
SCOTTISH STATUTORY INSTRUMENTS

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

(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

(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).