

Consultation on regulations to modify Part 1 of the Criminal Justice (Scotland) Act 2016 to deal with arrests which do not relate to criminal offences and arrests under warrant

Consultation Summary Report

October 2017

Introduction

1. The Scottish Government consulted to seek feedback on how Part 1 of the Criminal Justice (Scotland) Act 2016 (the Act) should apply to arrest not relating to criminal offences, including certain warrant arrests. The feedback received during the consultation will be used to shape the final regulations under section 60 of the Act. A draft set of regulations was included in the consultation paper which enabled the reader to see what amendments were proposed and why they were seen as necessary.

2. The Criminal Justice (Scotland) Act 2016 contains procedures and protections which will apply to all arrests. While the majority of arrests in Scotland are of people suspected of a criminal offence, there are arrests for other reasons allowed in various statutes. For example an arrest for a breach of a protective court order or a witness arrested under warrant to ensure they attend court. For these arrests, not all the procedures and protections set out in the Act are appropriate. Section 60 of the Act allows Scottish Ministers to make regulations to modify or dis-apply the Act to arrests that do not relate to criminal arrests. These regulations will ensure that arrests which do not relate to criminal offences and certain warrant arrests can be catered for within the new arrest and custody procedures brought in by the Act.

3. Although the regulations are of a very technical nature a full public consultation was considered appropriate to ensure that proper consideration was given to views regarding the rights which people arrested in these circumstances should be given.

4. This report provides analysis of the issues raised by individuals and organisations through that consultation exercise. As there were only a small amount of responses received the analysis is a fairly high level summary but the responses themselves have been published alongside the report for people to view as they wish – where respondents have indicated they are content for this to happen which in this case is all of the respondents to the consultation.

Consultation Overview

5. The consultation was launched on 24 October 2016 and closed on 16 January 2017. The consultation paper was published on Citizen Space, the Scottish Government's online consultation website and also forwarded out to a number of stakeholders.

6. The consultation was based around four main questions which asked respondents to offer comments on:

- the need to modify Part 1 of the Act for breaches of protective interdict and other court orders and whether proposed amendments are appropriate;
- whether protections in the Act should apply to child suspects arrested on non-offending grounds;
- proposed modification to allow a person to be taken directly to a place other than a police station in accordance with other enactments; and

- any other modifications.

7. A total of eight written responses were received. One response was received from an individual who did not want their name to be published. Seven responses were received from organisations:

- The Scottish Council on Deafness
- Police Scotland
- Scottish Women’s Aid
- The Finance and Leasing Association
- The Law Society of Scotland
- The Glasgow Bar Association
- East Renfrewshire Health and Social Partnership

8. Delivery of Part 1 of the Act is being taken forward by individual criminal justice bodies with an oversight group meeting regularly and which is constituted of;

- Police Scotland
- Crown Office and Procurator Fiscal Service
- Scottish Legal Aid Board
- Scottish Government
- Scottish Courts and Tribunals Service

9. The draft regulations were circulated to the members of the group and discussed at a group meeting and the feedback gathered has been taken into account in the consultation analysis below.

10. In addition the regulations have been discussed with other external bodies including the Scottish Prison Service and the Faculty of Advocates who, although they did not submit formal responses to the consultation, indicated that they are content with their content.

Analysis of responses

- **The respondents to the consultation and implementation group members supported the need for regulations to deal with these types of arrest. Their specific comments are highlighted below. It should be noted not all the questions were answered by every respondent.**

11. Specific points raised include:

Consultation Questions	Responses
Q1. Do you agree that Part 1 of the Criminal Justice (Scotland) Act 2016 needs to be modified to deal with people arrested for breach of protective interdicts and other court orders?	Five responses were received to this question. All respondents who answered this question agreed that regulations would be required.

<p>Q2. If yes, do you believe that the modifications outlined above are appropriate?</p>	<p>Five responses were received to this question. Specific points were raised in relation to interdicts where a court has made a determination that the interdict was a “domestic abuse interdict”. It was rightly pointed out by one respondent that if a court has made that determination then breach of such an interdict would be a criminal offence and dealt with in the same manner as other criminal offences and be subject to all of the Part 1 CJ(S)A 2016 provisions. The Respondent was clear that in order to differentiate between these interdicts, there requires to be clear guidance issued to the police as to what powers of arrest should be used where the civil interdict has been “determined” and breach is a criminal offence, as opposed to what could be regarded as “non-offence based interdicts” .</p> <p>The respondent in this case was clear that regulations were required to deal with the non-offence based interdicts, noting that, further, regardless as to whether the civil interdict is either a “determined” or “non-determined” interdict, procedures will also require to be in place for the police to respond to ancillary criminal offences committed during the breach of interdict (for instance, assault, threatening and alarming behaviour, criminal damage, breach of the peace, etc). This aspect will be dealt with within standard operating procedures produced by Police Scotland.</p>
<p>Q3. Do you agree that the protections in sections 22, 23 and 24 of the 2016 Act should apply to a child arrested on non-offending grounds and held for court?</p>	<p>Four responses were received to this question. The respondents stated that where children were arrested for breach of a protective order or under a witness warrant then the application of section 22, 23 and 24 of the CJ(S)A 2016 would be appropriate. It was however highlighted by one of the respondents that arrests of children in these circumstances would be a rare occurrence.</p>

<p>Q4. Do you agree that section 4 of the Criminal Justice (Scotland) Act 2016 should be modified to allow a person to be taken directly to a place other than a police station if a warrant or other enactment provides for this to happen?</p>	<p>Five responses were received to this question. Three of the respondents indicated that they agreed that there should be flexibility provided in the Act to allow individuals arrested under warrant to be taken directly to a place indicated on the warrant as opposed to a police station.</p>
	<p>One of the respondents highlighted that there should be a time limit on the amount of time an individual could be held in a police station if they could not be taken directly to the place indicated on the warrant. It would be the intention that the arrested person would only be taken to the police station only where the premises the person should be taken as indicated on the warrant is closed. For example prisons are closed for new receptions at certain times in the evening through to the next morning. The person would be held in police custody until the premises was open again for new receptions.</p> <p>One respondent also indicated that persons arrested under a witness warrant and taken directly to court should have the ability to seek legal advice. It would be the intention that a person would be given information as described in section 3 of the Act including the right to have intimation to a solicitor. If that right was requested by the person then the police would inform them. It also has to be recognised that at this stage the person has not been arrested for a criminal offence and it would be for the court to decide if charges were to be brought against them.</p>
<p>General Comments</p>	<p>The Part 1 CJ(S)A Implementation Group discussed and agreed the draft regulations raising no issues or specific amendments.</p>
	<p>One respondent highlighted the need for appropriate information to be available in accessible formats to ensure that people</p>

	<p>can understand the new processes, including age appropriate information for children. This will be a matter for Police Scotland in implementing the new arrest and custody processes.</p> <p>The modifications in the proposed regulations and the new arrest and custody processes should be regularly reviewed. This will be taken forward by Police Scotland following implementation.</p> <p>That the distinction between criminal behaviour and non-criminal behaviour is appropriate.</p> <p>One response suggested that the Scottish Government extend powers of arrest for civil matters, however, this is not a matter for these regulations.</p>
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Next Steps

12. The views and information submitted as part of this consultation have been considered as part of the Scottish Government review and used to inform the final regulations and supporting documents which will be laid before the Scottish Parliament. The Scottish Government will pass on information about the specific points raised in this consultation to delivery partners to ensure that consideration is given more widely as part of implementation.

13. These regulations will inform the implementation of the new system of arrest and custody and arrest which will be operated by Police Scotland. Part 1 of the Act is due to come into effect in Summer 2017.

Annex A – Consultation Questions

1. Do you agree that Part 1 of the Criminal Justice (Scotland) Act 2016 needs to be modified to deal with people arrested for breach of protective interdicts and other court orders?

Comments:

2. If yes, do you believe that the modifications outlined above are appropriate?

Comments:

3. Do you agree that the protections in sections 22, 23 and 24 of the 2016 Act should apply to a child arrested on non-offending grounds and held for court?

Comments:

4. Do you agree that section 4 of the Criminal Justice (Scotland) Act 2016 should be modified to allow a person to be taken directly to a place other than a police station if a warrant or other enactment provides for this to happen?

Comments:

5. Are any other modifications required?

Comments:



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