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STATUTORY INSTRUMENTS

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**2018 No. 46**

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

*Introductory*

**Citation**

1. This Order may be cited as the Criminal Justice (Scotland) Act 2016 (Consequential Provisions) Order 2018.

**Commencement**

2.—(1) The following provisions come into force on the day after the day on which this Order is made—

- (a) articles 1 to 4;
- (b) articles 10 to 12;
- (c) article 14;
- (d) article 18; and
- (e) article 24(1) and (3).

(2) The following provisions come into force on the day after the day on which the Order is made or, if later, the day on which section 14 of the Criminal Procedure (Scotland) Act 1995(1) is repealed—

- (a) articles 5 to 9;
- (b) article 13;
- (c) articles 15 to 17;
- (d) articles 19 to 23;
- (e) article 24(2); and
- (f) the Schedules.

**Extent**

3.—(1) The following provisions extend to Scotland only—

- (a) article 7 and Schedule 3;
- (b) article 8 and Schedule 4;
- (c) article 9 and Schedule 5;
- (d) articles 10 to 17;
- (e) articles 23 and 24.

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(1) 1995 c.46; paragraph 27(a) of Schedule 2 to the 2016 Act provides for the repeal of section 14 of the 1995 Act. Paragraph 27(a) is to come into force on a day appointed by the Scottish Ministers in an order under section 117(2) of the 2016 Act.

- (2) Article 18 extends to England and Wales and Northern Ireland only.
- (3) Paragraphs 2 and 3 of Schedule 2 extend to England and Wales and Scotland only.
- (4) Any provision of this Order not mentioned in paragraphs (1) to (3) extends to England and Wales, Scotland and Northern Ireland.

### **Meaning of the 2016 Act**

- 4. In this Order, “the 2016 Act” means the Criminal Justice (Scotland) Act 2016(2).

### *Criminal investigations*

### **Cross-border enforcement by constables of territorial police forces**

- 5.—(1) Schedule 1 modifies Part 10 of the Criminal Justice and Public Order Act 1994(3).
- (2) Schedule 1 does not apply in relation to a case in which a person is arrested or detained before this article comes into force.

### **Exercise of functions by constables and members of non-territorial police organisations**

- 6. Schedule 2 makes provision about the application of the 2016 Act in relation to—
  - (a) the Ministry of Defence Police;
  - (b) the British Transport Police Force; and
  - (c) the Civil Nuclear Constabulary.

### **Exercise of functions by other officials**

- 7.—(1) Schedule 3 makes provision about the application of the 2016 Act in relation to—
  - (a) immigration officers;
  - (b) designated customs officials; and
  - (c) officers of Revenue and Customs.
- (2) Nothing in Parts 2 to 5 of Schedule 3 causes a provision contained in Part 1 of the 2016 Act to apply in relation to a case in which a person is arrested before this article comes into force.
- (3) Nothing in Parts 2 to 5 of Schedule 3 causes a provision of the 2016 Act to apply in relation to a case if—
  - (a) the provision is contained in Part 1 of the 2016 Act and it would not apply in relation to the case had the arrest of the person in question been effected in Scotland by a constable of the Police Service of Scotland under section 1 of that Act; or
  - (b) the provision is contained in Part 2 of the 2016 Act and it would not apply in relation to the case had the search of the person in question been carried out in Scotland by a constable of the Police Service of Scotland.

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(2) [2016 asp 1](#).

(3) [1994 c.33](#). Part 10 of the 1994 Act is amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act [1995 \(c.40\)](#), Schedule 4, paragraph 93(6); the Youth Justice and Criminal Evidence Act [1999 \(c.23\)](#), Schedule 4, paragraph 23; the Powers of Criminal Courts (Sentencing) Act [2000 \(c.6\)](#), Schedule 9, paragraph 161; the Terrorism Act [2000 \(c.11\)](#), Schedule 15, paragraph 9; the Anti-terrorism, Crime and Security Act [2001 \(c.24\)](#), Schedule 7, paragraphs 17 to 19; the Proceeds of Crime Act [2002 \(c.29\)](#), Schedule 11, paragraph 24; the Serious Organised Crime and Police Act [2005 \(c.15\)](#), Schedule 7, paragraph 47; the Finance Act [2007 \(c.11\)](#), section 87(6); the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (S.I. [2007/288](#)), Schedule 1, paragraph 28; the Criminal Justice and Immigration Act [2008 \(c.4\)](#), Schedule 4, paragraph 42; the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (Consequential Provisions) Order 2011 (S.I. [2011/1739](#)), Schedule 2; the Policing and Crime Act [2017 \(c.3\)](#), Part 4, Chapter 8.

*Service offences etc.*

**Service offences etc.**

8.—(1) Schedule 4 makes provision about the application of the 2016 Act in relation to persons in police custody by virtue of sections 313 to 318 of the Armed Forces Act 2006<sup>(4)</sup> (arrest and detention by civil authorities).

(2) Nothing in Schedule 4 causes a provision of the 2016 Act to apply in relation to a case in which, before this article comes into force, a person—

- (a) is arrested; or
- (b) surrenders to a constable as being a person subject to service law who has deserted or is absent without leave.

(3) Nothing in Schedule 4 causes a provision of the 2016 Act to apply in relation to a case—

- (a) in which a person is arrested, if the provision would not apply in relation to the case had the arrest been effected under section 1 of that Act; or
- (b) in which a person surrenders to a constable as being a person subject to service law who has deserted or is absent without leave, if the provision would not apply in relation to the case had the person instead been arrested under section 1 of that Act at the time the person surrendered to the constable.

(4) For the purposes of paragraph (3), it is irrelevant that the hypothetical arrest under section 1 of the 2016 Act which is referred to in that paragraph could not be lawfully effected.

*Extradition*

**Persons arrested in connection with extradition proceedings**

9.—(1) Schedule 5 modifies the Criminal Procedure (Scotland) Act 1995<sup>(5)</sup> (“the 1995 Act”) and the 2016 Act as they apply in relation to persons arrested in connection with extradition proceedings.

(2) Paragraph (3) makes transitional provision in relation to section 18H of the 1995 Act (which is inserted by paragraph 1 of Schedule 5).

(3) Where—

- (a) relevant data or relevant samples were taken, or provided, in connection with extradition proceedings; and
- (b) before this article comes into force those proceedings were finally determined (within the meaning of section 18H(4) of the 1995 Act),

section 18H applies in relation to the data, the samples and any information derived from the samples subject to the modification that the reference in subsection (2) to the final determination of the extradition proceedings is to be read as a reference to the coming into force of this article.

(4) In paragraph (3)—

- “relevant data” means physical data to which section 18H of the 1995 Act applies; and
- “relevant samples” means samples to which that section applies.

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(4) 2006 c.52.  
(5) 1995 c.46.

### *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.

### *Further modifications of enactments*

#### **Legal Aid (Scotland) Act 1986**

**13.**—(1) In section 8A(2) of the Legal Aid (Scotland) Act 1986(6) (“the Legal Aid Act”), paragraphs (b) and (c) are repealed.

(2) To the extent that they were made in reliance on paragraph (b) or (c) of section 8A(2) of the Legal Aid Act, any regulations which had effect immediately before the relevant time continue to have effect as they did immediately before the relevant time in relation to a case in which a person is arrested or detained before the relevant time.

(3) In paragraph (2), “the relevant time” means the time at which this article comes into force.

#### **Criminal Justice and Public Order Act 1994**

**14.**—(1) The Criminal Justice and Public Order Act 1994 is modified in accordance with paragraphs (3) and (4).

(2) If (in whatever terms) an enactment makes transitional provision to keep a part of a subsection in effect in relation to certain cases despite the repeal of that part(7), that part of the subsection remains in effect in accordance with the transitional provision despite the repeal of the whole subsection by paragraph (3) or (4).

(3) In section 136, subsection (5) (insofar as not otherwise repealed) is repealed on the later of—

- (a) the day that paragraph (a) of the subsection is repealed by Schedule 17 to the Policing and Crime Act 2017(8);
- (b) the day that paragraph (b) of the subsection is repealed by Schedule 1 to this Order.

(4) In section 137, subsection (8) (insofar as not otherwise repealed) is repealed on the later of—

- (a) the day that paragraph (a) of the subsection is repealed by Schedule 17 to the Policing and Crime Act 2017;
- (b) the day that paragraphs (b) and (c) of the subsection are repealed by Schedule 1 to this Order.

#### **Criminal Procedure (Scotland) Act 1995**

**15.**—(1) Section 307 of the Criminal Procedure (Scotland) Act 1995 is modified in accordance with paragraphs (3) and (4).

(2) Those modifications do not apply in relation to a case in which a person is arrested or detained before this article comes into force.

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(6) 1986 c.47. Section 8A was inserted by the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), section 2(3); it has been amended by S.I. 2011/1739; by the Scottish Civil Justice Council and Criminal Legal Assistance (Scotland) Act 2013 (asp 3), sections 17 and 23(4); and by the Crime and Courts Act 2013 (c.22), Schedule 21, Part 3, paragraph 50.

(7) For example, article 5(2).

(8) 2017 c.3.

(3) In subsection (1AA) the words “(within the meaning of Part 3 of the Criminal Law (Consolidation) (Scotland) Act 1995)(9)” are repealed.

(4) After that subsection insert—

“(1AB) In subsection (1AA)—

“immigration offence” means—

- (a) an offence involving conduct which relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement); or
- (b) (insofar as it is not an offence within paragraph (a)) an offence under the Immigration Acts or in relation to which a power of arrest is conferred on an immigration officer by the Immigration Acts;

“nationality offence” means an offence involving conduct which is undertaken for the purposes of, or otherwise in relation to, an enactment in—

- (a) the British Nationality Act 1981(10);
- (b) the Hong Kong Act 1985(11);
- (c) the Hong Kong (War Wives and Widows) Act 1996(12);
- (d) the British Nationality (Hong Kong) Act 1997(13);
- (e) the British Overseas Territories Act 2002(14);
- (f) an instrument made under any of those Acts.

(1AC) In subsection (1AB), “the Immigration Acts” has the meaning given by section 61 of the UK Borders Act 2007(15).”

### **Criminal Law (Consolidation) (Scotland) Act 1995**

**16.**—(1) Part 3 of the Criminal Law (Consolidation) (Scotland) Act 1995 is modified in accordance with paragraphs (3) to (7).

(2) Those modifications do not apply in relation to a case in which a person is arrested or detained before this article comes into force.

(3) Subsection (3) of section 23P is repealed(16).

(4) Sections 24 to 25A(17) are repealed.

(5) In section 26, for subsections (8) to (10) substitute—

“(7A) An officer may use reasonable force in exercising any power conferred by this section, except as regards a requirement under subsection (2).

(7B) Sections 3 and 6(1), (2) and (8) of the Criminal Justice (Scotland) Act 2016 (giving and recording of information) apply in relation to a person detained by an officer under this section in connection with the commission of a relevant offence as they apply in relation to a person arrested by the officer in respect of that offence.

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(9) 1995 c.39.

(10) 1981 c.61.

(11) 1985 c.15.

(12) 1996 c.41.

(13) 1997 c.20.

(14) 2002 c.8.

(15) 2007 c.30.

(16) Section 23P was inserted by the Finance Act 2007, Schedule 23, paragraph 3.

(17) Sections 24A and 24B were inserted by S.I. 2011/1739, Schedule 1, paragraph 6; section 25A was inserted by S.I. 2011/1739, Schedule 1, paragraph 4.

(7C) Sections 31 to 34 and 38 to 44 of that Act (questioning, and intimation and access to others) apply in relation to a person detained under this section in connection with the commission of a relevant offence as they apply in relation to a person in custody following arrest by an officer in respect of that offence.

(7D) A person may not be detained under this section on any grounds if the person has been detained under this section before on the same grounds or on grounds arising out of the same circumstances.”.

(6) Section 26A is repealed.

(7) In section 26B(18)—

- (a) in subsection (1), the definitions of “immigration offence” and “nationality offence” are repealed;
- (b) for the definition of “officer” in that subsection, substitute—  
““officer” means an officer of Revenue and Customs;”;
- (c) in subsection (2), paragraph (b) and the “or” preceding it are repealed.

### **Crime and Disorder Act 1998**

17.—(1) Section 110 of the Crime and Disorder Act 1998(19) is repealed.

(2) The modification made by paragraph (1) does not apply in relation to a case in which a person is detained before this article comes into force.

### **Terrorism Act 2000**

18. The amendments made to Schedule 8 to the Terrorism Act 2000(20) by paragraph 37 of Schedule 2 to the 2016 Act extend also to England and Wales and Northern Ireland.

### **Finance Act 2007**

19.—(1) The Finance Act 2007(21) is modified in accordance with paragraphs (3) and (4).

(2) Those modifications do not apply in relation to a case in which a person is arrested or detained before this article comes into force.

(3) In section 87—

(a) before subsection (3)(22) insert—

“(2E) In the application of those sections to an officer of Revenue and Customs—

- (a) sections 136(4B) and 137(7B) apply with the omission of the words from “and, if the constable” to the end;
- (b) section 137ZA applies with the omission of subsection (6).”;

(b) subsection (3) is repealed.

(4) Paragraphs 4 and 5 of Schedule 23 are repealed.

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(18) Section 26B was inserted by the Finance Act 2007, Schedule 23, paragraph 7.

(19) 1998 c.37.

(20) 2000 c.11.

(21) 2007 c.11.

(22) New subsections (2A) to (2D) are to be inserted into section 87 (from a date to be appointed) by the Policing and Crime Act 2017, Schedule 17, paragraph 9.

### **UK Borders Act 2007**

**20.**—(1) In section 2(1A)(a) of the UK Borders Act 2007<sup>(23)</sup> (power of immigration officer to detain individual thought liable to detention by constable), for “detained by a constable under section 14 of the Criminal Procedure (Scotland) Act 1995” substitute “arrested by a constable under section 1 of the Criminal Justice (Scotland) Act 2016”.

(2) The modification made by paragraph (1) does not apply in relation to a case in which a person is detained before this article comes into force.

### **Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (Consequential Provisions) Order 2011**

**21.**—(1) The following provisions of the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (Consequential Provisions) Order 2011<sup>(24)</sup> are revoked—

- (a) articles 2, 6 and 7;
- (b) Schedules 1 and 2.

(2) The modifications made by paragraph (1) do not apply in relation to a case in which a person is arrested or detained before this article comes into force.

### **Crime and Courts Act 2013**

**22.**—(1) The Crime and Courts Act 2013<sup>(25)</sup> is modified in accordance with paragraphs (3) and (4).

(2) Those modifications do not apply in relation to a case in which a person is arrested or detained before this article comes into force.

- (3) Subsections (9) to (12) of section 55 are repealed.
- (4) Paragraphs 43, 45 to 47, 48(a) and 49 of Schedule 21 are repealed.

### **Immigration Act 2016**

**23.**—(1) Section 56 of the Immigration Act 2016<sup>(26)</sup> is repealed.

(2) The modification made by paragraph (1) does not apply in relation to a case in which a person is arrested or detained before this article comes into force.

### **2016 Act**

**24.**—(1) The 2016 Act is modified as follows.

- (2) In section 58 (disapplication in relation to service offences), after subsection (2) insert—
  - “(2A) This section is subject to Schedule 4 to the Criminal Justice (Scotland) Act 2016 (Consequential Provisions) Order 2018 ( S.I. 2018/46).”.
- (3) In section 70(2)(b) (provisions about possession of alcohol), after sub-paragraph (i) insert—
  - “(ia) the chief constable of the British Transport Police Force,
  - (ib) the chief constable of the Civil Nuclear Constabulary,
  - (ic) the chief constable of the Ministry of Defence Police.”.

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<sup>(23)</sup> 2007 c.30. Section 2(1A) is inserted by the Borders, Citizenship and Immigration Act 2009 (c.11), section 52(1); it is amended by the Counter-Terrorism and Security Act 2015 (c.6), section 10(8).

<sup>(24)</sup> S.I. 2011/1739.

<sup>(25)</sup> 2013 c.22.

<sup>(26)</sup> 2016 c.19.

Dover House  
London  
16th January 2018

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