

## **POLICY NOTE**

### **The Criminal Justice (Scotland) Act 2016 (Commencement No. 5, Transitional and Saving Provisions) Order 2017**

#### **S.S.I. 2017/345 (C. 25)**

1. The above instrument was made in exercise of the powers conferred by section 117(2) and (3) of the Criminal Justice (Scotland) Act 2016 (“the Act”). The instrument is laid before Parliament under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

#### **Policy Objectives**

2. The Act is the legislative vehicle to take forward the next stage of essential reforms to the Scottish criminal justice system, to enhance efficiency and bring the appropriate balance to the justice system so that rights are protected, whilst ensuring effective access to justice for victims of crime. The Act is being implemented in stages. This instrument brings into force most of Part 1 of the Act (plus certain other provisions) on 25 January 2018. Part 1 contains Arrest and Custody provisions that will apply from the point a person is arrested by the police to the point that they leave police custody.

3. These provisions include enhanced solicitor access rights whilst in police custody. These include the right to have a consultation with a solicitor at any time and the right to have a solicitor present during a police interview. The provisions also include bespoke arrangements for those under 18 who have enhanced rights applicable to them whilst in police custody, including access by parents and guardians. One of the overarching provisions is that there is a duty on the police not to detain a person in police custody unreasonably or unnecessarily.

#### **Transitional Arrangements**

4. A series of transitional and saving arrangements have been included in this Order to provide that those persons who are detained or arrested prior to commencement can continue to be dealt with in custody and brought before the court under the legislation that was applicable at the time of arrest or detention. Provisions relating to release on undertaking under the previous statutory regime are preserved in relation to individuals who have been released under them before 25 January 2018. Under the previous system an individual could not be detained on suspicion of the same offence more than once, and article 6 of the Order preserves this right by ensuring that if detained before 25 January and then released, a person cannot be arrested under section 1 of the Act for any purpose other than charging them with the offence.

5. Provision is also made preserving old provisions about police interviews in respect of interviews which have begun before commencement of the new system, and to set limits on the ability to use the new power to authorise post-charge questioning in transitional cases. This will not be possible where the person was charged before 25 January. Where the individual had been arrested or detained but was not yet charged at that point, a prosecution application will be possible after the person has left police custody, but a police application will not be (reflecting the policy of preserving the previous system until such individuals

have left police custody). These provisions are intended to ensure a smooth transition to the new regime, while preserving individuals' rights.

### **Consultation**

6. Part 1 of the Act develops the majority of the recommendations of Lord Carloway's Review of Scottish Criminal Law and Practice. Formal consultations were carried out by the Scottish Government with regard to the recommendations of the Lord Carloway review.

7. Extensive consultation with criminal justice partners and stakeholders was undertaken during the Bill process, and continues in relation to implementation of the Act.

### **Impact Assessment**

8. An Equality Impact Assessment (EQIA) was carried out for the purposes of the Criminal Justice (Scotland) Bill, which did not identify any areas in which there would be a negative impact on any of the protected categories as a result of the policies contained in the Bill.

### **Privacy**

9. It was not considered necessary for the Scottish Government to complete a Privacy Impact Assessment for this instrument as it does not introduce any significant changes to existing practice for Police Scotland in terms of the information that Police Scotland collects and how it is used. Police Scotland already records information about persons in custody within their National Custody System (NCS) and has detailed Standard Operating Procedures in place on how this information is retained and used. These procedures have been subjected to Police Scotland's own Privacy Impact Assessment.

10. It was not considered necessary to complete a Strategic Environmental Impact Assessment as these regulations do not have any environmental impact.

### **Financial Effects**

11. A Business and Regulatory Impact Assessment (BRIA) was carried out for the purposes of the Criminal Justice (Scotland) Bill. The instrument has no new financial impact on business other than that already provided within financial memorandum and supplementary financial memorandum that was completed during the Bill process.

Scottish Government  
Safer Communities Directorate

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