provision about application of Part
- 61 Further provision about vulnerable persons

### *Interpretation of Part*

- 62 Meaning of constable
- 63 Meaning of officially accused
- 64 Meaning of police custody

## **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
- 66 Cases involving removal of person
- 67 Public safety at premises or events
- 68 Duty to consider child's wellbeing

##### *Miscellaneous and definitions*

- 69 Publication of information by police
- 70 Provisions about possession of alcohol
- 71 Matters as to effect of sections 65, 66 and 70
- 72 Meaning of constable etc.

#### **CHAPTER 2**

#### **CODE OF PRACTICE**

##### *Making and status of code*

- 73 Contents of code of practice
- 74 Review of code of practice
- 75 Legal status of code of practice

##### *Procedure applying to code*

- 76 Consultation on code of practice
- 77 Bringing code of practice into effect

## **PART 3**

### **SOLEMN PROCEDURE**

- 78 Proceedings on petition

**Changes to legislation:** Criminal Justice (Scotland) Act 2016 is up to date with all changes known to be in force on or before 22 May 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

---

- 79 Pre-trial time limits
- 80 Duty of parties to communicate
- 81 First diets
- 82 Preliminary hearings
- 83 Plea of guilty

#### **PART 4**

#### **SENTENCING**

##### *Maximum term for weapons offences*

- 84 Maximum term for weapons offences

##### *Prisoners on early release*

- 85 Sentencing under the 1995 Act
- 86 Sentencing under the 1993 Act

#### **PART 5**

#### **APPEALS AND SCCRC**

##### *Appeals*

- 87 Preliminary pleas in summary cases
- 88 Preliminary diets in solemn cases
- 89 Extending certain time limits: summary
- 90 Extending certain time limits: solemn
- 91 Certain lateness not excusable
- 92 Advocation in solemn proceedings
- 93 Advocation in summary proceedings
- 94 Finality of appeal proceedings
- 95 Courts reform: spent provisions

##### *SCCRC*

- 96 References by SCCRC

#### **PART 6**

#### **MISCELLANEOUS**

#### **CHAPTER 1**

##### **PUBLICATION OF PROSECUTORIAL TEST**

- 97 Publication of prosecutorial test

#### **CHAPTER 2**

##### **SUPPORT FOR VULNERABLE PERSONS**

- 98 Meaning of appropriate adult support
- 99 Responsibility for ensuring availability of appropriate adults
- 100 Assessment of quality of appropriate adult support
- 101 Training for appropriate adults
- 102 Recommendations from quality assessor and training provider

*Changes to legislation:* Criminal Justice (Scotland) Act 2016 is up to date with all changes known to be in force on or before 22 May 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

---

- 103 Duty to ensure quality assessment takes place
- 104 Elaboration of regulation-making powers under this Chapter
- 105 Procedure for making regulations under this Chapter
- 106 Other powers of Ministers unaffected

### CHAPTER 3

#### NOTIFICATION IF PARENT OF UNDER 18 IMPRISONED

- 107 Child's named person to be notified
- 108 Definition of certain expressions

### CHAPTER 4

#### STATEMENTS AND PROCEDURE

##### *Statements by accused*

- 109 Statements by accused

##### *Use of technology*

- 110 Live television links
- 111 Electronic proceedings

### CHAPTER 5

#### AUTHORISATION UNDER PART III OF THE POLICE ACT 1997

- 112 Authorisation of persons other than constables

### CHAPTER 6

#### POLICE NEGOTIATING BOARD FOR SCOTLAND

- 113 Establishment and functions
- 114 Consequential and transitional

### PART 7

#### FINAL PROVISIONS

##### *Ancillary and definition*

- 115 Ancillary regulations
- 116 Meaning of “the 1995 Act”

##### *Commencement and short title*

- 117 Commencement
- 118 Short title

---

## SCHEDULE 1 — BREACH OF LIBERATION CONDITION

**Changes to legislation:** Criminal Justice (Scotland) Act 2016 is up to date with all changes known to be in force on or before 22 May 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

---

*Offence of breaching condition*

- 1 (1) A person commits an offence if, without reasonable excuse,...

*Sentencing for the offence*

- 2 (1) A person who commits an offence under paragraph 1(1)...

*Breach by committing offence*

- 3 (1) This paragraph applies— (a) where (and to the extent...

*Matters for paragraph 3(2)(b)*

- 4 (1) For the purpose of paragraph 3(2)(b), the matters are—...

*Matters for paragraph 3(2)(c)*

- 5 (1) For the purpose of paragraph 3(2)(c), the matters are—...

*Evidential presumptions*

- 6 (1) In any proceedings in relation to an offence under...

*Interpretation*

- 7 In this schedule— (a) references to an investigative liberation condition...

SCHEDULE 2 — MODIFICATIONS IN CONNECTION WITH PART 1  
PART 1 — PROVISIONS AS TO ARREST

*Criminal Procedure (Scotland) Act 1995*

- 1 The 1995 Act is amended as follows.  
2 These provisions are repealed— (a) in section 13, subsection (7),...  
3 (1) In section 234A, subsections (4A) and (4B) are repealed....

*Miscellaneous enactments*

- 4 In section 4 of the Trespass (Scotland) Act 1865, for...  
5 In subsection (3) of section 1 of the Public Meeting...  
6 In the Firearms Act 1968, section 50 is repealed.  
7 In the Civic Government (Scotland) Act 1982—  
8 In the Child Abduction Act 1984, section 7 is repealed....  
9 In section 11 of the Protection of Badgers Act 1992,...  
10 In the Criminal Justice and Public Order Act 1994, section...  
11 In section 8B of the Olympic Symbol etc. (Protection) Act...  
12 In the Criminal Law (Consolidation) (Scotland) Act 1995—  
13 In the Deer (Scotland) Act 1996, section 28 is repealed...  
14 In section 61 of the Crime and Punishment (Scotland) Act...  
15 In section 7 of the Protection of Wild Mammals (Scotland)...  
16 In the Fireworks Act 2003— (a) in section 11A, subsection...  
17 In section 307 of the Criminal Justice Act 2003, subsection...  
18 In the Antisocial Behaviour etc. (Scotland) Act 2004—  
19 In section 130 of the Serious Organised Crime and Police...  
20 In the Animal Health and Welfare (Scotland) Act 2006, in...

**Changes to legislation:** Criminal Justice (Scotland) Act 2016 is up to date with all changes known to be in force on or before 22 May 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

---

- 21 In the Prostitution (Public Places) (Scotland) Act 2007, section 2...
- 22 In section 32 of the Glasgow Commonwealth Games Act 2008,...
- 23 In section 7 of the Tobacco and Primary Medical Services...
- 24 In each of sections 169(2) and 170(2) of the Children's...
- 25 In section 9 of the Forced Marriage etc. (Protection and...

#### PART 2 — FURTHER MODIFICATIONS

#### *The 1995 Act*

- 26 The 1995 Act is amended as follows.
- 27 These provisions are repealed— (a) sections 14 to 17A,
- 28 (1) In section 18— (a) in subsection (1), the words...
- 29 In section 28— (a) after subsection (1) there is inserted—...
- 30 After section 28 there is inserted— Application of the Criminal...
- 31 In section 42— (a) subsection (3) is repealed,
- 32 In section 74, after paragraph (a) of subsection (2) there...
- 33 In section 79— (a) for subsection (2)(b)(ii) there is substituted—...
- 34 Before section 261A there is inserted— Statements made after charge...

#### *Other enactments*

- 35 In subsection (2)(a) of section 8A of the Legal Aid...
- 36 In section 6D of the Road Traffic Act 1988, for...
- 37 In Schedule 8 to the Terrorism Act 2000—
- 38 In the schedule to the Sexual Offences (Procedure and Evidence)...
- 39 In the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland)...
- 40 In the Children's Hearings (Scotland) Act 2011—
- 41 In section 20 of the Police and Fire Reform (Scotland)...

SCHEDULE 3 — POLICE NEGOTIATING BOARD FOR SCOTLAND  
SCHEDULE 2A POLICE NEGOTIATING BOARD FOR SCOTLAND  
(introduced by section...



**Changes to legislation:**

Criminal Justice (Scotland) Act 2016 is up to date with all changes known to be in force on or before 22 May 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.

[View outstanding changes](#)

**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\(a\)](#)