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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 452**

**CRIMINAL PROCEDURE**

**The Criminal Justice (Scotland) Act 2016 (Consequential and Supplementary Modifications) Regulations 2017**

*Made* - - - - *14th December 2017*

*Coming into force* - - *25th January 2018*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 115(1) of the Criminal Justice (Scotland) Act 2016(1) and all other powers enabling them to do so.

In accordance with section 115(2)(a) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

1. These Regulations may be cited as the Criminal Justice (Scotland) Act 2016 (Consequential and Supplementary Modifications) Regulations 2017 and come into force on 25th January 2018.

**Consequential and supplementary modifications of enactments**

2.—(1) The schedule contains modifications of enactments consequential on and supplementary to the Criminal Justice (Scotland) Act 2016 (“the 2016 Act”).

(2) Paragraphs 1, 7, 12(2) and 13 to 18 of the schedule do not apply in respect of any matter arising from an arrest or detention of a person by a constable where—

- (a) the arrest or detention takes place before the appointed day; and
- (b) the person remains in police custody following that arrest or detention at the beginning of the appointed day.

(3) In this regulation—

“constable” means—

- (a) a constable within the meaning given by section 62 of the 2016 Act; and

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(1) 2016 asp 1 (“the 2016 Act”).

- (b) a member of the staff of the Police Investigations and Review Commissioner designated under paragraph 7B of schedule 4 of the Police, Public Order and Criminal Justice (Scotland) Act 2006(2)—
  - (i) to take charge of any investigation on behalf of the Commissioner; or
  - (ii) to assist a member of the Commissioner’s staff designated to take charge of such an investigation;

“detention” means detention under section 14 of the Criminal Procedure (Scotland) Act 1995(3), and “detained” is to be construed accordingly;

“the appointed day” means 25th January 2018.

(4) For the purposes of this regulation, a person is in police custody from the time when the person is arrested or detained by a constable until any one of the events mentioned in paragraph (5) occurs.

(5) The events are—

- (a) the person is released from custody;
- (b) the person is brought before a court in accordance with any enactment or rule of law or the terms of any warrant;
- (c) the Principal Reporter makes a direction under section 65(2)(b) of the Children’s Hearings (Scotland) Act 2011(4) that the person continue to be kept in a place of safety.

St Andrew’s House,  
Edinburgh  
14th December 2017

*MICHAEL MATHESON*  
A member of the Scottish Government

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(2) 2006 asp 10. Paragraph 7B of schedule 4 was inserted by the Police and Fire Reform (Scotland) Act 2012 asp 8 schedule 7(1) paragraph 33(17)(c).

(3) 1995 c.46. Section 14 was amended by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) section 81(6) and the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15) sections 1(2) and 3(1).

(4) 2011 asp 1. Section 65(2) is amended by schedule 2 paragraph 40(a)(ii) of the 2016 Act.

## SCHEDULE

Regulation 2

### CONSEQUENTIAL AND SUPPLEMENTARY MODIFICATIONS

#### PART 1

##### Primary Legislation

###### *Salmon Fisheries (Scotland) Act 1868*

1. In section 29 of the Salmon Fisheries (Scotland) Act 1868(5) (apprehension of offenders), the words from “, or to deliver” to “magistrate” are omitted.

###### *Official Secrets Act 1911*

2. Section 6 of the Official Secrets Act 1911(6) (power to arrest) is repealed.

###### *Public Order Act 1936*

3. In section 7 of the Public Order Act 1936(7) (enforcement), subsection (3) is repealed.

###### *Children and Young Persons (Scotland) Act 1937*

4. In section 21 of the Children and Young Persons (Scotland) Act 1937(8) (punishment of vagrants preventing children from receiving education), subsection (2) is repealed.

###### *Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951*

5. In section 12(2) of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951(9) (apprehension of offenders), both occurrences of “, constable” are omitted.

###### *Sea Fisheries (Shellfish) Act 1967*

6. In section 4D of the Sea Fisheries (Shellfish) Act 1967(10) (sections 4A to 4CA: supplementary), subsections (2A) and (2B) are repealed.

###### *Immigration Act 1971*

7. In section 28H(13) of the Immigration Act 1971(11) (searching persons in police custody), for paragraph (b) substitute—

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- (5) 1868 c.123 (31 & 32 Vict). Section 29 was amended by schedule 2 of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (c.26 14 & 15 Geo 6). It was partially repealed by the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (asp 15) schedule 4 Part 2 (see also section 71(3) and (4)) and S.I. 2006/2913 schedule 4 Part 2 (see also article 1(3)).
- (6) 1911 c.28 (1 & 2 Geo 5).
- (7) 1936 c.6 (1 Edw 8 & 1 Geo 6). Section 7(3) was amended by the Public Order Act 1986 (c. 64) schedule 3.
- (8) 1937 c.37 (1 Edw 8 & 1 Geo 6). Section 21(2) was amended by the Education (Scotland) Act 1945 (c.37 8 & 9 Geo 6) schedule 4 and the Social Work (Scotland) Act 1968 (c.49) section 95 and schedule 9.
- (9) 1951 c.26 (14 & 15 Geo 6). Section 12 was partially repealed by the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (asp 15) schedule 4 Part 2 (see also section 71(3) and (4)) and S.I. 2006/2913 schedule 4 Part 2 (see also article 1(3)).
- (10) 1967 c.83. Section 4D was inserted by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) section 98(1). It was amended by the Aquaculture and Fisheries (Scotland) Act 2013 (asp 7) section 57(3) and (4).
- (11) 1971 c.77. Section 28H was inserted by the Immigration and Asylum Act 1999 (c.33) section 135(1).

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“(b) he is arrested at a police station after attending voluntarily at the station or accompanying a constable to it.”.

*Misuse of Drugs Act 1971*

8. Section 24 of the Misuse of Drugs Act 1971(12) (power of arrest) is repealed.

*Inshore Fishing (Scotland) Act 1984*

9. In section 6A of the Inshore Fishing (Scotland) Act 1984(13) (power to enter land), subsections (6) and (7) are repealed.

*Public Order Act 1986*

10. In each of sections 14B and 14C of the Public Order Act 1986(14) (trespassory assemblies), subsection (4) is repealed.

*Road Traffic Act 1988*

11. Sections 167 (power of arrest) and 178(3) (taking motor vehicle without authority) of the Road Traffic Act 1988(15) are repealed.

*Criminal Procedure (Scotland) Act 1995*

12.—(1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) In section 24(3)(b) (bail and bail conditions) for “section 21, 22 or 43 of this Act” substitute “section 25 of the Criminal Justice (Scotland) Act 2016”.

(3) In section 288K(1)(16) (live television links: specified hearings), after “High Court,” insert “Sheriff Appeal Court.”.

*Terrorism Act 2000*

13. In paragraph 18(3)(b) of schedule 8 of the Terrorism Act 2000(17) (treatment of persons detained under section 41 or schedule 7) for “section 15(4) of the Criminal Procedure (Scotland) Act 1995” substitute “section 40 of the Criminal Justice (Scotland) Act 2016”.

*Extradition Act 2003*

14. In section 206C(5) of the Extradition Act 2003(18) (live links: interpretation), paragraph (c) is omitted.

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(12) 1971 c.38.

(13) 1984 c.26. Section 6A was inserted by the Aquaculture and Fisheries (Scotland) Act 2013 (asp 7) section 50(2).

(14) 1986 c.64. Sections 14B and 14C were inserted by the Criminal Justice and Public Order Act 1994 (c.33) sections 70 and 71 respectively.

(15) 1988 c.52. Section 167 was amended by the Road Safety Act 2006 (c.49) schedule 3 paragraph 27.

(16) Section 288K is inserted by section 110(1) of the 2016 Act.

(17) 2000 c.11. Schedule 8 paragraph 18 is amended by the Anti-social Behaviour, Crime and Policing Act 2014 (c.12) schedule 9 paragraph 5(12) and the 2016 Act schedule 2 paragraph 37.

(18) 2003 c.41. Section 206C was inserted by the Policing and Crime Act 2009 (c.26) section 78.

## PART 2

### Secondary Legislation

#### *Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013*

**15.** In rule 12(3)(b) of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013<sup>(19)</sup> (record keeping by the Reporter of investigation and determination) for "section 43(5) (arrangements where children arrested) of the Criminal Procedure (Scotland) Act 1995" substitute "section 53(2) of the Criminal Justice (Scotland) Act 2016 (duty to inform Principal Reporter if child not being prosecuted)".

#### *Secure Accommodation (Scotland) Regulations 2013*

**16.** In regulation 12(1)(b) of the Secure Accommodation (Scotland) Regulations 2013<sup>(20)</sup> (children otherwise dealt with under the Criminal Procedure Act) for "section 43 of the Criminal Procedure Act" substitute "section 22 or 53 of the Criminal Justice (Scotland) Act 2016".

#### *Right to Information (Suspects and Accused Persons) (Scotland) Regulations 2014*

**17.** In regulation 2 of the Right to Information (Suspects and Accused Persons) (Scotland) Regulations 2014<sup>(21)</sup> (interpretation) for paragraph (1) substitute—

"(1) For the purposes of these Regulations, a person is in police custody if the person has been arrested by a constable in connection with an offence, except where arrested under the Extradition Act 2003, and is in custody in a police station or other premises."

#### *Right to Interpretation and Translation in Criminal Proceedings (Scotland) Regulations 2014*

**18.** In regulation 2 of the Right to Interpretation and Translation in Criminal Proceedings (Scotland) Regulations 2014<sup>(22)</sup> (interpretation) for paragraph (2) substitute—

"(2) For the purposes of these Regulations, a person is in police custody if the person has been arrested by a constable in connection with an offence, except where arrested under the Extradition Act 2003, and is in custody in a police station or other premises."

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision consequential on the Criminal Justice (Scotland) Act 2016 ("the 2016 Act"). Paragraph 12(3) of the schedule makes provision supplemental to that Act.

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<sup>(19)</sup> S.S.I. 2013/194.

<sup>(20)</sup> S.S.I. 2013/205.

<sup>(21)</sup> S.S.I. 2014/159.

<sup>(22)</sup> S.S.I. 2014/95.

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The Regulations modify primary and secondary legislation to remove references to powers of arrest abolished by section 54 of the 2016 Act and to remove references to detention under section 14 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) (which is repealed by schedule 2 paragraph 27 of the 2016 Act). Other modifications replace references to provisions of the 1995 Act with references to replacement provisions in the 2016 Act.

Paragraph 12(3) of the schedule amends section 288K(1) of the 1995 Act (inserted by section 110(1) of the 2016 Act) to enable the Lord Justice General to specify hearings in the Sheriff Appeal Court (as well as the High Court, sheriff court and JP court) as appropriate for the appearance of an accused by live television link. Reference to the Sheriff Appeal Court was not included in this power as presently framed because the Bill which became the 2016 Act was introduced in the Scottish Parliament before the Bill which became the Courts Reform (Scotland) Act 2014<sup>(23)</sup> and which created the Sheriff Appeal Court.

Regulation 2(2) to (5) contains transitional provision disapplying some of the consequential modifications in respect of individuals arrested or detained before 25th January 2018 (the date of commencement of relevant provisions of the 2016 Act) and still in police custody at the beginning of that day.

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(23) 2014 asp 18. The Sheriff Appeal Court is established by section 46.