

**Changes to legislation:** Criminal Justice (Scotland) Act 2016, Cross Heading: The 1995 Act is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULE 2 MODIFICATIONS IN CONNECTION WITH PART 1

### PART 2

#### FURTHER MODIFICATIONS

##### *The 1995 Act*

26 The 1995 Act is amended as follows.

#### Commencement Information

**II** Sch. 2 para. 26 in force at 25.1.2018 by S.S.I. 2017/345, art. 3, sch.

27 These provisions are repealed—

- (a) sections 14 to 17A,
- (b) sections 22 to 22ZB (together with the italic heading immediately preceding section 22),
- (c) section 43,
- (d) in section 135, subsection (3).

#### Commencement Information

**I2** Sch. 2 para. 27 in force at 25.1.2018 by S.S.I. 2017/345, art. 3, sch. (with arts. 4, 5, 7)

28 (1) In section 18—

- (a) in subsection (1), the words “or is detained under section 14(1) of this Act” are repealed,
- (b) in subsection (2), the words “or detained” are repealed.

(2) In subsection (2)(a) of section 18B, for the words “under arrest or being detained” there is substituted “in custody”.

(3) In section 18D—

- (a) in subsection (2)(a), the words “or detained” are repealed,
- (b) in subsection (2)(b), for the words “under arrest or being detained” there is substituted “in custody”.

(4) In subsection (8)(b) of section 19AA, the words “or detention under section 14(1) of this Act” are repealed.

#### Commencement Information

**I3** Sch. 2 para. 28 in force at 25.1.2018 by S.S.I. 2017/345, art. 3, sch. (with art. 4)

29 In section 28—

- (a) after subsection (1) there is inserted—  
“(1ZA) Where—

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- (a) a constable who is not in uniform arrests a person under subsection (1), and
  - (b) the person asks to see the constable's identification,
- the constable must show identification to the person as soon as reasonably practicable.”,
- (b) after subsection (3) there is inserted—
    - “(3A) If—
      - (a) a person is in custody only by virtue of subsection (1) or (1A), and
      - (b) in the opinion of a constable there are no reasonable grounds for suspecting that the person has broken, or is likely to break, a condition imposed on the person's bail,
 the person must be released from custody immediately.
  - (3B) An accused is deemed to be brought before a court under subsection (2) or (3) if the accused appears before it by means of a live television link (by virtue of a determination by the court that the person is to do so by such means).”.

**Commencement Information**

**I4** Sch. 2 para. 29 in force at 25.1.2018 by S.S.I. 2017/345, art. 3, sch.

30 After section 28 there is inserted—

**“28A Application of the Criminal Justice (Scotland) Act 2016 to persons arrested and detained under section 28**

- (1) Section 7(2) of the Criminal Justice (Scotland) Act 2016 (“the 2016 Act”) does not apply to an accused who has been arrested under section 28(1) of this Act.
- (2) The following provisions of the 2016 Act apply in relation to a person who is to be brought before a court under section 28(2) or (3) of this Act as they apply in relation to a person who is to be brought before a court in accordance with section 21(2) of the 2016 Act—
  - (a) section 22,
  - (b) section 23,
  - (c) section 24.
- (3) In relation to a person who is to be brought before a court under section 28(2) or (3) of this Act, the 2016 Act applies as though—
  - (a) in section 23(2)—
    - (i) for paragraph (c) there were substituted—
      - “(c) that the person is to be brought before the court under section 28 of the 1995 Act in order for the person's bail to be considered.”, and
    - (ii) paragraph (d) were omitted,
  - (b) in section 24—

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- (i) in subsection (3)(c), for the words “after being officially accused” there were substituted “ after being informed that the person is to be brought before a court under section 28(2) or (3) of the 1995 Act ”, and
- (ii) in subsection (4), for paragraph (c) there were substituted—
  - “(c) that the person is to be brought before the court under section 28 of the 1995 Act in order for the person's bail to be considered.”,
- (c) in section 43(1), for paragraph (d) there were substituted—
  - “(d) the court before which the person is to be brought under section 28(2) or (3) of the 1995 Act and the date on which the person is to be brought before that court.”.”.

**Commencement Information**

**I5** Sch. 2 para. 30 in force at 25.1.2018 by S.S.I. 2017/345, art. 3, sch.

- 31 In section 42—
- (a) subsection (3) is repealed,
  - (b) subsection (7) is repealed,
  - (c) in subsection (8), for the words “subsection (7) above” there is substituted “ section 24 of the Criminal Justice (Scotland) Act 2016 ”,
  - (d) in subsection (9), the words “detained in a police station, or” are repealed,
  - (e) subsection (10) is repealed.

**Commencement Information**

**I6** Sch. 2 para. 31 in force at 25.1.2018 by S.S.I. 2017/345, art. 3, sch. (with art. 4)

- 32 In section 74, after paragraph (a) of subsection (2) there is inserted—
- “(aza) may not be taken against a decision taken by virtue of section 35 of the Criminal Justice (Scotland) Act 2016;”.

**Commencement Information**

**I7** Sch. 2 para. 32 in force at 25.1.2018 by S.S.I. 2017/345, art. 3, sch.

- 33 In section 79—
- (a) for subsection (2)(b)(ii) there is substituted—
    - “(ii) a preliminary objection under any of the provisions listed in subsection (3A);”,
  - (b) after subsection (3) there is inserted—
    - “(3A) For the purpose of subsection (2)(b)(ii), the provisions are—
      - (a) section 27(4A)(a) or (4B), 90C(2A), 255 or 255A of this Act,

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- (b) section 9(6) of the Antisocial Behaviour etc. (Scotland) Act 2004 or that section as applied by section 234AA(11) of this Act,
- (c) paragraph 6(5)(b) of schedule 1 to the Criminal Justice (Scotland) Act 2016.”.

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**Commencement Information**

**I8** [Sch. 2 para. 33](#) in force at 25.1.2018 by [S.S.I. 2017/345, art. 3, sch.](#)

34 Before section 261A there is inserted—

*“Statements made after charge*

**Exception to rule on inadmissibility**

261ZB Evidence of a statement made by a person in response to questioning carried out in accordance with authorisation granted under section 35 of the Criminal Justice (Scotland) Act 2016 is not inadmissible on account of the statement's being made after the person has been charged with an offence.”.

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**Commencement Information**

**I9** [Sch. 2 para. 34](#) in force at 25.1.2018 by [S.S.I. 2017/345, art. 3, sch.](#)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act expiry of affecting provision 2022 asp 8, sch. para. 15 by [S.S.I. 2023/360 reg. 2\(a\)](#)