

POLICY NOTE

THE CRIMINAL JUSTICE (SCOTLAND) ACT 2016 (CONSEQUENTIAL AND SUPPLEMENTARY MODIFICATIONS) REGULATIONS 2017

S.S.I. 2017/452

1. The above instrument is made in exercise of the powers conferred by section 115(1) of the Criminal Justice (Scotland) Act 2016. It is subject to the affirmative procedure.

Purpose of this instrument

2. Part 1 of the Criminal Justice (Scotland) Act 2016 (“the 2016 Act”) introduces various reforms to arrest and custody procedures. In particular, section 1 introduces a new power for a constable to arrest an individual without warrant on suspicion of an offence. Schedule 2 paragraph 27 (introduced by section 56) repeals those provisions of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) which provide for detention on suspicion of an offence, thus abolishing the concept of detention as a separate custodial category from arrest. Section 54 of the 2016 Act abolishes all pre-existing powers of a constable to arrest without warrant in respect of an offence, other than under anti-terrorism legislation. Section 21 provides the basis for bringing a person in police custody before the court, whether the person has been arrested under a warrant or arrested without warrant and subsequently charged.

3. Section 110 of the 2016 Act contains provisions which alter the circumstances in which an accused can appear in court by live television link. Section 110(2)(b) repeals the previous provision concerning live television links (section 80 of the Criminal Justice (Scotland) Act 2003).

4. This instrument makes consequential amendments to primary and secondary legislation, as well as transitional provision in respect of those amendments. These provisions are considered necessary or expedient for the purposes of or in connection with the provisions of Part 1 of the 2016 Act.

5. Paragraph 12(3) of the schedule of this instrument also makes a supplementary amendment to a provision of the 1995 Act inserted by section 110(1) of the 2016 Act, in order to fill a gap in the new provisions relating to live television links.

Consequential Modifications

6. Paragraph 1 of the schedule repeals an aspect of section 29 of the Salmon Fisheries (Scotland) Act 1868 which relates to transfer of an individual into police custody and the duty on the police to bring them before a court. These matters are now covered by sections 1 and 21 of the 2016 Act. Section 12(2) of the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 restricts the power of arrest in section 29 of the 1868 Act to a number of office-holders including a constable. So far as constables are concerned, this power is now

superseded by that in section 1 of the 2016 Act, so references to a constable are removed by paragraph 5 of the schedule of these Regulations.

7. Paragraphs 2 to 4, 6 and 8 to 11 of the schedule contain formal repeals of old powers of arrest which are abolished in any case by section 54 of the 2016 Act. Paragraphs 7, 14, 17 and 18 remove various legislative references to detention under section 14 of the 1995 Act, which is repealed by schedule 2 paragraph 27 of the 2016 Act. Paragraphs 12(2), 13, 15 and 16 contain amendments replacing various legislative references to provisions of the 1995 Act with references to replacement provisions of the 2016 Act.

Supplementary Modification

8. Paragraph 12(3) of the schedule inserts a reference to the Sheriff Appeal Court into new section 288K(1) of the 1995 Act (as inserted by section 110(1) of the 2016 Act). The effect is to enable the Lord Justice General to specify hearings in the Sheriff Appeal Court as suitable for appearance by an accused using a live television link. Section 288K(1) makes this power available in relation to all other Scottish criminal courts. Reference to the Sheriff Appeal Court was not included because the Bill which became the 2016 Act was introduced into the Scottish Parliament before the Bill which became the Courts Reform (Scotland) Act 2014, which established the Sheriff Appeal Court.

Transitional Provisions

9. Regulation 2(2) to (5) contains transitional provisions. These reflect the policy that the new arrest and custody regime and new arrangements for bringing individuals before a court which are contained in the 2016 Act will not apply to people who have been arrested or detained before commencement of the relevant provisions of the 2016 Act and who are still in police custody at that point. They will continue to be dealt with under the previous statutory provisions until their first court appearance.

Consultation

10. The 2016 Act includes provisions which were developed from the recommendations of Lord Carloway's review of Criminal Law and Practice. The Scottish Government consulted formally on the recommendations of Lord Carloway's review.

11. Extensive consultation with criminal justice partners and stakeholders was carried out during the Bill process, and continues in relation to implementation of the 2016 Act.

Impact Assessment

12. An Equality Impact Assessment (EQIA) was carried out for the Criminal Justice (Scotland) Bill. This 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.

Financial Effects

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

Scottish Government

Safer Communities Directorate