



Police and Criminal Evidence Act 1984

1984 CHAPTER 60

PART IV

DETENTION

Detention—conditions and duration

38 Duties of custody officer after charge.

- (1) Where a person arrested for an offence otherwise than under a warrant endorsed for bail is charged with an offence, the custody officer shall [^{F1}, subject to section 25 of the Criminal Justice and Public Order Act 1994,] order his release from police detention, either on bail or without bail, unless—
- (a) If the person arrested is not an arrested juvenile—
- (i) his name or address cannot be ascertained or the custody officer has reasonable grounds for doubting whether a name or address furnished by him as his name or address is his real name or address;
 - [^{F2}(ii) the custody officer has reasonable grounds for believing that the person arrested will fail to appear in court to answer to bail;
 - (iii) in the case of a person arrested for an imprisonable offence, the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from committing an offence;
 - [^{F3}(iiia) in a case where a sample may be taken from the person under section 63B below, the custody officer has reasonable grounds for believing that the detention of the person is necessary to enable the sample to be taken from him;]
 - (iv) in the case of a person arrested for an offence which is not an imprisonable offence, the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from causing physical injury to any other person or from causing loss of or damage to property;

Status: Point in time view as at 12/04/2019. This version of this provision has been superseded.

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- (v) the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from interfering with the administration of justice or with the investigation of offences or of a particular offence; or
 - (vi) the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary for his own protection;]
 - (b) if he is an arrested juvenile—
 - (i) any of the requirements of paragraph (a) above is satisfied [^{F4}(but, in the case of paragraph (a)(iia) above, only if the arrested juvenile has attained the minimum age)]; or
 - (ii) the custody officer has reasonable grounds for believing that he ought to be detained in his own interests.
 - [^{F5}(c) the offence with which the person is charged is murder.]
- (2) If the release of a person arrested is not required by subsection (1) above, the custody officer may authorise him to be kept in police detention [^{F6}but may not authorise a person to be kept in police detention by virtue of subsection (1)(a)(iia) after the end of the period of six hours beginning when he was charged with the offence].
- [^{F7}(2A) The custody officer, in taking the decisions required by subsection (1)(a) and (b) above (except (a)(i) and (vi) and (b)(ii)), shall have regard to the same considerations as those which a court is required to have regard to in taking the corresponding decisions under paragraph [^{F8}2(1)] of Part I of Schedule 1 to the ^{M1}Bail Act 1976 [^{F9}(disregarding [^{F10}paragraphs 1A and 2(2)] of that Part)].]
- (3) Where a custody officer authorises a person who has been charged to be kept in police detention, he shall, as soon as practicable, make a written record of the grounds for the detention.
 - (4) Subject to subsection (5) below, the written record shall be made in the presence of the person charged who shall at that time be informed by the custody officer of the grounds for his detention.
 - (5) Subsection (4) above shall not apply where the person charged is, at the time when the written record is made—
 - (a) incapable of understanding what is said to him;
 - (b) violent or likely to become violent; or
 - (c) in urgent need of medical attention.
 - [^{F11}(6) Where a custody officer authorises an arrested juvenile to be kept in police detention under subsection (1) above, the custody officer shall, unless he certifies—
 - (a) that, by reason of such circumstances as are specified in the certificate, it is impracticable for him to do so; or
 - (b) in the case of an arrested juvenile who has attained the [^{F12}age of 12 years], that no secure accommodation is available and that keeping him in other local authority accommodation would not be adequate to protect the public from serious harm from him,
 secure that the arrested juvenile is moved to local authority accommodation.

[In this section—

- ^{F13}(6A) “local authority accommodation” means accommodation provided by or on behalf of a local authority (within the meaning of the Children Act 1989);

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[^{F14}“minimum age” means the age specified in [^{F15}section 63B(3)(b) below];]

“secure accommodation” means accommodation provided for the purpose of restricting liberty;

[^{F16}“sexual offence” means an offence specified in Part 2 of Schedule 15 to the Criminal Justice Act 2003;

[^{F17}“terrorism offence” means an offence specified in Part 3 of that Schedule;]

“violent offence” means murder or an offence specified in Part 1 of that Schedule;]

and any reference, in relation to an arrested juvenile charged with a violent [^{F18}, sexual or terrorism] offence, to protecting the public from serious harm from him shall be construed as a reference to protecting members of the public from death or serious personal injury, whether physical or psychological, occasioned by further such offences committed by him.]]

[^{F13}(6B) Where an arrested juvenile is moved to local authority accommodation under subsection (6) above, it shall be lawful for any person acting on behalf of the authority to detain him.]

(7) A certificate made under subsection (6) above in respect of an arrested juvenile shall be produced to the court before which he is first brought thereafter.

[^{F19}(7A) In this section “imprisonable offence” has the same meaning as in Schedule 1 to the Bail Act 1976.]

(8) In this Part of this Act “local authority” has the same meaning as in the [^{F20}Children Act 1989].

Textual Amendments

- F1** Words in s. 38(1) inserted (10.4.1995) by 1994 c. 33, s. 168(2), **Sch. 10 para. 54**; S.I. 1995/721, art. 2, **Sch.**
- F2** S. 38(1)(a)(ii)-(vi) substituted (10.4.1995) for sub-paras (ii)(iii) by 1994 c. 33, s. 28(2); S.I. 1995/721, art. 2, **Sch.**
- F3** S. 38(1)(a)(iii) substituted (1.12.2005) by Drugs Act 2005 (c. 17), ss. 23(1), 24, **Sch. 1 para. 3(a)**; S.I. 2005/3053, art. 2(1)(f)
- F4** Words in s. 38(1)(b)(i) inserted (1.8.2004 for certain purposes and 1.12.2005 for further purposes) by Criminal Justice Act 2003 (c. 44), ss. 5(2)(a)(ii), 336; S.I. 2004/1867, art. 2; S.I. 2005/3055, art. 2
- F5** S. 38(1)(c) added (1.2.2010) by Coroners and Justice Act 2009 (c. 25), ss. 177(1), 182, **Sch. 21 para. 77** (with s. 180, Sch. 22); S.I. 2010/145, art. 2(2), Sch. para. 25(b)
- F6** Words in s. 38(2) inserted (for certain purposes on 20.6.2001, 2.7.2001, 20.5.2002, 2.9.2002, 1.4.2003, 1.4.2004, 1.4.2005 and 1.12.2005) by 2000 c. 43, ss. 57(3)(b), 80(1); S.I. 2001/2232, art. 2(f); S.I. 2002/1149, art. 2; S.I. 2002/1862, art. 2; S.I. 2003/709, art. 2; S.I. 2004/780, art. 2; S.I. 2005/596, art. 2; S.I. 2005/3054, art. 2
- F7** S. 38(2A) inserted (10.4.1995) by 1994 c. 33, s. 28(3); S.I. 1995/721, art. 2, **Sch.**
- F8** Words in s. 38(2A) substituted (5.4.2004) by Criminal Justice Act 2003 (c. 44), ss. 331, 336, **Sch. 36 para. 5(a)**; S.I. 2004/829, art. 2(1)(2)(k)
- F9** Words in s. 38(2A) inserted (5.4.2004) by Criminal Justice Act 2003 (c. 44), ss. 331, 336, **Sch. 36 para. 5(b)**; S.I. 2004/829, art. 2(1)(2)(k)
- F10** Words in s. 38(2A) substituted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 11 para. 34**; S.I. 2012/2906, art. 2(i)

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- F11** S. 38(6)(6A) substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53), **s. 59**; S.I. 1992/333, art. 2(2), **Sch. 2**.
- F12** Words in s. 38(6)(b) substituted (3.2.1995) by 1994 c. 33, **s. 24**; S.I. 1995/127, art. 2(1), **Sch. 1**
- F13** S. 38(6A)(6B) inserted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(5), **Sch. 13 para. 53(2)** (with **Sch. 14 para. 1(1)**); S.I. 1991/828, **art. 3(2)**
- F14** S. 38(6A): definition of "minimum age" inserted (1.8.2004 for certain purposes and 1.12.2005 for further purposes) by Criminal Justice Act 2003 (c. 44), **ss. 5(2)(b)**, 336; S.I. 2004/1867, **art. 2**; S.I. 2005/3055, **art. 2**
- F15** S. 38(6A): words in the definition of "minimum age" substituted (1.12.2005) by Drugs Act 2005 (c. 17), **ss. 23(1)**, 24, **Sch. 1 para. 3(b)**; S.I. 2005/3053, **art. 2(1)(f)**
- F16** S. 38(6A): definitions of "sexual offence" and "violent offence" substituted (4.4.2005) by Criminal Justice Act 2003 (c. 44), **ss. 304**, 336, **Sch. 32 para. 44**; S.I. 2005/950, **art. 2(1)**, **Sch. 1 paras. 23**, 42(20) (subject to art. 2(2), **Sch. 2**) (as amended by S.I. 2005/2122, art. 2)
- F17** Words in s. 38(6A) inserted (12.4.2019) by Counter-Terrorism and Border Security Act 2019 (c. 3), s. 27(3), **Sch. 4 para. 5(a)** (with s. 25(3)(4))
- F18** Words in s. 38(6A) substituted (12.4.2019) by Counter-Terrorism and Border Security Act 2019 (c. 3), s. 27(3), **Sch. 4 para. 5(b)** (with s. 25(3)(4))
- F19** S. 38(7A) inserted (10.4.1995) by 1994 c. 33, **s. 28(4)**; S.I. 1995/721, art. 2, **Sch.**
- F20** Words in s. 38(8) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(5), **Sch. 13 para. 53(3)** (with **Sch. 14 para. 1(1)**); S.I. 1991/828, **art. 3(2)**

Modifications etc. (not altering text)

- C1** S. 38 modified (4.4.2005) by Criminal Justice Act 2003 (c. 44), **ss. 88(1)(a)**, 336; S.I. 2005/950, **art. 2(1)**, **Sch. 1 para. 5** (subject to art. 2(2), **Sch. 2**) (as amended by S.I. 2005/2122, art. 2)
- S. 38 modified (4.4.2005) by Criminal Justice Act 2003 (c. 44), **ss. 88(1)(b)**, 336; S.I. 2005/950, **art. 2(1)**, **Sch. 1 para. 5** (subject to art. 2(2), **Sch. 2**) (as amended by S.I. 2005/2122, art. 2)
- C2** S. 38 applied (with modifications) by Criminal Justice Act 2003 (c. 44), s. 24B(1)-(3) (as inserted (29.6.2007) by Police and Justice Act 2006 (c. 48), **ss. 18(1)**, 53 (with s. 18(2)); S.I. 2007/1614, **art. 2(e)**)

Marginal Citations

- M1** 1976 c. 63.

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