

# RESTRICTED

## Police Service of Scotland

Police Notebook – Form 099-001 (Content)

### **Criminal Justice (Scotland) Act 2016**

#### **Procedure Under Section 1 (Arrest) (\*)**

**(\*) (Arrests made under Section 41 of the Terrorism Act 2000 and Sections 6D or 7(5) of the Road Traffic Act 1988 are unaffected by the Criminal Justice (Scotland) Act 2016).**

To be used when a police officer has reasonable grounds for suspecting that the person has committed or is committing an offence. All officers have a requirement to justify their use of arrest powers ensuring the person is not kept in police custody unreasonably or unnecessarily. Officers need to consider alternatives to arrest and then ensure all use of powers are necessary and proportionate. Where the suspected offence is not punishable by imprisonment, the police officer should only arrest if satisfied it would not be in the interest of justice to delay the arrest.

Read the following statement:

- “I am arresting you under Section 1 of the Criminal Justice (Scotland) Act 2016
- for (general nature of offence).
- The reason for your arrest is that I suspect that you have committed an offence and I believe that keeping you in custody is necessary and proportionate for the purposes of bringing you before a court or otherwise dealing with you in accordance with the law.  
Do you understand?
- You are not obliged to say anything but anything you do say will be noted and may be used in evidence.  
Do you understand? (Note replies).
- I require you to give me your name, date of birth, place of birth, nationality and address.
- You have the right to have a solicitor informed of your arrest; and to have access to a solicitor. These rights will be explained to you further at a police station.”

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## **Criminal Justice (Scotland) Act 2016**

### **Record the Following in Notebook:**

- a) Time and place of Arrest.
- b) General nature of offence for which person is arrested.
- c) Reason for the Arrest.
- d) Time at which and by whom the person was advised of rights (See above).
- e) Name, Date of Birth, Place of Birth, Nationality and Address of Arrested Person.
- f) Any further reply by Arrested Person.
- g) Where transported following arrest by Police, time & place of departure and time & place of arrival.
- h) If released from custody before arrival at Police Station, time of release, details of liberating officer and release rationale.

### **Section 50 – Duty of Police**

An officer must take every precaution to ensure that a person is not unreasonably or unnecessarily held in police custody.

It is essential that this is given careful consideration on all occasions; but particularly when the suspect / accused is a child. Only those cases which may be the subject of a report to either the Procurator Fiscal or the Children's Reporter will require consideration of arrest on suspicion or as officially accused. If the matter can be dealt with by appropriate referral to local youth justice services or by police direct measures, then arrest will not be reasonable or necessary. For further guidance refer to the Offending by Children SOP.

### **Common Law Caution / Charge**

"I am going to charge you, but before I do so I must caution you that you do not need to say anything in answer to the charge but anything you do say will be noted and may be used in evidence. Do you understand?" (Await reply).  
"The charge against you is that you did \_\_\_\_ (specify wording of charge). Do you understand?" (Await reply). "Have you anything to say?" (Note reply).

## **Criminal Justice (Scotland) Act 2016**

### **Procedure under Section 7 – Arrest Authorisation**

Where an arrested person has not yet been cautioned and charged with an offence (i.e. they have the status of 'Not Officially Accused') authorisation to keep the person in custody must be sought as soon as reasonably practicable after the person arrives at the police station. Authorisation may only be given by a Sergeant or above who has not been previously involved in the investigation.

Where appropriate an arrested person should be cautioned and charged prior to, or on arrival at, a police station. This changes their status to 'Officially Accused' and removes the requirement for the formal authorisation process.

On arrival at the police station it is the Investigating Officer's responsibility to inform the Custody Sergeant / Officer at the station of the full circumstances surrounding the arrest. If the officers arriving at the station are escorting officers, they must be in possession of sufficient information to allow any Section 7 authorisation to properly take place.

If authorisation is refused, the person may continue to be held in police custody only if the person is charged with an offence.

### **Arrest Authorisation Criteria**

A person who has been Arrested as 'Not Officially Accused' must meet the test that:

- (a) There are reasonable grounds for suspecting that the person has committed an offence.

**and**

- (b) Keeping the person in custody is necessary and proportionate for the purposes of bringing the person before a court or otherwise dealing with the person in accordance with the law.

Consideration may be given to –

- (a) Whether the person's presence is reasonably required to enable the offence to be fully investigated.
- (b) Whether the person (if liberated) would be likely to interfere with witnesses or evidence, or otherwise obstruct the course of justice.
- (c) The nature and seriousness of the offence.

## **Criminal Justice (Scotland) Act 2016**

### **Hospital Procedure**

If an arrested person has been conveyed directly to hospital, officers must ensure the Custody Sergeant / Officer at the nearest custody suite has been informed of the arrest. Further guidance will then be provided by the Custody Sergeant / Officer.

If the person arrested is 'Not Officially Accused' (i.e. Suspect), Section 7 authorisation must be sought remotely as soon as reasonably practicable via the Custody Sergeant / Officer at the nearest custody suite.

If Section 7 authorisation is granted Officers at hospital must then inform the person:

- (a) of the reason they are being kept in police custody.
- (b) they have not been charged with an offence and can be held in police custody for a period of 12 hours without charge (time spent receiving medical treatment will not be included in this 12 hour period).

The 12 hour period being held in custody refers to the "Investigative Clock" which stops when a 'Not Officially Accused' (i.e. Suspect) person is at hospital. It only commences, or re-commences, when they have been presented at a police station.

In the exceptional circumstances that a person has to be interviewed at hospital the investigating officer must take account of the total interview time and inform the Custody Sergeant.

All arrested persons who attend hospital must be informed they have:-

- (a) the right to have intimation sent to a reasonably named adult.
- (b) the right to have intimation sent to a solicitor.

Officers must act upon any rights the person wishes to exercise and ensure custody staff are updated with the relevant details.

## **Criminal Justice (Scotland) Act 2016**

### **Custody Review Process**

A person who is arrested as 'Not Officially Accused' (i.e. a Suspect) may be held in police custody for 12 hours. A custody review will be conducted when the person has been in custody for a continuous period of 6 hours from the time of the Section 7 Authorisation.

It is imperative that all lines of enquiry are conducted timeously and the person is charged / released as soon as reasonably practicable.

Authorisation must be sought if officers require to extend the person's time in custody beyond the 12 hour limit. Extension will be considered for indictable offences only.

It is the Investigating Officer's responsibility to ensure that the Custody Sergeant / Officer is updated with all outstanding lines of enquiry, so any custody review can be completed effectively.

### **Statement to Arrested Person when Liberated**

The following two options are available for use dependent upon the unique circumstances of the investigation for which the Not Officially Accused (i.e. Suspect) had been arrested. It will be for the investigating officer to clearly identify to the Custody Sergeant / Officer releasing the suspect the most appropriate option which will then be read to the suspect prior to their release from custody.

The following statement should be read to a 'Not Officially Accused' (i.e. Suspect) person when being released from custody without charge:

"You are now being liberated from police custody. At this time there are no longer grounds for your continued arrest. Enquires into the offence for which you were arrested will continue and you should be aware that you can be arrested in the future if new evidence is found in relation to this offence or an offence arising from the same circumstances as this offence. There is no time limit to the period in which you can be arrested".

**OR**

"You are now being liberated from police custody. Police enquiries have now established that you are no longer a suspect in relation to the crime you were arrested for".

## **Criminal Justice (Scotland) Act 2016**

### **Procedure Under Section 4**

Where a person is arrested out with a police station and there are no longer reasonable grounds for suspecting that the person has committed the offence(s) the person must be released from police custody immediately.

The relevant incident, supervisor and the police officer's notebook must be fully updated with the circumstances surrounding the arrest and release of the person.

## **Criminal Procedure (Scotland) Act 1995**

### **Procedure Under Section 13**

To be used when a police officer has reasonable grounds for suspecting an offence is being / has been committed at any place i.e. where he / she has some evidence or information from a credible witness.

Police officer must comply with the following:

- (a) read statements to suspect or potential witness;
- (b) record all details in notebook as soon as possible;
- (c) no suspect to be taken to police station to carry out procedure unless absolutely necessary.

### **Statement Re Suspect**

"In terms of Section 13 of the Criminal Procedure (Scotland) Act 1995, I suspect you of committing / having committed an offence, namely \_\_\_\_\_ (state general nature of offence). I require you to give me your name, address, date of birth, place of birth and nationality. You are not obliged to say anything further by way of explanation but anything you do say will be recorded and may be given in evidence."

"I also require you to remain with me while I verify your name, address, date of birth, place of birth and nationality and note any explanation given by you. Failure, without reasonable excuse either to give your name, address, date of birth, place of birth and nationality or to remain with me when required to do so constitutes an offence for which you may be arrested under terms of Section 1 Criminal Justice (Scotland) Act 2016."

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### **Statement Re Potential Witness**

“In terms of Section 13 of the Criminal Procedure (Scotland) Act 1995, I suspect that an offence has been / is being committed, namely \_\_\_\_\_ (state general nature of offence) and I believe you have information relating to the offence. I require you to give me your name, address, date of birth, place of birth and nationality and failure to do so without reasonable excuse constitutes an offence for which you may be arrested under terms of Section 1 Criminal Justice (Scotland) Act 2016.”

### **Record the Following in Notebook:**

#### **Suspect**

- (1) Name, address, date of birth, place of birth and nationality.
- (2) Time, date and locus procedure carried out.
- (3) Suspected offences.
- (4) Time and by whom name and address verified. (Note: Verification must be obtained quickly).
- (5) Suspect's explanation, if any given.
- (6) Time of release / arrest.
- (7) Name, rank and number of persons present.

#### **Potential Witnesses**

- (1) Name, address, date of birth, place of birth and nationality.
- (2) Time, date and locus procedure carried out.
- (3) Suspected offence(s).
- (4) Name, rank and number of persons present.

**Note** – If either suspect or potential witness commits an offence under this procedure caution and charge and note additional particulars:

- (1) Full particulars of accused.
- (2) Time and place caution and charge(s) made.
- (3) Nature of charge(s).
- (4) Accused's reply if any.

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**Warning in Terms of Section 1 Road Traffic Offenders Act 1988**

“You will be reported for consideration of the question of a prosecution under one or other of Sections 2, 3, 22, 28, 29, 35 or 36 of the Road Traffic Act 1988 and Section 16, 17(4), 88(7) or 89 of the Road Traffic Regulation Act 1984.”

**Warning in Terms of Section 6 Road Traffic Act 1988**

“I have reasonable cause to suspect that you have (alcohol or a drug in your body) (committed a traffic offence whilst the vehicle was in motion) (been involved in an accident) and, in terms of Section 6 of the Road Traffic Act 1988, I require you to provide a specimen of breath for a breath test. I must warn you that failure to provide such a specimen without reasonable excuse, is an offence and may render you liable to prosecution. Do you agree to provide a specimen of breath for a breath test and, if not, what is your reason for refusing?”

**Section 172(2) Road Traffic Act 1988**

“I am duly authorised by the Chief Constable, Police Service of Scotland, in terms of Section 172(2) R.T.A. 1988 to require that you provide me with the name and address or identity of the driver of \_\_\_\_\_ Motor vehicle Reg. Mk \_\_\_\_\_ about (time) on (date) at (locus) the driver of which is alleged to have committed the offence of \_\_\_\_\_ and I must warn you that should you fail to provide that information, that you may be guilty of an offence.”



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**Pre Interview Review of Rights Aide Memoire**

To be read to suspect(s) immediately before interview(s) at a police station and prior to administering the common law caution.

**“Before beginning this interview, under Section 31 of the Criminal Justice (Scotland) Act 2016 I must remind you of certain information. Please listen carefully:”**

	(Read out on <b>all</b> occasions).
<b>1.</b>	<b>“You have been arrested / attended voluntarily on suspicion of (general nature of offence).”</b>
<b>2.</b>	<b>You are under no obligation to say anything other than to provide your name, date of birth, place of birth, nationality and address.”</b>
<b>“Do you understand?”</b>	Yes / No

**Intimation to Reasonably Named Person**

	(Read out only if right <b>not</b> already exercised).
<b>3.</b>	<b>“You have the right to have intimation of your arrest / voluntary attendance and the place where you are in custody sent to a person reasonably named by you.”</b>
<b>“Do you understand?”</b>	Yes / No

**Right of Access to Parent / Adult**

	(Read out <b>only</b> if aged 16 or 17 and not subject to supervision).
<b>4.</b>	<b>“You have the right of access to a parent or adult reasonably named by you while you are in police custody.”</b>
<b>“Do you understand?”</b>	Yes / No

**Intimation to a Solicitor**

	(Read out only if right <b>not</b> already exercised).
<b>5.</b>	<b>“You have the right to have intimation sent to a solicitor of (a) your arrest / voluntary attendance; (b) the place where you are in custody / have attended and (c) that the solicitor’s professional assistance is required by you.”</b>
<b>“Do you understand?”</b>	Yes / No

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**Private Consultation with a Solicitor**

	(Read out on <b>all</b> occasions).
<b>6.</b>	<b>“While you are in police custody you have the right to a private consultation with a solicitor at any time.”</b>
<b>“Do you understand?”</b>	Yes / No

**Solicitor Present During Interview**

	(Read out on <b>all</b> occasions).
<b>7.</b>	<b>“You have the right to have a solicitor present while being interviewed by police.”</b>
<b>“Do you understand?”</b>	Yes / No

**Review of Rights**

	(Read out on <b>all</b> occasions).
<b>8.</b>	<b>“Do you wish us to take any further action for you in respect of these rights before we commence Interview?”</b>
	Yes / No

Note any actions taken.

**Prior to Interview**

<b>Caution at Common Law</b>	
<b>“I am now going to ask you questions about (crime / offence).”</b>	
<b>“You are not obliged to answer any questions, but anything you do say may be noted, may be audio and visually recorded, and may be used as evidence.”</b>	
<b>“Do you understand that?”</b>	Yes / No