

## SCHEDULE 1

Article 2(1)

### Amendments of Part 3 of the Criminal Law (Consolidation) (Scotland) Act 1995

#### **Introductory provision**

1. Part 3 of the Criminal Law (Consolidation) (Scotland) Act 1995<sup>(1)</sup> (investigation of Revenue and Customs offences) is amended as follows.

#### **Right of suspects to have access to a solicitor**

2. In section 24 (detention and questioning at office of Revenue and Customs), in subsection (5)

- (a) in paragraph (e), for “section 25(1)” substitute “sections 25(1) and 25A(2) and (3)”;  
(b) in paragraph (f), after “25(1)” insert “or 25A(2)”.

3. In section 25 (right to have someone informed when detained), in subsection (1) the words “solicitor and to one other” are repealed.

4. After section 25 insert—

#### **“25A. Right of suspects to have access to a solicitor**

(1) This section applies to a person (“the suspect”) who—

- (a) is detained under section 24;
- (b) attends voluntarily at an office of Revenue and Customs or any other premises or place for the purpose of being questioned by an officer on suspicion of having committed a Revenue and Customs offence; or
- (c) is arrested (but not charged) by an officer in connection with a Revenue and Customs offence and is being detained at an office of Revenue and Customs or any other premises or place for the purpose of being questioned by an officer in connection with the offence.

(2) The suspect has the right to have intimation sent to a solicitor of any or all of the following—

- (a) the fact of the suspect’s detention, voluntary attendance or arrest (as the case may be);
- (b) the office of Revenue and Customs or other premises or place at which the suspect is being detained or is attending; and
- (c) that the solicitor’s professional assistance is required by the suspect.

(3) The suspect also has a right to a private consultation with a solicitor—

- (a) before any questioning of the suspect by an officer begins; and
- (b) at any other time during such questioning.

(4) Subsection (3) is subject to subsections (8) and (9).

(5) In subsection (3) “consultation” means consultation by such means as may be appropriate in the circumstances (and may include, for example, consultation by means of telephone).

(6) The suspect must be informed of the rights under subsections (2) and (3)—

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(1) 1995 c. 39 (“the 1995 Consolidation Act”).

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- (a) on arrival at the office of Revenue and Customs or other premises or place;
- (b) in the case where the suspect is detained under section 24 after such arrival, on the suspect's detention; and
- (c) in the case where the suspect is arrested as mentioned in subsection (1)(c) after such arrival, on arrest;

and it is immaterial in a case to which paragraph (b) or (c) applies whether or not the suspect has previously been informed of the rights.

(7) Where a suspect wishes to exercise the right to have intimation sent under subsection (2), the intimation must be sent by an officer—

- (a) without delay; or
- (b) if some delay is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders, with no more delay than is necessary.

(8) In exceptional circumstances, an officer may delay the suspect's exercise of the right under subsection (3) on any occasion so far as it is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders that the questioning of the suspect by an officer begins or continues without the suspect having exercised that right on that occasion.

(9) Subsection (3) does not apply in relation to the questioning of the suspect by an officer for the purpose of obtaining the information mentioned in section 24(8A)."

#### **Increase of maximum period of detention under section 24 from 6 to 12 hours**

5.—(1) Section 24 (detention and questioning at office of Revenue and Customs) is amended as follows.

- (2) In subsection (2)—
  - (a) for "Detention" substitute "Subject to section 24A, detention";
  - (b) for "six hours" substitute "12 hours".
- (3) In subsection (4), for "six hours" substitute "12 hours".

#### **Extension of period of detention under section 24**

6. After section 24 insert—

##### **"24A. Extension of period of detention under section 24**

(1) This section applies in relation to a person who is being detained under section 24 ("the detained person").

(2) Before the expiry of the period of 12 hours mentioned in section 24(2), a custody review officer may, subject to subsection (4), authorise that period to be extended in relation to the detained person by a further period of 12 hours.

(3) The further period of 12 hours starts from the time when the period of detention would have expired but for the authorisation.

(4) A custody review officer may authorise the extension under subsection (2) in relation to the detained person only if the officer is satisfied that—

- (a) the continued detention of the detained person is necessary to secure, obtain or preserve evidence (whether by questioning the person or otherwise) relating to an offence in connection with which the person is being detained;

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(b) the offence in connection with which the detained person is being detained is one that is an indictable offence; and

(c) the investigation is being conducted diligently and expeditiously.

(5) Where section 24(4) applies in relation to the detained person, the references in subsection (2) of this section to the period of 12 hours mentioned in section 24(2) are to be read as references to that period as reduced in accordance with section 24(4).

(6) Where a custody review officer authorises the extension of the period of detention under subsection (2), section 24 has effect in relation to the detained person as if the references in it to the period of 12 hours were references to that period as extended by virtue of the authorisation.

(7) In this section and section 24B, “custody review officer” means an officer who—

(a) is of a rank at least equivalent to that of a police inspector; and

(b) has not been involved in the investigation in connection with which the person is detained.

#### **24B Extension under section 24A: procedure**

(1) This section applies where a custody review officer is considering whether to authorise the extension under section 24A(2) of the period of detention of a person who is being detained under section 24 (“the detained person”).

(2) Before deciding whether to authorise the extension, the custody review officer must give either of the following persons an opportunity to make representations—

(a) the detained person; or

(b) any solicitor representing the detained person who is available at the time the officer is considering whether to authorise the extension.

(3) Representations may be oral or written.

(4) The custody review officer may refuse to hear oral representations from the detained person if the officer considers that the detained person is unfit to make representations because of the person’s condition or behaviour.

(5) Where the custody review officer decides to authorise the extension, the officer must ensure that the following persons are informed of the decision and the grounds on which the extension is authorised—

(a) the detained person; and

(b) any solicitor representing the detained person who is available at the time the decision is made.

(6) Subsection (7) applies where—

(a) the custody review officer decides to authorise the extension; and

(b) at the time of the decision, the detained person has not exercised all the person’s rights under sections 25 and 25A.

(7) The custody review officer must—

(a) ensure that the detained person is informed of the rights under sections 25 and 25A which the person has not yet exercised; and

(b) if the officer considers there are possible grounds under section 25(1) or 25A(7) (b) or (8) (as the case may be) for delaying the exercise of any such right, decide whether or not to delay the exercise of the right.

(8) The custody review officer must make a written record of—

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- (a) the officer's decision on whether to authorise the extension; and
- (b) any of the following which apply—
  - (i) the grounds on which the extension is authorised;
  - (ii) the fact that the detained person and a solicitor have been informed as required by subsection (5);
  - (iii) the fact that the detained person has been informed as required by subsection (7)(a);
  - (iv) any decision on the matter referred to in subsection (7)(b) and, if the decision is to delay the exercise of a right, the grounds for the decision.”