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## EXPLANATORY NOTE

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

The Order makes provision in consequence of the Criminal Justice (Scotland) Act 2016 (“the 2016 Act”).

Article 10 enables the Lord Advocate, when acting under section 57 of the 2016 Act, to specify bodies and deal with matters in the Code of Practice on investigative functions which would otherwise be outwith the legislative competence of the Scottish Parliament in terms of section 29(2) (b) or (c) of the Scotland Act 1998.

Articles 11 and 12 provide in relation to the code of practice about search of a person not in police custody under section 73 of the 2016 Act which applies to persons exercising the functions of a constable. Article 12 requires other officials and officers to have regard to the code when exercising a corresponding function.

Articles 13, 15 to 23 and 24(2) make modifications consequential on provision in the 2016 Act or other provision in the Order. Article 24(3) expands the procedural requirements in relation to regulations made under section 70 of the 2016 Act to reflect the application to constables in non-territorial police forces.

Article 14 makes provision to tidy up the statute book as a consequence of the combined effects on the Criminal Justice and Public Order Act 1994 (“the 1994 Act”) of Schedule 1 to the Order and provisions of the Policing and Crime Act 2017 which are not yet in force.

Schedule 1 modifies the 1994 Act. Section 136 of the 1994 Act allows an arrest to be effected in England and Wales or Northern Ireland under a Scottish warrant. Section 137 allows a constable of the Police Service of Scotland to arrest someone who is in England and Wales or Northern Ireland without a warrant in connection with a Scottish crime in certain circumstances. Section 140 allows a constable of a police force in England and Wales or Northern Ireland to arrest a person in Scotland in certain circumstances. In each of these situations, Schedule 1 amends the relevant section to ensure that the laws applicable to an arrest effected in Scotland by a constable of the Police Service of Scotland will apply. Paragraph 4 inserts section 137ZA into the 1994 Act, which adjusts the operation of the 2016 Act rules as they apply to arrests effected outside Scotland. The rest of the Schedule removes from the 1994 Act references to provisions of the Criminal Procedure (Scotland) Act 1995 which are repealed by the 2016 Act.

Schedule 2 makes provision to apply Parts 1 and 2 of the 2016 Act where the Ministry of Defence Police, the British Transport Police Force and the Civil Nuclear Constabulary exercise police powers in Scotland.

Schedule 3 makes provision about the application of the 2016 Act in relation to immigration officers, designated customs officials and officers of Revenue and Customs; and modifies Part 3 of the Criminal Law Consolidation (Scotland) Act 1995 (“the 1995 Act”), which applies to such officers and officials. Part 5 deals with the application of the 2016 Act to National Crime Agency officers.

Part 6 of Schedule 3 makes provision in connection with the transfer of a person between different types of custody and provides for cooperation between officers.

Schedule 4 makes provision about the application of the 2016 Act in relation to persons in police custody in Scotland by virtue of sections 313 to 318 of the Armed Forces Act 2006 (“the 2006 Act”). Section 315 of the 2006 Act makes provision with respect to a person who surrenders to a civilian police officer as being a deserter or absent without leave. Sections 313 to 318 of the 2006 Act provide for arrest and detention of persons subject to service law by civilian police officers in certain limited

circumstances and set out the procedures which apply following such arrest or surrender, including procedures for transfer of a person into service custody.

Schedule 5 modifies the Criminal Procedure (Scotland) Act 1995 (“the Criminal Procedure Act”) and the 2016 Act as they apply in relation to a person arrested in connection with extradition proceedings.

Paragraph 1 modifies provisions of the Criminal Procedure Act which regulate the taking of relevant physical data (as defined in section 7A of that Act, and including fingerprints) and other more intimate samples from a person who has been arrested and is in police custody, and the retention and destruction of those data and samples, and any information derived from them.

Paragraph 2 modifies the application of the 2016 Act in the case of a person arrested under an extradition arrest power. Sections 3, 4 and 25 to 30 of the 2016 Act are expressly dis-applied as these provisions relate to the procedure to be followed when a person is arrested in connection with a domestic criminal investigation.

Section 5 of the 2016 Act obliges police to provide a person in police custody with certain information. Schedule 5 modifies this obligation to information relevant in the case of a person arrested under an extradition arrest power, including information which must be provided in the case of a person arrested in connection with a European arrest warrant in order to comply with the [Directive 2012/13/EU](#) of the European Parliament and of the Council of 22nd May 2012 on the right to information in criminal proceedings.

Section 6 of the 2016 Act is modified to limit the obligation to record information to information relevant in the case of a person arrested under an extradition power. Section 48 of the 2016 Act is modified to clarify that the effect of that provision applies in the case of a person arrested under an extradition arrest power.

A full regulatory impact assessment for this Order has not been produced as no impact on the private or voluntary sectors is foreseen.