
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 345

**The Criminal Justice (Scotland) Act 2016 (Commencement
No. 5, Transitional and Saving Provisions) Order 2017**

Citation and commencement

1. This Order may be cited as the Criminal Justice (Scotland) Act 2016 (Commencement No. 5, Transitional and Saving Provisions) Order 2017 and comes into force on 25th January 2018.

Interpretation

2.—(1) In this Order—

“constable” means—

- (a) a constable within the meaning given by section 62 of the 2016 Act; and
- (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(1)—
 - (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.

“detained” means detained under section 14 of the 1995 Act, and “detention” is to be construed accordingly;

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(2);

“the 2016 Act” means the Criminal Justice (Scotland) Act 2016;

“the appointed day” means the day appointed by article 3.

(2) For the purposes of this Order, a person is in police custody from the time the person is arrested or detained by a constable until any one of the events mentioned in paragraph (3) occurs.

(3) 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(3) that the person continue to be kept in a place of safety.

(1) [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).

(2) [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 \(asp 15\)](#) (“the 2010 Act”) sections 1(2) and 3(1).

(3) [2011 asp 1](#). Section 65(2) is amended by schedule 2 paragraph 40(a)(ii) of the 2016 Act.

Appointed day

3. 25th January 2018 is the day appointed for the coming into force of the provisions of the 2016 Act specified in column 1 of the table in the schedule (the subject matter of which is described in the corresponding entry in column 2).

Persons arrested or detained before appointed day- transitional and saving provisions

4.—(1) This article applies in relation to a person who is arrested or detained by a constable before the appointed day, and remains in police custody at the beginning of the appointed day following that arrest or detention.

(2) Sections 3 to 34, 38 to 41, 43, 44 and 55 of the 2016 Act do not apply in relation to any matter arising from that arrest or detention.

(3) Despite the coming into force of schedule 2 paragraphs 4, 27, 28, 31, 35, 36, 37, 39 and 40 of the 2016 Act in accordance with article 3, the following provisions continue to have effect on and after the appointed day as they did immediately before that day in relation to any matter arising from that arrest or detention:—

- (a) section 4 of the Trespass (Scotland) Act 1865(4);
- (b) section 8A(2)(a) of the Legal Aid (Scotland) Act 1986(5);
- (c) section 6D(2A) of the Road Traffic Act 1988(6);
- (d) sections 14 to 15A, 17, 17A, 18, 18B, 18D, 19AA, 22, 22ZA, 22ZB, 42(3), (7) and (8), 43 and 135(3) of the 1995 Act(7);
- (e) schedule 8 paragraphs 18, 20(1) and 27 of the Terrorism Act 2000(8);
- (f) sections 65, 66, 68, 69 and 72 of the Children’s Hearings (Scotland) Act 2011(9).

(4) Despite the coming into force of section 54 of the 2016 Act in accordance with article 3, the power of a constable at common law to arrest a person to whom this article applies in respect of an

-
- (4) 1865 c.56 (28 & 29 Vict). Section 4 was amended by the Criminal Justice Act 1982 (c.45), section 77 and schedule 15 paragraph 1.
 - (5) 1986 c.47. Section 8A was inserted by the 2010 Act section 2(3) and amended by S.I. 2011/1739 article 3; the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3) sections 17 and 23(4); and the Crime and Courts Act 2013 (c.22) schedule 21 paragraph 50(1).
 - (6) 1988 c.52. Section 6D was inserted by the Railways and Transport Safety Act 2003 (c.20) schedule 7 paragraph 1 and amended by the Serious Organised Crime and Police Act 2005 (c.15) section 154(1) to (3).
 - (7) Sections 14A and 14B were inserted by the 2010 Act section 3(2). Section 15 was amended by the Crime and Punishment (Scotland) Act 1997 (c.48) section 62(1) and schedule 1 paragraph 21(2) and the 2010 Act section 1(3). Section 15A was inserted by the 2010 Act section 1(4). Section 17A was inserted by the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9) schedule 1 paragraph 2 and amended by the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5) schedule 1 paragraph 3(b) and the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) schedule 7 paragraph 29. Section 18 was amended by the Crime and Punishment (Scotland) Act 1997 section 47(1)(a) and (d) and schedule 3; the Crime and Disorder Act 1998 (c.37) section 119 and schedule 8 paragraph 117(1); the Criminal Justice (Scotland) Act 2003 (asp 7) section 55(2); the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) section 83(1) and schedule 6 paragraph 4(2); the Criminal Justice and Licensing (Scotland) Act 2010 section 77(2) and schedule 7 paragraph 30; the Police and Fire Reform (Scotland) Act 2012 (asp 8) schedule 7 paragraph 12(3) and the Protection of Freedoms Act 2012 (c.9) schedule 1 paragraph 6(2). Sections 18B and 18D were inserted by the Criminal Justice and Licensing (Scotland) Act 2010 sections 78 and 79. Section 19AA was inserted by the Police, Public Order and Criminal Justice (Scotland) Act 2006 section 77(2) and amended by the Anti-social Behaviour, Crime and Policing Act 2014 (c.12) schedule 11 paragraph 51. Section 22 was amended by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) section 7 and the Criminal Justice and Licensing (Scotland) Act 2010 schedule 7 paragraph 34. Sections 22ZA and 22ZB were inserted by the Criminal Justice and Licensing (Scotland) Act 2010 section 55. Section 42 was amended by the Criminal Justice and Licensing (Scotland) Act 2010 section 52(3). Section 43 was amended by the Crime and Punishment (Scotland) Act 1997 section 55(2) and (3). Section 135 was amended by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 section 7(3) and schedule 1 paragraph 17.
 - (8) 2000 c.11. Schedule 8 paragraph 18 was amended by the Anti-social Behaviour, Crime and Policing Act 2014 (c.12) schedule 9 paragraph 5(12). Paragraph 20 was amended by the Anti-terrorism, Crime and Security Act 2001 (c.24) section 89(3) and (4) and the Protection of Freedoms Act 2012 (c.9) schedule 10.
 - (9) Section 66 was amended by S.S.I. 2013/211 schedule 1 paragraph 20(7).

offence while the person remains in police custody following the arrest or detention referred to in paragraph (1) continues to have effect on and after the appointed day.

(5) But the power referred to in paragraph (4) continues to have effect only for the purpose of immediately charging the person with an offence.

Undertakings- saving provision

5.—(1) This article applies where a person is liberated on a written undertaking under section 22 or 43(1) of the 1995 Act before the appointed day.

(2) Sections 22(1F) and (1G), 22ZA and 22ZB of that Act or (as the case may be) section 43(6) and (7) of that Act continue to have effect in relation to that undertaking on and after the appointed day as they did immediately before that day.

Arrest under section 1 following detention- transitional provision

6.—(1) This article applies where a person arrested under section 1 of the 2016 Act has previously—

- (a) been detained in relation to the same offence as that in respect of which the person is arrested, or in relation to an offence arising from the same circumstances as that offence; and
- (b) left police custody following that detention.

(2) No authorisation for keeping the person in custody may be given under section 7 of that Act.

Voluntary interviews- transitional and saving provision

7. Where a person attends at a police station or other place voluntarily for the purpose of being interviewed by a constable, and that interview begins before the appointed day—

- (a) section 31(1), (2)(a) to (c) and (4) and section 32 of the 2016 Act do not apply in respect of that interview;
- (b) section 15A of the 1995 Act continues to have effect in relation to that interview after the beginning of the appointed day as it did immediately before that day.

Post-charge questioning- transitional provision

8.—(1) Despite the coming into force of sections 35 to 37 of the 2016 Act in accordance with article 3, the court may not authorise questioning under section 35(1) of a person in respect of an offence where paragraph (2) or (3) applies.

(2) This paragraph applies where the person was officially accused of the offence before the appointed day.

(3) This paragraph applies where—

- (a) the person was arrested or detained in respect of the offence before the appointed day and remained in police custody at the beginning of the appointed day following that arrest or detention; and
- (b) the application for authorisation is made by a constable.

Statements by accused- transitional provision

9. Section 109 of the 2016 Act applies only in respect of a statement made in the course of questioning where the course of questioning begins on or after the appointed day.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Live television links- saving provision

10. Despite the coming into force of section 110(2)(b) of the 2016 Act in accordance with article 3, any arrangements made under section 80(1) of the Criminal Justice (Scotland) Act 2003(**10**) before the appointed day continue to have effect on and after that day, and section 80(2) to (5) continue to apply in relation to any such arrangements as they did immediately before that day.

St Andrew's House,
Edinburgh
24th October 2017

MICHAEL MATHESON
A member of the Scottish Government