

For Information Only

6. Investigative Liberation

6.1 The Criminal Justice (Scotland) Act 2016 allows for a **Not Officially Accused Person (NOA)** formally known as a suspect, who is suspected of committing a relevant offence, punishable by imprisonment, to be arrested and liberated on more than one occasion under the same set of circumstances up to a maximum cumulative time of 12 hours.

6.12 Force Policy has been developed to address the need for extensions to a NOA beyond the cumulative total of 12 hours up to a maximum extension 24 hours. [See Criminal Justice \(Scotland\) Act 2016 Arrest Process SOP](#).

6.2 Not Officially Accused (NOA)

6.2.1 It must always be at the forefront of all Investigating Officers minds to progress full and thorough enquires as quickly and efficiently as possible. This includes NOA interviews, gathering of forensic samples and other physical evidence that supports the arrest of the offender, and where appropriate caution and charge them where a sufficiency of evidence exists.

6.3 Further Enquiry

6.3.1 The Act provides that where a NOA has been arrested on suspicion but, after initial enquiries a sufficiency of evidence does not exist to justify continued arrest, or any further enquiry cannot be concluded within the initial 12 hour period the NOA arrest rendering them subject to unnecessary further detention, then the NOA must be released from custody without delay unless the Investigating Officer (IO) can justify their continued arrest with the time limits laid out by the Act.

6.3.2 The options open to the IO at this stage are liberate the NOA from police custody without conditions, or make a formal application for imposition of Investigative Liberation conditions.

6.4 Liberation from Custody - Not Officially Accused

6.4.1 Where a decision is taken to liberate a NOA to allow further enquire there are two liberation options available for use.

6.4.2 In deciding what how best to liberate the NOA the IO should take the following factors into consideration:

- a. risks posed if the NOA is liberated,
- b. further enquiries required to establish a sufficiency of evidence,
- c. likely timescales for completing these enquiries

6.4.3 The overriding aim must be to manage risk and protect victims, witnesses and the public whilst also ensuring that a person's Article 5 – Liberty and Security rights are observed.

For Information Only

6.5 Standard Liberation – Default Position

- 6.5.1 If after conducting the above assessment and there is no investigative risk associated with the NOA release then it will be force policy that NOA will be released without the imposition of Investigative Liberation conditions.

6.6 Requirement for Investigative Liberation

- 6.6.1 Where an IO decides that after assessing all associated risks posed by the proposed liberation of a NOA to facilitate further enquires, they believe that in so doing is likely to impact upon their ability to “**ensure the proper conduct of the investigation**”, then they can make application under sec 16 of the Act to the Custody Sergeant for the imposition of Investigative Liberation conditions.

- 6.6.2 The use of Investigative Liberation (IL) is in the main a matter for the IO to consider against the demands of their investigation, and must not be used as a “holding” position during an investigation.

6.6.3 There are no restrictions on the types of crime or offences for which IL may be used.

- 6.6.4 Where IL conditions are imposed, they will last for a maximum of 28 days from imposition, automatically ceasing to apply from that time or, if within that initial period, the NOA is arrested again in relation to the initial set of circumstances, at which time, the IL conditions will automatically be removed from the Criminal History System (CHS) via the National Custody System (NCS) at the time their arrest is authorised.

6.7 IL - Investigative Planning

- 6.7.1 The responsibility for the application and future administration of IL will be undertaken by the Investigating Officer (IO) in overall charge of the crime for which the NOA was arrested.
- 6.7.2 IO's should at the earliest opportunity, where possible, include within their investigation planning the potential for the use of Investigative Liberation, particularly in relation to victim welfare.
- 6.7.3 When considering the use of IL, the IO must balance the advantages of its use against any possible risks to the conduct of the investigation including potential risks to the victim, witnesses.
- 6.7.4 All risk considerations must be recorded within the crime report enquiry update field and must include any communication with the victim and or witnesses that the NOA release may impact upon.
- 6.7.5 Particularly in cases involving Domestic Abuse, any decision made must be balanced against the wider force guidance on domestic abuse investigation – [Domestic Abuse Toolkit](#).

For Information Only

6.7.6 Early discussion with line managers should be sought to ensure that any proposed use of IL is necessary and proportionate, and that release without imposed conditions would not be more appropriate. This will mitigate the potential need for radical amendments or alteration of any future IL conditions authorised by the custody sergeant.

6.8 IL - Application Process

6.8.1 When considering an application for IL, the IO must be able to demonstrate how the imposed conditions will support the proper conduct of the investigation during the maximum allowed period of imposition of 28 days from first point of imposition, and must be able to demonstrate that there is a realistic expectation that their investigations will be concluded within that time period although ultimately they may not generate a sufficiency of evidence to prefer a charge.

6.8.2 Where IL is used in cases that require forensic or other specialist examinations to identify potential evidence, early communication with those specialist departments is recommended to ensure that the results can realistically be achieved within the 28 day period of IL imposition, with all communications recorded within the enquiry update field of the relevant crime report.

6.8.3 There are no set standard conditions for Investigative Liberation (IL) and it is not competent to impose conditions to specify a person must be at a particular place at a set time however, IL conditions can prevent an NOA from approaching directly or by third party means witnesses, victims or specific areas that continue to be subject to police investigations, whether this be witness interviews or locus examinations.

6.9 Necessity and Proportionality

6.9.1 Any conditions considered by the IO must be necessary and proportionate to ensure the proper conduct of the investigation for which the NOA has been arrested.

6.9.2 Section 14, 2 (a) & (b) of the Act provides guidance in relation to necessity and proportionality around arrest and continued detention however, necessity and proportionality when used to support any application for IL conditions requires the IO to specifically focus on whether:

- the conditions applied for are necessary and cannot be achieved by other means, and
- are proportionate when measured against the actions requiring to be achieved.

6.9.3 When formulating IL conditions the IO must determine whether they can justify their imposition to achieve the appropriate balance between ECHR Article 2 – right to life and Article 8 – right to privacy.

6.9.4 Necessity

Police Scotland Investigative Liberation
Operation Guidance

For Information Only

In order to justify the application the IO needs to cover three main points:

- crime / offence / circumstances (“the event”) under investigation, and
- NOA(s) / offender(s) / witness(es) / victim(s) (“the person”) and how the person(s) is/are linked to the event, and
- What they intend to achieve during the period of the IL conditions (28 days).

6.9.5 Proportionality

Applicants must outline what they seek to achieve by obtaining IL conditions and how if authorised they will benefit the investigation.

The two basic questions:

- What will the imposition of IL conditions allow the IO to do within the 28 day period that they couldn't do by continuing the arrest of the NOA or release without IL, and
- Are the IO's expectations realistically achievable within that time period..

6.10 Sufficiency of Evidence – Release on IL

- 6.10.1 On most occasions where an IO has a sufficiency of evidence to report an NOA they will prefer relevant changes and report the Officially Accused to COPFS using the prescribed methods of reporting.
- 6.10.2 There may however, be circumstances, that due to other related outstanding enquires, the potential exists for the IO to obtain additional inculpatory or exculpatory evidence that further supports their investigation. In these circumstances the IO may make an application for the imposition of IL conditions to protect the those enquiries as long as there is still time within the 28 day period of any previously used IL process. This would allow the IO to continue to ensure the proper conduct of the investigation ultimately leading to the submission of a stronger case to COPFS. This tactic is seen as of benefit in some cases, and particularly in instance of Domestic Abuse where a pattern of offences are suspected.
- 6.10.3 The application process for IL in these instances remains as previously described and is for the IO to justify the use of IL.

6.11 Investigating Officer – (IO)

6.11.1 Investigative Liberation Application Form

General

All applications for the imposition of IL conditions will be made in writing using:

- [Form 048-005 Investigative Liberation - Application Form](#)

Police Scotland Investigative Liberation
Operation Guidance

For Information Only

Which when complete will become a case related document

The IO will populate Part 1 of the on-line form, and then print it off and present it directly to the officer of at least the rank of Sergeant who is in overall charge of the NOA detention in police custody and is unconnected to the matter under investigation.

It is considered good practice for the IO, at the earliest opportunity to make the custody sergeant in overall charge of the NOA's care of the likelihood of their intention to submit an IL application to allow the proper review of the applied for conditions to be undertaken without impacting upon the investigative clock and other Custody area business.

6.11.2 IL Part 1 – Custody Details

The IL application form is a 5 part document and will be hand written. The IO should complete part one of the IL Application Form, including the unique prisoner reference numbers as generated by the National Custody System which will be provided to them by the Authorising Officer.

They must include full details of the nature of their investigation, and a list of conditions they wish imposed upon the NOA.

The conditions must be necessary and proportionate to ensure the proper conduct of the investigation and may include that the NOA:

- **Is not to be in a specified place at a specified time, or**
- **Is to remain out with a place, or any place falling within a specified category for a specified period, or**
- **Is not to contact a named person or group either directly or by third party means including email, text or social media sites**

It must be the belief of the IO that the applied for conditions are essential and they can demonstrate how the IL conditions will ensure the proper conduct of the investigation is protected.

6.11.3 NOA Notification

The formalisation of Investigative Liberation conditions is for the Investigating officer to decide, not agree with the NOA or their legal representatives.

It will be the responsibility of the IO for the matter under investigation to, at the earliest opportunity during their interactions with the NOA and their legal representative to advise them, where appropriate, of the likelihood of an application for the imposition of IL conditions.

In doing so the NOA and or their legal representatives will have an opportunity to provide comment on the proposed IL conditions, potentially mitigating the

Police Scotland Investigative Liberation
Operation Guidance

For Information Only

need for future appeals against the conditions. This will also provide an opportunity to informally agree future attendance dates at the police station to continue enquires. (**Note:** IL cannot be used to compel a NOA to attend any future interviews)

Once the IO is satisfied that their IL application is an accurate representation of their investigation and its future needs, they must present the completed form to the Authorising Officer (AO) in charge of the NOA custody care of at least the rank of Sergeant who will conduct a review of the application.

6.12 Authorising Officer – (AO)

Custody Officer In overall Charge of the NOA Arrest – Minimum Sgt Rank

6.12.1 IL Part 2

Authorisation of Proposed Conditions – Custody Officer (At Least Sgt Rank)

It will be the responsibility of the AO, upon application by the relevant IO, to review [Form 048-005 Investigative Liberation - Application Form](#), and if satisfied that the conditions detailed are necessary and proportionate to ensure the proper conduct of the Investigation they may:

- **Authorise the imposition of Investigative Liberation conditions**
- **Amend the stated conditions to better reflect the necessity and proportionality of the need for said conditions.**

Where the AO refuses the application for conditions they can direct that the IO to:

- **Release the NOA without conditions or**
- **Continue the section 1 arrest to allow the IO to continue enquires, utilising the remainder of the 12 hour arrest clock and any subsequent extension if appropriate but only if they consider it necessary to refuse the NOA liberty from custody.**

Once the IO has been advised of the AO decision they will be required to sign the application form acknowledging they are content to continue with the application, and only once this has been completed then will the Custody Officer progress the IL application to release the NOA.

6.12.2 National Custody System

The AO will populate the National Custody System which will generate:

- [Form 048-006 Investigative Liberation – Not Officially Accused Copy](#)

Police Scotland Investigative Liberation
Operation Guidance

For Information Only

and provide the NOA with a copy at their point of release. The location of the relevant Sheriffdom where an IL appeal should be lodged will be added to the rear to the NOA's copy for their future reference.

The AO will record the time the NOA is officially released from police custody and add this to the IL application form which will then be returned to the IO for retention as a case related document.

6.13 Re-Arrest of NOA under Original Circumstances

6.13.1 If as a result of further enquires, an NOA is arrested again in under the same set of circumstances that lead previously to the imposition of IL conditions, at the point of section 7 authorisation of the arrest by a custody sergeant, the imposed IL conditions will automatically be removed from CHS via the link with NCS.

6.13.2 If after further enquires, the NOA is to be released from Police custody, and the IO wishes to impose IL conditions, either new or similar conditions to those previously imposed then they submit a new [Form 048-005 Investigative Liberation – Application Form](#) to the custody sergeant for consideration.

6.13.3 Any new IL conditions authorised will on last for the remainder of the original 28 day imposition period.

6.14 Management of IL Conditions

6.14.1 Investigating Officers Responsibilities

Upon receipt of the IL Application Form from the AO the IO must immediately notify either directly, or by email, the IL Reviewing Officer (RVO) who should be their line manager of at least Inspector rank of the existence of the live IL conditions, and at the earliest opportunity deliver to that officer the IL Application form for review.

6.15 Crime Report/File

6.15.1 It is the responsibility of the IO to fully, and continually update the crime report enquiry fields with all actions undertaken during the investigation relating to the IL conditions imposed including:

- **Initial recording and incorporation of IL into the reasonable lines of enquiry planning**
- **All updates and communication with RVO concerning the progression and management of IL conditions**
- **All IL appeal related information including, any early indication of the likelihood of an appeal being lodged**

6.16 Victim Strategy and Communication Responsibilities

Police Scotland Investigative Liberation
Operation Guidance

For Information Only

- 6.16.1 It is solely the responsibility of the IO to provide all relevant information relating to the use of IL including real time notification of IL condition updates to the victims of crime and how, if any, the imposition of conditions may impact upon them.
- 6.16.2 Where possible, it is essential that the imposition of IL conditions is communicated to victims and witnesses prior to the release of the NOA from police custody. It is appreciated that this will not be possible in all instances therefore, where this is not achieved appropriate arrangements must be made by the IO to have any material changes to IL conditions, and how they may impact upon the victim/witnesses communicated to them as soon as a reasonably practical with all efforts recorded accurately for future reference.
- 6.16.3 In some instances, based upon the circumstances of the investigation, the failure to notify a victim of the intended use of IL may result in the police having to continue to detain the NOA in custody, and either continue enquiries, recording the reasons for not liberating them or charging the NOA and detaining them until their appearance at court. This is an operational policing matter and any decision taken will be dependent upon the facts and circumstances of the particular case at that time, with all supporting rationale recorded within the NOA's NCS record and the relevant enquiry update of the crime under investigation

6.17 Additional Police Action in Support of IL Conditions

- 6.17.1 Any actions taken to provide added assurance to victims must be, where appropriate, communicated to them by the IO and accurately and timeously recorded within the crime report enquiry update to include:
- Notification of IL conditions to the victim, and how delivered
 - Changes, modification or withdrawal of IL conditions
 - IL appeal notifications and results
 - Any concerns raised by the victim / witnesses re IL conditions and or the release of the NOA
 - STORM markers for extra attention / urgent response
 - Daily Briefing Registers entries
- 6.17.2 For further guidance in relation to victim support please see [Domestic Abuse Toolkit](#).

6.18 Breach of IL

- 6.18.1 When IL is imposed upon a NOA, any breach of any of the imposed conditions is an arrestable offence, and as such, unless the breach is considered a minor or accidental breach, will normally require the offender to appear from custody. This decision will be made in conjunction with the custody sergeant.

Police Scotland Investigative Liberation
Operation Guidance

For Information Only

6.18.2 It will be the responsibility of the arresting officers to report the circumstances of the breach of IL conditions to the relevant prosecutor, ensuring that notification is immediately sent to the IO in overall charge of the IL related investigation.

6.18.3 An arrest for breach of IL conditions does not affect the live conditions which will remain in force and continue to be reviewed in line with the original investigation.

6.19 Cross Border Considerations

6.19.1 Enforcement of Investigative Liberation conditions is confined in general to the normal jurisdiction of the Scottish Legal system and is therefore not routinely enforceable out with Scotland. That said, a breach of IL conditions can still be committed even where either the NOA or a person named within the IL conditions – victim or witness - are out with Scotland as long as a “locus” can be established that is covered by Scottish Legal jurisdiction.

6.19.2 An example of establishing a Scottish “locus” can be where a complainer, who at the time of the IL breach is within their home address in the jurisdiction of the Court and is contacted by the NOA who is outwith Scotland contrary to the IL conditions. Where the NOA breaches a condition using a telephone or other communications’ device or social media platform it would be competent to libel a charge of breach of IL and should be reported without delay to COPFS craving a warrant if appropriate.

6.19.3 Where both a victim or witness who are mentioned in IL conditions issued to an accused move out with normal Scottish Legal Jurisdiction it is considered good practice for the IA to notify the Police Force where the victim and accused are resident and appraise the force of the existence of the live investigation and the IL conditions to allow that force to make necessary policing decisions based upon the presence of the subjects.

6.19.4 All contacts with other forces and information shared must be recorded within the relevant crime report enquiry update field.

6.20 Review of IL Conditions

6.20.1 IL Reviewing Officer (RVO) - Inspector Line Management of Investigating Officer

General

The review of IL conditions must be conducted in perpetuity during the 28 day period of imposition by the IL Reviewing Officer (RVO) and should form part of line management daily business process until the conclusion of the IL process as part of the live investigation.

IL Part 3

For Information Only

IL Conditions Initial Review

Upon notification from the IO of the existence of “live” IL conditions, the RVO must fully apprise themselves with the current position of the investigation and review the imposed conditions to ensure that they remain necessary and proportionate.

Unless there is a significant material change in the circumstances of the investigation since the imposition of IL conditions, the RVO will not make any changes to the imposed IL conditions at this time, however no matter what action is taken during the initial review, all decisions must be accurately recorded and communicated to the IO.

All changes to IL conditions must be communicated to the NOA in writing – Please see **Notification of Change / Amendment / Imposition of Conditions** below for full guidance.

The RVO must thereafter endorse part 3 of the IL Application, recording their decisions on both the form and within the enquiry update field of the crime report and continue this process until the process is concluded.

IL Management Information – Daily Business

The RVO should include all live IL conditions within their daily business review and management information reports to ensure that the progression of the investigations are conducted including proactively addressing:

- **Resourcing of investigations**
- **Allocation of tasks to progress IL related lines of enquiry, and**
- **Maintain an overview of the victim strategy and how the continued imposition of IL conditions are likely to impact upon the victim / witnesses**

Local Command Area Oversight

Each individual Division or Department should establish local management processes for live IL conditions to ensure that appropriate policing action is developed to manage the conditions in conjunction with the ongoing RVO process and ensure that the policy outlined in this SOP is being complied with.

It will be the responsibility of the Reviewing Officer to advise the local policing area that has operational responsibility for the crime under investigation of the existence of the Investigative Liberation to allow operational policing plans to be developed as appropriate to assist with the impact of IL within that area.

6.21 Changes to IL Conditions – Responsibilities

6.21.1 IL Reporting Process – General

Police Scotland Investigative Liberation
Operation Guidance

For Information Only

The Criminal Justice (Scotland) Act 2016 contains a legislative framework for the notification of all IL condition amendments or alterations to the NOA, which must be communicated as soon as reasonably practicable and in writing within the initial period of 28 days and must contain:

- Any changes to the conditions, including their removal and
- Must specify the time from which the condition is modified or removed.

Although the Act is silent on the definition of “in writing” of IL changes within the initial 28 day period, the following mandatory information management process will be used by Police Scotland.

6.21.2 Notification of Change / Amendment / Imposition of Conditions

Victim / Significant Witnesses

It is the responsibility of the IO to inform the victim and or any effected witness without delay of any IL changes that impact upon them, and all communications must be accurately recorded within the enquiry update of the crime report and reflected in the relevant victim/witness management strategy as appropriate.

Where possible, any changes to IL conditions should be notified to victims and significant witnesses in advance of the notification to the NOA. It is therefore essential that all contact details for the victims and witnesses are accurately maintained to aid this process.

6.21.3 Removal of Conditions - Not Officially Accused

Reduction or Removal of IL Conditions

Where, as a result of the investigative process some or all imposed IL conditions cease to apply, **these changes apply from the moment the decision is made.** This may be as a result of information provided by a witness that when examined against a particular IL condition means that the condition is no longer necessary and proportionate to ensure the proper conduct of the investigation.

Strictly speaking this means that from the moment this threshold is no longer reached, the condition falls, however in reality, this material change has to be physically communicated to the NOA with the Act stating that this change must be communicated in writing.

In all instances of partial or complete removal of imposed IL conditions the IO, will as soon as reasonably practicable, complete:

- [Form 048-008 - Investigative Liberation – Update of Conditions on CHS](#),

detailing the rationale behind the removal request and submitted to their RVO for signoff and onward transmission via the Force Email system using either:

Police Scotland Investigative Liberation
Operation Guidance

For Information Only

CJOperationsEdinburgh@scotland.pnn.police.uk for East and North Command based officers; or

CHS@scotland.pnn.police.uk for all other officers

Criminal Justice Services Division will update CHS in line with the submitted request from the RVO and will then send

- [Form 048-009 – Investigative Liberation – Changes to Condition\(s\)](#)

to the NOA using external mailing Providers

6.21.4 New / More Onerous Conditions

If, as a result of the ongoing investigations by the IO, or review of live IL conditions by the RVO, there is considered a need to impose new or more onerous IL conditions, it will be the responsibility of the RVO to manage this process.

The RVO must record their decisions in part 3 of:

- [Form 048-005 Investigative Liberation – Application Form](#)

Thereafter, they must as soon as reasonably practicable complete:

- [Form 048-007 Investigative Liberation – Notification of Increased Conditions,](#)

which details the updated IL conditions; and

- [Form 048-009 Investigative Liberation – Changes to Condition\(s\)](#) which is a formal letter of notification as required by the Act and have both these forms hand delivered to the NOA without delay.

6.21.5 CHS Update

Only once the increased conditions have been hand delivered to the NOA by the police will the RVO complete [Form 048-008 - Investigative Liberation – Update of Conditions on CHS,](#) and forward via the Force Email system using the most appropriate CJSD email address as listed on the form.

In all cases actions taken by either the IO or RVO must be accurately recorded in the enquiry update field of the relevant crime report and within the 'RVO: section 3' of [Form 048-005 - IL Application Form](#) which will be retained as a case related document at the conclusion of the investigation by the IO.

6.21.6 Urgent Amendment of IL Conditions

It is not force policy to permit NOA and or their legal representatives to contact the IO in relation to imposed IL conditions however, it is appreciated that there may, on occasion be extenuating circumstances whereby an urgent review of a

For Information Only

condition is required to permit a NOA to undertake a particular action, for example attend and visit a gravely ill relative or keep an urgent appointment that, if the condition was not removed would render them liable to arrest and prosecution for breach of that condition.

In these circumstances, any such request should be directed to the relevant RVO who will assess the request and can, if they choose, amend any imposed condition. It may be the view of the RVO that the request cannot be met, however all decisions made, in relation to any approach to amend IL conditions will require to be recorded within the IL application Form – part 3 and also within the enquiry update of the relevant crime report.

It must be stressed, that although not a legal requirement under the Act, that by enhancing the process of communication with the NOA and their legal representatives at the time of formulating IL conditions is seen as potentially reducing the likelihood of an IL appeal which is detailed later in the SOP.

6.22 Investigative Liberation - Appeals Process

6.22.1 IL Part 4

Initial Notification of an IL appeal

Where a NOA lodges an appeal against the imposition of any, or all IL conditions, the Court where the appeal is lodged will schedule a hearing to take place 7 days later, and will notify Police Scotland and Crown Office & Procurator Fiscal Service (COPFS) of the details, and of the need for a report of the circumstances to be submitted.

Victim Notification

Any appeal notification and resulting court decisions must be continually assessed by the RVO and IO, and where appropriate communicated to the victim or relevant witnesses, and recorded within the enquiry update field of the crime report / file.

6.22.2 Timescales for IL Occurrence Report Submission

From intimation to the police of an IL appeal, the report will require to be submitted to COPFS within 3 days, and therefore the IO will be required to submit their report without delay to the RVO who is responsible for the final review and submission of the IL Occurrence Report, to the local Criminal Justice (CJ) unit.

Police Scotland Investigative Liberation
Operation Guidance

For Information Only

Where the IO and RVO are unavailable to submit the IL Occurrence Report, it will be the for the local CJ unit to review the crime report / file and decide who is best suited to submit the IL report.

Upon receipt of the IL appeal occurrence report from the submitting officer the local CJ unit will, without delay, forward it to the local COPFS for their attention and action.

IL Occurrence Report

The ISCJIS Occurrence Report Template will be used to provide COPFS with information relating to the investigation and the rationale for the imposition of IL conditions and will include:

1. A summary of the facts in the case
2. Any conditions imposed
3. The rationale behind the decision to impose such condition(s) including:
 - a. Details of the further enquiries being carried out and what additional evidence it is hoped will be obtained from them
 - b. Why the conditions imposed are deemed necessary and proportionate for the proper conduct of the investigation, and
 - c. How each condition assists in the proper conduct of the investigation
4. Details of any review process undertaken by the Police RVO including the time that any decision to remove or modify a condition was made and the rationale behind the decision.

Guidance notes / information for inclusion in the Occurrence Report are detailed in [Appendix 'J'](#).

6.22.3 Appeal administration - COPFS

Once COPFS have reviewed the IL Appeal Occurrence report they can either:

- Oppose the Appeal and defend it in court – within 7 days from appeal being lodged, or
- Advise the IO that they do not support the IL conditions as imposed and will not be contesting the IL Appeal

Where COPFS intimate that they do not support the IL conditions, the IO must immediately notify their RVO of the decision. This will allow the RVO to either review and amend the imposed conditions or, if necessary discuss the matter with the COPFS. This will be particularly relevant in serious crime investigations, and may require the RVO to request that the issues be reviewed by a senior representative from COPFS before the IL conditions are revoked.

For Information Only

If after further discussion has been concluded and COPFS maintain their decision, the Police will act as directed and make the necessary changes to the IL conditions, reporting these to the NOA without delay as per procedure.

6.22.4 Court Rulings on IL Conditions

Once the IL appeal has been heard by a sheriff, they may:

- Dismiss the appeal, or
- Uphold the appeal and remove all or amend any conditions

Where an IL appeal is upheld, and IL conditions are amended the court will advise the NOA and or their legal representative of any changes to the impose IL conditions.

6.22.5 Police Responsibilities

The existence of an IL Appeal does not prevent the normal progression of an investigation which may result in the appealed conditions being concluded prior to the appeal hearing and the condition no longer being relevant. If this occurs then the normal process for changes to IL conditions should be followed with additional notification sent using a force Memo to the relevant local COPFS department as the changes may remove the need to hold an appeal hearing.

Notification of changes to IL conditions will be sent to CHS by the court.

Changes to IL conditions made at an appeal will not be automatically sent to the IO/RVO therefore It is their responsibility to ensure that they obtain immediate notification of the outcome of an IL appeal hearing to ensure that changes to IL conditions are incorporated into their investigation and if necessary, appropriate communication is sent to victims and witnesses impacted by the changes.

Any changes must be accurately recorded within the crime enquiry updates and within [Form 048-005 – IL Application Form](#) - Part 3 – Additional IL Review Amendments by the RVO and IO as appropriate.

It is considered good practice for the RVO and or IO to check the NOA's CHS record to ensure that any changes to IL conditions as a result of an appeal are accurate.

6.23 Conclusion of IL Process

6.23.1 IL Part 5

It will be necessary to conclude the IL process either

- at the time of any subsequent arrest under the same circumstances

Police Scotland Investigative Liberation
Operation Guidance

For Information Only

- submission of a police report emanating from the circumstances that lead to the imposition of IL conditions
- at the conclusion of the 28 days period of the IL conditions has elapsed even though the investigation remains live

Where no arrest is made, CHS must be updated to reflect that the investigation has concluded and any live IL conditions must be removed.

In all circumstances, the IO will notify the RVO the reason for the removal of IL conditions, recording their rationale within the relevant crime report enquiry update field and thereafter the RVO will complete section 5 of the IL Application Form, returning this to the IO for lodging as case related document.

PSoS Operational Guidance Law Society Of Scotland Information Only