

## SCHEDULE 3

### Exercise of functions by officials other than police constables

## PART 2

### Application of 2016 Act to immigration officers

#### *Introductory*

#### **Application of 2016 Act in relation to immigration officers**

2.—(1) Chapters 1 to 6 of Part 1 of the 2016 Act<sup>(1)</sup> and sections 63, 65, 66 and 68 (power to arrest without warrant, other provisions about arrest and custody by police, and police searches) apply in relation to arrest and custody by immigration officers for an immigration offence or nationality offence and searches by them in connection with such an offence, subject to the adaptations in this Part.

(2) Sections 31 to 33 of the 2016 Act (rights of suspects at interview) apply, subject to those adaptations, in relation to a person who attends voluntarily for the purpose of being interviewed by an immigration officer for an immigration offence or nationality offence.

#### *General adaptations*

#### **General adaptations**

3. In the provisions of the 2016 Act mentioned in paragraph 2(1), references in column 1 of the table are, subject to the specific adaptations in this Part, to be read in accordance with column 2—

<i>1. Reference in 2016 Act</i>	<i>2. How reference is to be read</i>
a constable	an immigration officer
the rank of sergeant	the grade of immigration officer
the rank of inspector	the grade of chief immigration officer
police custody	immigration custody as defined by paragraph 6
a police station	a police station or Home Office custody suite

#### *Specific adaptations*

#### **Section 11 (authorisation for keeping in custody beyond 12 hour limit)**

4. In section 11(2), for paragraph (a) read—

“(a) is of or above the grade of chief immigration officer, and”.

#### **Section 66 (cases involving removal of person)**

5. In section 66, for subsection (3) read—

---

(1) 2016 asp 1.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

“(3) Anything seized by an immigration officer in the course of a search carried out under this section may be retained by the immigration officer or by a constable.”.

### *Supplementary*

#### **Immigration custody**

6.—(1) For the purposes of provisions of the 2016 Act as applied by this Part of this Schedule, a person is in immigration custody from the time the person is arrested by an immigration officer, or is transferred into the custody of an immigration officer, until any one of the events mentioned in sub-paragraph (2) occurs.

(2) The events are—

- (a) the person is released from custody;
- (b) the person is brought before a court in accordance with section 21(2) of the 2016 Act;
- (c) the person is brought before a court in accordance with section 28(2) or (3) of the Criminal Procedure (Scotland) Act 1995(2);
- (d) the person is brought before a court in accordance with—
  - (i) any other enactment or rule of law which requires that a person in custody be brought before a court; or
  - (ii) a term of the warrant under which the person was arrested;
- (e) the person is transferred in accordance with the law into the custody of a person who is not an immigration officer;
- (f) the Principal Reporter directs under section 65(2)(b) of the Children’s Hearings (Scotland) Act 2011(3) that the person continue to be kept in a place of safety.

#### **Powers of search etc. under other enactments**

7. Where a person is arrested by an immigration officer under section 1 of the 2016 Act, an immigration officer may exercise—

- (a) any power that would be exercisable by an immigration officer if the person had been arrested under another enactment that confers power on an immigration officer to arrest in relation to the same offence; and
- (b) any power within section 47(3)(c) of the 2016 Act that would be exercisable by a constable if the person had been arrested by a constable.

---

(2) 1995 c.46.  
(3) 2011 asp 1.