THE POLICE IN SCOTLAND:
YOUR RIGHTS WHEN SEARCHED
QUESTIONED OR ARRESTED

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Specially prepared by the
Scottish Consumer Council to
accompany the BBC TV Series
For the Love of Albert
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INTRODUCTION

In a way the police represent you - the public. They have a duty to investigate crime and bring criminals to justice. They act - or should act - in the public interest. Some people think that they do act in the public interest and trust them completely. Other people think they're keener on getting convictions than anything else. Perhaps most of us feel something in between these two extremes. We probably all know someone who's had reason to be grateful to the police; and someone who's had a bad experience with them.

Whatever your attitude to the police, it's important that you know what your rights are with them. You ought to know what they're allowed to do, and what they're not; what they're supposed to do, and what they may actually do; what you're required to do, and what you're not.

What's in this booklet

The booklet applies to Scotland only and covers what you ought to know when dealing with the police on questioning, warrants, arrest, bail, being searched and driving. There's also a section on how to complain about the police if you feel you've been unfairly or unlawfully treated by them.

And there's information about getting free or cheap legal help from solicitors.

The Advice and Help section gives addresses of organisations that should be able to help you further if you have problems with the police.

The booklet is based on information from various sources. Some parts of the law are not very clear so although the booklet tries to state what the law is, there are some areas
where we cannot be precise. Also what happens in practice may be different from what the law says should happen. We've tried to include some of the problems that you may come up against. When in doubt get advice (see Advice and Help section).

**Homework**

There's an important difference between this booklet and the four others in the series. Like them, it's a work of reference that you can look at when you want to find something out. But problems with the police can crop up much more suddenly than, say, a planning proposal you don't like, or a need for more Supplementary Benefit. If a policeman grabs you in the street and says he's taking you down to the police station, you need the sort of information that's in the booklet there and then. If you do the wrong thing, it may be too late to put it right when you consult this booklet the next day.

So what we've tried to do is pick out the basic information. You ought to consider actually studying it so that you can remember it.

**WE'VE PRINTED PARTICULARLY IMPORTANT THINGS IN BLOCK CAPITALS LIKE THIS**

**England (and Wales) and Scotland**

It is not always appreciated that there are very big differences between England (and Wales) and Scotland as far as the police are concerned. Two of the most important are the Procurator Fiscal and the Judges Rules. We have Procurators Fiscal but not Judges Rules.
The Procurator Fiscal

Unlike England, in Scotland prosecutions are carried out by the Procurator Fiscal. He is a civil servant independent of the police who is responsible for the investigation of all crimes and for deciding whether a prosecution should be brought in the first place.

Judges Rules

These are rules which the police in England should follow. They do not apply in Scotland. Instead the police work under the supervision of the procurator-fiscal. Also the courts control police behaviour to some extent by refusing to allow evidence they consider to be improperly obtained.

QUESTIONING

Of course the police have to ask questions when they are investigating a crime. If they think that a person can help them find out about a crime they are entitled to ask him questions. Usually you will want to help the police but if for some reason you don't want to answer their questions, you don't have to. You should NEVER give them FALSE information. You HAVE to give the police information if, for example, you are the owner of or are driving a motor vehicle. Then you have to give your name and address or the name and address of the driver. If you're suspected of an offence under the Official Secrets Act you have to give information.

You should also give your name and address if:

- you're asked about prohibited drugs
- you're in possession of a firearm and are unable to produce a licence
- you're asked about an offence to do with protected birds, eg stealing eggs

(There are other times when you have to give your name and address (or produce a document such as a driving licence but these are the most important))
Ask the police if they have a right to ask your name and address. If you are happy with their reply give them your name and address. If you are not and they still insist you would be as well to tell them. You can always complain later.

Apart from sometimes having to give your name and address you don't have to answer any questions the police ask.

IF THE POLICE INSIST ON TAKING YOU TO A POLICE STATION ASK WHETHER YOU ARE BEING ARRESTED OR NOT. IF YOU ARE NOT BEING ARRESTED YOU NEED NOT (IN THEORY) GO WITH THEM, BUT if they still insist in taking you to a police station, tell them, quite calmly, that you are only going because they are making you. You can always complain later (see page 14).

AT THE POLICE STATION YOU HAVE THE RIGHT TO SILENCE. YOU NEED NOT ANSWER ANY QUESTIONS PUT TO YOU.

The police should not:
1) Bully you or use any "third degree" methods
2) make any promises to get your cooperation
3) make you sign any statement
4) change any statement you have made
5) interview you without the presence of a parent or legal adviser if you are under the age of 17.
6) use any tricks or bribes to get answers from you.

STATEMENTS FROM YOU MADE UNDER ANY SORT OF PRESSURE CANNOT BE USED AS EVIDENCE AGAINST YOU BUT STATEMENTS MADE TOTALLY OF YOUR OWN FREE WILL CAN BE USED AGAINST YOU IN COURT.
If police charge you they should caution by by saying something like

"You don't have to say anything but anything you do say will be taken down in writing and may be used in evidence".

The charge and the caution should be done at the same time. After you have been charged and cautioned the police should not really continue to question you. Any evidence obtained at this stage will be treated with suspicion by the court. At this point the police should have sufficient information.

So you may not want to answer questions and you need not do so. You may want to get legal advice before saying anything else. Tell the police

"I don't want to say anything until I have seen my Solicitor".

If you do want to continue answering the questions think very carefully about what you say.

IF YOU HAVE GONE TO A POLICE STATION WITHOUT BEING FORCED TO AND DECIDE AFTER A WHILE THAT YOU DON'T WANT TO ANSWER ANY MORE QUESTIONS AND WANT TO LEAVE, TELL THEM. THEY SHOULD EITHER LET YOU GO, OR ARREST YOU.

MAKING A STATEMENT

Just as you need not actually say anything to the police unless you want to you do not have to write or dictate any statement. If you are upset or confused or drunk it might be better not to make a statement.

If you DO want to make a statement you can write it yourself or you can dictate it to a police officer. If you dictate it make sure that you get a chance to read it back, AND

DO NOT SIGN ANY STATEMENT UNLESS YOU AGREE WITH EVERY WORD IN IT.

IF YOU ARE IN ANY DOUBT, DON'T SIGN IT.

If you are unfamiliar with English you may make a statement in your own language.
BEING A WITNESS

Every law-abiding citizen is under a moral obligation to help the police do their duty and you will probably want to help the police by telling them all that you know of an incident. But you may not. Except for those situations where you must tell the police your name and address (see above)

IT IS NOT A CRIME TO REFUSE TO GIVE A STATEMENT OR YOUR NAME AND ADDRESS TO THE POLICE.

The police have no legal authority to close the doors of, say, a dance hall, to prevent people from leaving until they have given their names and addresses. However you must attend court if you have been cited as a witness and you must answer questions put to you in court. You must also give a statement (or "precognition") to the Procurator Fiscal if you are asked.

ARREST

Surprisingly, in Scotland arrest is not clearly defined. As we have seen you need not go with the police officers unless they arrest you but if they insist you will usually have little choice. You can always complain afterwards.

LEGALY THERE IS NO SUCH THING AS "BEING DETAINED ON SUSPICION" OR "BEING TAKEN INTO CUSTODY". YOU ARE EITHER UNDER ARREST OR FREE, THERE IS NO HALFWAY HOUSE.

When a person is arrested he should be told immediately of the charge on which the arrest has been made.

AFTER YOUR ARREST THE POLICE SHOULD:
CONTACT YOUR SOLICITOR IF YOU ASK. USUALLY YOU WILL NOT BE ALLOWED TO SPEAK PERSONALLY ON THE TELEPHONE TO YOUR SOLICITOR. THE POLICE WILL DO THIS FOR YOU.

If the solicitor arrives at the police station he may be allowed to have an interview with you. You are entitled to an interview with a solicitor before your appearance in court.

The police will usually also send a message to a relative or friend telling them that you are in custody. They may also allow the
relative or friend to see you. But this is a matter for their discretion.

Of course a solicitor is not bound to visit a person that has been arrested by the police although if the charge is serious he probably would.

WARRANT FOR ARREST

A warrant for arrest is a document which gives the police power to arrest you on a particular charge. If the police stop you or come to your house and say they have a warrant for your arrest, ask to see it. When you see it check that it includes your name and address and a simple description of the crime. You can be arrested

WITH or WITHOUT A WARRANT

ARREST - WITHOUT A WARRANT

In certain circumstances the police can arrest a person without a warrant. Usually the circumstances in which this is justified are:

* where a police officer is given good information that a crime has been committed
* where violence is being threatened
* where an offender is running away from the scene of the crime
* where there is an offence to public decency

A police officer may also arrest a person found in suspicious circumstances with goods believed to be stolen.

There are also some Acts of Parliament which give the police power to arrest without a warrant. Under one Act, a police officer may arrest you without a warrant if he is not satisfied that the name and address you give are true. Some local laws give the police further powers, particularly in relation to offences of dishonesty.
ARREST - WITH A WARRANT

You have the right to see the warrant if you are arrested. But a police officer may make an arrest even if he does not have a warrant with him. But he must know that a warrant has been issued. So you can be detained until the police officer with the warrant arrives. When a person is arrested on a warrant it should be shown to you if you ask to see it, but the police officer will retain possession of it.

When you see the warrant check that it includes your name and address and a description of the alleged crime.

HOW LONG CAN YOU BE HELD AT THE POLICE STATION?

A person who has been arrested has a right to be quickly brought before the court. For lesser (what are known as summary) offences the person arrested must wherever practicable be brought before the court on the first day (excepting Sundays and some public holidays) after arrest. So if you are arrested on a Tuesday you should be brought before the court on Wednesday but if you are arrested on a Saturday night you will not appear in court until Monday morning. As far as more serious offences are concerned, the police are obliged to make sure that any person charged with an offence is not unreasonably and unnecessarily detained in custody.

BAIL

Bail is very important. It is a way by which you can obtain your freedom while you are waiting for your case to be heard. If you are released on bail this will let you prepare your case, keep your job (or look for work) and look after your family. Bail is money security. If you do not appear in court you may lose it. Grant of bail is not automatic. Sometimes you can be released without bail - you promise to appear in court. Bail can be applied for no matter what the crime alleged to have been committed (apart from murder and treason).
Even for murder or treason bail may be accepted if the Lord Advocate agrees. Anyone accused of a crime (except for murder or treason) is entitled when he has been brought before a court to apply for release on bail. Sometimes the police can let you out on bail. In practice the court will take the following things into consideration when deciding:—

* the likelihood of the accused absconding
* the type of offence involved
* the previous record of the accused
* the attitude of the procurator fiscal

The court will decide how much bail is required. It should be fixed at such an amount as the court considers sufficient to make sure that the person turns up to court. It varies very much from case to case.

**BUT**

If you have been charged with a minor offence which is to be tried in the District court the police are entitled to give you bail. You must deposit the amount of cash which the police ask for as security. If you do not have sufficient money the police will generally be willing to contact someone whom you say will provide the money. The police cannot ask bail of more than £20. The police can also release you without any bail at all. In serious cases, the police do not have the power to grant bail and your first chance of obtaining release will be when you are first brought before the sheriff court.

**IDENTIFICATION PARADES**

If the police have a witness to a crime, and someone they suspect may have done the crime, they may want to see if the witness recognises the suspect. The way this is done is that the suspect is lined up with other people and the witness if then brought in by the police to see if he can pick the suspect out. This is called an identification parade.
If you have not been arrested you need not take part in an identification parade. You may, of course, want to but no pressure should be put on you to take part. If you have been arrested you can't refuse to take part. A standard procedure is laid down to make sure identification parades are fair:

* you have the right to have your solicitor present
* you should be placed beside persons of similar age, height, dress and general appearance
* there should be at least five others in the parade
* you may stand where you want to in the line

YOU SHOULD BE ASKED IF YOU HAVE ANY OBJECTION TO MAKE REGARDING THE ARRANGEMENTS

SEARCH

The police do not have the general automatic right to search you - whether in the street, in your home, or in the police station, unless you agree, but police can search you without first arresting you where it is urgent. An example of this would be when it was necessary to prevent a suspect from destroying evidence. There are other circumstances in which they can search you.

Being searched in the street

Unless you have been arrested the police can search you in the street only for a certain number of reasons. The most important are:

if you're suspected of having a prohibited drug
if you're found committing an offence to do with protected birds
if you're suspected of a poaching offence

SEARCH AFTER ARREST: FINGERPRINTS AND PHOTOGRAPHS

After you have been arrested the police are entitled to search you. This search may be carried out on the spot. The right to search includes:
* photographing you
* making a visual physical examination, for example, to see injuries.
* the taking of finger prints (if you are discharged or acquitted these will be destroyed)
* placing you on an identification parade
* it can also include the taking of nail scrapings, palm rubbings and even bite marks.

BUT if the police want to interfere with your body by taking a blood sample, or cutting off some of your hair, they should get a warrant unless you consent. Ask to see that warrant. BUT you MUST give a blood or urine sample if you fail the Breathalyser test. It is an offence to refuse. The police cannot normally carry out a search in order to find out whether or not to arrest you. But in cases of urgency the police can search suspects whom they have not apprehended. Women should be searched only by women police officers.

Anything that the police take from you should be listed and packaged in your presence. Do not sign the list if it is inaccurate. If you do sign it, do so immediately below the end of the list, in such a way as to prevent any additions.

THE POLICE IN YOUR HOME
The police do not have the automatic right to enter or search your home without your permission. BUT they can come in without your permission if :-

they think a crime is being committed or to pursue an offender after a serious crime or if they have a SEARCH WARRANT.

If you have been arrested the warrant for this includes a warrant to search your premises for evidence. And where a person is arrested in his house with or without a warrant the police can search the house for stolen property or any other evidence of guilt.

The police may also obtain a search warrant. The search warrant should say what the purpose of the search is. A vague search warrant allowing the police to search for anything is illegal. So the police are not allowed to get a warrant to "fish" for evidence. If a warrant has been granted to search for specific articles it depends on the circumstances whether other articles
may be removed. It seems to be the case that once the police are lawfully on the premises with a search warrant they may take any suspicious articles they happen to "stumble upon" but they should not actively search for articles not included in the warrant. Also they should not take away articles which might, on further examination, disclose further offences. A police officer with a warrant for a suspect's arrest has a right to enter a house and may break down the door to get in.

If the police come to your door and say they have a search warrant, ask to see it. You have the right to read it carefully before you let them in. Make sure the name and address and other details are right and see what it allows the police to do. If you think the address is wrong you could refuse to let them in. If they still insist you can always complain later.

THE MOTORIST

You must be at least 17 to drive a car (16 if it's a two wheeler); you must have a valid driving licence; the vehicle must be licenced and insured for you to drive it; it must have a MOT certificate if it's over 3 years old.

Then there are other laws about driving with care, and not taking drink or drugs when you drive.

If you are a motorist, or even just riding a bike, the police have powers over you that they don't have over pedestrians.

WHEN CAN YOU BE STOPPED?

The police, if they're in uniform, can stop you at any time when you're driving or cycling.

Once you've stopped, the police have the right to:

* demand your name and address
* see your driving licence. They can inspect it, but they're not supposed to look for endorsements in it
* see your insurance certificate
* see the MOT certificate
* search your vehicle if they reasonably suspect it contains dangerous drugs, or is involved in any crime
* test the condition of your vehicle. You can put off this inspection if it's inconvenient
If you don't have these documents, you'll be asked to produce them at a police station within five days. If you refuse any of them, it's an offence.

WHEN CAN YOU BE ARRESTED

As a motorist you can be arrested by the police if:

* they reasonably suspect you have caused death by dangerous driving
* they actually see you commit an offence of dangerous, careless, reckless or inconsiderate driving
* you're in charge of a motor vehicle while under the influence of drink or drugs.

(The police must be in uniform)

* they suspect you're driving while disqualified from driving

THE BREATHALYSER

If you're driving, or sitting in (or on) your vehicle, or even just standing near it, the police can insist you take the breathalyser if they suspect you're drunk. If you resist or refuse you can be prosecuted.

If you fail the test, the police can insist you go to the police station. If you refuse you can be arrested and made to go.

If you refuse a blood or urine test (you have the choice) at the police station you have automatically committed an offence. You have to pay for the test. You won't be told there and then the result of the test. But you're allowed an extra sample of blood or urine to take away, if you want an independent test done.

After the test you can leave. (but don't drive away, or you may be arrested again).

ACCIDENTS

It's an offence not to stop after an accident. If it's not serious, and there's no injury, you only have to swap names, addresses, licence numbers and insurance details with the other driver.

If it's serious you must report it to the police within 24 hours.
MAKING A COMPLAINT AGAINST THE POLICE

The police need the cooperation of the public to carry out their duties. However, there are a lot of things that can go wrong when dealing with the police. You might want to complain about:

* the police may have taken you to a police station without your permission and without arresting you first
* you may have gone to a police station without being forced to but the police kept you after you told them you wanted to go
* you may think you have been arrested unlawfully
* the police may not have telephoned your solicitor for you
* the police may not have let you talk to your solicitor in private
* the police may have forced you to answer questions, threatened you, made promises, suggested you pleaded guilty, forced you to make a statement
* the police may claim you said something you know you didn't say
* you may not have been brought before a court as soon as you should have been
* the police may have finger-printed or photographed you unlawfully
* you may think that the identification parade was organised unfairly
* the police may have unlawfully searched you in the street, in your home or the police station
* the police may have unlawfully searched your home
* the police may have taken away property you do not think they should have
* you believe you have been assaulted by the police

WHAT TO DO

Before making a complaint — especially if it is a serious complaint — you may wish to get legal advice. If you want to make a complaint yourself this should be done as soon as possible. The first step is to send a detailed statement of your complaint to the Chief Constable of the Police Force concerned. You should keep a copy of this letter. The letter should describe your complaint about what happened, what the police officers' numbers were (if you know), the names and address of witnesses (if any)
WHAT HAPPENS THEN DEPENDS ON WHETHER YOUR COMPLAINT CONTAINS AN ALLEGATION THAT A POLICE OFFICER HAS COMMITTED A CRIMINAL OFFENCE

IF IT DOES:
The Deputy Chief Constable will order enquiries to be made and will send a report to the Procurator Fiscal who is responsible for the investigation of all crimes and offences and for deciding whether a prosecution should be brought. The Procurator Fiscal will then decide whether the police officer should be prosecuted. If he decides that the police officer should be prosecuted, this will take in the ordinary criminal court, and you will no doubt be required to attend and give evidence.
Even if the officer is found not guilty there may be further enquiries by the police to determine whether there has been a breach of police discipline. The procedure then followed is basically the same as if the original complaint had contained no allegations of criminal offences (see below).

IF IT DOES NOT the investigation will be done primarily by the police themselves.

This will usually be done by a senior police officer who may be from another police officer who may be from another police force.

The investigating officer will want to interview you and any witnesses you have.

At the end of the interview you will be asked to sign a statement of what you said. Check it carefully before you sign and make sure that you agree with it. If you are not happy that it explains your complaint properly, ask for changes before you sign it.

Ask for a copy. Make sure that the investigating officer has the names and addresses of all the witnesses. Ask your witnesses to get copies of their statements.

When the investigation is complete a report will be prepared for the Deputy Chief Constable. This report is confidential so you cannot ask to see it. If the report concludes :-
that the complaint is NOT JUSTIFIED
you will be informed by letter
that the complaint WAS JUSTIFIED
the Deputy Chief Constable must decide whether to charge the
police officer with a disciplinary offence.
that the matter is TRIVIAL
he may arrange for the police officer to be given a warning.
You will probably receive a written apology.
Otherwise
the police officer will be charged with a disciplinary offence
and a disciplinary hearing will be held. You will be told
that this step has been taken. You also have the right to attend
this hearing. You will probably be called as a witness.

If the disciplinary charge is proved you will be told of this
result but not the penalty imposed upon the police officer.
This is a matter for the Chief Constable.

NEW COMPLAINTS PROCEDURE
As we have seen the investigation of complaints against the police
is, unless criminal charges are alleged, the responsibility of
the police themselves. BUT changes are on the way. The main
purpose of the changes is to bring an independent element into
the complaint procedures. There is to be a Police Complaints
Panel for Scotland which will have the function of reviewing
those cases in which it has been decided that no disciplinary
action should be taken. The panel will have the power to
recommend or direct that disciplinary charges should be brought.
Also, in certain circumstances, a member of the Panel may attend
the hearing of charges.

This DOES NOT affect the procedure whereby if it is alleged that an
officer has committed a criminal offence the complaint is referred
to the Procurator Fiscal for consideration.

SUING FOR DAMAGES
If you are still not happy that your complaint has been dealt
with you could consider suing the police for unlawful arrest or
assault. BUT this could be very difficult to prove. Take legal
advice.
FREE OR CHEAP LEGAL HELP

There are two schemes for free or cheap legal help by solicitors. Not all solicitors give such help, though - most of those that do will have a sign displayed. Your local Citizen’s advice Bureau or other advice agency will give you a list of solicitors who might help.

LEGAL ADVICE AND ASSISTANCE

This first scheme is usually called the pink form scheme or the £25 scheme. It's designed to give badly off people £25 worth of advice and help from a solicitor. It covers things like making a will, writing letters, negotiating or visiting a police station, sometimes helping with a tribunal hearing. It's possible for solicitors to get permission to go over the £25 limit.

WILL YOU GET IT?

If your 'disposable income' (income after taking away tax, National Insurance, allowances for dependants) is less than a certain level per week, you should get legal advice and assistance - unless you have a lot of savings, or valuables, or an expensive house. If your disposable income is less than £20, your legal help should be free; if it's above this, you pay something towards the cost of your help.

LEGAL AID

If you are receiving Supplementary Benefit or Family Income Supplement you automatically qualify. Legal aid is a system for making sure that badly-off people who need legal aid because they’re going to be in court get it. It covers things like landlord and tenant disputes, personal injury and family cases as well as criminal cases.
The solicitor you go to will help you fill in the forms if it's a civil case. If it's a criminal case, you get forms from the court office or a Citizens Advice Bureau. You then apply to the court. If your disposal income is less than £2,085 a year, you should get legal aid - unless, again you have savings etc. If it's less than £665, or you're on Supplementary Benefit, your legal aid should be free, if it's between £665 and £2,085, you pay something towards it.

**ADVICE AND HELP**

Dealing with the police can be very difficult, very complicated - and very important. So it's quite likely that if you have trouble with them, you will want more advice and help than this booklet can give. This section suggests where to go.

The Scottish Council for Civil Liberties (SCCL)
146 Holland Stret
Glasgow G2 4NG.
Telephone 041 332 5960

The SCCL can give individual advice on cases on such things as police, race, sex discrimination, breaches of privacy, wrongful imprisonment. And it takes up a limited number of individual cases.

The SCCL is an independent body funded by its membership. Membership is £3.25 per year (£3 if paid by Bankers' Order) for couples; students, welfare claimants and pensioners £1.50. Trade unions can affiliate. Members receive a bi-monthly bulletin and publications as they appear. A trade union supplement is sent to trade unions and anybody who may be interested.

The SCCL also publishes a series of six fact sheets on the issues dealt with in this booklet (5p each, 20p for all six plus postage).
It is planned to publish a comprehensive Guide to Civil Liberties in Scotland in early 1978.

Legal Advice Centres

These are basically for giving legal advice but some will negotiate for you by writing letters or making telephone calls. Some are attached to CABs. If you need further help they will advise you where to go. There are legal advice centres in Glasgow, Edinburgh, Dundee, Aberdeen, Perth and Shotts. Your local CAB should be able to tell you the address of the nearest one.

Citizens' Advice Bureau (CAB)

There are about 45 of these in Scotland. Look in the phone book under 'C'. They should be able to recommend you a solicitor or tell you where to find a legal advice centre.

The Court

Legal Aid is automatically available to all accused persons in custody. Ask to see the Duty Solicitor.