
STATUTORY INSTRUMENTS

2018 No. 46

**The Criminal Justice (Scotland) Act 2016
(Consequential Provisions) Order 2018**

Codes of practice under the 2016 Act

Code of practice about investigative functions

10.—(1) A code of practice issued by the Lord Advocate under section 57 of the 2016 Act may deal with matters which, by virtue of section 29(2)(b) or (c) of the Scotland Act 1998, it is outside the legislative competence of the Scottish Parliament to make provision about.

(2) Without prejudice to the generality of paragraph (1), the Lord Advocate may, in exercise of the function conferred by section 57(3)(b) of the 2016 Act, specify a body in a code notwithstanding that it is outside the legislative competence of the Scottish Parliament to make provision about that body or functions which are exercisable by it or on its behalf.

(3) Nothing in this article permits a code to deal with matters other than—

- (a) the questioning, and recording of questioning, of persons suspected of committing offences; and
- (b) the conduct of identification procedures involving such persons.

(4) In section 57(5) of the 2016 Act—

- (a) the word “and” at the end of paragraph (g) is repealed; and
- (b) after that paragraph insert—

“(ga) any body which the Lord Advocate intends to specify in the code under subsection (3)(b) and (where relevant) the Secretary of State, and”.

Code of practice about searches

11.—(1) The 2016 Act is amended as follows.

(2) In section 74(4)—

- (a) at the end of paragraph (b), omit the word “or”; and
- (b) after paragraph (c) insert—
 - “(d) the British Transport Police Authority,
 - (e) the chief constable of the British Transport Police Force,
 - (f) the Civil Nuclear Police Authority,
 - (g) the chief constable of the Civil Nuclear Constabulary,
 - (h) the chief constable of the Ministry of Defence Police, or
 - (i) the Secretary of State.”.

(3) In section 76(2), after paragraph (e) insert—

- “(ea) the British Transport Police Authority,

- (eb) the chief constable of the British Transport Police Force,
- (ec) the Civil Nuclear Police Authority,
- (ed) the chief constable of the Civil Nuclear Constabulary,
- (ee) the chief constable of the Ministry of Defence Police,
- (ef) the Commissioners for Her Majesty’s Revenue and Customs,
- (eg) the Director of Border Revenue,
- (eh) the National Crime Agency,
- (ei) for each of the persons mentioned in paragraphs (ea) to (eh), the Secretary of State.”.

Duty of other officials to have regard to code of practice about searches

12.—(1) An immigration officer, a designated customs official and an officer of Revenue and Customs must have regard to any code of practice issued under section 73 of the 2016 Act in exercising any function corresponding to a function to which the code applies.

(2) In this article, “immigration officer” and “designated customs official” have the meaning given by paragraph 1 of Schedule 3.