

POLICY NOTE

THE CRIMINAL JUSTICE (SCOTLAND) ACT 2016 (MODIFICATION OF PART 1 AND ANCILLARY PROVISION) REGULATIONS 2017

S.S.I. 2017/453

1. The above instrument was made in exercise of the powers conferred by section 60(1) and (2) and section 115(1) of the Criminal Justice (Scotland) Act 2016 (“the Act”). The instrument is laid before Parliament under section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Policy Objectives

2. The Act contains procedures and protections which will apply to all arrests. While the majority of arrests are of people suspected of a criminal offence, there are arrests for other reasons allowed in various statutes. For example, a person could be arrested for a breach of a protective court order, or a witness could be arrested under warrant to ensure they attend court. For these arrests, not all the procedures and protections set out in the Act are appropriate. The procedures set out in the Act are also designed primarily for arrests without warrant (such as those under section 1), and may not always be suited to all warrant arrests. Section 60 of the Act allows the Scottish Ministers to make regulations to modify or disapply Part 1 of the Act in respect of arrests which are not made under section 1. These regulations will ensure that arrests which do not relate to criminal offences and certain warrant arrests can be specially catered for within the new arrest and custody procedures brought in by the Act.

Modifications of the Act

3. Regulation 2 amends the Act. Section 4 is amended to disapply the duty to take the arrested individual to a police station as soon as reasonably practicable where a warrant or enactment requires the person to be taken somewhere else and this would be unnecessarily delayed by going to a police station first (for example, an absconding witness may be taken directly to the court where they were meant to be giving evidence). There may be circumstances (e.g. where the person is only found after the place to which they are to be taken has closed for the night) when they will still need to be taken to a police station first, and the wording allows for this. Section 7 is adjusted to ensure that an authorisation to hold an individual in custody under that section can only be given where the person is suspected of an offence. The procedure that follows on from section 7 relates to investigative custody. Where an arrest is made for other reasons then any ability to hold the individual will be governed by specialist provisions relating to that particular type of arrest. There are other minor amendments which recognise the fact that an arrest may have been made otherwise than in respect of an offence.

4. Section 21 (bringing individuals before the court) is amended to prevent its application to people arrested on warrants which are not issued as part of a prosecution process. Any duty to bring before a court individuals who are arrested without warrant on a non-criminal matter or who are arrested under one of these special warrants will be contained in specialist provision elsewhere. Further adjustments are made to the Act to reflect this. The definition of “police custody” in section 64 is amended to reflect the possibility of individuals being transferred

into other forms of custody following one of these arrests, such as an absconding prisoner being returned to the prison authorities.

5. The schedule contains modifications of other enactments. Some of these are to remove rights conferred on arrested individuals and obligations to record information relating to their custody under specialist regimes, where these now duplicate provisions of the Act applying to everyone in police custody. Others expand provisions in specialist legislation about bringing individuals who are alleged to have breached protective orders before the court, to ensure that these can be used whether or not the person is to be charged with an offence arising from the breach, as people arrested in these circumstances do not fall within the procedure contained in section 21 of the Act.

Consultation

6. The Scottish Government carried out a public consultation on these regulations between 24 October 2016 and 16 January 2017. The feedback received during the consultation was used to shape the final regulations. A draft set of regulations was included in the consultation paper which enabled the reader to see what amendments were proposed and why they were seen as necessary.

Impact Assessment

7. An Equality Impact Assessment (EQIA) was carried out for the purposes of these regulations. The EQIA 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 regulations. The regulations themselves are intended to continue the current policies when dealing with these types of arrest. A children's Rights and Wellbeing Impact Assessment (CRWIA) has also been completed in relation to these regulations. It has been assessed that there would not be a negative impact on children in relation to these regulations.

Privacy

8. 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.

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

Financial Effects

10. A Business and Regulatory Impact Assessment (BRIA) was not considered necessary for this instrument as it has been assessed that it will have no financial impact on business or the Scottish Police Authority.

Scottish Government
Safer Communities Directorate
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