

# CRIMINAL JUSTICE (SCOTLAND) ACT 2016

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## EXPLANATORY NOTES

### OVERVIEW OF THE ACT

#### Part 2 – Search by Police

##### *Chapter 2 – Code of practice*

#### Making and status of code

##### *Section 73 – Contents of code of practice*

178. *Section 73* provides that Scottish Ministers must make a code of practice about the carrying out of searches and what the code must set out. The code of practice will only apply to the functions exercisable by police constables.

##### *Section 74 – Review of code of practice*

179. *Section 74* contains provisions regarding subsequent reviews and revision of the code of practice. It allows Ministers to revise the code in light of a review. The Scottish Ministers must review the code within two years of it first coming into effect. Thereafter the code must be reviewed at least every four years. When deciding when to conduct a review, Ministers must have regard to representations made by the Scottish Police Authority, the Chief Constable, or Her Majesty's Inspectorate of Constabulary in Scotland (HMICS).

##### *Section 75 – Legal status of code of practice*

180. *Section 75* provides for the legal status of the code of practice. A court or tribunal in civil or criminal proceedings must take into account the code of practice (including, therefore, any breach of the code) when determining any questions arising in the proceedings to which the code is relevant.

#### Procedure applying to code

##### *Section 76 – Consultation on code of practice*

181. *Section 76* makes provisions about consultation on the code of practice. Before making a code of practice, the Scottish Ministers must consult publicly on a draft code. Subsection (2) provides that a number of persons or organisations must be consulted when preparing a draft for public consultation.

##### *Section 77 – Bringing code of practice into effect*

182. *Section 77* makes provision for bringing the code of practice into effect. A code of practice or any revised code of practice will be brought into effect on a date to be appointed by regulations. The regulations will be subject to affirmative procedure, and the code to which the regulations relate must be laid before the Parliament at the same time.