STATUTORY INSTRUMENTS

2018 No. 46

CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
CRIMINAL PROCEDURE

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

Made - - - - 16th January 2018

Coming into force in accordance with article 2

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(4) and (5) of the Scotland Act 1998(**1**).

In accordance with paragraphs 1, 2 and 3 of Schedule 7 to that Act a draft of this Order has been laid before and approved by a resolution of each House of Parliament.

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).

(**1**) 1998 c.46.

(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the Order is made or, if later, the day on which section 14 of the Criminal Procedure (Scotland) Act 1995(**2**) is repealed—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.

(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(**3**).

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(**4**).

(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—

(**2**) 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.

(**3**) 2016 asp 1.

(**4**) 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.

(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.

Service offences etc.

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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(**5**) (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.

(**5**) 2006 c.52.

Extradition

Persons arrested in connection with extradition proceedings

9.—(1) Schedule 5 modifies the Criminal Procedure (Scotland) Act 1995(**6**) ("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.

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)—

(**6**) 1995 c.46.

(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(**7**) ("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.

(**7**) 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.