

SCHEDULES

SCHEDULE 21

POWERS OF IMMIGRATION OFFICERS: FURTHER PROVISION

PART 3

SCOTLAND

Criminal Law (Consolidation) (Scotland) Act 1995

- 44 The Criminal Law (Consolidation) (Scotland) Act 1995 is amended as follows.
- 45 (1) Section 24 (detention and questioning at office of Revenue and Customs) is amended in accordance with this paragraph.
- (2) In the title of the section, for “**at office of Revenue and Customs**” substitute “: **Revenue and Customs, immigration and nationality offences**”.
- (3) In subsection (5)—
- (a) in paragraph (a)—
- (i) after “Customs” insert “(in a case falling within subsection (A1)(a) or police station (in a case falling within subsection (A1)(b)))”;
- (ii) after “premises” insert “(in either of those cases)”;
- (b) in paragraph (d)—
- (i) after “subsection (1)” insert “or (1A)”;
- (ii) after “Customs” insert “(in a case falling within subsection (A1)(a) or police station (in a case falling within subsection (A1)(b)))”;
- (iii) after “premises” insert “(in either of those cases)”.
- 46 In section 25 (right to have someone informed when detained), in subsection (1)—
- (a) in the words before paragraph (a)—
- (i) after “Customs” (in the first place) insert “(in a case falling within subsection (A1)(a) or police station (in a case falling within subsection (A1)(b)))”;
- (ii) after “place” (in the first place) insert “(in either of those cases)”;
- (iii) after “Customs” (in the second place) insert “, police station”;
- (b) in paragraph (a), after “Customs” insert “, police station”.
- 47 (1) Section 25A (right of suspects to have access to a solicitor) is amended in accordance with this paragraph.
- (2) In subsection (1)—
- (a) in paragraph (b)—
- (i) for “an officer” substitute “an officer of Revenue and Customs”;
- (ii) omit the final “or”;

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- (b) in paragraph (c), for “an officer” (in each place) substitute “an officer of Revenue and Customs”;
 - (c) after paragraph (c) insert—
 - “(d) attends voluntarily at a police station or any other premises or place for the purpose of being questioned by an immigration officer on suspicion of having committed an immigration offence or nationality offence; or
 - (e) is arrested (but not charged) by an immigration officer in connection with an immigration offence or nationality offence and is being detained at a police station or any other premises or place for the purpose of being questioned by an immigration officer in connection with the offence.”.
 - (3) In subsection (2)(b), after “Customs” insert “, police station”.
 - (4) In subsection (6)(a), after “Customs” insert “, police station”.
- 48 In section 26B (interpretation of Part 3 etc)—
- (a) in subsection (1), for the definition of “officer” substitute—
 - ““officer” means—
 - (a) for the purposes of sections 24 to 25A—
 - (i) an officer of Revenue and Customs (in relation to detention by, attendance for the purpose of being questioned by, or arrest by, such an officer), or
 - (ii) an immigration officer (in relation to detention by, attendance for the purpose of being questioned by, or arrest by, such an officer); and
 - (b) for the purposes of the other provisions of this Part of this Act, an officer of Revenue and Customs.”;
 - (b) in subsection (2), for the words from “this Act” to “had authority” substitute “this Act—
 - (a) a certificate of the Commissioners for Her Majesty’s Revenue and Customs that an officer of Revenue of Customs, or
 - (b) a certificate of the Secretary of State that an immigration officer,

had authority”.
- 49 (1) The amendments made by section 55(10), and paragraph 45 of this Schedule, do not affect section 24 of the 1995 Act as it applies by virtue of section 26(8) of that Act in respect of a person detained under section 26 of that Act (detention in connection with certain drug smuggling offences).
- (2) The amendments made by paragraph 46 of this Schedule do not affect section 25(1) of the 1995 Act as it applies by virtue of section 26(9) of that Act in respect of a person detained under section 26 of that Act (detention in connection with certain drug smuggling offences).

Consequential amendments relating to legal aid in Scotland

- 50 (1) In section 8A of the Legal Aid (Scotland) Act 1986 (power to provide for criminal advice and assistance to be available for certain clients without reference to the

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- financial limits), in subsection (2)(b), after “offences” insert “or immigration or nationality offences”.
- (2) In regulation 8 of the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011 (criminal advice and assistance: automatic availability in certain circumstances), in paragraph (b), after “offences” insert “or immigration or nationality offences”.
- (3) The amendment of regulation 8 by sub-paragraph (2) above does not prevent the provision made by that amendment from being amended or revoked by exercise of the power conferred by section 8A of the Legal Aid (Scotland) Act 1986 or any other power.
- (4) Regulation 3(1)(b) of the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011 (duty solicitors: advice for suspects) applies in relation to a person to whom section 25A of the 1995 Act applies by virtue of its amendment by paragraph 46 of this Schedule; and, accordingly, in regulation 3(1)(b), after “customs” insert “, immigration and nationality”.
- (5) But regulation 3(1)(b) does not have effect in relation to such a person in a case where—
- (a) the person is detained under section 24 of the 1995 Act, and the period of detention began before the time at which paragraph 46 of this Schedule comes into force;
 - (b) the person attends as mentioned in section 25A(1)(d) of the 1995 Act, and the period of attendance began before that time; or
 - (c) the person is arrested and detained as mentioned in section 25A(1)(e) of that Act, and the arrest occurred before that time.
- (6) Sub-paragraph (4) does not affect the application of regulation 3(1)(b) in relation to a person to whom section 25A of the 1995 Act applies otherwise than by virtue of its amendment by paragraph 47 of this Schedule.
- (7) Sub-paragraphs (4) to (6) do not prevent regulation 3(1)(b) from being amended or revoked by exercise of any power conferred by the Legal Aid (Scotland) Act 1986 or any other power.
- (8) In this paragraph “1995 Act” means the Criminal Law (Consolidation) (Scotland) Act 1995.