



Law Reform (Miscellaneous Provisions) (Scotland) Act 1985

1985 CHAPTER 73

Criminal courts, procedure, evidence and justice

35 Provisions as to persons arrested in respect of terrorism

After section 3 of the Criminal Justice (Scotland) Act 1980 there shall be inserted the following sections—

“3A Rights of persons arrested or detained in connection with terrorism.

- (1) A person who has been arrested or detained under the terrorism provisions and who is in detention in a police station or other premises shall be entitled to have intimation of his detention and of the place where he is being detained sent without delay to a solicitor and to another person reasonably named by him:

Provided that a police officer not below the rank of superintendent may authorise a delay (not extending longer than the period of 48 hours from the start of the detention) where, in his view, such delay is necessary on one of the grounds mentioned in section 3C(3) of this Act.

- (2) Where a person arrested or detained under the terrorism provisions requests that the intimation be made, there shall be recorded the time when such request is—
- (a) made; and
 - (b) complied with.

- (3) A person arrested or detained under the terrorism provisions shall be entitled to consult a solicitor at any time, without delay:

Provided that a police officer not below the rank of superintendent may authorise a delay (not extending longer than the period of 48 hours from the start of the detention) where, in his view, such delay is necessary on one of the grounds mentioned in section 3C(3) of this Act.

- (4) Subject to section 3C of this Act the consultation provided for in subsection (3) above shall be private.

3B Provisions as to children detained in connection with terrorism.

- (1) Subject to the provisions of this section the provisions of section 3A of this Act apply to children as they apply to adults.

- (2) Without prejudice to—

- (a) subsection (3) of this section, or
 (b) his entitlement, in terms of section 3A(1), to have intimation of his detention and of the place where he is being detained sent to a solicitor

—
 a person arrested or detained under the terrorism prevention provisions who appears to a constable to be a child shall not be entitled to have such intimation sent to any other person named by him.

- (3) Where it appears to a constable that a person arrested or detained under the terrorism provisions is a child, he shall, subject to subsection (4), without delay—

- (a) send intimation of the arrest or detention and of the place where the child is being held to his parent (if known); and
 (b) allow such parent access to the child.

- (4) A police officer not below the rank of superintendent may authorise—

- (a) a delay in compliance with the duty mentioned in subsection (3)(a) above ;

(b) non-compliance with the duty mentioned in subsection (3)(b) above, where such delay or, as the case may be, non-compliance is, in his view, necessary on one of the grounds mentioned in section 3C(3) of this Act:

Provided that any such delay in compliance with the duty mentioned in subsection (3) (a) shall not extend longer than the period of 48 hours from the start of the detention.

- (5) There shall be recorded the time at which the intimation mentioned in subsection (3)(a) is made.

- (6) Subject to section 3C of this Act the access mentioned in subsection (3)(b) above shall be private.

- (7) Where a child is, by virtue of any enactment, in the care either of a local authority or of a voluntary organisation, the intimation shall be either to the authority or organisation or to the parent, and the right of access shall be exercisable both by an officer of the authority or organisation and by the parent; and subsections (4) and (6) above and section 3C of this Act shall apply in relation to intimation and access under this subsection as they apply to intimation and access under subsection (3) above.

3C Provisions relating to consultations and access in connection with terrorism.

- (1) An officer not below the rank of Assistant Chief Constable may direct that the consultation or access mentioned in sections 3A(3) and 3B(3) of this Act respectively be in the presence of a uniformed officer not below the rank of inspector if it appears to the officer giving the direction to be necessary on one of the grounds mentioned in subsection (3) below.
- (2) A uniformed officer directed to be present during a consultation or, as the case may be, access shall be an officer who, in the opinion of the officer giving the direction, has no connection with the case.
- (3) The grounds mentioned in sections 3A(1), 3A(3) and 3B(4) of this Act and in subsection (1) above are that it is in the interests of the investigation or prevention of crime, or of the apprehension, prosecution or conviction of offenders.
- (4) Where delay or non-compliance is authorised in the exercising of any of the rights or, as the case may be, the carrying out of any of the duties, mentioned in sections 3A(1), 3A(3), and 3B(3) of this Act, there shall be recorded the reason for such delay or non-compliance.

3D Interpretation and effect of sections 3A to 3D.

- (1) In sections 3A to 3C and this section of this Act—
 - (a) "terrorism provisions" means—
 - (i) section 12(1) of the Prevention of Terrorism (Temporary Provisions) Act 1984; or
 - (ii) any provisions conferring a power of arrest or detention and contained in an order under section 13 of that Act; and
 - (b) "child" and "parent" have the same meanings as in section 3 of this Act.
- (2) The provisions of sections 3A to 3C and this section of this Act shall have effect, in relation to persons arrested or detained under the terrorism provisions, in place of any enactment or rule of law under or by virtue of which a person arrested or detained may be entitled to communicate or consult with any other person."