Draft Order laid before Parliament under paragraphs 1, 2 and 3 of Schedule 7 to the Scotland Act 1998, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2011 No. 0000

CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
CRIMINAL LAW
LEGAL AID AND ADVICE

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

Made - - - - 2011

Coming into force in accordance with article 1(2)

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(2), (3), (4) and (5) of the Scotland Act 1998(**1**).

In accordance with section 115(1) of, and 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.

Citation, commencement and extent

1.—(1) This Order may be cited as the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (Consequential Provisions) Order 2011.

(2) This Order comes into force on the day after that on which it is made.

(3) Articles 2 to 5 (and Schedule 1) extend to Scotland only.

(4) This article and articles 6 and 7 (and Schedule 2) extend to England and Wales, Scotland and Northern Ireland.

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

Amendment of provisions relating to the investigation of Revenue and Customs offences in Scotland

2.—(1) Schedule 1 amends Part 3 of the Criminal Law (Consolidation) (Scotland) Act 1995(**2**) to give suspects the right to have access to a solicitor, to increase the maximum period of detention under section 24 and to provide for the extension of that period of detention in certain circumstances.

(2) The amendments made by paragraph 2 of Schedule 1 do not affect section 24(5) of that Act(**3**) (detention and questioning at office of Revenue and Customs) as it applies by virtue of section 26(8) in respect of a person detained under section 26 (detention in connection with certain drug smuggling offences).

(3) The amendment made by paragraph 3 of Schedule 1 does not affect subsection 25(1) of that Act(**4**) as it applies by virtue of section 26(9) in respect of a person detained under section 26.

(4) The amendments made by Schedule 1 do not affect the operation of Part 3 of that Act (as it has effect immediately before the time at which this Order comes into force) in relation to—

(a) a person who is detained under section 24 of that Act, where the period of detention began before that time;

(b) a person who attends as mentioned in section 25A(1)(b) of that Act, where the period of attendance began before that time;

(c) a person who is arrested and detained as mentioned in section 25A(1)(c) of that Act, where the arrest occurred before that time.

Availability of criminal advice and assistance for persons suspected of a Revenue and Customs offence and persons detained for certain drug smuggling offences

3. In section 8A of the Legal Aid (Scotland) Act 1986(**5**) (power to provide for criminal advice and assistance to be available for certain clients without reference to the financial limits), in subsection (2)—

(a) after "is" insert—

"(a)";
and

(b) at the end insert—

"(b) a person to whom section 25A of the Criminal Law (Consolidation) (Scotland) Act 1995 (right of suspects to have access to a solicitor: revenue and customs offences) applies; or

(c) a person detained under section 26 of that Act (detention in connection with certain drug smuggling offences).".

4.—(1) In regulation 8 of the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011(**6**) (criminal advice and assistance: automatic availability in certain circumstances) —

(a) after "the Act" insert—

"(a)";
and

(**2**) 1995 c. 39 ("the 1995 Consolidation Act").
(**3**) Subsection 24(5) of the 1995 Consolidation Act was amended by the Finance Act 2007 (c.11), Schedule 23, paragraph 4(b).
(**4**) Subsection 25(1) of the 1995 Consolidation Act was amended by the Finance Act 2007 (c.11), Schedule 23, paragraph 5.
(**5**) 1986 c. 47. Section 8A was inserted by the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), section 2(3).
(**6**) S.S.I. 2011/217.

(b) at the end insert—

"(b) for any person to whom section 25A of the Criminal Law (Consolidation) (Scotland) Act 1995 (right of suspects to have access to a solicitor: revenue and customs offences) applies, in relation to a private consultation within the meaning of subsection (3) of that section; and

(c) for any person detained under section 26 of that Act (detention in connection with certain drug smuggling offences), in relation to a consultation with a solicitor permitted by subsection (9)(b) of that section.".

(2) The amendments made by paragraph (1) have no effect in relation to—

(a) a person who is detained under section 24 or 26 of that Act, where the period of detention began before the time at which this Order comes into force;

(b) a person who attends as mentioned in section 25A(1)(b) of that Act, where the period of attendance began before that time; or

(c) a person who is arrested and detained as mentioned in section 25A(1)(c) of that Act, where the arrest occurred before that time.

5.—(1) In regulation 3(1) of the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011(**7**) (duty solicitors: advice for suspects)—

(a) after "assistance to" insert—

"(a)";
and

(b) at the end insert—

"(b) a person to whom section 25A of the Criminal Law (Consolidation) (Scotland) Act 1995 (right of suspects to have access to a solicitor: revenue and customs offences) applies; or

(c) a person detained under section 26 of that Act (detention in connection with certain drug smuggling offences).".

(2) The amendments made by paragraph (1) have no effect in relation to—

(a) a person who is detained under section 24 or 26 of that Act, where the period of detention began before the time at which this Order comes into force;

(b) a person who attends as mentioned in section 25A(1)(b) of that Act, where the period of attendance began before that time; or

(c) a person who is arrested and detained as mentioned in section 25A(1)(c) of that Act, where the arrest occurred before that time.

Amendment of provisions relating to cross-border arrest and detention by Scottish police

6.—(1) Schedule 2 amends Part 10 of the Criminal Justice and Public Order Act 1994(**8**) to make further provision about the rights of persons arrested or detained under section 137(2) of that Act, including the right to have access to a solicitor, to increase the maximum period of detention and to provide for the extension of that period in certain circumstances.

(2) The amendments made by Schedule 2 do not affect the operation of that Part of that Act (as it has effect immediately before the time at which this Order comes into force) in relation to a person arrested or detained under section 137(2) of that Act where the arrest occurred or the period of detention began before that time.

(**7**) S.S.I. 2011/163.
(**8**) 1994 c. 33.

Amendment of provisions relating to cross-border arrest and detention by officers of Revenue and Customs

7.—(1) In section 87 of the Finance Act 2007(**9**) (cross-border exercise of powers by officers of Revenue and Customs), for subsection (3) substitute—

"(3) In the application of section 138(**10**) to an officer of Revenue and Customs—

(a) subsection (1B) shall be treated as if it provided as follows—

"(1B) Where a person is arrested under subsection (2) of the principal section but not charged in connection with an offence, subsections (2) to (9) of section 25A of the Criminal Law (Consolidation) (Scotland) Act 1995 (right of suspects to have access to a solicitor) apply with the following modifications—

(a) omit the references to "other premises or place" in subsections (2) and (6);

(b) the right under subsection (2) arises when the person is arrested;

(c) the reference in subsection (2)(b) to the office of Revenue and Customs where the person is being detained is to be read as a reference to the police station to which the person is to be taken; and

(d) subsection (6) is to be read as requiring that the person be informed of the rights under section 25A(2) and (3) on being arrested.";

(b) in subsection (2), the references to the 1995 Act and to section 14(1) of that Act are to be treated as references to the Criminal Law (Consolidation) (Scotland) Act 1995 ("the Consolidation Act") and to section 24(1) of that Act;

(c) subsection (2A) is to be treated as if it provided as follows—

"(2A) Those provisions are—

(a) section 24(2) to (8A)(**11**) (detention and questioning at office of Revenue and Customs);

(b) sections 24A and 24B (extension of period of detention under section 24);

(c) section 25 (right to have someone informed when detained);

(d) section 25A(2) to (9) (right of access to solicitor).";

(d) in subsection (6) the reference to the 1995 Act is to be treated as a reference to the Consolidation Act;

(e) in subsection (7)—

(i) the reference to section 14 is to be treated as a reference to section 24 of the Consolidation Act; and

(ii) the reference to subsections (6) and (9) of section 14 is to be treated as a reference to subsections (5) and (8) of section 24;

(f) in subsection (8)—

(i) the reference to section 15 is to be treated as a reference to section 25 of the Consolidation Act;

(ii) paragraph (a) is to be treated as if it provided as follows—

(**9**) 2007 c. 11.
(**10**) Section 138 of the Criminal Justice and Public Order Act 1994 (c.33) is amended by paragraph 2 of Schedule 2 to this Order.
(**11**) Subsection 24(4) of the 1995 Consolidation Act was amended by the Crime and Disorder Act 1998 (c.37), section 110. Subsections 24(5) and (8) were amended by the Finance Act 2007 (c.11), Schedule 23, paragaphs 4(b) and (c). Subsection 24(8A) was inserted by the Finance Act 2007 (c.11), Schedule 23, paragraph 4(d).

"(a) in subsection (1)—

(i) the words "other premises or place" (in both places) are to be treated as if they referred to a police station;

(ii) the reference in paragraph (a) to other premises is to be treated as a reference to a police station;";

(iii) paragraph (b) does not apply;

(iv) the references in paragraph (c)(i) and (iii) to the right under subsection (1)(b) are to be treated as references to the right under section 25(1) to have someone informed when detained;

(v) the reference in paragraph (c)(ii) to subsection (1)(b) is to be treated as a reference to section 25(1);

(vi) the reference in paragraph (c)(iii) to subsection (2) is to be treated as a reference to the words in section 25(1) beginning "and the person shall be informed";

(vii) the reference to subsection (4) is to be treated as a reference to section 25(2); and

(g) in subsection (9)—

(i) the reference to section 15A(**12**) is to be treated as a reference to section 25A;

(ii) paragraph (a) is to be treated as if it provided as follows—

"(a) the words "other premises or place" in subsections (2) and (6) are to be treated as referring to a police station;"; and

(iii) in paragraph (b)(iii) the reference to section 15A(2) and (3) is to be treated as a reference to section 25A(2) and (3).".

(2) The amendment made by paragraph (1) does not affect the operation of sections 136 to 139 of the Criminal Justice and Public Order Act 1994 (as they apply to officers of Revenue and Customs by virtue of section 87 of the Finance Act 1987 as it has effect immediately before the time at which this Order comes into force) in relation to a person arrested or detained under section 137(2) of that Act (as it applies to such officers) where the arrest occurred or the period of detention began before that time.

Signed by the authority of the Secretary of State

Dover House,London
Date

Parliamentary Under Secretary of State
Scotland Office

(**12**) Section 15A of the Criminal Procedure (Scotland) Act 1995 (c.46) was inserted by the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), section 1(4).