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**Criminal Justice (Scotland) Act 2016
(Arrest Process)**

Standard Operating Procedure

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1. Purpose

- 1.1 This Standard Operating Procedure (SOP) supports the Police Service of Scotland referred to hereafter as Police Scotland policies for:
- Custody
 - Crime Investigation
- 1.2 This SOP provides instruction and guidance to all Police Officers/Members of Police Staff in relation to Criminal Justice processes and procedures in respect of arrest and custody as required by the Criminal Justice (Scotland) Act 2016.
- 1.3 This SOP should be read in conjunction with the Care and Welfare of Persons in Police Custody SOP to ensure the rights and needs of those in Police Custody are met within legislative and professional requirements.
- 1.4 Police Scotland's values of integrity, fairness and respect are reflected throughout the Code of Ethics. Police Scotland has formally adopted the National Decision Making Model as a framework for making decisions, which the Code of Ethics sits at the centre of. Consequently, it is clear that our values should be at the heart of every decision we make and be reflected in all the actions we take.
- 1.5 All key decisions and rationale made in respect of persons in police custody should be recorded on the National Custody System or paper log.
- 1.6 Whilst the vast majority of custody suites have the National Custody System, it is noted that certain areas continue to utilise paper records. For these suites and any other suite that is temporarily unable to utilise their computer records, any reference to the National Custody System also refers to paper records.
- 1.7 Any reference herein to a Health Care Professional (HCP) includes Doctors, Nurses and Paramedics.
- 1.8 This SOP has been written to take account of the Criminal Justice (Scotland) Act 2016 which came into effect at 0001hrs on Thursday 25th January 2018. This SOP also incorporates sections which were previously contained within the Care and Welfare of Persons in Police Custody SOP

2. Equality and Human Rights Considerations

- 2.1 It is essential that the application of Criminal Justice and Custody processes and procedures are implemented fairly and consistently across Police Scotland. Whilst security is of paramount importance, all custodies are to be treated with care and respect, ensuring that their fundamental human rights are maintained at all times.

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- 2.2 No custody should receive less favourable treatment on the grounds of any protected characteristic (defined by the Equality Act 2010 as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) or any other characteristic including relationship or socio-economic status.
- 2.3 Each person in custody must be considered as an individual with specific needs relevant to his or her particular circumstances, health and condition. Reasonable requests, which do not interfere with operational requirements or security, should only be refused when there are justifiable reasons. Any such reasons for refusing a request should be documented on the National Custody System. Cognisance should be paid to the Human Rights Act 1998 when dealing with any person in police custody.
- 2.4 Users of this SOP should be aware that the management of any personal information must be undertaken in compliance with the Data Protection Act 2018.

3. Definitions

- 3.1 **'The Act'** is the Criminal Justice (Scotland) Act 2016.
- 3.2 **Not Officially Accused** – A person who has been arrested under the powers provided by Section 1 of the Act but has not been cautioned and charged; or has not been reported to Crown Office & Procurator Fiscal Service (COPFS)
- 3.3 **Officially Accused** – A person who has been arrested under the powers provided by Section 1 of the Act and has subsequently been cautioned and charged, or where the prosecutor has instigated proceedings against the person.
- 3.4 **National Custody System (NCS)** – This is the Police Scotland National Prisoner Processing IT system.
- 3.5 **Custody Officer** – A Custody Suite can either be PCSO, Constable or Sergeant led. They are all referred to as Custody Officers with ranks only detailed within the SOP when legislation requires a specific rank.
- 3.6 **Force Custody Inspector (FCI)** – This inspector will oversee all care and welfare duties in relation to persons in custody and will act as the Single Point of Contact (SPOC) for this.
- 3.7 **Custody Review Inspector (CRI)** – This Inspector will carry out the 6/18 hour reviews, 12 hour extensions, apply curfew conditions to undertakings and authorise suspect interviews outwith the presence of a solicitor (exceptional circumstances). They will be the SPOC for any enquiries in relation to the Act.
- 3.8 **Health Care Professional (HCP)** - This includes Doctors, Nurses and Paramedics.

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- 3.9 **Child** – There are many different definitions of a child across legislation. In relation to this SOP, and the associated Offending by Children SOP, a child is defined as under 18 years of age. It is essential, however, to understand that there are different provisions and associated duties for different age groups of children. In broad terms they can be broken down into two categories as follows:
- **Younger children** - Those aged under 16 years of age and those under 18s who are subject to Compulsory Measures of Supervision under Section 199 of the Children's Hearing (Scotland) Act 2011 (hereafter referred to as under Supervision)
 - **Older children** - Those aged 16 or 17 years of age who are not subject to Compulsory Measures of Supervision (see definition below)
- 3.10 N.B. On NCS the following abbreviated identifiers are used on the 'Whiteboard' in relation to children:
- Child – which relates to under 16s
 - CSO – any child under 18 who is subject to a Compulsory Supervisions Order (see definition below)
 - NUS – 16 & 17 year olds who are not subject to a CSO
- 3.11 'Child' and 'CSO' are both 'Younger Children' under the above definition and 'NUS' are 'Older Children'. The additional category of CSO has been used to make it clear to Custody staff when a child is subject to Compulsory Measures of Supervision.
- 3.12 For older children, protection and support is now offered whilst still providing them with a greater degree of self-determination. The differing protections for children in each of the above categories is explained in full at Part 9 of this SOP.
- 3.13 **Compulsory Supervision Order (CSO)** - A compulsory supervision order is a legal document which means that the local authority is responsible for helping the child. It can contain measures that say where the child must live or other conditions which must be followed. The local authority is responsible for making sure that what is stated in the compulsory supervision order is happening, and that the child is getting the assistance that they need. A CSO is granted by a Children's Panel Hearing and can be applied to children under 18 years of age.
- 3.14 **Parent/Guardian/Carer** –
Parent – includes guardian and any person who is responsible for the care of the child in custody e.g. Babysitter, local authority care home staff etc. For a person under 18 years of age and subject to a CSO this includes a Local Authority representative e.g. a Social Worker.
- 3.15 **Adult** – this is any person aged 18 years or older.

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3.16 **Reasonable Named Person/Relevant Person/Appropriate Person** – All three of these terms are used to describe the person providing support to under 18s in relation to their rights and protections in the 2016 Act. They are all closely linked; however, each term is defined as follows:

- **Reasonably Named Person** – This is the person who is sent intimation of a child’s arrest and the place where the child is being held. The duties in respect of intimation and access for the two categories of children are explained under Part 9 of this SOP.
- **Relevant Person** – This is the adult who must be asked if they agree with an older child who has waived their right to a solicitor during interview. However, the definition of a “relevant person” is defined by reference to the person who has intimation and access rights to the child. The person to whom intimation of the child’s arrest is defined as a person “reasonably named” by them.
- **Appropriate Person** – This is the person whom the Local Authority identifies as the best person to support the child in custody as their guardian/carer. It will only be necessary to identify an Appropriate Person for a younger child in specific circumstances. This is explained in Part 9.

3.17 Meaning of Police Custody

3.17.1 A person is in police custody from the time the person is arrested by a constable until any one of the events mentioned below occurs:

- the person is released from custody or
- they are brought before a court from custody or
- the person is brought before a court under Section 28(2) or (3) of the Criminal Procedure (Scotland) Act 1995 or
- the Principal reporter makes a direction under Section 65(2) (b) of Children’s Hearings (Scotland) Act 2011 that the person continues to be kept in a place of safety.

3.18 Persons in Police Custody

3.18.1 The Act applies specific rights to persons in police custody with regard to access to a solicitor. These would be applied to any person who is:

- arrested under S1 Act, charged and Officially Accused
- arrested under S1 Act, and Not Officially Accused
- attending voluntarily at a Police Station or other premises or place for the purpose of being questioned by a constable on suspicion of having committed an offence
- arrested under warrant
- arrested under S35 Act (Post Charge Questioning)
- arrested under Drink/Drug driving offences
- arrested for a service offence

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- arrested under a non-offence based interdict

4. Initial Arrest and Considerations

4.1 Power of a Constable

4.1.1 The power of arrest under the Act is known as the Section 1 Power of Arrest.

4.1.2 A constable may arrest a person without a warrant if the constable has reasonable grounds for suspecting that the person has committed or is committing an offence.

4.1.3 Once a person has been arrested under Section 1 of the Act and cautioned and charged, they are known as an 'Officially Accused'. A person is also Officially Accused where the Prosecutor has instigated proceedings against the person.

4.1.4 When a person has been arrested under Section 1 of the Act and has not been cautioned and charged, they are known as a 'Not Officially Accused' (a suspect).

4.1.5 The power of arrest should be considered very carefully with regard to alternatives prior to making the arrest.

4.2 Information Given on Arrest

4.2.1 A constable who has arrested a person must inform them as soon as reasonably practical they are:

- under arrest
- the general nature of the offence for which they were arrested
- the reason for the arrest
- inform them they are not required to say anything other than provide (1) Name (2) Address (3) Date of birth (4) Place of Birth and (5) Nationality
- they have a right to have intimation sent to a solicitor and their right to access to a solicitor (both these rights will be granted when they are in police custody) (further details in Solicitor Access Guidance document)

4.2.2 All Police Scotland staff who speak to a solicitor should have the NCS reference number available for passing on.

4.3 Statement of Arrest

4.3.1 When a person has been arrested under the Act, the following statement, contained in the police issue notebook, should be read as soon as reasonably practical.

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- (1) "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 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?"
- (2) 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)
(Standard caution)
- (3) I do require you to give me your name, date of birth, place of birth, nationality and address.
- (4) 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 on arrival at the police station"

4.3.2 The following should be recorded in the arresting officer's notebook.

- time and place of arrest
- general nature of offence for which person is arrested
- reason for the arrest
- time at which and by whom the person was advised of their right to have intimation sent to a solicitor and access to a solicitor
- name, Date of Birth, Place of Birth, Nationality and Address of arrested person
- any further reply by arrested person
- where transported following arrest by Police, time & place of departure and time & place of arrival
- if released from custody before arrival at Police Station, details of liberating officer and release rationale

4.3.3 Persons arrested under the Terrorism Act 2000 are unaffected by the Act. Officers should continue to use paragraph (2) in the above 'Statement of Arrest' for most arrests unrelated to the Act. Arrests under Warrant, interdict and Sections 6(D) and 7(5) Road Traffic Act 1988 are also unchanged by the Act.

4.4 De-arrest

4.4.1 The Act provides for certain situations whereby a person must be released from police custody **prior** to their arrival at a police station. This effectively allows the police to 'de-arrest' that person where the reasonable grounds for suspicion no longer exist. The details of the person should be recorded in the arresting officer's notebook, a supervisor informed and if a STORM incident has already been created, details should also be recorded here.

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4.5 Initial Apprehension of Custody

- 4.5.1 For Care and Welfare considerations in relation to persons in custody, please refer to the Care and Welfare of Persons in Police Custody SOP.
- 4.5.2 All alternative methods of disposal should be considered prior to removing that person's liberty.
- 4.5.3 A person arrested must be promptly informed, in a manner he or she can understand, of the reason for the arrest. If a person is incapable of understanding the reason for their arrest or, is so violent, as to pose a risk to themselves, police staff or any other person, this may be delayed until he or she has sufficiently recovered, or an appropriate adult, interpreter or translator is available to achieve this aim. For further information consult the Appropriate Adult SOP, Interpreting and Translating Services SOP and The Right to Interpretation and Translation in Criminal proceedings (Scotland) regulations 2014.
- 4.5.4 All persons arrested under the Act are initially arrested as a Not Officially Accused person but by the time they reach a custody suite, many could have changed to an Officially Accused if they have been cautioned and charged. There are many circumstances when officers are not able to caution and charge someone immediately. Examples include but are not limited to:
- where they remain a suspect to allow enquiries to continue or
 - a person's level of intoxication through drink or drugs or
 - interpreter requirement or
 - level of violence or
 - mental health issues or
 - they are a younger child
- 4.5.5 Where applicable and appropriate, and where no further enquiries are required, arrested persons should be cautioned and charged as soon as reasonably practicable prior to arrival at a police station. Thereafter they will be processed as an Officially Accused which will allow the custody staff to provide the appropriate rights and ensure their status is clear to all staff.
- 4.5.6 If the arrested person is Not Officially Accused, the conveying officers should have sufficient information in their possession to allow a custody Sergeant to make a Section 7 Authorisation decision (which the Act requires to be completed to allow Not Officially Accused arrested persons to remain in police custody – See Section 5.3 for further information). They should also be in possession of the enquiry officers' details to allow this to be recorded on the NCS.
- 4.5.7 A Section 7 Authorisation can only be provided when there are reasonable grounds for suspecting that the person has committed an offence and keeping the person in custody is necessary and proportionate for the purposes of

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bringing the person before a court or otherwise dealing with the person in accordance with the law (full guidance contained in Section 5.3)

- 4.5.8 In the interests of officer safety and the safety of the custody, as well as for the preservation of evidence, custodies must be searched at the time of apprehension. Section 66 of the Act permits any person not in police custody being or to be conveyed by a constable lawfully or otherwise, can be searched under the authority of any enactment warrant or court order or if deemed necessary, to do with respect to the care and protection of the person. If this is not possible for any reason, care must be taken with the person until they can be properly searched.
- 4.5.9 Please refer to the Care and Welfare of Persons in Police Custody SOP for full guidance regarding searching persons in police custody.

5. Station Procedure Following Arrest

5.1 Information to be given at Police Station

5.1.1 Once it has been decided that a person is going to be processed at a custody suite, the person must be informed as soon as reasonably practical at the custody suite that they are under no obligation to say anything other than give their:

- name
- address
- date of birth
- place of birth
- nationality

5.1.2 They must also be informed of their right to have intimation sent and access to certain other persons, solicitor intimation and solicitor consultation (Solicitor Access Guidance Document)

5.2 Test for Keeping a Person in Police Custody – Section 14 Test

5.2.1 The following test must be satisfied when deciding whether to give a Section 7 Authorisation, authorise a 6/18 hour custody review or authorise a 12 hour investigative extension:

- there are reasonable grounds for suspecting that the person has committed an offence, **and**
- 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.

5.2.2 **(The PIN test)** in considering what is 'Necessary and proportionate' for the above purpose, regard may be had to:

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- (a) Whether the person's **PRESENCE** is reasonably required to enable the offence to be investigated fully
- (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.

5.2.3 Section 50 of the Act provides '**A constable must take every precaution to ensure that a person is not unreasonably or unnecessarily held in police custody**'

5.2.4 **Compliance with Section 50 will be the responsibility of all officers involved from the arresting and enquiry officers to the custody officer.**

5.2.5 The above test is vital for all persons brought into custody. It should be noted however that any decisions made in relation to children and in particular younger children will be scrutinised and officers should be content with their decision making process in this regard. Please refer to the Offending by Children SOP for further guidance.

5.3 Authorisation for Keeping in Custody – Section 7 of the Act

5.3.1 If there is insufficient evidence to caution and charge or the officers are not in a position to caution and charge prior to an arrested person being processed, then the arrested person **MUST** be processed as a Not Officially Accused (a suspect) and a Section 7 Authorisation must take place as soon as reasonably practical.

5.3.2 A Section 7 Authorisation is only required for an arrested person who is/remains Not Officially Accused. The Authorisation is required whether the Not Officially Accused is at a custody suite or has been taken direct to hospital and should be sought as soon as reasonably practical on arrival by the arresting officers in either situation. Arresting officers are encouraged to seek early 'provisional' Authorisation prior to any lengthy journey to a custody suite with a Not Officially Accused person. The details of any Authorisation should be recorded on NCS even if the person is at hospital.

5.3.3 On arrival at a Custody Suite (or hospital), the arresting officer will speak to the custody Sergeant prior to presenting the Not Officially Accused person at the charge bar in order that the custody Sergeant can fully understand their current status, determine the best path for the person and make a decision on how best to deal with them. An alternative to removing a person's liberty may be available once discussion has taken place between arresting officers and custody Sergeant. If the arresting officers are at hospital, this discussion should be by telephone or Airwave terminal.

5.3.4 Section 7 Authorisation can only be given by a Sergeant or above with the appropriate training (see training section) who has not been involved with the investigation. Strict observation is required to ensure compliance.

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- 5.3.5 **Involved in the investigation** could mean anything from allocating the crime report or any investigative function. This does not include any previous custody function with that person when they appeared in custody earlier for the same crime. When a Not Officially Accused person is presented, questions must be asked to ascertain if the Sergeant has been involved in the investigation. A custody Sergeant is not deemed to be involved in an investigation if they have previously given a Section 7 Authorisation as this is not an investigative function. Officers presenting a Not Officially Accused person at a custody suite should have a crime report in their possession to present to the Sergeant if one has been raised and this is a subsequent arrest.
- 5.3.6 If the Sergeant at the processing custody suite has been involved in the investigation, the conveying officer must contact a custody Sergeant at the next nearest custody suite to seek Section 7 Authorisation as soon as reasonably practical. Several Sergeants may have to be contacted prior to a suitable person being traced. If problematic, as a last resort, the CRI can be contacted for advice. The Not Officially Accused person can still be processed at their nearest custody by the sergeant involved in the investigation with the Authorisation being done by a remote sergeant not involved in the investigation.
- 5.3.7 If the custody suite is Constable led, a custody Sergeant can provide remote Section 7 Authorisation by telephone or use of Airwave terminal. The authorising Sergeant's details, rationale and decision must be updated onto the NCS. These details can be entered by anyone with access to the system and do not have to be the authorising Sergeant themselves.
- 5.3.8 Authorisation can only be given if the Sergeant is satisfied the test for keeping a person in police custody is met, (see section Test for Keeping a Person in Police Custody – Section 14) and in the case of the investigation is being conducted diligently and expeditiously.
- 5.3.9 If the custody requires an appropriate adult then this should be arranged. See the Appropriate Adult SOP for further information.
- 5.3.10 After Section 7 Authorisation has been granted, officers have an initial 6 hours to carry out their investigation without undue delay, prior to the first review by a CRI. Any delay into the investigation by the enquiry officers must be fully documented and justified. Custody staff need to engage with enquiry officers regarding their investigative intentions and progress of the enquiry.
- 5.3.11 The custody officer or supervisor of the enquiry officer should take an active interest in the enquiry to ensure investigation without undue delay is achieved where at all possible. Section 50 of the Act, (as referred to at paragraph 5.2.3) should always be borne in mind.
- 5.3.12 A Section 7 authorising officer should not be named as a witness in any SPR2. They should be named as the Section 7 authorising officer in the description of events but not named in the witness list.

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- 5.3.13 It is important to remember that the role of a custody officer is to initially ensure that arrested persons brought to a police station **require** to be in police custody. The circumstances surrounding **all** persons brought into police custody and not just Not Officially Accused should be reviewed by a Custody officer to ensure depriving them of their liberty is the correct course of action.
- 5.3.14 Enquiry officers should record in the police issue notebook the unique custody reference number from the NCS for each arrest of a Not Officially Accused person as well as the Section 7 Authorisation time. These details should also be recorded on the Crime Report.

5.4 Information to be given on Authorisation

5.4.1 When a Section 7 Authorisation has been granted, the person must be informed:

- the Authorisation has been given and
- the grounds on which the Authorisation was given and
- the 12 hour limit of detention and the fact the person may be kept in custody for a further 12 hours and
- the right to have intimation to a solicitor

5.4.2 This will be recorded on NCS.

5.5 Section 7 Authorisation Refused

5.5.1 If the Section 7 Authorisation is refused for any reason, the person can only continue to be held in police custody if they are cautioned and charged with an offence or they are detained for breach of bail conditions (Section 28(1A) Criminal Procedure (Scotland) Act 1995).

5.5.2 Police have a duty to ensure that those who are being released from custody are fit, able and prepared to look after themselves and that any identified risks are managed in particular where there is a risk of self-harm. This involves taking all reasonable steps that a person being released is not a danger to themselves or others. A person being released as a result of a refused Section 7 Authorisation should undergo the pre-release risk assessment process. For further details please consult the Care and Welfare of Persons in Police Custody SOP.

5.6 Custody Clock & Investigative Clock

5.6.1 There are two clocks that commence at the point of a Section 7 Authorisation when a Not Officially Accused person is brought into police custody.

5.6.2 The first clock is a custody clock which will not be stopped for any reason (unless a Not Officially Accused moves to being an Officially Accused or is released) until 6 hours, when a custody review will be carried out by a CRI (see Section 5.8 for further information). After the 6 hour custody review has been carried out, the custody clock will stop.

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- 5.6.3 The second clock is an investigative clock that will stop when a Not Officially Accused is either:
- cautioned and charged or
 - taken to hospital or
 - they are released from police custody
- 5.6.4 The investigative clock will remain stopped for the duration of their stay at hospital unless they are interviewed on the way to, whilst at or when returning from hospital.
- 5.6.5 When a person has returned from hospital, the clock will commence at the time they arrive back at the custody suite. If there is a wait between arrival time and the time they are presented at the charge bar, then the 12 hour clock should be adjusted to take into account their arrival time. The clock will initially run for up to 12 hours and if an extension is granted, it can run for a further 12 hours. The extension will only be granted for indictable cases and will only be in **exceptional circumstances**. Any extension will be subject to heavy scrutiny if a case proceeds to court with the authorising officer having to justify their decision. (See section 5.9 for further information)

5.7 Reviews / Extension Summary

- 5.7.1 The NCS has a Police Inspector (PI) Review whiteboard accessible to CRIs and custody officers which will display when 6 hour reviews and 12 hour extensions are required. The 18 hour review will display once a 12 hour extension has been completed on NCS for any person. Any Not Officially Accused person who appears on this whiteboard and is at hospital (their investigative clock has stopped) will be clearly identified on the whiteboard.
- 5.7.2 **Section 7 Act Authorisation** - Carried out to authorise the arrest of a Not Officially Accused.
- 5.7.3 **Custody Review 6 hours** - Carried out after a continuous period of 6 hours in custody after Section 7 Authorisation regardless if person is at hospital or police station - Completed by CRI.
- 5.7.4 **Investigative extension 12 hours** - Carried out at a cumulative 12 hours after Section 7 Authorisation. (Combination of all separate arrests as Not Officially Accused for that particular set of circumstances – clock stops if Not Officially Accused attends hospital) - Completed by CRI.
- 5.7.5 **6 hours after 12 hour extension has been authorised** - There will be another investigative review at approximately 18 hours (If the 12 hour extension was authorised at 11.5 hours, the next review will be at 17.5 hours) – clock stops if Not Officially Accused attends hospital - Completed by CRI.
- 5.7.6 There will be no more timed custody reviews or extensions. At the end of the second period of 12 hours, the Not Officially Accused person should either be

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cautioned and charged or released. Ongoing reviews of all persons in police custody will be routinely carried out by custody officers at shift handover and by FCIs and CRIs.

5.8 Custody Review 6 Hours – Custody Clock

5.8.1 A key safeguard of the Act is when a Not Officially Accused person has been held without charge in police custody for a continuous period of 6 hours (including time spent at hospital) following a Section 7 Authorisation, their detention beyond 6 hours is required to be authorised through a custody review by an inspector or above who is not involved in the investigation (Chief Inspector or above for under 18s). This review will be completed by the CRI who will speak to the enquiry officer and custody officer. The purpose of the review is to:

- ensure the Section 14 test is still met, and
- ensure Section 50 is being complied with (not unreasonably or unnecessarily held in police custody) and
- demonstrate that the investigation is being conducted diligently and expeditiously and
- confirm the circumstances of the investigation and
- confirm what progress the enquiry has made and
- confirm what lines of enquiry are still outstanding

5.8.2 Section 50 of the Act indicates that ‘A constable must take every precaution to ensure that a person is not unreasonably or unnecessarily held in police custody’ If officers have a Not Officially Accused person in custody, the relevant enquiries should be their only focus until the person is either cautioned and charged or released from police custody. Best efforts should be made not to attend any other calls, not to take a refreshment break for longer than necessary or carry out work unrelated to that individuals continued detention.

5.8.3 Investigating officers should ensure custody staff are regularly updated regarding their intentions and investigative options, particularly where any delays or significant changes in circumstance are experienced. The enquiry officer should contact the custody sergeant directly 4 hours after the initial Section 7 Authorisation **only if** there is a likelihood a Not Officially Accused person is to be kept in custody over 6 hours. This can be gauged firstly through a conversation between the enquiry officer and the custody officer who will act as the gatekeeper to the CRI. The on duty CRI will obtain details from the custody officer and will then liaise with the enquiry officer if necessary to ascertain details regarding the ongoing investigation to assist making a decision about the 6 hour review. The enquiry officer’s ISSI number should be on the NCS record under Custody Officer Notes. If the enquiry officer has any doubt, they should speak with the custody officer at the 4 hour mark to discuss the ongoing investigation.

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5.8.4 When the CRI is satisfied that:

- the Section 14 test to keep a person in police custody has been met, and
- the investigation is progressing and
- the person in custody is not being detained unnecessarily

Authorisation will be given to detain the Not Officially Accused person beyond the 6 hours. This will be recorded by the CRI directly onto the NCS. The custody officer will update the enquiry officer and the Not Officially Accused person.

5.8.5 If the CRI concludes that the test to keep a person in police custody is no longer met, the arrested person can only remain in custody if they are charged with the offence detained under bail offences or detained under other search legislation.

5.8.6 The 6 hour custody review will be completed even if the Not Officially Accused person has spent all of this time at hospital as it must take place 6 hours after the Section 7 Authorisation has been granted. If the Not Officially Accused person is at hospital, enquiry must still take place as they are still in police custody although temporarily under the care of the NHS. Local policing will need to ensure there are officers designated to carry out enquiry over and above any officers required to carry out observation at hospital.

5.9 Investigative Extension 12 Hours – Investigative Clock

5.9.1 A person who has been subject to a Section 7 Authorisation can, generally, be held for a cumulative period of 12 hours from the time of Authorisation as a Not Officially Accused (not including time spent at hospital) provided their 6 hour review was authorised. The 12 hours will include the cumulative time of previous periods spent in custody as a Not Officially Accused for the same offence or an offence arising from the same circumstances. The 12 hour Custody Extension will take place 12 hours after the Section 7 Authorisation, unless the Not Officially Accused person is at hospital whereupon the 12 hour clock stops.

5.9.2 To allow for a 12 hour extension, the CRI must ensure that the Section 14 test and the Section 50 obligation are still satisfied, the investigation is being conducted diligently and expeditiously and the crime is indictable.

5.9.3 If the Not Officially Accused person is 18 years or older, the extension authorising officer will be the CRI and if the person is believed to be under 18 years of age, the extension authorising officer needs to be a Chief Inspector or above. The CRI/CI should not have been involved in the investigation with which the person is in police custody.

5.9.4 The CRI/CI must clarify if the Not Officially Accused wishes to make written/verbal representation, or for their solicitor to do so on their behalf, in relation to their continued detention beyond 12 hours. This would be done in liaison with the Custody officer who will speak directly with the Not Officially

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Accused and report back to the CRI/CI. The written/verbal representation will be recorded by the Custody officer on NCS in 'officer notes' field.

- 5.9.5 The investigating officer must provide the CRI/CI with sufficient information ahead of the end of the initial 12 hour investigatory period to enable them to fully consider whether or not to authorise the extension.
- 5.9.6 Taking everything into account, the CRI/CI will then decide if the Not Officially Accused persons arrest is to be extended beyond the 12 hour period. If the extension is not authorised, the rationale behind this decision should be recorded and the Not Officially Accused person released following the pre-release risk assessment process. For further details please consult the Care and welfare of persons in police custody SOP.
- 5.9.7 If extension is granted beyond 12 hours, the Not Officially Accused should be informed verbally by the Custody officer that a further 12 hour extension has been authorised, the grounds for granting it and of their right to have a solicitor and Reasonably Named Person informed. If granted, a person could be kept in custody for a maximum of 24 hours before charge.
- 5.9.8 A CRI/CI should not be named as a witness in any police case reporting the person who has been cautioned and charged. They should just be referred to as the CRI/CI in the description of events in the SPR2.

5.10 18 Hour Investigative Review

- 5.10.1 There will be another investigative review at approximately 18 hours (If the 12 hour extension was authorised at 11.5 hours, the next review will be at 17.5 hours) completed by CRI.

5.11 24 Hour Investigative Clock Ends

- 5.11.1 In some cases it may be necessary to keep a Not Officially Accused for a period up to 24 hours without charge.
- 5.11.2 Once the investigative clock reaches 24 hours, the Not Officially Accused must either be cautioned and charged or released from police custody without charge. The investigative clock will stop at this point.

5.12 Further Arrests – Previously Liberated

- 5.12.1 A person may be arrested under Section 1 powers more than once in respect of the same offence. If there is not enough evidence to caution and charge a Not Officially Accused person, they can be released either with no conditions or released on Investigative Liberation (see Crime Investigation SOP). Once released, a Not Officially Accused person can be re-arrested if additional further evidence becomes available and/or further questioning is required. The total time spent in custody for that particular set of circumstances cannot exceed 12 hours. The Section 14 test to keep a person in police custody must be passed each time someone is re-arrested. Arresting officers will inform the custody officers of the details of any previous arrests as part of the Section 7

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Authorisation process by informing them of the NCS reference number and having possession of the crime report.

- 5.12.2 When a person is the subject of arrest more than once in respect of the same offence, where possible, it should be the same solicitor or Firm of solicitors that represents them in any subsequent interview. Where the specific solicitor or firm is not available, that firm can choose to nominate another solicitor to represent their client. It is the responsibility of the arresting/interviewing officers to consider planning where appropriate, any further arrest in advance to ensure that a solicitor is available. If the further arrest is unplanned, then contact must be made with the same Firm of solicitors and arrangements made as appropriately as possible.
- 5.12.3 Once the total cumulative time spent in custody for that crime reaches 12 hours, if required, an extension must be sought from a CRI ensuring the test to keep the person in police custody is met (see paragraph 5.9), the offence with which the person is in police custody is indictable and the investigation is being conducted diligently and expeditiously. If an extension to the 12 hours is granted, the 12 hour extension will cease once they are released or cautioned and charged within that second period of 12 hours. **They cannot be re-arrested as a NOA again once released within the second 12 hour period.** If they require to be re-arrested again in relation to that crime, they must be cautioned and charged.

5.13 Sequential Arrest

- 5.13.1 For further information please refer to the Crime Investigation SOP.

5.14 Voluntary Attendance

- 5.14.1 All Voluntary Attendees must be fully recorded on the NCS when they are taken to a police station with a custody suite. This notification is the primary responsibility of the escorting officers.
- 5.14.2 The Voluntary Attendance (VA) Form (Force Form 051-031) will be printed off NCS and should be signed and lodged for any future court hearing. Refusal to initially sign the relevant voluntary attendance form will result in the person being required to leave the police station and the voluntary attendance will cease.
- 5.14.3 PIRoS (see the Solicitor Access Guidance Document for details) should be completed for every voluntary attendee who is not a witness and is going to be interviewed as a suspect.
- 5.14.4 If the person is a younger child, the signing should be by a parent or guardian with the younger child also being given the opportunity to sign the VA form. If the younger child refuses to sign the VA, it will be a subjective decision by the custody supervisor about whether they accept the VA based on the known impact factors and circumstances under which the child and their parent/guardian have attended voluntarily.

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5.14.5 If the person is an older child, they will sign their own VA with no involvement of a parent or carer.

5.15 Detention Periods – Not Effecting Investigative/Custody Clock

5.15.1 If a person has been detained under Section 23 Misuse of Drugs Act 1971 for a drugs search or a search under other legislation, the period of time spent under detention will not be taken into account in the investigative or custody clock. If a person is arrested after a Section 23 search has been carried out, the clock will commence at zero hours at the time of granting the Section 7 Authorisation. Enquiry officers will need to be aware of the requirement to justify any period where a person has been detained and to consider the ability to move to arrest when practicable.

6. Rights of Persons in Custody

6.1 Letter of Rights

6.1.1 A copy of a 'Letter of Rights' should be provided to every arrested person in a language of their understanding unless there is a particular reason for not doing so. This will be recorded on NCS by the processing custody officer. Any failure or inability to provide the Letter of Rights at the time of processing due to a person's demeanour or conduct should be recorded on NCS. The letter must be given to the prisoner at the earliest opportunity and in any case before any other process is carried out. If the arrested person is a child or there is a reasonable belief that they may not understand the 'Letter of Rights' due to their mental capacity, they can be given the easy read version. (Please refer to Mental Health and Place of Safety SOP)

6.2 Intimation to Be Given If Sexual Offence

6.2.1 If a person has been arrested on a warrant or charged with a sexual offence to which Section 288C of the Criminal Procedure (Scotland) Act 1995 applies, they must be informed as soon as reasonably practicable that (a) any court proceedings in relation to the case may only be conducted by a lawyer, (b) it is in their interest to get the professional assistance of a lawyer and (c) if they do not engage a solicitor for the purposes of the conduct of their case or a hearing, the court will do so. This is built into NCS.

7. Police Interview

7.1 Police Interview Rights of Suspect Form (PIRoS)

7.1.1 Please refer to the Solicitor Access Guidance Document for guidance.

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8. Disposal Options

8.1 Verification of Particulars

8.1.1 No arrested person is to be liberated until their name, address and date of birth are verified to the satisfaction of the custody supervisor.

8.2 Lord Advocate's Guidelines to Chief Constables

8.2.1 The guidelines issued by the Lord Advocate must be consulted in respect of liberating persons either on undertaking or when detaining a custody for court on the next lawful day. See Lord Advocate Guidelines – Liberation by the Police for further information.

8.2.2 For a quick guide, please refer to Appendix 'F' Custody Processes and Disposals.

8.3 Liberation by the Police

8.3.1 Whilst taking into account operational requests, the custody supervisor is responsible for all disposal decisions.

8.3.2 It is for the police to justify keeping a person in custody and denying their liberation. Officers need to satisfy the conditions laid out in the Section 14 test with presumption of liberty being a principal consideration.

8.3.3 The Act and Lord Advocate's Guidelines allow the police to release on Undertaking, persons arrested on warrant. If a person in custody has been arrested on a warrant, a custody Sergeant may;

- release them on an Undertaking or
- refuse to release them.

8.3.4 However, it should be noted that the position is different for post-conviction warrants due to some legislative ambiguity. Police Scotland will take the operational decision to consider release on Undertaking for post-conviction warrants in respect of the following limited circumstances:

- arrested person declared not fit to be detained by a Doctor.
- arrested person detained in hospital for a prolonged period and where the continued arrest and allocation of police resources is not reasonable.
- arrested person has welfare issues that are significant enough for the police to consider release on Undertaking as proportionate.

8.3.5 In all such cases SCTS will be informed of the circumstances and the Undertaking conditions, in advance where possible. Furthermore, in all post-conviction warrant cases, the release on Undertaking **cannot** involve the inclusion of 'Further Conditions' in order to prevent any appeals and the potential involvement of COPFS (which is inappropriate for post-conviction matters).

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- 8.3.6 In respect of arrests related to **pre-conviction warrants** (including witness warrants) the Act and the Lord Advocate's Guidelines **do allow** release on Undertaking to be considered where appropriate with 'Conditions' and 'Further Conditions' available to be applied. It is clear that where a person has been trying to avoid execution of the warrant then they should normally be held in custody to appear at court.
- 8.3.7 Where the person has not been evading capture, is assessed as being low risk to any victims or witnesses, and compliance with the Undertaking is assessed as high, custody supervisors should apply their judgement in light of all the circumstances and to consider liberating such persons on Undertaking. In line with current processes, consultation with COPFS may be appropriate as part of the decision making process, whilst recognising that such a liberation is an operational police responsibility and cannot be directed by COPFS staff.
- 8.3.8 Where there are bail conditions relating to the same case as the warrant which they were arrested on, then it should be noted that these bail conditions are no longer valid after arrest and the setting of Undertaking conditions on any such liberation would require to be considered.
- 8.3.9 If consideration is being given to releasing a warrant on an Undertaking, these circumstances **MUST** be approved by the FCI and fully recorded on the NCS.
- 8.3.10 If an Officially Accused is in custody, a custody officer may:
- liberate them on a written undertaking to appear at a specified court on a specified day (Must be custody Sergeant)
 - release the person from custody without such an undertaking (report case, Formal Adult Warning, Recorded Police Warning)
 - refuse to release the person from custody. (custody case)
- 8.3.11 Full rationale for each decision should be recorded on the NCS.
- 8.3.12 Where the custody supervisor decides that the person is to remain in custody, they must inform the person of the reasons for doing so and this must be recorded in the NCS. In making such a decision to detain a custody until appearance at court, reference should be made to the Lord Advocate Guidelines – Liberation by the Police and Police Scotland and Crown Office and Procurator Fiscal Service in Partnership - Challenging Domestic Abuse.
- 8.3.13 In consultation with the reporting officer, the custody officer may agree to dispose of an offender by way of a fixed penalty notice, but only if this is accepted by the offender. Refer to the Antisocial Behaviour Fixed Penalty Notices SOP.
- 8.3.14 If consideration is given to a Recorded Police Warning refer to the Recorded Police Warnings SOP for further information

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8.3.15 If a Not Officially Accused is being released from police custody, a custody officer may

- release them without charge as grounds no longer exist or
- release them without charge as the enquiry continues or
- release them on Investigative Liberation with conditions.

8.3.16 One of the following two options should be read from NCS to the Not Officially Accused person prior to release. It is for the investigating officer to clearly identify to the custody officer releasing the Not Officially Accused person the most appropriate option, depending on the particular circumstances which will be read to them prior to their release from custody.

Options:

1. 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

2. 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.

8.3.17 In all investigations where a Not Officially Accused person is released under option one, the lead investigator must, where no charges are libelled at this time, and prior to the closure of that investigation make all reasonable efforts to speak to the suspect and inform them that the investigation remains live, and in the future, if new evidence is identified, they may be subject to further arrest. This contact should be recorded within the enquiry update of the crime report.

8.3.18 A person in custody for a domestic related crime can be considered for release taking into account the gravity of the crime, the threat to the victim and any risk assessment which may be required (Please refer to Police Scotland and Crown Office and Procurator Fiscal Service In Partnership - Challenging Domestic Abuse)

8.3.19 If the Not Officially Accused person is being released into the care of the NHS, the officers at hospital will read one of the two options to them, in consultation with the custody officer.

8.3.20 If a person is being released from police custody, a pre-release risk assessment (PRRA) should be considered. If further action is required after the PRRA and the person is required to be kept in police custody to enable a health assessment, this will impact on the 12 hour investigative clock which

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will not stop until they are either released from custody, cautioned and charged or they attend hospital.

8.4 Release on Undertaking

8.4.1 The Act gives police the power to release an accused on a written undertaking to appear at a specified court on a specified date within 28 days of the date of their liberation. Where an Officially Accused person is released on Undertaking the linked SPR must be submitted to COPFS urgently, within custody case reporting timescales if possible.

8.4.2 When an Officially Accused person is released on an Undertaking, they are required to sign three copies of an Undertaking Form. They must sign each form a minimum of twice, once to accept the Undertaking and once to acknowledge the receipt of a copy of the form. If they do not wish a private consultation with a solicitor prior to accepting the Undertaking, they need to sign each form a third time. A liberating officer and witness must also sign each form.

8.4.3 The conditions which may be imposed are:

(a) that the person does not:

- commit an offence
- interfere with witnesses or evidence, or otherwise obstruct the course of justice
- behave in a manner which causes or is likely to cause, alarm or distress to witnesses

(b) Any further condition that a constable considers necessary and proportionate for the purpose of ensuring that any conditions imposed under paragraph (a) are observed.

8.4.4 Liberating officers will need to consider if all conditions apply. Any condition that is applied needs to be justified by the officer and all conditions need to be necessary and proportionate.

8.4.5 There must be one of the conditions present at 8.4.3 before further conditions can be applied to a release on Undertaking.

8.4.6 Of the three copies of the Undertaking form, one copy is forwarded to the COPFS, one copy should be handed to the accused and one is to be retained by the police.

8.4.7 Sergeants/Inspectors are encouraged to make full use of 'further conditions' when authorising undertakings as per the Lord Advocate Guidelines – Liberation by the Police.

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- 8.4.8 Further conditions may be imposed on an individual prior to their release on the undertaking and can require the person to be:
- in a specified place at a specified time and
 - to remain there for a specified period.
- 8.4.9 This is effectively a curfew and **MUST** be imposed by an officer the minimum rank of an Inspector. This role will be carried out by the CRI. Full rationale must be recorded on NCS with a very high test being set when releasing someone on conditions of this nature.
- 8.4.10 When considering if curfew type conditions are applicable, the nature of the offence, the record of the accused and any other factors of which we are aware should be taken into account. Conditions of this nature are appropriate where there is a course of action and a real risk of reoffending given that course of conduct and the overall record of the person. A curfew type condition is very restrictive and is reluctantly granted by the court. An 'attend at the door' type condition should be considered otherwise a curfew will prove difficult to enforce. COPFS will appear at any hearing in a challenge against a condition.
- 8.4.11 All other further conditions which are not a curfew **MUST** be imposed by an officer the minimum rank of a Sergeant. Examples could be conditions restricting access to a certain pub or shop or restricting access to a public building. It will very much be dependent on the particular circumstances of each case and will require to have full rationale recorded on NCS. These can include:
- **not** being in a specified place, or category of place, at a specified time and
 - to remain outwith that place or any place falling within that category for a specified period.
- 8.4.12 All Sergeants and Inspectors must take cognisance of an individual's human rights when imposing further conditions. Any condition imposed must be necessary, proportionate and justifiable.
- 8.4.13 A person will only be released on an Undertaking if they agree to all the conditions and sign the Undertaking Form. They will be afforded the opportunity to consult with a solicitor before agreeing to sign.
- 8.4.14 If the person to be released on an Undertaking is outwith a Police Scotland custody suite (e.g. at hospital) then any police officer can release them on the Undertaking. If the person being released on an Undertaking is at a Police Station, it must be the custody officer releasing them.
- 8.4.15 In relation to persons in custody for domestic related incidents, please see Joint protocol document, Police Scotland and Crown Office and Procurator Fiscal Service in Partnership Challenging Domestic Abuse.

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8.5 Undertaking for Children

- 8.5.1 Although the Act is silent in relation to the use of undertakings for children and the duties in relation to safeguarding and promoting the wellbeing of a child do not cover the use of undertakings, they can be used as an appropriate disposal for children being released from custody.
- 8.5.2 Caution is necessary when deciding appropriate conditions to prevent any unintended consequences e.g. preventing a child from attending school by placing a condition that they cannot approach a witness. Where such a condition is necessary, for example in more serious cases, the decision must be fully documented (see the Offending by Children SOP for further information in relation to serious offences committed by children).
- 8.5.3 An older child should sign an undertaking form themselves. A parent, guardian or carer should not sign the undertaking on their behalf. If the older child refuses to sign the undertaking then they should be kept in police custody.
- 8.5.4 If a younger child does not sign an undertaking form, a parent, guardian or carer can sign the undertaking on their behalf.

8.6 Rescission, Expiry and Review of Undertakings

- 8.6.1 The Procurator Fiscal may rescind an undertaking. This takes effect from the end of the day on which the rescission notice was sent.
- 8.6.2 A constable may arrest a person without warrant if they have reasonable grounds for suspecting they are likely to fail to comply with the terms of an undertaking. Once arrested the undertaking is rescinded and the person is to be treated as if they were charged for the offence for which they were released on an undertaking.
- 8.6.3 An undertaking expires at the end of the day on which the person who signed it is required by its terms to appear at court. A warrant will be granted for the persons arrest if they fail to appear at court in terms of their undertaking.
- 8.6.4 A person who has an undertaking containing a condition imposed can apply to a Sheriff to have the condition reviewed. Before reviewing this application the Sheriff must give the Procurator Fiscal an opportunity to make representation. If the Sheriff is satisfied that the condition is not necessary and proportionate for the purpose for which it is imposed the Sheriff may modify the undertaking by removing the condition/s or imposing alternative condition/s that they consider to be necessary and proportionate for that purpose.
- 8.6.5 Any person arrested in respect of a Post-Conviction Warrant can only be released on an undertaking if there are no conditions imposed. See Section 8.3.4 for further information.

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8.7 Person to Be Brought Before Court

- 8.7.1 If a person is in custody having been arrested on a warrant, other than a Post Charge Questioning warrant (see Crime Investigation SOP) or since being arrested the person has been charged with an offence by a constable, if required, the person must be brought before a court on the next lawful day or as soon as practicable after that.

8.8 Investigative Liberation

- 8.8.1 For full guidance re Investigative Liberation, please refer to the Crime Investigation SOP.

8.9 Custody to Court

- 8.9.1 Any decision to keep a person in custody must be reviewed at regular intervals by the custody supervisor, at least once during each shift cycle, to confirm that the grounds for continued detention still exist and ensure compliance with the Section 50 obligation (that a person is not unreasonably or unnecessarily held in police custody). Where the custody supervisor refuses to grant liberation to an accused person, they shall inform the accused of their reasons for doing so. This must be recorded on the custody computer system.

'Lord Advocate's Guidelines paragraph 24(b) intimidate witnesses-and 24(d), career criminal, 33 PCs, 1 pending, expiry of last sentence 20/10/10'.

- 8.9.2 The reporting officer shall also detail the reasons why an accused was kept in custody in the police report to the COPFS as well as their opinion on Bail.

9. Children

9.1 Introduction

- 9.1.1 The Act provides specific additional safeguards for children. For a summary of their rights please refer to Appendix 'G' Age Related Rights.
- 9.1.2 Details regarding Undertaking for children can be found in Para 8.9.
- 9.1.3 The definition of a child for the purposes of the following sections is set out below. Other definitions in relation to this section can be found at the start of the SOP under 'Definitions'.

Child – There are many different definitions of a child across legislation. In relation to this SOP, and the associated Offending by Children SOP (Hyperlink), a child is defined as under 18 years of age. It is essential, however, to understand that there are different provisions and associated duties for different age groups of children. In broad terms they can be broken down into two categories as follows:

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- Younger children - Those aged under 16 years of age and those under 18s who are subject to Compulsory Measures of Supervision under Section 199 of the Children's Hearing (Scotland) Act 2011 (hereafter referred to as under Supervision).
- Older children - Those aged 16 or 17 years of age who are not subject to Compulsory Measures of Supervision.

9.1.4 For older children, protection and support is now offered whilst still providing them with a greater degree of self-determination. The differing protections for children in each of the above 2 categories is explained in full below.

9.1.5 Whilst the Act provides a definition of a child as under 18, the definition in Section 199 of the Children's Hearing (Scotland) Act 2011 has not changed. This means that only younger children will continue to be subject to the protection and provisions within the Children's Hearing System. Older children will continue to be subject to report to the COPFS alone for consideration of prosecution. It is imperative that officers and staff understand this distinction to ensure children are afforded the rights and protections relevant to their particular age and stage of development.

9.1.6 It should be noted that many of the offences committed by children (in particular those referring to younger children) will not require the child to be arrested in order to progress the investigation of the offence. The decision whether or not it is necessary to bring a child into custody is fully explained in the Offending by Children SOP. It is important that Custody Supervisors understand that test to ensure the presumption of liberty for the child is fully considered when they are brought into custody.

9.2 Duty to Consider a Child's Wellbeing

9.2.1 When taking any decision, the constable must treat the need to safeguard and promote the wellbeing of the child as a primary consideration in relation to the following:

- arrest a child
- hold a child in police custody
- interview a child about an offence which the constable has reasonable grounds to suspect the child of committing or
- charge a child with committing an offence.

9.2.2 This section refers to both categories of a child i.e. all under 18s. Whilst the above duties are new, the principles are consistent with longstanding custody practice. It will, however, be necessary to incorporate this legislative duty into the use of the National Decision Making Model when custody officers are making decisions about children.

9.2.3 Officers must be mindful that the provisions ensure that the need to safeguard and promote the wellbeing of the child is a primary consideration but not the **only** consideration. Wider considerations in relation to the investigation and

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prevention of crime, community safety, etc. will continue to be legitimate considerations. It is essential that the rationale for all decisions made in relation to a child, either being accepted into custody or whilst in custody, are clearly documented on NCS.

- 9.2.4 At every stage of the enquiry, we should ask ourselves is it necessary to interview a child or can an alternative be found.

9.3 Right to Have Intimation Sent to Another Person

- 9.3.1 A person who is in police custody has the right to have intimation sent to another person informing them that they are in custody and where they are being held.

- 9.3.2 Younger Children – Intimation must be sent regardless of whether the person requests it. For younger children the person sent intimation will be a parent, guardian or the person who has care of the child at that time. Where the child is subject to a CSO, the Local Authority should be contacted to assist in identifying the appropriate person to contact.

Older Children – Intimation will be sent to another person if the person in custody requests that it be sent. For older children this person would be an adult reasonably named by the person in custody.

- 9.3.3 Intimation should normally be sent as soon as reasonably practicable and will only be delayed by an officer the minimum rank of Sergeant not involved in the investigation if it is necessary in the interests of-

- (a) the investigation or prevention of crime,
- (b) the apprehension of offenders, or
- (c) safeguarding and promoting the wellbeing of the person in custody, where a constable believes that person to be under 18.

- 9.3.4 The delay of the intimation in (c) above is further explained in Para 9.6 - Social Work Involvement in Relation to under 18s.

- 9.3.5 If a decision to delay intimation is to be taken under 9.3.3 (a) or (b) efforts must be made to contact another person as soon as reasonably practical. The person in custody must be asked to identify another person if the first person identified by them meets the rationale in (a) or (b) above.

- 9.3.6 Any delay and full rationale should be comprehensively recorded on the NCS.

- 9.3.7 It is the responsibility of the enquiry officer to notify custody staff when the delay is no longer relevant and notification to the person can be carried out.

- 9.3.8 Attempts to send intimation to a person must be made until they are contacted and agree to attend within a reasonable time where the person in custody is held. If they cannot attend within a reasonable time, the child in custody can be asked to identify someone else.

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9.3.9 For all children under 18 years of age the following circumstances may arise:

- it is not practicable or possible to contact, within a reasonable time, the person to whom intimation is to be sent (this includes circumstances when some delay in intimation has been deemed necessary in the interests of the investigation or prevention of crime or the apprehension of offenders)
- the person to whom intimation is sent, if asked to attend at the place where the child in custody is being held, claims to be unable or unwilling to attend within a reasonable time or
- a Local Authority has advised against sending intimation to the person to whom intimation is to be sent (see Para 9.7 – Social Work Involvement in Relation to under 18's for guidance on who should be contacted in such circumstances).

9.3.10 In the circumstances described above, attempts to send intimation to an appropriate person must continue to be made until:

- an appropriate person is contacted and agrees to attend, within a reasonable time, at the police station or other place where the child is being held or
- if a constable believes that the person in custody is an older child, the person requests that (for the time being) no further attempt to send intimation is made.

9.3.11 As with all cases, it will be necessary to consider the particular circumstances reported and ensure that the rationale for intimation and access for under 18's is fully documented on NCS.

9.4 Right Of Under 18s to Have Access to Other Person

9.4.1 Where a constable believes a person in police custody is a younger child, access must be permitted to the child's parent, guardian or carer.

9.4.2 Where a constable believes a person in police custody is an older child, access must be permitted to the person sent intimation under Section 38 (Right to have intimation sent to another person), if the person in custody wishes them to have access. Access need only be permitted to one person at a time.

9.4.3 In exceptional circumstances, access may be refused or restricted in the interests of:

- the investigation or prevention of crime,
- the apprehension of offenders,
- for the wellbeing of the person in custody.

9.4.4 Only a Sergeant or above who has not been involved in the investigation can refuse or restrict access. A risk assessment of the person in custody should also be taken into account in relation to their suitability for a visit.

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- 9.4.5 Visits should be accommodated as soon as reasonably practical after the visitor has arrived at the custody suite but should not be to the detriment of the service that is being provided to other users of the suite. If it is a high demand time, the visitor should be asked to wait, informed why they are not being permitted immediate access and be informed approximately how long it may take to accommodate their visit. This should be recorded on NCS, including the rationale for delaying access (see section 12.4 - Visitors to Custody Suites)
- 9.4.6 Once it has been decided a visit can go ahead, if practical, the person in custody should be moved to a solicitor access room. No items are permitted to be passed between the child and the visitor. This is in the interest of both the safety of the child and others within the Custody Suite. Where a solicitor access room is not available, the visit can take place in the cell of the person in custody. The custody must be properly supervised during the visit, to ensure that no property is passed without permission. There is no right to private access to the arrested person.

9.5 Social Work Involvement in Relation to Under 18s

- 9.5.1 Section 41 of the Act imposes requirements and duties for circumstances which have, largely, previously been good practice to safeguard and promote the wellbeing of children.
- 9.5.2 Intimation of the fact that a person is in police custody and the place where the person is in custody must be sent to a Local Authority as soon as reasonably practicable if the following applies:
- a constable believes that the child may be subject to a CSO or
 - intimation has been delayed in order to safeguard and promote the wellbeing of a child. As with all cases, the use of this provision will be subjective and dependant on the circumstances reported. An example may be where, owing to the circumstances of the offence or the comments by the child when initially arrested, the investigating officers express concern for the child's wellbeing if their parent is notified of their arrest. However, if such circumstances are not present and there is no reason known not to notify a child's parent of their arrest, then such notification can continue as normal with no need to refer to the Local Authority. This is merely a safeguard which creates a duty to notify the Local Authority if, for any reason, there is an identified particular need to safeguard and promote the wellbeing of the child.
- 9.5.3 Where the above criteria is met, the Local Authority may arrange for someone to visit the child if they are subject to a CSO or the Local Authority believes the child to be under 16 years of age, and has grounds to believe that arranging someone to visit the person would best safeguard and promote the child's wellbeing.

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- 9.5.4 Equally, the Local Authority may give advice as to who might be an appropriate person to send intimation (Right to have intimation sent under 18's). The Custody Officer must have regard to any such advice offered by the Local Authority. It must be remembered that if the child in question is 16 or 17 years of age and the Local Authority advise that the child is subject to a CSO, the intimation duties and access rights that apply will be those of a younger child.
- 9.5.5 The person who attends on behalf of the Local Authority must be permitted access to the child in custody. In exceptional circumstances, access may be refused or restricted so far as the refusal or restriction is necessary in the interests of:
- the investigation or prevention of crime or
 - the apprehension of offenders or
 - for the wellbeing of the child.
- 9.5.6 A decision to refuse or restrict access to a child in custody may only be taken by a Sergeant or above who has not been involved in the investigation.
- 9.5.7 Before undertaking to arrange someone to visit the child, the Local Authority must be satisfied that anyone it arranges to visit the child will be able to make the visit within a reasonable time.

9.6 Consent to Interview without Solicitor – Solicitor Waiver

- 9.6.1 When a person is being given their PIRoS rights (see Solicitor Access Guidance Document for further information), they will be asked if they wish a solicitor present during their interview. The result of this question and the time will be recorded on NCS through PIRoS.
- 9.6.2 An older child (16 or 17 years of age and not subject to a compulsory measure of supervision) can consent to being interviewed without a solicitor but **only** with the agreement of a "relevant person". The Act defines a "relevant person" as follows:
- Not Officially Accused – A person who has been sent intimation of the child's arrest and who is entitled to access to the child.
 - Voluntary Attendance – A person who is at least 18 years of age and is reasonably named by the child. The test of "reasonably named" in this context is consistent with the test for intimation rights under Section 38.
- 9.6.3 The endorsement of the "relevant person" is a safeguard to ensure that the older child is making an informed decision to waive their right. It will always be best practice to have the "relevant person" physically present in the Custody Suite.

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- 9.6.4 If an older child has waived their right to a solicitor, the police require to seek the permission of a relevant person using Force Form-051-030 16/17 year Old Solicitor Waiver. This form should be managed in accordance with the force Record Retention SOP. At all stages we should consider the necessity to interview the older child. The following steps should be made by the enquiry officers:
- 1 the relevant person should attend the suite where the person is in custody. The officers will read through and complete the form with the relevant person
 - 2 the enquiry officers should go to the home address if the relevant person cannot attend the suite. The officers will read through and complete the form with the relevant person at their home address
 - 3 if this is not possible, an incident should be entered onto STORM to have officers attend the home address of the relevant person. The officers will read through and complete the form with the relevant person at their home address
 - 4 at every stage above, enquiry officers should ask themselves if interview is necessary or could the older child be released on IL (if necessary) and be interviewed at a later date or an alternative relevant person contacted.
- 9.6.5 If step 3 is required then Force Form – 051-030 16/17 Year Old Solicitor Waiver should be completed by the enquiry officers and scanned/e-mailed to the officers allocated the call to attend at the relevant person’s home address. The form must be completed to ensure that the manner in which the “relevant person” provides support to the child and the decision taken is fully recorded.
- 9.6.6 If the older child waives their right to a solicitor and their nominated relevant person agrees with this, then a solicitor is **not** required during interview.
- 9.6.7 If the older child waives their right to a solicitor and their nominated relevant person indicates they want a solicitor present, then a solicitor should only be present during interview in **exceptional circumstances**.
- 9.6.8 (051-030 16/17 Year Old Solicitor Waiver) should be used to record the above process.
- 9.6.9 An interview may go ahead without the solicitor, **in exceptional circumstances**, if the person is vehemently disagreeing with a solicitor’s presence, even although their circumstances would normally dictate the requirement for a solicitor. Every effort should be made to have the solicitor present at interview. If any interview goes ahead without a solicitor in these circumstances, this should be recorded on the NCS. The CRI must be contacted for their Authorisation to allow the interview to go ahead in these ‘exceptional circumstances’.
- 9.6.10 The precise test for exceptional circumstances is not defined in the Act and the decision will require to be made in light of the particular circumstances. It

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is a **high test** that should only be appropriate in **rare situations** and justified on the basis of compelling need to avert serious adverse consequences for the life and liberty and physical integrity of a person, or to prevent substantial jeopardy to criminal proceedings. The latter element will primarily apply to cases where it can be evidenced and justified that all outstanding enquiries have been completed and that interview is the only remaining investigative option to obtain a sufficiency of evidence that would potentially lead to criminal proceedings. Due to this high test only serious crimes should be considered, whilst recognising that a crime in itself does not justify using exceptional circumstances.

- 9.6.11 The decision to utilise exceptional circumstances will be taken by the CRI following consultation with the SIO and where such an interview takes place it will be required to record (within NCS custody notes) all steps taken to try and ensure a solicitor was present and the full rationale for progressing to interview without solicitor. That said, the exercise of exceptional circumstances requires that the interview without solicitor is undertaken in a way that ensures it is only exercised as far as is necessary and proportionate to obtain the minimum information required to avoid the adverse consequences.
- 9.6.12 A young child cannot consent to be interviewed without having a solicitor present unless exceptional circumstances above are met. A CRI must be consulted in these circumstances.
- 9.6.13 A younger child's parent, guardian or carer must always be present at any interview that is going ahead without the presence of a solicitor.

9.7 Under 18s to Be Kept In Place Of Safety Prior To Court

- 9.7.1 It is essential that the need to safeguard and promote the wellbeing of children as a primary consideration forms part of the decision to retain a child in custody prior to appearance at court. In considering the wellbeing of the child it is essential that the impact factors relevant to a decision to keep a child in custody are fully documented.
- 9.7.2 Guidance on the investigation of crimes committed by children and the manner in which they should be responded to is set out in the Offending by Children SOP. It is essential that both investigating and custody officers explore all options in relation to the care of a younger child and possible alternatives to retention in police custody prior to appearance at court. The retention of a younger child in a place of safety or police custody should always be viewed as a measure of last resort.
- 9.7.3 There is no specific criteria set out in legislation when a child will be kept in custody to appear at court. However, only certain offences may be considered in relation to the retention of a younger child prior to appearance at court. Any such retention is informed by the Lord Advocate's Guidelines to the Chief Constable on the Reporting to Procurators Fiscal of offences alleged to have been committed by children. The nature of the offence must be considered alongside the other impact factors which will govern any decision

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to keep a person in police custody. The decision to keep a child in custody must be considered alongside the duties set out below.

9.7.4 Younger Children – where a younger child is to be held to appear at court they must be kept in a place of safety (as defined in Section 202(1) of the Children’s Hearing (Scotland) Act 2011) until they can be brought before the court. The place of safety must not be a police station unless an Inspector or above certifies that keeping the child in a place of safety other than a police station would be:

- (a) Impracticable,
- (b) Unsafe, or
- (c) Inadvisable due to the person’s state of health (physical and mental).

9.7.5 Older Children - continue to be dealt with through the adult criminal justice system and will continue to be held in a police station if being kept for court.

9.7.6 When being held to appear at court, both younger and older children should preferably be accommodated in a cell located as far as possible from others being held in custody, in particular adults in custody. The placement of a child in police custody should depend on the needs and welfare of the child and the decision on where the child is to be placed should be at the discretion of the custody supervisor. The following factors are not exhaustive, however, they should be considered prior to deciding where a child is to be detained:

- the seriousness of the crime
- the demeanour of the child
- the length of time they are expected to be in police custody.

9.7.7 Lodging a child in a police cell is an acceptable option, providing the decision can be accounted for and is proportionate to the circumstances. The custody supervisor must record the reason on the custody computer system.

9.7.8 Once the decision has been taken to retain a younger child in custody, the reporting officer will be responsible for advising the child's parent, guardian, or other carer.

9.7.9 When a decision is taken to detain a younger child in a police station, this must be endorsed by an officer of the rank of Inspector or higher and a Child Detention Certificate completed. This will be arranged through the FCI.

9.7.10 Where necessary, a 'Child Detention Certificate' in respect of a child custody who is to appear before a Sheriff can be produced via NCS.

9.8 Notice to Parent That under 18 to Be Brought Before Court

9.8.1 If a younger child is either brought before a court from custody or released from police custody on an undertaking given under Section 25(2)(a) of the Act a parent of the child must be informed of the following:

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- the court before which the child is to be brought,
- the date on which the child is to be brought before the court,
- the general nature of the offence which the child has been Officially Accused of committing, and
- that the parent's attendance at the court may be required under Section 42 of the Criminal Procedure Scotland Act 1995.

9.8.2 The Custody Officer is not required to provide the above information if they have grounds to believe that giving the parent the information mentioned may be detrimental to the wellbeing of the child.

9.8.3 A parent in this section includes guardian and any person who has the care of the child at that time.

9.9 Notice to Local Authority That under 18 to Be Brought Before Court

9.9.1 A Local Authority must be notified when a child is being brought before a court when certain criteria are met:

Older Children:

- if they are being kept in custody to appear at court
- since being arrested they have not exercised their right to have intimation sent to another person and
- having been reminded has still declined to exercise this right.

Younger Child:

- if they are being kept in custody to appear at court
- if they are being released on an undertaking

In these cases the appropriate Local Authority must be informed of the following:

- the court before which the child is to be brought
- the date on which the person is to be brought before the court and
- the general nature of the offence which the person has been Officially Accused of committing.

9.9.2 If having been so notified the Local Authority requests access to the child in custody, every effort should be made to facilitate this. Whilst not a duty under the Act, this is good practice which should be supported at all times. If, for any reason, it is not possible or practical to allow such access, the rationale for such a decision must be fully recorded on NCS.

9.9.3 In this section the appropriate Local Authority is the one in whose area the court sits.

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9.10 Duty to Inform Principal Reporter If Child Not Being Prosecuted

- 9.10.1 The Principal Reporter must be informed, as soon as reasonably practicable if a younger child is being kept in a “place of safety” in accordance with Section 22(2) of the Act when it is then decided by the Crown Office not to prosecute the child.
- 9.10.2 In the above circumstances, the younger child must be kept in the place of safety until the Principal Reporter gives direction either:
- that the child be released from the place of safety or
 - that the child continue to be kept in the place of safety until the Principal Reporter makes a determination:
 - whether they consider that grounds apply to convene a Hearing in respect of the child and
 - if so, whether the Principal Reporter considers that it is necessary for a compulsory supervision order to be made in respect of the child.
- 9.10.3 In this section, “place of safety” has the meaning given in Section 202(1) of the Children’s Hearings (Scotland) Act 2011.
- 9.10.4 In practical terms, such cases will have been the subject of joint report to the Crown Office and the Children’s Reporter. They will liaise at the earliest opportunity to arrive at the decision on whether or not the case is being remitted by Crown to the Reporter to deal with. When the decision is taken to remit the case to the Reporter it is then their responsibility to advise whether or not the child should be released or continue to be held in the place of safety.
- 9.10.5 In practice, when the Crown is remitting the case, the Children’s Reporter, will notify the Custody suite that the child is no longer required to attend at court. On being so notified, it will be the responsibility of the Custody Supervisor to liaise with the relevant Children’s Reporter to confirm if the child should continue to be held in a Place of Safety or released. In some cases the child may not be in police custody, having already have been transferred to an alternative place of safety (a Secure Care Unit). In such circumstances, early liaison with the relevant Local Authority Social Work Department is essential based on the direction from Crown Office and the Children’s Reporter.

10. Staffing of Custody Roles

10.1 Key Roles and Responsibilities

- 10.1.1 For further information please refer to the Care and Welfare of Persons in Police Custody SOP.

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11. Welfare

11.1 Hospital - Medical Treatment

- 11.1.1 The custody officer should be informed by arresting officers as soon as possible of all persons in police custody who attend hospital at any time to allow them to properly record and monitor their progress. If they have attended hospital directly, a ghost record will be created at the nearest custody suite by the custody officer and this will be kept up to date through close liaison between the custody staff and officers at the hospital. The FCI should be informed by the custody officer of all persons who have come into police custody and have then required to go to hospital at any point.
- 11.1.2 All arrested persons who attend hospital must be informed of:
- (a) The right to have intimation sent to a reasonably named adult.
 - (b) The right to have intimation sent to a solicitor.
- 11.1.3 If a Not Officially Accused has been taken to hospital, the arresting officers **MUST** make contact with the custody Sergeant at the nearest custody suite as soon as reasonably practical to seek Section 7 Authorisation. If the Authorisation is granted, the 12 hour investigative clock will remain stopped for as long as the Not Officially Accused is at, or being taken to or from hospital unless they are interviewed in relation to an offence. The 6 hour custody clock will commence as soon as the Section 7 Authorisation is granted regardless if they are attending hospital or not. Please see 'Custody Review 6 Hours – Custody Clock' section for further details.
- 11.1.4 If the Section 7 Authorisation is granted, officers at hospital must inform the person of
- (a) The reason they are being kept in police custody
 - (b) They have not been charged with an offence and can be detained for a period of up to 24 hours without charge.
- 11.1.5 If the Section 7 Authorisation is refused, there are no grounds to keep the Not Officially Accused person in police custody. On conclusion of the pre-release risk assessment process and in consultation with the custody officer, the Not Officially Accused person will then be released into the care of the NHS and the officer's notebooks and NCS updated to that effect
- 11.1.6 If a Not Officially Accused person is at hospital and four hours has passed since the Section 7 Authorisation was granted, it is the responsibility of the enquiry officer to contact the CRI to commence the 6 hour review process if they believe it is likely they will go over the 6 hour limit. The CRI will then carry out a custody review and will confirm/refuse the continued detention. This will be recorded on the NCS.
- 11.1.7 When a person is removed directly to hospital, and they are expected to be detained in hospital for an extended period, the arresting officers must, as soon as is reasonably practicable, contact the custody supervisor and their

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supervisory officer for further instruction. If there is a significant change to the care or condition of someone at hospital, this should be relayed to the custody officer immediately. The custody supervisor is responsible for any custody decisions and will liaise with the FCI in relation to any possible disposal options.

11.2 Persons in Custody Whilst Intoxicated

- 11.2.1 When arresting a Not Officially Accused person, their level of intoxication should be one of the elements considered when depriving them of their liberty. If the person is too intoxicated to interview, they may require to be held in police custody until sober if other disposal options are not available or suitable. This will reduce the 12 hour enquiry time.
- 11.2.2 If a person has been brought into custody as Drunk and Incapable and they are going to hospital due to their level of intoxication, they should be processed as an Officially Accused person and then all the routine care and welfare considerations should be put into place. A Drunk & Incapable arrest does not require to be cautioned and charged prior to processing them as an Officially Accused – CJ Act related. This will negate the requirement for 6 and 18 hour reviews and a 12 hour extension if they are going to remain in custody for a considerable period of time until it is safe to release them. If a Drunk and Incapable person is going to be reported to COPFS, they must be processed as a Not Officially Accused person and then cautioned and charged when sober enough to understand, thereafter their status will change to Officially Accused.
- 11.2.3 When processing a person on NCS arrested for Drunk and Incapable who is being processed as an Officially Accused, the time for the Caution & Charge will be the time that the person is being processed.

11.3 Support for Vulnerable Persons

- 11.3.1 The position regarding persons who require the assistance of an appropriate adult is unchanged by the Act. (Please refer to Appropriate Adult SOP and Adult Support and Protection SOP for further guidance)
- 11.3.2 If a person who requires the assistance of an appropriate adult requires to be interviewed and they have declined their right to a solicitor, please refer to Solicitor Access Guidance Document.

12. Miscellaneous

12.1 Information to Be Recorded By Police

- 12.1.1 NCS has been developed to ensure all requirements of the Act are met. Throughout a person's stay in police custody, there are numerous details which require to be recorded. Please refer to NCS training and guidance document to ensure all relevant details are recorded.

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12.2 Post Charge Questioning

12.2.1 Please refer to the Crime Investigation SOP for information regarding Post Charge Questioning.

12.3 Drink Driving and Other Charges

12.3.1 The powers of arrest under Section 6(D) and Section 7(5) of Road Traffic Act 1988 still remain and are separate arrest powers from the 2016 Act powers. However the power previously utilised in terms of Section 4 of the Road Traffic Act 1988 has been replaced by Section 1 of the 2016 Act.

12.3.2 A person arrested for Drink/Drug Driving should be recorded as an Officially Accused non-CJ Arrest on NCS.

12.3.3 In the event of a positive specimen being provided at a locus, the driver is to be arrested using Section 6 of the Road Traffic Act 1988. This is to be made clear by using the words "I arrest you". Persons who are arrested should be taken to the nearest police station where there is an approved device and/or medical examination facilities for blood/urine test provision, wherever practical, to the boundaries of the Procurator Fiscals jurisdiction.

12.3.4 As these Road Traffic powers remain after the introduction of the Act, the following scenarios are provided as guidance where there is evidence to arrest someone under Section 6(D) or Section 7(5) Road Traffic Act 1988 as well as Section 1 of the Criminal Justice (Scotland) Act 2016. The following scenarios are not exhaustive and if any further clarification is required, please contact the on duty CRI.

12.3.5 When a person is arrested solely under Section 6(D) or Section 7(5) of the Road Traffic Act 1988, they are processed through NCS as an Officially Accused, Non CJ Act Arrest. All arrest powers and processes remain unchanged thereafter.

12.3.6 When someone is arrested under Section 6(D) or Section 7(5) of the Road Traffic Act 1988 and are suspected of a non-drink driving crime (e.g. assault), the drink driving will get dealt with as per force guidelines:

- If they are not cautioned and charged with drink driving, they will then be arrested using Section 1 of the 2016 Act and the separate assault dealt with as per force guidelines.
- If they are cautioned and charged with drink driving, they will then be given their rights for the separate assault and this will be dealt with as per force guidelines.

12.3.7 (Full details in the Drink Drugs Driving SOP)

12.4 Searching Visitors to Custody Suites

12.4.1 The Act can be interpreted to define a custody suite or any area of a police station with secure entry as a 'relevant premises'. This means that a police

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officer can request any visitor to submit to a **consensual** search, where appropriate. This is not a search of all visitors but those that police officers think may be appropriate.

- 12.4.2 Each set of circumstances has to be risk assessed for example;
- (a) Are they attending a secure solicitor access room where nothing can be passed to the person in police custody?
 - (b) Do they have any bags on them?
 - (c) Are they known to have previously carried or been in possession of drugs or weapons?
 - (d) Do they appear nervous or have what appears to be something hidden under their clothing?
- 12.4.3 This is not an exhaustive list and any of the above circumstances does not mean they should be automatically asked to consent to a search and refusal to consent should not be an automatic refusal to entry. Officers should use their interpersonal skills to seek a resolution. The custody staff will have to consider any control measures or restrictions that would be applied to any visitor and this would be fully documented in the NCS record of the person in custody they are visiting.
- 12.4.4 Police Scotland do have a duty of care to all persons in police custody as well as all persons within secure areas of police stations, including employees.
- 12.4.5 There is no requirement to issue a search receipt to a person that has consented to a search in these circumstances as the Codes of Practice regarding Stop Search do not apply in these circumstances.
- 12.4.6 On all occasions, persons in custody and the room the visit is taking place should be searched before and after any visit. Visitors should be accompanied at all times throughout their visit.

12.5 Fingerprinting, Photographing and DNA Sampling of Custodies

- 12.5.1 Section 18 of the Criminal Procedure (Scotland) Act 1995 provides that the police may take, where it is considered appropriate, fingerprints, palm prints and other prints and impressions from external parts of the body from anyone who is arrested under Section 1 2016 Act.
- 12.5.2 The fact that a custody has been fingerprinted and photographed must be recorded accurately with the Livescan reference number (if utilised) on NCS. Further guidance and can be found in the Fingerprints SOP.

12.5.3 Photographing of Custodies

All persons arrested as an Officially Accused or Not Officially Accused for a crime or offence listed in Groups 1 to 5 are to be photographed. Refer to the Crime Group Classification document for a list of crimes or offences listed in Groups 1 to 5 for further guidance.

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12.5.4 DNA Samples

A DNA sample is to be taken from all persons arrested under Section 1 Act as an Officially Accused or Not Officially Accused for a crime or offence they are to be charged for.

For procedures relating to DNA sampling refer to the DNA Sampling and Retention SOP.

12.5.5 Use of Reasonable Force to Obtain Samples

A constable may use reasonable force to take a sample with the authority of an officer of a rank no lower than inspector.

The accused will be further charged with a contravention of Section 28(3) Police and Fire Reform (Scotland) Act 2012.

12.5.6 Police Custody and Security Officer Power to Obtain Samples

In terms of Section 28(3) Police and Fire Reform Act 2012 a PCSO may at a constable's direction, take photographs, or take physical data from, any person held in legal custody.

12.6 Home Office Immigration Enforcement Apprehensions

12.6.1 Home Office Immigration Enforcement (HOIE) teams will present custodies at custody suites for processing. The details of the arresting officers and the port reference number provided by HOIE should be noted on NCS.

12.6.2 Where a detainee is required to be admitted to hospital whilst in the custody of Police Scotland, HOIE will be required to provide officers for hospital supervision. If there are any issues regarding the provision of HOIE resources, then contact should be made with the FCI.

12.6.3 Police Scotland can recover costs for each person apprehended under immigration legislation by HOIE or if arrested by the police, after consultation with HOIE.

12.7 Terrorist Detentions

12.7.1 For further information please refer to the Care and Welfare of persons in Police Custody SOP

12.8 Other Agencies

12.8.1 Specialist reporting agencies such as National Crime Agency, Home Office Immigration, Military and HMRC will continue to bring persons in their custody at Police Scotland custody suites. They will advise the Custody officer of the relevant legislation in relation to their arrest. All agencies are trained in relation to the Act and will be aware of the new processes in place. Police Scotland has full control and responsibility for the care, welfare and delivery of

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the rights of that person, including decisions regarding their custody Authorisation and/or liberation.

- 12.8.2 Police Scotland will continue to have complete control of all arrested persons from a custody, care and welfare point of view. Early interaction with any agency or organisation should be made.
- 12.8.3 Separate arrangements have been made with PIRC in relation to persons they bring into a custody suite. PIRC will be responsible for primary custody decision making in terms of Section 7 Authorisation, arrest review (6 & 18 hours), 12 hour extension, where people become Officially Accused and how they would be reported to COPFS. The care and welfare however will be remitted to Police Scotland on all occasions. The FCI/CRI should be informed of any PIRC arrests at a custody suite.
- 12.8.4 All other agencies who bring a person into custody to be interviewed will require to complete a (051-032 PIRoS Form) and Pre-Interview Review of Rights Aide memoire prior to interview.

12.9 Cross Border Powers

- 12.9.1 **Warrants Issued by Courts out with Scotland** – Custody supervisors should ensure that the warrant is marked as executable in Scotland. Enquiries should be made with the issuing force to confirm that they wish the warrant executed. Only after these checks have been carried out should the custody supervisor accept the person into custody. Arrangements should be made for the issuing force to attend and uplift the custody. The FCI should be notified where cross border powers have been the sole reason for arrest. Guidance can be found at Warrants SOP.

Note: The service provider G4S will not convey these prisoners out with Scotland.

- 12.9.2 **Packaged Enquiries** – Custody supervisors should not accept any detainee or arrested person brought into custody in relation to Police National Computer (PNC) markers or packaged enquiries from other United Kingdom (UK) forces. Officers are to be advised to confirm identification and current abode where possible and disseminate the information to the owning force.
- 12.9.3 **Bail Conditions set by Courts out with Scotland** - Bail conditions set by English/Welsh courts are NOT enforceable in Scotland.

Example 1:- Person 'A' is released on bail in Carlisle (England) with conditions not to contact victim 'B'. 'A' and 'B' are both in Dumfries (Scotland) and 'A' is breaching their English bail conditions only - Person 'A' cannot be arrested in terms of English or Scottish law as there is no crime.

Example 2:- Person 'A' is released on bail in Carlisle (England) with conditions not to contact victim 'B'. 'A' is in Dumfries (Scotland) and contacts 'B' who is in Carlisle (England) – As the crime is now complete in England, Person 'A' can be arrested. However, they must be arrested by English officers and conveyed back to an English custody suite.

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Similarly, if the breach of bail has taken place in England and Person 'A' subsequently comes to Scotland, 'A' can be arrested by English officers and taken to English custody suite.

Example 3:- Person 'A' is released in Carlisle (England) with conditions not to enter any branch of Marks & Spencer (M&S). Person 'A' comes to M&S in Gretna (Scotland) - Person 'A' cannot be arrested as the English bail condition is not enforceable in Scotland, therefore no crime has been committed.

- 12.9.4 Police Scotland Exercising Cross Border Powers out with Scotland – Where a prisoner is detained for a Scottish offence out with Scotland, Sections 137 and 138 of the Criminal Justice and Public Order Act 1994 provide the power to do so. They do not need to be taken to a Police Scotland custody suite. The custody supervisor must confirm with the detaining officers, whether their current location is the first police station the detainee has been brought to as the 12 hour detention time commences on arrival at the first police station. The exception to this would be if the detainee had stopped purely for a rest break at a police station on the way to their final destination.
- 12.9.5 If a person is being brought to a custody suite in Police Scotland from out with Scotland, they have the right to have intimation to a solicitor. The custody suite they are being conveyed to should be contacted and they will obtain the details of and contact a solicitor. A ghost record should **not** be created at the receiving Police Scotland Custody Suite. A record should only be created when the person being conveyed arrives at the suite and can be processed in the normal manner.
- 12.9.6 Once the record has been created on NCS after the persons arrival at the suite, notes should be added to NCS by the authorising officer to explain the difference between the arrest time and the processing time at the suite which effectively will be the time spent travelling.
- 12.9.7 For further guidance please refer to the Cross Border Powers section of the Crime Investigation SOP.
- 12.9.8 If you have any further questions after reading this guidance please contact the on duty Custody Review Inspector. They provide 24/7 coverage and their rota and contact details can be accessed on the Intranet.
- 12.9.9 Where the detention and interview takes place outwith Scotland, it must still be a Scottish enrolled solicitor who provides advice to the person in police custody. Where officers plan in advance to interview a person in police custody outwith Scotland, then consideration should be given to advanced consultation with the Scottish Legal Aid Board. It would also be helpful for SCL to be provided with a contact mobile number for the OIC given the distance being travelled in the event of any difficulties. Whenever possible for planned operations, seven days notification should be provided.

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12.9.10 When pre-arranging such an interview, the following information should be provided via the Solicitor Contact Line:

- suspects name, date of birth, address
- if appropriate, what the person is going to be arrested for
- whether the suspect is aware that they will be arrested and, if so, whether they have been made aware of their solicitor access rights and have confirmed that they would wish solicitor attendance
- if known, whether the person has a named solicitor
- date and time of interview
- location of interview

12.10 Voluntary Attendance – Cross Border Assistance

12.10.1 As part of the United Kingdom, officers from Police Scotland may regularly call upon the support of forces out with Scotland to progress an investigation (see Cross Border Powers at Section 12.9).

12.10.2 As part of a reciprocal arrangement, Police Scotland will also make custody centres in Scotland available to facilitate colleagues from out with forces progress investigations in Scotland.

12.10.3 If such a request is made then this will only be conducted at a recognised custody centre. All persons attending at a custody centre as a voluntary attendee should be recorded on the National Custody System

12.10.4 Visiting officers will be responsible for ensuring that all necessary records relative to their force processes are completed. Copies are to be provided to Police Scotland at the conclusion of the process and stored in accordance with local arrangements.

12.10.5 Police Scotland will have complete control of all voluntary attenders from a care and welfare point of view.

12.10.6 Should an interpreter be required then it is anticipated that this will have been pre-arranged by the escorting officers prior to arrival at the custody centre.

12.10.7 Any expenditure, solely connected to the investigation, will be borne by the escorting officer's force. Police Scotland will not cross-charge for the use of the custody facility.

12.11 Foreign National Offenders and Asylum Seekers

12.11.1 For further information, please refer to the Care and Welfare of persons in Police Custody SOP.

12.11.2 All arrested FNOs including asylum seekers will be photographed, fingerprinted and subject to the taking of samples in the same way as any other arrested person. When an asylum seekers' fingerprint impressions have

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been obtained, the relevant custody supervisor should contact staff at the Scottish Police Authority (SPA) and arrange for a copy of the fingerprints to be sent to New Scotland Yard.

12.12 Custodies Claiming Diplomatic Immunity

- 12.12.1 In terms of the Diplomatic Privileges Act 1964, any person who is entitled to diplomatic immunity is exempt from the criminal jurisdiction of the courts. This exception may be total, extending to all criminal and civil matters or partial and limited to immunity in connection with official duties
- 12.12.2 Any such person should not be arrested or unnecessarily detained by the police. It is therefore essential to verify claims to diplomatic immunity at the earliest opportunity.
- 12.12.3 Verification of Immunity: This can be confirmed by contacting the Duty Officer Service Overview (DO SOV), who will be responsible for checking the Police National Index of Privileged Persons and Diplomatic Vehicles, maintained on a 24 hour basis by the Metropolitan Police Diplomatic Protection Group (DPG). It should be noted that production of an embassy identification card is not in itself proof of immunity.
- 12.12.4 Procurator Fiscal (PF): Proceedings are not to be taken against any person entitled to diplomatic immunity but if it is alleged that a crime or offence has been committed by any such person, their spouse/civil partner or minor child, the facts are to be reported to the PF immediately by telephone or out with office hours to the Duty Fiscal by the investigating officer(s) supervisor.
- 12.12.5 Prevention of Further Offences: It is established in International Law that the host country does not give up its right to protect the safety and welfare of its populace. Police authorities may intervene where public safety is in imminent danger (i.e. drink driving offences), or it is apparent that a serious crime or offence may otherwise be committed. This includes the power of the police to defend themselves from personal harm.

12.13 Custody Released Under Statutory Supervision/Parole/Life Licence

- 12.13.1 The Scottish Government is to be notified as soon as possible when a custody who has been released on statutory supervision/parole/life licence is arrested or charged with an offence, however trivial. (See Appendix 'E' –Contact Directory for contact details).
- 12.13.2 In emergency out with office hours, contact the Custody Guards at St Andrew's House (see Appendix 'E' – Contact Directory)
- 12.13.3 Notification is to be included in the police report to the PF. The social worker supervising the accused is to be notified, if possible.

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12.14 Complaints about the Police

- 12.14.1 A custody, at any point during their period of detention within a police station, may wish to make a formal complaint against any police officer or police staff. The investigation of this should follow the procedure outlined in the Complaints about the Police SOP.
- 12.14.2 Where the individual who is subject to the complaint is a member of custody staff, or at the material time is carrying out relief custody duties, the complaint will be dealt with by Criminal Justice Services Division. Where an officer who is subject to the complaint works elsewhere the complaint will be dealt with by local policing.
- 12.14.3 Where an incident occurs which, in the view of the custody supervisor, could result in a complaint against a member of custody staff then that member of staff should no longer have any responsibility for the care or welfare of the custody making the complaint. This includes officers engaged on observation duties.

12.15 Custody Paper Procedure/Business Continuity

- 12.15.1 The following information is intended to assist officers within custody suites that do not have NCS or where it is temporarily unavailable.
- 12.15.2 The below Force Forms are available on the Force Forms system and should be used as a replacement for NCS, either temporary or permanent;
- 051-033A Arrest Form-Apprehension and Authorisation
 - 051-033B Arrest Form-Intimation and Access to Solicitor
 - 051-033C Arrest Form-Intimation and Access to Another Person
 - 051-033D Arrest Form-Review and Extension Process
 - 051-033E Arrest Form-Review and Extension Process – Officially Accused
 - 051-033F Arrest Form- Not Officially Accused - Disposal
- 12.15.3 These forms should be managed in accordance with the Police Scotland Record Retention SOP.

12.16 Arrest of Serving Military Personnel

- 12.16.1 On occasions upon which serving military personnel are arrested and brought into police custody, officers and staff should refer to the Armed Forces Personnel SOP for guidance.

12.17 Interpreters

- 12.17.1 Where a person in police custody requires the services of an interpreter this interpreter can also be used to facilitate both the private consultation with a

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solicitor and the subsequent interview, without any undue conflict arising surrounding the interpreter's role.

- 12.17.2 All police officers and staff **must** be aware of the fact that interpreters will be both providing a service for the police and the defence and they may be party to legally privileged conversations and consultations. It therefore follows that police officers and staff should only provide interpreters with sufficient information to provide interpreting services and should not reveal any information about cases, beyond that which they would be comfortable providing to solicitors.
- 12.17.3 Police officers and staff should also ensure that they do not ask any questions of the interpreters which may be thought to undermine solicitor/client confidentiality.
- 12.17.4 Police Scotland will work with partners to develop more detailed information, guidance and other arrangements in relation to interpreters. Refer to the Interpreting and Translation Services SOP for further information.

12.18 Health & Safety at Police Offices

- 12.18.1 The Health & Safety at Work etc. Act 1974 and The Management of Health and Safety at Work Regulations 1999 (as amended) provide for the health and safety of anyone who may be affected by the work activities of the organisations; for example, contractors, members of the public, solicitors, prisoners, etc. Therefore, Police Scotland **must** comply with the duties set out in the legislation, which includes:
- a requirement for employers to ensure that non-employees who may be affected by work activities, such as members of the public, prisoners, solicitors, contractors, etc., are not exposed to risks to their health and safety. Where young or vulnerable persons may be affected, the duty of care is greater
 - a duty on anyone responsible for the workplace to ensure that the premises, plant and machinery do not endanger the people using them, i.e. Police Scotland has a duty to maintain its premises, including plant and equipment, to ensure that it does not harm employees and non-employees visiting the premises
 - Police Scotland is required to carry out risk assessments to eliminate or reduce risks and must produce a Generic Risk Assessment for solicitor visits, covering issues such as supervision, interview facilities, fire evacuation procedures, etc.

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List of Associated Legislation

- Criminal Procedure (Scotland) Act 1995
- Police and Fire Reform (Scotland) Act 2012
- Section 23(2) of the Misuse of Drugs Act 1971
- Terrorism Act 2000
- Human Rights Act 1998
- The Right to Interpretation and Translation in Criminal Proceedings (Scotland) Regulations 2014
- Equality Act 2010
- Children's Hearing (Scotland) Act 2011
- Criminal Justice (Scotland) Act 2016
- The Health & Safety at Work etc. Act 1974
- The Management of Health and Safety at Work Regulations 1999
- Data Protection Act 2018.

List of Associated Reference Documents

Policy

- Custody
- Crime Investigation

Standard Operating Procedures

- Adult Support and Protection SOP
- Antisocial Behaviour Fixed Penalty Notices PSoS SOP
- Appropriate Adults SOP
- Armed Forces Personnel SOP
- Care and Welfare of Persons in Police Custody
- Complaints about the Police SOP
- Crime Investigation SOP
- Disability in Employment SOP
- DNA Sampling and Retention SOP
- Drink, Drugs Driving SOP
- Equality, Diversity and Dignity SOP
- Fingerprints SOP
- Interpreting and Translating Services SOP
- Mental Health and Place of Safety SOP
- Offending by Children SOP
- Record Retention SOP
- Recorded Police Warnings SOP
- Use of Force SOP
- Warrants SOP

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Guidance

- Police Scotland Diversity Booklet – A Practical Guide
- Crime Group Classification
- Custody Officer’s Guide
- Police Service of Scotland Solicitor Access Guidance
- Lord Advocate’s Guidelines on Liberation by Police
- NCS training and guidance document
- Lord Advocate Guidelines on Offences Alleged To Have Been Committed By Children
- Stop and Search Code of Practice
- Police Scotland and Crown Office and Procurator Fiscal Service in Partnership - Challenging Domestic Abuse

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List of Associated Forms

- Form 048-005 Investigative Liberation – Application Form
- Form 048-006 Investigative Liberation – Not Officially Accused (Copy)
- Form 048-007 Investigative Liberation – Notification of Increased Conditions
- Form 048-008 Investigative Liberation – Update of Conditions on CHS
- Form 048-009 Investigative Liberation – Changes to Condition(s)
- Form 048-011 Investigative Liberation – Application for Authority to Conduct Post Charge Questioning
- Form 048-011(A) Form 66.4-A Application for Authorisation to Question a Person Officially Accused
- Form 048-011(B) Form 64.4-B Authorisation under Section 35 of the Criminal Justice (Scotland) Act 2016
- Form 048-012(A) Investigative Interview – Voluntary Statement – Aide Memoire
- Form 048-012(B) Investigative Interview – Recording of Interviews – Aide Memoire
- Form 048-012(C) Investigative Interview – Remote Monitoring Recording of Interviews – Aide Memoire
- Form 051-006 Child Detention Certificate
- Form 051-030 16/17 Year Old Solicitor Waiver
- Form 051-031 Declaration of Voluntary Attendance
- Form 051-032 Police Interview Rights of Suspects (PIRoS)
- Form 051-033A Arrest Form-Apprehension and Authorisation
- Form 051-033B Arrest Form-Intimation and Access to Solicitor
- Form 051-033C Arrest Form-Intimation and Access to Another Person
- Form 051-033D Arrest Form-Review and Extension Process
- Form 051-033E Arrest Form-Review and Extension Process – Officially Accused
- Form 051-033F Arrest Form-Not Officially Accused – Disposal

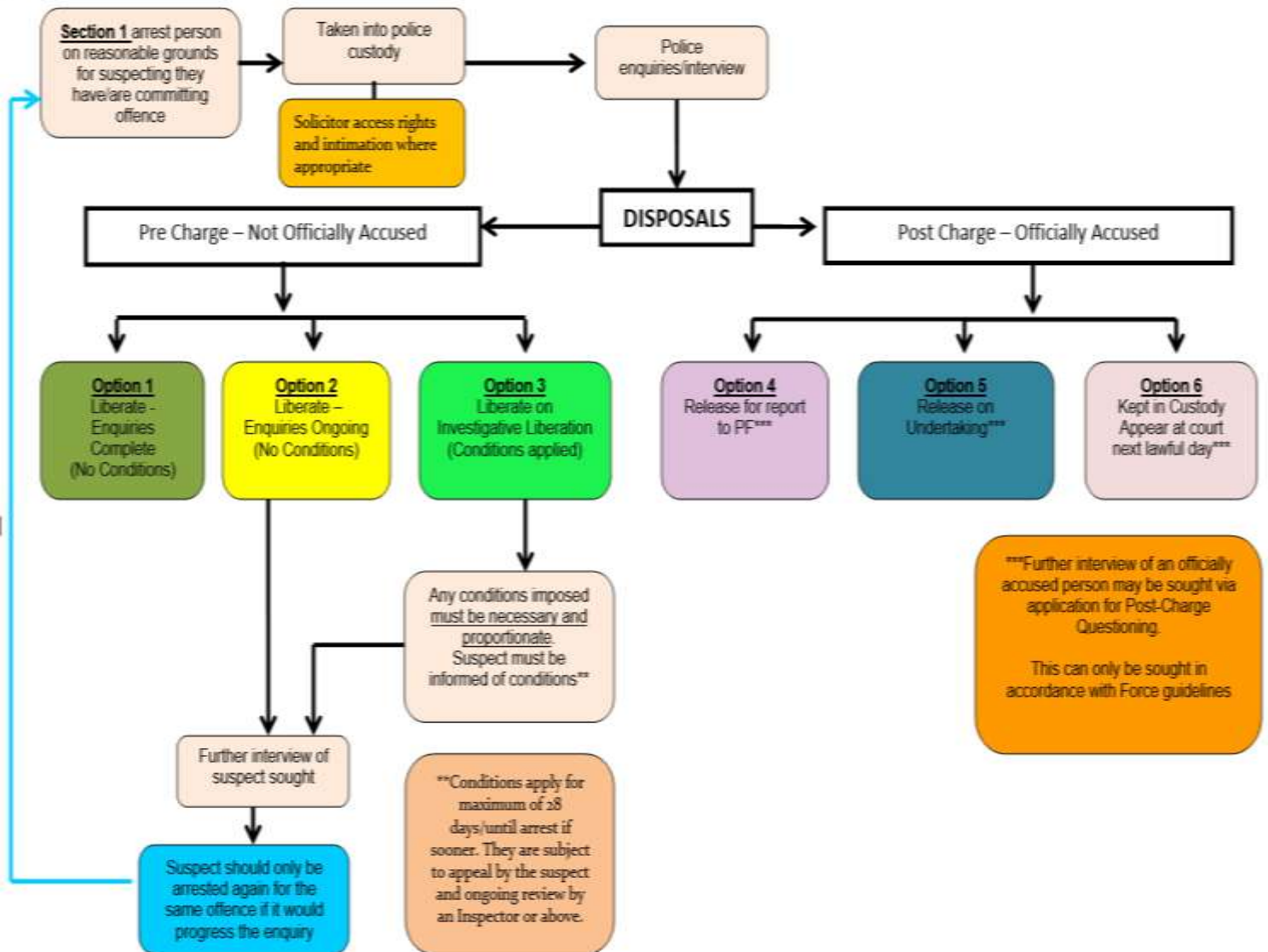
Glossary of Terms

CCBE	Council of the Bar and Law Societies in Europe	PER	Personal Escort Record
DCU	Divisional Coordination Unit	PIDs	Personal Identification Devices
DO SOV	Duty Officer, Service Overview	PINS	Police Information net for Scotland
DPG	Diplomatic Protection Group	PIRoS	Police Interview Rights of Suspects
DWP	Department of Works and Pensions	POCA	Proceeds of Crime Act 2002
FCI	Force Custody Inspector	SCD	Specialist Crime Division
FIU	Financial Investigation Unit	SID	Scottish Intelligence Database
FNO	Foreign National Offenders	SOP	Standard Operating Procedure
		SPA	Scottish Police Authority
HCP	Health Care Professionals	SPS	Scottish Prison Service
		STDC	Scottish Terrorist Detention Suite
HOIE	Home Office Immigration Enforcement	TACT	Terrorism Act
ICVs	Independent Custody Visitors	ViSOR	Violent and Sex Offender Register
IDF	Interim Detention Facilities	Act	Criminal Justice (Scotland) Act 2016
IND	Immigration & Nationality Directorate	CRI	Custody review Inspector
IT	Information Technology	NCS	National Custody System
OCCT	Organised Crime and Counter Terrorism	CSO	Compulsory Supervision Order
OICC	Officer in Charge of Case		
PCSO	Police Custody Security Officers		

Contact Directory

Agency/Department	Contact Details
HOIE (24 hour help line)	03000 134 999
Scottish Government (Breach of Parole Licence)	0131 244 8529
Scottish Government (Breach of Life Licence)	0131 244 8543 or 8535
Scottish Government (Young Offender Aftercare Licence)	0131 244 8536 or 8537
Scottish Government Out of Hours	0131 556 8400
Scottish Government (Reshaping Care & Mental Health Directorate)	0131 244 5203

Custody Processes and Disposals



Age Related Rights

