

Information sheet on the Criminal Justice (Scotland) Act 2016

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The Criminal Justice (Scotland) Act 2016 was given Royal Assent on the January 13, 2016. Part 1 of the Act commenced on January 25, 2018. This Act replaces all legislation regarding arrest for criminal offences. It repeals detention, provides a single power of arrest and enhances the rights of people in police custody to legal advice.

For the purpose of the Act, a younger child is anyone under age 16, or age 16 and 17 and subject to a Compulsory Supervision Order (CSO), and an older child is age 16-17 and not subject to a CSO. 'Child' below refers to all children under age 18.

Police processes

Section 51 of the Act requires the police to consider the wellbeing of a child as a primary consideration before deciding to arrest a child, hold a child in police custody, interview a child regarding an offence, or charge them with an offence.

If the police have reason to suspect a child has committed an offence, they can arrest them. The child, if asked, must give their name, address, date of birth, place of birth and nationality, and wait until this is checked by the police.

Police generally try to avoid bringing children to police stations, however if deemed necessary, a child can be asked to attend a police station on the following basis:

- Voluntarily
- Arrested officially accused (when there is sufficient evidence to charge the child)
- Arrested 'not officially accused' (when the child is not a suspect) to enable further inquiries, including interview. In such instances the child can be held in a police station for up to 12 hours. The child can be released during this time and subsequently re-arrested but generally only for a total period of 12 hours. The 12 hour clock starts and stops upon entering and leaving the police station. In exceptional circumstances the total time which a child can be held in police custody can be extended for a further 12 hours
- Section 2 of the Act allows the police to arrest the child more than once for the same offence within a total of 12 hours

Rights

Whilst in police custody all children have the right to a private consultation with a solicitor before and/or during questioning by the police and to have one other person informed that they are in police custody.

In the case of a younger child, the police will automatically inform the parent or guardian. For those aged under 18 but subject to a CSO, contact will be made with the local authority to help identify an appropriate person to inform. Parental access to a child may be restricted if the police deem this to be necessary for reasons including the investigation or prevention of crime, the apprehension of offenders, or for the wellbeing of the child. In the case of a younger child, the local authority may arrange for someone to visit them, although this contact may be restricted in exceptional cases.

If the child is under 16, a lawyer must be with them during the police interview, unless there are exceptional circumstances. An appropriate person should also be present. This will usually be the parent or guardian: if not available, the police will contact the local authority to provide such a responsible adult.

In the case of an older child, the police can request that an adult of the child's choosing (aged over 18) is informed of their entry to police custody. This adult may be able to visit them. Older children can waive access to a solicitor but only if the relevant person they identified agrees with their decision.

Release from police custody

If a child has been arrested 'not officially accused' they can be released from police custody:

- Without charge because they are no longer a suspect
- Because there are no longer grounds for their continued arrest but they are still a suspect, meaning they could be re-arrested should further evidence come to light
- On investigative liberation for further investigation into the alleged offence. The child may be released with conditions, for example not to interfere with witnesses or evidence, for up to 28 days. The police have the power to re-arrest the child during this time. If the child breaches the conditions of their investigative liberation they could be arrested and charged. An appeal may be made to the court to have these conditions reviewed

If a child has been arrested officially accused and charged, they may be:

- Released unconditionally. In this case a report may be submitted to the Crown Office Procurator Fiscal Service for consideration of prosecution, diverted to local Early and Effective Intervention processes. This is dependent on the age of the child and the nature of the offence
- Released on a written undertaking. This is an agreement, either by the child or their parent or guardian that they will attend at court at a specified time. It can also include other conditions (as per the [Criminal Procedure \(Scotland\) Act 1995](#)).
- In certain circumstances, be kept in police custody, or in some instances a place of safety, as detailed in section 43 of the Criminal Procedure (Scotland) Act 1995

The 2016 Act allows the police or procurator fiscal to make an application to the court to question a child after they have been charged with an offence. This will mainly be used when new or significant evidence comes to light after the initial charge has been made by the police. The decision will be based on:

- The seriousness of the crime
- The extent to which the child could have been questioned previously about the information sought, and
- Whether that new information could have previously been foreseen to be important to prove or disprove that they committed an offence

Age related rights

