

Real Rights: young people engaging with law enforcement

 Scotland



Developed by Baker McKenzie and the Global Initiative on Justice with Children, Real Rights provides young people – especially young people in vulnerable populations – with legal information for when children encounter police in public settings. Thanks to the pro bono work of over 1,500 volunteer professionals, this database provides answers for children in contact with the police from initial contact to searches and questioning.

Rights:

What rights do I have when I encounter law enforcement?

Question Asked

- Stopped by the police on the street, now what?
- When Can Police Search You and Your Surroundings?
- Reasons Police May Detain or Arrest You
- The difference between police TELLING me what to do and asking me to do something
- Do Police Need a Warrant to Arrest You?
- How Do You Know If You Are Under Arrest?
- What To Do After Being Warned of Your Rights
- Police Questioning You
- How do I Contact A Lawyer and When?
- Do Police Always Have To Tell The Truth?
- How do I make a complaint if I have questions or feel my rights have been violated?
- What if I feel I was a victim of discrimination or racism?
- How can I respond to circumstances involving discrimination?
- What can you do if the police perform an improper search? Or I was improperly detained?

Stopped by the police on the street, now what?

Proposed Information

It is important to follow this advice:

- Stay calm. It is not a good idea to run. Speak carefully and clearly. Anything you say can be used against you in a court of law.
- It is not a good idea to touch the officers. Keep your hands where the police can see them.
- It is not a good idea to resist, even if you're innocent or if you think the police are acting unfairly or unlawfully.

Can the police arrest you for refusing to answer questions?

- 1) It depends on whether you are a suspect or a witness to a crime. If you are, the police will tell you that you are a suspect or a witness, and you will be required to answer some questions:

SUSPECT: If the police suspect you of committing an offence, they should let you know this and tell you what offence they believe you committed. If asked, you must give your name, address, date and place of birth and nationality to the officer. You may also be asked to explain your behaviour that made them think you committed an offence. It is not a good idea to give false information or refuse to answer because this could also be an offence and you could be arrested and charged. If you have been asked to stay with the police while they check the information you have provided, you must do so.

WITNESS: If the police think you are a witness to a crime (you saw a crime being committed), they should tell you this. If asked to do so, you must give your name, address, date and place of birth and nationality to the officer. You don't have to provide anything else.

- 2) If you are not a suspect or a witness, you don't have to provide any information about yourself to the police, even if the police stop you to conduct a search. In these circumstances, the police cannot arrest you for refusing to answer. To arrest you, the police need reasonable grounds to suspect that you have committed a crime, are in the act of committing a crime or are about to commit a crime. Refusing to answer is not a reasonable enough ground to arrest you.

Sources:

Criminal Procedure (Scotland) Act 1995, s. 13:

<https://www.legislation.gov.uk/ukpga/1995/46/section/13>

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, paragraph 4.13: [Police powers to stop and search, enter private property and seize goods - Citizens Advice](#).

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, paragraph 6.13: [Stop and search: a guide for children and young people - gov.scot](#).

Citizens Advice Scotland, Police powers to stop and search, enter private property and seize goods, paragraph "Your rights if you're searched": [Police powers to stop and search, enter private property and seize goods - Citizens Advice](#). *Please note that this is an article and not legislation or case law. We cannot be sure that such information is up-to-date. We do not promote specific websites.*

What if the officers do not identify themselves?

If you are stopped for search by police officers and they do not identify themselves, you can politely ask them to tell you their name and their police station. Unless they have a reason to refuse such information (for example, giving this information would create some danger to them), they are supposed to answer.

If you are stopped for search by police officers not in uniform, they need to show you their warrant card (basically, their badge).

However, these requirements are for when a police officer is searching you. If they are not in the process of searching you, and are not planning to, then the officer may not provide you with their name or information.

Sources:

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, paragraph 6.9: <https://www.gov.scot/publications/code-practice-exercise-constables-power-stop-search-person-scotland/pages/4/#par69>.

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, paragraph 9.6: <https://www.gov.scot/publications/code-practice-exercise-constables-power-stop-search-person-scotland/pages/4/#par69>.

Citizens Advice Scotland, Police powers to stop and search, enter private property and seize goods, paragraph "Your rights if you're searched": <https://www.citizensadvice.org.uk/scotland/law-and-courts/legal-system-s/police-s/police-powers-to-stop-and-search-enter-private-property-and-seize-goods-s/#h-your-rights-if-you-re-searched> *Please note that this is an article and not legislation or case law. We cannot be sure that such information is up-to-date. We do not promote specific websites.*

What if an officer just begins speaking to me but does not order me to do anything?

You do not have to answer or tell them anything. Officers have no legal right to speak to you. If what you say to them gives them reason to suspect there are reasonable grounds to search you, then they can do that.

Source:

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, paragraph 4.8: [Complaint form | Police Scotland](#)

What if the officer is not in uniform or identified as an officer but I think it is one?

If you are stopped for search by a police officer not in uniform, they need to show you their warrant card (basically, their badge). You can politely ask them to show you their warrant card, and tell you their name, number and police station. Police officers can refuse only if they reasonably believe that sharing such information would be dangerous for them or other officers.

However, these requirements are for when a police officer is searching you. If they are not in the process of searching you, and are not planning to, then the officer may not provide you with their name or information, even if they are not identified or in uniform.

Sources:

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, paragraph 6.9: [Part 4 - How Stop and Search powers are to be used, recorded and monitored - Stop and Search of the Person in Scotland: code of practice for constables - gov.scot](#)

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, paragraph 9.6: [Part 4 - How Stop and Search powers are to be used, recorded and monitored - Stop and Search of the Person in Scotland: code of practice for constables - gov.scot](#)

Citizens Advice Scotland, Police powers to stop and search, enter private property and seize goods, paragraph: "Your rights if you're searched": [Police powers to stop and search, enter private property and seize goods - Citizens Advice](#). *Please note that this is an article and not legislation or case law. We cannot be sure that such information is up-to-date. We do not promote specific websites.*

Can I tell police I do not want to speak without a lawyer?

You have the right to ask for a "responsible adult" to be with you during the search. This is someone over the age of 18 who is able to look after you, such as a parent, an older brother or sister, a carer or teacher. They should be able to support you and explain what is happening and why.

You have the right to speak to a lawyer at any time if you are taken into police custody. This could be over the phone or at the police station.

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, paragraph 7.17: [How to report a possible abuse of your human rights - mygov.scot](#)

Legal advice at a police station [Part 4 - How Stop and Search powers are to be used, recorded and monitored - Stop and Search of the Person in Scotland: code of practice for constables - gov.scot](#) *Please note that this is an article and not legislation or case law. We cannot be sure that such information is up-to-date. We do not promote specific websites.*

If I sit down, am I resisting?

There are no specific rules about sitting. To be on the safe side, you may want to ask the officer if it is fine for you to sit while being questioned.

If I am stopped in a group, and some kids run, can I run?

No. It is dangerous to run, and the police may use reasonable force if they are trying to arrest you. You should stay and speak to the police and allow them to explain the reason for stopping you.

Source:

Scotland Stop & Search document: [stop-and-search-leaflet.pdf](#)
[stop-and-search-national-guidance.doc](#)

Powers of arrest [Complaint form | Police Scotland](#).

Can I tell others (siblings, for example) to run?

No. It is dangerous to run, and the police may use reasonable force if they are trying to arrest them. The police may stop you for any number of reasons. Stay calm and listen to the officer's reasons for stopping you.

Source:

Stop and search: a guide for children and young people:
<https://www.gov.scot/publications/stop-search-scotland-need-know-guide-children-young-people/>.

Powers of arrest <https://www.mygov.scot/arrested-your-rights>. *Please note that this is an article and not legislation or case law.*

If the officer's language is not my first language, can I tell them without waiving my rights?

Yes. If you are under 18 and a police officer wants to search you, they must explain this in a way that you can understand. Let the police officer know that you are unable to communicate in the language they are speaking to you.

If you are taken into custody, the police must also give you a letter describing your rights in a language that you can understand.

Source:

Stop and search: a guide for children and young people: [Stop and search: a guide for children and young people - gov.scot](#)

"9. The Code of Practice says that police officers should speak to you in a way you will easily understand. It's important that police officers:

- Speak clearly – and avoid using complicated words
- Check that you understand what is happening – before, during and after a search.
- Allow you to ask questions.
- Ask you if you need any extra support.
- Understand that it can sometimes be difficult for you to speak to them or challenge anything they've said, as they are in a position of authority."

Letter of rights for people in police custody in Scotland: [NRS Web Continuity Service / Please note that this is an article and not legislation or case law. We cannot be sure that such information is up-to-date. We do not promote specific websites.](#)

If I did not do anything, can they stop me?

The police can stop and question you for different reasons. Just be calm and try to understand why you have been stopped.

Source:

[Complaint form | Police Scotland](#)

[Part 4 - How Stop and Search powers are to be used, recorded and monitored - Stop and Search of the Person in Scotland: code of practice for constables - gov.scot](#)

When Can Police Search You and Your Surroundings?

Proposed Information

It is important to follow this advice:

- You have the right to say no to searches of your person.
- You have the right to say no to searches of your car, house or other surroundings.
- You cannot be arrested for refusing to consent to a search without a warrant.
- If a police officer produces a warrant (which is an order from the court) to search you, your house or car, you have no choice but to consent to the search.

What if a police officer wants to search my phone?

Police are only allowed to take your phone if: (i) you have agreed to give them your phone (consent); (ii) they have a warrant; or (iii) there is an urgent need to take it.

Although your phone might assist in an investigation, you can refuse or withdraw your consent at any time. Sometimes the police might need to rely on another power (such as a warrant or law that is not found in legislation) if you refuse consent to search your phone or if you withdraw consent. This will depend on the investigation and what might be on your phone. You should be able to understand what the police officer is telling you. If you do not understand let them know.

[back to top](#)

Sources:

Public information leaflet, digital device consent: <https://www.scotland.police.uk/spa-media/xt0bi45a/digital-device-consent-public-information-leaflet.pdf>

Digital Device Examination - Principles: [Facial recognition: how policing in Scotland makes use of this technology | Scottish Parliament](#)

What if a police officer asks me for my password to my phone?

The police are not legally allowed to look through your phone unless you give them permission or they have obtained necessary warrants (a court authorization). However, if you have been arrested and cautioned (advised of your rights), you do not have to answer any questions and you are entitled to independent legal advice (a solicitor). This means you do not have to give the police your passwords even if directly asked.

Do the police have a right to search your phone?:

"Although your device can greatly assist an investigation, you can refuse or withdraw your consent at any time. Sometimes the police might need to use one of the other powers (warrant or common law) if you refuse consent or withdraw it. This will depend on the investigation and what might be on the device."

Public information leaflet, digital device consent: [digital-device-consent-public-information-leaflet.pdf](#)

What if they tell me to give them my password or other access to my phone?

The police are not legally allowed to look through your phone unless you give them permission or they have obtained necessary legal warrants (court authorizations).

However, if you have been arrested and cautioned (advised of your rights), the most important thing to remember is, you do not have to answer any questions and you are entitled to independent legal advice (a solicitor). This means you do not have to give the police your passwords even if they ask you for them or tell you to give them.

If the police do obtain access to your phone, the technology used will copy all available information from your phone and may recover deleted information. Police will not look at all that information, only what is necessary, reasonable, justifiable and relevant to the investigation.

All access to mobile networks (mobile data) and the internet (including Wi-Fi) are cut off before examination. The examination only involves information on the phone itself, including removable media such as a SIM or Memory Cards.

Do the police have a right to search your phone?:

"Although your device can greatly assist an investigation, you can refuse or withdraw your consent at any time. Sometimes the police might need to use one of the other powers (warrant or common law) if you refuse consent or withdraw it. This will depend on the investigation and what might be on the device."

Public information leaflet, digital device consent: [Being arrested: your rights - mygov.scot](#)

Do I have to give them my device password if they demand it from me if I am not under arrest? What if they just ask for it?

No. The police are not legally allowed to look through your phone unless you give them permission or they have obtained necessary legal warrants (court authorizations). If you have been arrested and cautioned (advised of your rights), the most important thing to

remember is, you do not have to answer any questions and you are entitled to independent legal advice (a solicitor).

Do the police have a right to search your phone?: [Part 4 - How Stop and Search powers are to be used, recorded and monitored - Stop and Search of the Person in Scotland: code of practice for constables - gov.scot](#) *Please note that this is an article and not legislation or case law. We cannot be sure that such information is up-to-date. We do not promote specific websites.*

Police powers to search your phone and social media accounts: [Part 4 - How Stop and Search powers are to be used, recorded and monitored - Stop and Search of the Person in Scotland: code of practice for constables - gov.scot](#) *Please note that this is an article and not legislation or case law. We cannot be sure that such information is up-to-date. We do not promote specific websites.*

What tools can police use to search me? What technology? (Facial recognition, hidden cameras, finger print searches, etc.)

Currently, the police cannot use facial recognition technology or body cameras.

If you are arrested, the police have the right to take photographs of you. They can also take forensic evidence like fingerprints and a DNA sample – for example, from a mouth swab or head hair root. They do not need your permission to do this and can use reasonable force if you refuse.

The police need a warrant (permission from a court) to take samples like blood or urine. However, they are allowed to take a blood or urine sample in connection with driving while under the influence of drugs or alcohol.

The police also need a warrant to carry out an intimate body search (strip search) or an invasive search, which involves an internal examination. A doctor will be present to carry out examinations and take blood or urine samples.

Sources:

Facial recognition: how policing in Scotland makes use of this technology: [Part 2 When powers of Stop and Search may be used - Stop and Search of the Person in Scotland: code of practice for constables - gov.scot](#) *Please note that this is an article and not legislation or case law. We cannot be sure that such information is up-to-date. We do not promote specific websites.*

Police Scotland launches consultation on use of bodycams: [Police Scotland launches consultation on use of bodycams | STV News](#) *Please note that this is an article and not legislation or case law. We cannot be sure that such information is up-to-date. We do not promote specific websites.*

Facial recognition: "no justification" for Police Scotland to use technology: [digital-device-consent-public-information-leaflet.pdf](#) *Please note that this is an article and not legislation or case law. We cannot be sure that such information is up-to-date. We do not promote specific websites.*

Fingerprints, photographs, samples and searches: [Part 2 When powers of Stop and Search may be used - Stop and Search of the Person in Scotland: code of practice for constables - gov.scot](#)

Can they search my backpack or other item I am carrying?

The police do have the right to search you in certain instances. For example, if they have "reasonable grounds" to believe you have broken the law or that you plan to do so. They can

also search your bags at events like concerts or football matches to make sure you aren't carrying anything that might be used to hurt someone in a crowd.

If the police do wish to search you, they have to explain (in a way that you understand) why they believe you may be carrying something illegal or why they think you may be involved in a crime. They should also tell you what they want to search and limit their search to those places.

An officer should explain what they are looking for when they carry out a search. The search should be carried out by someone of the same gender as yours and in the area close to where they stopped you.

Source:

Stop and search: guidance: [Part 4 - How Stop and Search powers are to be used, recorded and monitored - Stop and Search of the Person in Scotland: code of practice for constables - gov.scot](#)

Stop and Search: [Part 4 - How Stop and Search powers are to be used, recorded and monitored - Stop and Search of the Person in Scotland: code of practice for constables - gov.scot](#)

Can they take my picture or record me?

If you've been arrested or are detained under suspicion of having committed a crime for which you could be put in prison, the police have the right to take photographs of you. They will take standard photographs known as "mug shots".

If you're released without being charged, or the charge against you is dropped, or you're found not guilty by a court, then the photographs should be destroyed by the police. If you're charged, the photographs will be kept until you go to court. If you're found guilty, the photographs will be kept with your criminal record.

Unfortunately, police have often been found to keep photos that should be deleted.

Source:

Citizens Advice Scotland, If you are arrested and held in custody by the police in Scotland: [If you are arrested and held in custody by the police in Scotland - Citizens Advice](#). *Please note that this is an article and not legislation or case law. We cannot be sure that such information is up-to-date. We do not promote specific websites.*

[Bill to stop Scots police keeping innocent people's photos on file](#) *Please note that this is an article and not legislation or case law. We cannot be sure that such information is up-to-date. We do not promote specific websites.*

Can they ask me where I am going and why?

Yes, but you do not have to provide any information or say anything to the police. However, you can volunteer information to avoid a search, and the police must give you the opportunity to provide any information if you want to.

Source:

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland: [Part 4 - How Stop and Search powers are to be used, recorded and monitored - Stop and Search of the Person in Scotland: code of practice for constables - gov.scot](#)

Reasons Police May Detain or Arrest You

Proposed Information

It is important to follow this advice:

- The police may arrest you because they suspect you of committing (or having committed) a violation of the law, or if they suspect that you currently have evidence of a crime.
- Sometimes police have a warrant (court order) for an arrest. If that is the case, you should be clear on what kind of warrant is being presented to you. It is a good idea to review a warrant carefully, to ensure you understand what exactly it covers.
- If arrested, you may be charged with a felony for a more serious crime (with potential jail time of one year or more), a misdemeanor for a less serious crime (with jail time of less than one year) or a violation.
- If the police arrest you, they also have the right to search you. Anything found during this search may be used as evidence against you.

What if I did not do anything illegal, must I speak with the police and answer questions?

If stopped by the police you have no obligation to answer questions, or to provide your name, address and date of birth.

The police cannot arrest you for refusing to answer questions. To arrest you, the police need reasonable grounds to suspect that you have committed a crime, are in the act of committing a crime or are about to commit a crime. Your refusal to answer questions is not a reasonable ground to arrest you.

Sources:

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, paragraph 4.13: [stop-and-search-leaflet.pdf](#)

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, paragraph 6.13: [Part 4 - How Stop and Search powers are to be used, recorded and monitored - Stop and Search of the Person in Scotland: code of practice for constables - gov.scot](#)

What if they tell me something they are investigating that is wrong? Must I correct them?

You do not have any obligation to say anything to the police, but you may do so if you want.

What if an officer just begins speaking to me but does not order me to do anything?

You do not have to answer or tell them anything. Officers have no power or right to speak to you. If what you say to them gives them reason to suspect there are reasonable grounds to search you, then they can.

Source:

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, paragraph 4.8: [Part 2 When powers of Stop and Search may be used - Stop and Search of the Person in Scotland: code of practice for constables - gov.scot](#)

What is the legal difference between talking to them if they do not tell me I am under arrest, versus after they inform me that I am under arrest?

If you are being placed under arrest, the police officer will have to communicate that to you. This does not change the fact that you are not required to speak to them though. You do have to give your name, address, date of birth, where you were born and your nationality. Besides that, you can still remain silent when they ask you questions, but you should comply with their requests to take you in. Consider informing the officer that you won't speak until you speak with an attorney.

Source:

[If you are arrested and held in custody by the police in Scotland - Citizens Advice](#) *Please note that this is an article and not legislation or case law. We cannot be sure that such information is up-to-date. We do not promote specific websites.*

The difference between police TELLING me what to do and asking me to do something.

What is the difference between the police deciding to search me or my belongings (phone, person, backpack) and me agreeing to the search?

The police can search you, your outside clothing, and your backpack without your agreement if they have "reasonable grounds" to believe you committed or are committing a crime. If they do wish to search you, they have to explain (in a way that you understand) why they believe you may be carrying something illegal or why they think you may be involved in a crime. They should also tell you what they want to search and limit their search to those places.

Reasonable grounds can include someone behaving in an unusual way (nervous or under the influence of drink or drugs), someone matching your description has been reported to the police, they think you may have seen a crime committed nearby, they think you may be carrying something illegal (e.g. fireworks, drugs, stolen property or an item that may be used to hurt someone).

The police can also search your belongings if you consent to such, but a police officer cannot ask you to consent to a search that would otherwise be unlawful.

Source:

Stop and search: guidance, paragraph 1: [Part 2 When powers of Stop and Search may be used - Stop and Search of the Person in Scotland: code of practice for constables - gov.scot](#)

Police powers to stop and search, enter private property and seize goods: [Part 4 - How Stop and Search powers are to be used, recorded and monitored - Stop and Search of the Person in Scotland: code of practice for constables - gov.scot](#) *Please note that this is an article and not legislation or case law. We cannot be sure that such information is up-to-date. We do not promote specific websites.*

What if they tell me to give them information versus them asking and me providing answers voluntarily?

If stopped by the police you have no obligation to answer questions, or to provide your name, address and date of birth. However, you can volunteer information in order to avoid a search, and the officer must give you the chance to speak, if you want to. Be careful in what you say to the police. Sometimes volunteering information may make the situation worse.

Sources:

Stop and search: guidance, paragraph 4: [A guide to Stop and Search in Scotland - Stop and search: guidance - gov.scot](#)

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, paragraph 4.13: [Police and Criminal Evidence Act 1984](#)

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, paragraph 6.13: [Police powers to stop and search, enter private property and seize goods - Citizens Advice](#)

Do Police Need a Warrant to Arrest You?

Proposed Information

It is important to follow this advice:

- No. Police officers can legally arrest you without a warrant (court authorization) in several circumstances:
 - If the crime is committed in front of a police officer.
 - If the police officer has probable cause (reason to suspect) that you committed a felony, whether or not the act was done in front of them.

If I did not do anything, can they stop me?

The police may stop you just to talk without trying to perform any search. In order to stop you and search you, they must have "reasonable grounds" to believe you have committed a crime, are in the act of committing a crime, or are about to commit a crime.

"Reasonable Grounds" can include someone behaving in an unusual manner (nervous or under the influence of drink or drugs), someone matching your description has been reported to the police, they think you may have seen a crime committed nearby, or they think you may be carrying something illegal (e.g. fireworks, drugs or a knife). Personal factors alone can never be reasonable grounds for suspicion.

Source:

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, paragraph 4: [Stop and Search of the Person in Scotland: code of practice for constables - gov.scot \(www.gov.scot\)](#)

Can I ask for the reason they stopped me?

Yes, you can and should always ask the police officer for the reason you are being stopped.

Source:

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, paragraph 7.11: [Stop and Search of the Person in Scotland: code of practice for constables - gov.scot \(www.gov.scot\)](#)

If I think the stop is unjustified, what can I do?

If you think a stop is unjustified, you can file a complaint with the police. The form to file the complaint is located here: [Police Complaints Form | Police Scotland](#). The police officer should also provide you with details of how to file a complaint and you can speak with an officer at a police station.

[back to top](#)

During the stop, even if you think it is unjustified, the best thing you can do is try to comply with the officer's requests. If they are doing something wrong, it is safest to try and sort that out later.

Source:

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, paragraph 7.24: [Stop and Search of the Person in Scotland: code of practice for constables - gov.scot \(www.gov.scot\)](http://www.gov.scot/publications/code-of-practice-for-constables/pages/7-24-stop-and-search-of-the-person-in-scotland.aspx)

Can I get the officer's identifying information for a future complaint?

Yes. Unless doing so would pose a danger to the police officer, they should tell you their name and number (or other identification number) and the name of the police station where they work.

In addition, you will be provided with a receipt following the stop and search that will include details of how to file a complaint.

Source:

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, paragraphs 6.9(i), 6.11 and 7.24: [Stop and Search of the Person in Scotland: code of practice for constables - gov.scot \(www.gov.scot\)](http://www.gov.scot/publications/code-of-practice-for-constables/pages/6-9-i-6-11-and-7-24-stop-and-search-of-the-person-in-scotland.aspx)

How Do You Know If You Are Under Arrest?

Proposed Information

It is important to follow this advice:

- You are under police custody if you do not feel free to leave an officer's presence, or if a reasonable person in your shoes would not feel free to leave.
- If the following happens, you are likely under arrest according to the law:
 - an officer handcuffs you;
 - an officer forcibly holds you down;
 - an officer puts you into the back seat of a police car; and/or
 - an officer warns you about your rights.
- An officer only has to warn you of your rights before they question you. This means an officer can arrest you before warning you of your rights.
- If a police officer arrests you before warning you of your rights, it is still a valid arrest. However, this may mean that evidence collected after you are arrested is not admissible (cannot be presented) in court later.

What if I do not know if I am under arrest?

If you are under arrest, a police officer must clearly explain this to you, along with the reason why you have been arrested, what crime they believe you have committed and what your rights are at the point they arrest you. They should also ask you to confirm that you understand.

Source:

Being arrested: your rights: <https://www.mygov.scot/arrested-your-rights/young-people-and-vulnerable-adults/>

What is the difference between detention and arrest?

Detention means the police are holding you while they look for more information to support their belief that you have committed a crime. The police in Scotland have 12 hours to hold you until they must either charge you with a crime or let you go.

If you are arrested, the police already have enough information to believe you have committed a crime.

Source:

Being arrested: your rights: <https://www.mygov.scot/arrested-your-rights/young-people-and-vulnerable-adults/>

Background: Police detention in Scotland - BBC News: <https://www.bbc.com/news/uk-scotland-25793111> *Please note that this is an article and not legislation or case law. We cannot be sure that such information is up-to-date. We do not promote specific websites.*

If I am handcuffed, am I arrested?

No, this doesn't mean you are arrested. The police have the right to handcuff you if they believe you may hurt yourself or someone else and they have tried all other ways to calm you down.

If you are handcuffed, this should be limited to the shortest period of time until you are no longer likely to hurt yourself or anyone else.

Source:

[Standard Operating Procedure \(SOP\) Review Template](#)

If my liberty is restricted, am I under arrest?

Not necessarily. The police will tell you that you are being arrested, if that is the case, and will explain why it is necessary to arrest you.

Source:

Power of arrest: [the police arrest procedure - mygov.scot](#)

What To Do After Being Warned of Your Rights

Proposed Information

It is important to follow this advice:

- You can use your right to remain silent or any of your other rights (such as the right to a lawyer) by saying that you want to use that right.
- You are also able to waive your rights (that is, not use them) by, for example, saying "Yes, I understand my rights but I am ready to talk to you." This is not a good idea without a lawyer present.
- Make sure you know what you're doing in giving up your rights

[back to top](#)

How do things change if I am read my rights by police?

Police may read your rights to you, and it should not change your response. The most important thing is that you can understand the rights that you have. You may also ask for a letter of rights in a language you can understand if that is necessary.

Source:

[Stop and search: a guide for children and young people - gov.scot](#)

[Suspects to be read their rights in Scotland for first time ever | The Herald](#) *Please note that this is an article and not legislation or case law. We cannot be sure that such information is up-to-date. We do not promote specific websites.*

Does it matter where I am when the police read me my rights? (street, station, police car, etc.)

The location of where your rights are read does not matter, but the timing does. Your rights should be communicated to you as soon as practically possible following your arrest. Depending on the circumstances, the location where you first become "under arrest" may vary.

Source:

Police and Criminal Evidence Act 1984 Section 28: [When you're arrested - mygov.scot](#)

<https://www.mygov.scot/arrested-your-rights/when-youre-arrested>

[Suspects to be read their rights in Scotland for first time ever | The Herald](#) *Please note that this is an article and not legislation or case law. We cannot be sure that such information is up-to-date. We do not promote specific websites.*

Police Questioning You

Proposed Information

It is important to follow this advice:

- You are not required to make a statement, answer police questions or participate in a police investigation, and you never have to go anywhere with the police unless they have arrested you.
- If the police have arrested you and you are under the age of 18, they are required to immediately notify your parent, caretaker or legal guardian.

Source:

Required to make a statement: [Your rights when being questioned - mygov.scot](#)

Am I required to make a statement?

- You have the right not to speak.
- You do not have to answer any questions the police ask you.
- But you must tell the police your name, address, date and place of birth and nationality.

Source:

Required to make a statement: [Your rights when being questioned - mygov.scot](#)

Must police notify my guardian?

Yes, if you're 8 or over, and otherwise a minor, the police must tell your parent or guardian that you're in police custody, even if you don't ask them to.

Source:

Being arrested: your rights: [Being arrested in Scotland - mygov.scot](#)

Must I confess?

No, you do not have to confess to anything for the police.

- You have the right not to speak.
- You do not have to answer any questions the police ask you.
- But you must tell the police your name, address, date and place of birth and nationality.

Source:

Required to make a statement: [Your rights when being questioned - mygov.scot](#)

What adults can I ask to be with me?

You can ask your parents, another family member or a friend to be with you during a police interview.

Source:

Being arrested: your rights: [Being arrested in Scotland - mygov.scot](#)

Who do police have to contact if I am a legal minor?

If you're 8 or over, and otherwise a minor, the police must tell your parent or guardian that you're in police custody, even if you don't ask them to.

Your parent or guardian must attend the police station and be with you when the police interview you. They can ask another family member or friend to attend instead, if appropriate.

The police will ask a social worker or another professional to visit you instead if your parent or guardian isn't available, if the police are concerned about your wellbeing or if contacting your parent or guardian will affect the investigation.

You cannot be interviewed by the police without a solicitor (a lawyer) being in the room with you.

Source:

Being arrested: your rights: [Being arrested in Scotland - mygov.scot](#)

How do I Contact A Lawyer and When?

Proposed Information

It is important to follow this advice:

- **You should always contact a lawyer before making any statements to anyone in a criminal case or investigation.**
- This applies even if you are told that (i) police officers only want to question you and/or (ii) you are only a witness.
- If you are arrested or questioned, you have the right to remain silent and to not speak until your lawyer is present.
- To get a lawyer, tell the police you would like legal advice and they'll arrange for your own lawyer (if you have one) to be contacted or for you to receive advice from a duty solicitor. Duty solicitors are independent from the police and are available 24 hours a day. They will provide legal advice for free.

What if I am just a witness?

- **You have the right to speak to a lawyer at any time while in police custody. This could be over the phone or at the police station.**
- If you did not contact a lawyer before making any statements, you can change your mind later.
- You have the right to have a lawyer being in the room while the police question you. This is free while you are in police custody.
- You can tell the police you would like to talk to a lawyer and they will arrange such for you.

Source:

Legal Advice at a police station: [Part 2 When powers of Stop and Search may be used - Stop and Search of the Person in Scotland: code of practice for constables - gov.scot](#)

Do Police Always Have To Tell The Truth?

Proposed Information

It is important to follow this advice:

- The police do not always have to tell the truth.
- In some circumstances, mainly when searching someone, the police have to tell you basic information about themselves.
- You can politely ask an officer for their name, even if they are not required to answer.
- You do not need to volunteer information to the police at all times, but in many circumstances, you may need to honestly provide them with information.

Can the police lie to me?

There does not appear to be any legal requirement that a police officer must tell the truth in all circumstances. However, if you are stopped for search by police officers and they do not identify themselves, you can politely ask them to tell you their name and their police station. Unless they have a reason to refuse such information (for example, giving this information would create some danger to them), they are supposed to answer.

If you are stopped for search by police officers not in uniform, they need to show you their warrant card (basically, their badge).

However, these requirements are for when a police officer is searching you. If they are not in the process of searching you, and are not planning to, then the officer may not provide you with their name or information.

Sources:

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, paragraph 6.9: <https://www.gov.scot/publications/code-practice-exercise-constables-power-stop-search-person-scotland/pages/4/#par69>.

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, paragraph 9.6: [digital-device-consent-public-information-leaflet.pdf](#)

Citizens Advice Scotland, Police powers to stop and search, enter private property and seize goods, paragraph "Your rights if you're searched": [Part 4 - How Stop and Search powers are to be used, recorded and monitored - Stop and Search of the Person in Scotland: code of practice for constables - gov.scot](#) Please note that this is an article and not legislation or case law. We cannot be sure that such information is up-to-date. We do not promote specific websites.

Do I have to tell the police the truth?

Generally, you do not have to volunteer information to the police, unless:

- An officer reasonably suspects you have committed an offence;
- You are being detained or arrested; or
- You are stopped while driving a motor vehicle.

In these cases you may need to provide your name, date and place of birth, address and nationality when asked to do so by the officer, or turn over your license if driving.

It can also be an offence to waste a police officer's time by making false reports, so make sure you are honest in your dealings with the police that you initiated as well.

Criminal Law Act 1967 (CLA 1967) S 5(2): [Criminal Law Act 1967](#)

Criminal Procedure (Scotland) Act S 13: [Criminal Procedure \(Scotland\) Act 1995](#)

Know your rights: [Being arrested: your rights - mygov.scot](#)

Scottish Activist Legal Project: [When you're arrested - mygov.scot](#) Please note that this is an article and not legislation or case law. We cannot be sure that such information is up-to-date. We do not promote specific websites.

How do I make a complaint if I have questions or feel my rights have been violated?

Proposed Information

It is important to follow this advice:

You can file a complaint with the police. The form to file the complaint is located here: [Police Complaints Form | Police Scotland](#). The police officer should also provide you with details on how to file a complaint and you can speak with an officer at a police station.

Source:

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, paragraph 7.24: [Part 4 - How Stop and Search powers are to be used, recorded and monitored - Stop and Search of the Person in Scotland: code of practice for constables - gov.scot](#)

What if I feel I was a victim of discrimination or racism?

Proposed Information

It is important to follow this advice:

You can file a complaint with the police. The form to file the complaint is located here: [Police Complaints Form | Police Scotland](#). The police officer should also provide you with details on how to file a complaint and you can speak with an officer at a police station.

You can also make a complaint using the email address sgcomplaints@gov.scot.

Source:

How to report a possible abuse of your Human Rights: [Stop and search: guidance - gov.scot](#)

How can I respond to circumstances involving discrimination?

Proposed Information

It is important to follow this advice:

You can file a complaint with the police. The form to file the complaint is located here: [Police Complaints Form | Police Scotland](#). The police officer should also provide you with details on how to file a complaint and you can speak with an officer at a police station.

You can also make a complaint using the email address sgcomplaints@gov.scot.

Source:

How to report a possible abuse of your Human Rights: [How to report a possible abuse of your human rights - mygov.scot](#)

What can you do if the police perform an improper search? Or I was improperly detained?

Proposed Information

It is important to follow this advice:

You can file a complaint with the police. The form to file the complaint is located here: [Police Complaints Form | Police Scotland](#). The police officer should also provide you with details on how to file a complaint and you can speak with an officer at a police station.

Source:

Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, paragraph 7.24: [Stop and Search of the Person in Scotland: code of practice for constables - gov.scot \(www.gov.scot\)](#)

Disclaimer

The materials and content provided on this website are for general information only and are not intended as legal advice. Although we strive to provide accurate and up to date legal information, we cannot promise it is error free or that it is suitable for your specific concerns. Therefore, you should contact an attorney to obtain legal advice for any issue specific to your situation. If you use the materials and information provided on this site or links to other websites, it does not create an attorney-client relationship between us or any providers of information you find on this website, and we take no responsibility for any information linked to this website.

The materials and content are provided as-is with no warranty of any kind. We disclaim all express and implied warranties, including the implied warranties of merchantability, fitness for particular purpose. Under no circumstances will we or our contributors be liable for any consequential, indirect, incidental, special or punitive damages or lost profits, whether foreseeable or unforeseeable, under any legal theory. Some states do not allow the exclusion of implied warranties or the limitation of incidental or consequential damages, so the above limitation and exclusions may not apply to you.

Please note that the Real Rights Platform is in development and does not represent the final version of the work product. We will continue to update this Real Rights Platform as updates and edits are received across the globe.

Baker McKenzie International is a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm.

Law is generally described as of May 2025.

[back to top](#)