

Detention

Where a police officer has reasonable grounds for suspecting that a person has committed or is committing an offence or crime (for the difference refer to *Sacro Briefing Paper no. 12 The Scottish Legal System*), and that offence or crime is punishable by imprisonment, they may require that person to accompany them to a police office to carry out investigations and decide whether criminal proceedings should be brought.

The person detained must be told of the nature of the police suspicion and the reason for their detention. The suspect may be asked questions by the police about the alleged offence but is under no obligation to answer other than to give their name and address.

They are entitled to have a solicitor or such other person as they choose informed of their detention but have no right to communicate directly with the chosen person and are not free to leave the police office for a period up to six hours.

The detainee has a right to know why they are in custody and whether they have been arrested or detained.

Detention must stop six hours after it began. The detainee cannot be detained in respect of the same grounds or circumstances but must either be released or arrested and charged.

Arrest

Police officers may arrest a person without a warrant, provided they consider the arrest is justifiable and in the interests of justice. Factors considered will be the seriousness of the alleged crime, the character of the accused, the likelihood of interference with witnesses or evidence by the accused, and the possibility of other offences being committed or of the person absconding. The police officers have to be satisfied that arrest is necessary for a good and valid reason e.g. the risk of further violence or of drunk driving.

An accused person, whether detained or arrested, may be searched and have their fingerprints taken.

It is not essential that a person be formally arrested for court proceedings to begin - an example is a speeding offence where the vehicle licence plate is caught on camera. The driver will be prosecuted in court without being cautioned, charged or formally arrested.

Proceedings

The Procurator Fiscal (local state prosecutor) has complete discretion as to the nature of the charge that will be prosecuted. The fiscal is not constrained by the terms of any charge that the police may have used in arresting a person. A person may have been cautioned and charged by the police with assault, which is a serious crime, but on review the procurator may reduce the charge to one of breach of the peace, a less serious crime. The Procurator Fiscal will always assess the evidence and relevant law and decide upon the exact nature of the charges.

Criminal proceedings are started by service of papers prepared by the Procurator Fiscal on the accused. These papers will detail the name of the accused, their date of birth, their address and the details of the alleged crime. The Procurator Fiscal will serve a complaint or indictment either by post or personally by way of police officer. With these documents will be an order (citation) to attend at a certain court at a certain date and time.

A detainee may be released from custody or may be detained to appear in Court from custody. If detained, they must appear not later than the first court sitting day after they have been taken into custody.

Bail

An accused person is innocent until proven guilty in Scots law. The question of bail is not dependent on the innocence or guilt of the person accused: innocence or guilt can only be established in the course of a trial. The police can release an accused person from custody either without an order to appear at a future court hearing or after they have given an undertaking to appear at a specific court on a specific date and time. If the accused person has appeared in court from police custody or been remanded in custody after a court appearance they can apply for bail or interim liberation. Interim liberation is not available if the charge is murder or treason. If bail or interim liberation is granted by the court, it will be on the basis that the accused person complies with certain conditions. Should they fail to do that they will have committed a further offence. There are four standard bail conditions, and the court may impose others. The standard conditions relate to:

- > appearance at every hearing;
- > not committing a further offence;
- > not interfering with witnesses and;
- > assisting the investigation.

Other conditions may take the form of ordering the accused not to do certain things e.g. to keep away from a certain person or place. If the accused is unwilling to accept these conditions then bail or interim liberation will not be granted.

Legislation: <https://tinyurl.com/bddtdd3t>

This is one in a series of briefing papers on Community Mediation for practising and trainee mediators.

Published by the Scottish Community Mediation Centre

Sacro, 17 Gayfield Square, Edinburgh EH1 3NX

tel: 0131 624 7263

email: info@scmc.org.uk

web: www.scmc.org.uk

sacro