

CORONAVIRUS (RECOVERY AND REFORM) (SCOTLAND) ACT 2022

EXPLANATORY NOTES

THE ACT: OVERVIEW

Part 3: Public Service Reform

Custody at police stations

Section 40: Custody officers' functions

146. This section allows prisoner custody officers and police custody and security officers to have custody of a person who is appearing before a court virtually from a police station.
147. Once a person has been charged by the police (or arrested by police on a warrant requiring them to be brought before a court), if the person is to remain in custody, the person has to appear before a court as soon as possible. Before there was the possibility of having someone appear before a court remotely, prisoners would be taken to a court building by the police or by prisoner custody officers (a role created by the Criminal Justice and Public Order Act 1994). In court, they would usually be in the custody of prisoner custody officers. Prisoners in a court building could also be kept in the custody of police custody and security officers (a role first created by the Criminal Justice (Scotland) Act 2003, but which now has its legal basis in the Police and Fire Reform (Scotland) Act 2012).
148. The legislation giving prisoner custody officers and police custody and security officers the power to hold people in their custody while appearing before a court was framed so that they could only exercise the power in a court building. Therefore they could not hold in their custody arrestees appearing before a court from a police station via a TV link. Subsections (2)(a) and (4) of section 40 extend the powers of prisoner custody officers and police custody and security officers (respectively), so that they can.
149. Subsection (2)(b) makes a consequential adjustment so that a prisoner custody officer in a police station has the same duty to give effect to an order from a court under section 212 of the Criminal Procedure (Scotland) Act 1995 as the officer would in a court building. An order under that section is an order a court can make having imposed a fine on a person. It is an order to an official to search the person for money that can be used to pay the fine.
150. Subsection (6) makes a consequential adjustment to the definition of “police custody” in Part 1 of the Criminal Justice (Scotland) Act 2016. Being in police custody (as defined) has various consequences under Part 1 of the Criminal Justice Act. Being transferred into the custody of someone who is not a police constable or a police custody and security officer is one way that someone who has been arrested can stop being in police custody. Being transferred into the custody of a prisoner custody officer is therefore one way that a person can stop being in police custody. Subsection (3) adjusts the definition

*These notes relate to the Coronavirus (Recovery and Reform) (Scotland)
Act 2022 (asp 8) which received Royal Assent on 10 August 2022*

so that a person who is transferred into the custody of a prisoner custody officer while at a police station is not treated as having left police custody at that point.

151. Subsection (8) makes a connected adjustment to section 2 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016. That section sets out circumstances in which an investigation into a death has to be carried out because the person died in custody. One of the circumstances in which an investigation must be carried out is when a person has died in “police custody” as defined for the purposes of Part 1 of the Criminal Justice (Scotland) Act 2016. Under that Act, a person ceases to be in “police custody” once the person has been brought before a court. With the advent of virtual court appearances, it is now possible for a person to be simultaneously in custody at a police station and before a court, so for the Fatal Accidents Act’s purposes having the obligation to investigate end the moment the person is brought before a court would be premature.
152. [Section 40\(8\)](#) of this Act therefore amends the Fatal Accidents Act so that the obligation to investigate persists so long as a person is in custody at a police station, even if a virtual court appearance means the person is no longer in “police custody” as defined for the Criminal Justice Act’s purposes.