
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 345

**The Criminal Justice (Scotland) Act 2016 (Commencement
No. 5, Transitional and Saving Provisions) Order 2017**

Persons arrested or detained before appointed day- transitional and saving provisions

4.—(1) This article applies in relation to a person who is arrested or detained by a constable before the appointed day, and remains in police custody at the beginning of the appointed day following that arrest or detention.

(2) Sections 3 to 34, 38 to 41, 43, 44 and 55 of the 2016 Act do not apply in relation to any matter arising from that arrest or detention.

(3) Despite the coming into force of schedule 2 paragraphs 4, 27, 28, 31, 35, 36, 37, 39 and 40 of the 2016 Act in accordance with article 3, the following provisions continue to have effect on and after the appointed day as they did immediately before that day in relation to any matter arising from that arrest or detention:—

- (a) section 4 of the Trespass (Scotland) Act 1865(1);
- (b) section 8A(2)(a) of the Legal Aid (Scotland) Act 1986(2);
- (c) section 6D(2A) of the Road Traffic Act 1988(3);
- (d) sections 14 to 15A, 17, 17A, 18, 18B, 18D, 19AA, 22, 22ZA, 22ZB, 42(3), (7) and (8), 43 and 135(3) of the 1995 Act(4);
- (e) schedule 8 paragraphs 18, 20(1) and 27 of the Terrorism Act 2000(5);

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- (1) [1865 c.56](#) (28 & 29 Vict). Section 4 was amended by the Criminal Justice Act [1982 \(c.45\)](#), section 77 and schedule 15 paragraph 1.
 - (2) [1986 c.47](#). Section 8A was inserted by the 2010 Act section 2(3) and amended by [S.I. 2011/1739](#) article 3; the Scottish Civil Justice Council and Criminal Legal Assistance Act [2013 \(asp 3\)](#) sections 17 and 23(4); and the Crime and Courts Act [2013 \(c.22\)](#) schedule 21 paragraph 50(1).
 - (3) [1988 c.52](#). Section 6D was inserted by the Railways and Transport Safety Act [2003 \(c.20\)](#) schedule 7 paragraph 1 and amended by the Serious Organised Crime and Police Act [2005 \(c.15\)](#) section 154(1) to (3).
 - (4) Sections 14A and 14B were inserted by the 2010 Act section 3(2). Section 15 was amended by the Crime and Punishment (Scotland) Act [1997 \(c.48\)](#) section 62(1) and schedule 1 paragraph 21(2) and the 2010 Act section 1(3). Section 15A was inserted by the 2010 Act section 1(4). Section 17A was inserted by the Sexual Offences (Procedure and Evidence) (Scotland) Act [2002 \(asp 9\)](#) schedule 1 paragraph 2 and amended by the Criminal Procedure (Amendment) (Scotland) Act [2004 \(asp 5\)](#) schedule 1 paragraph 3(b) and the Criminal Justice and Licensing (Scotland) Act [2010 \(asp 13\)](#) schedule 7 paragraph 29. Section 18 was amended by the Crime and Punishment (Scotland) Act 1997 section 47(1)(a) and (d) and schedule 3; the Crime and Disorder Act [1998 \(c.37\)](#) section 119 and schedule 8 paragraph 117(1); the Criminal Justice (Scotland) Act [2003 \(asp 7\)](#) section 55(2); the Police, Public Order and Criminal Justice (Scotland) Act [2006 \(asp 10\)](#) section 83(1) and schedule 6 paragraph 4(2); the Criminal Justice and Licensing (Scotland) Act 2010 section 77(2) and schedule 7 paragraph 30; the Police and Fire Reform (Scotland) Act [2012 \(asp 8\)](#) schedule 7 paragraph 12(3) and the Protection of Freedoms Act [2012 \(c.9\)](#) schedule 1 paragraph 6(2). Sections 18B and 18D were inserted by the Criminal Justice and Licensing (Scotland) Act 2010 sections 78 and 79. Section 19AA was inserted by the Police, Public Order and Criminal Justice (Scotland) Act 2006 section 77(2) and amended by the Anti-social Behaviour, Crime and Policing Act [2014 \(c.12\)](#) schedule 11 paragraph 51. Section 22 was amended by the Criminal Proceedings etc. (Reform) (Scotland) Act [2007 \(asp 6\)](#) section 7 and the Criminal Justice and Licensing (Scotland) Act 2010 schedule 7 paragraph 34. Sections 22ZA and 22ZB were inserted by the Criminal Justice and Licensing (Scotland) Act 2010 section 55. Section 42 was amended by the Criminal Justice and Licensing (Scotland) Act 2010 section 52(3). Section 43 was amended by the Crime and Punishment (Scotland) Act 1997 section 55(2) and (3). Section 135 was amended by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 section 7(3) and schedule 1 paragraph 17.
 - (5) [2000 c.11](#). Schedule 8 paragraph 18 was amended by the Anti-social Behaviour, Crime and Policing Act [2014 \(c.12\)](#) schedule 9 paragraph 5(12). Paragraph 20 was amended by the Anti-terrorism, Crime and Security Act [2001 \(c.24\)](#) section 89(3) and (4) and the Protection of Freedoms Act [2012 \(c.9\)](#) schedule 10.

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

(f) sections 65, 66, 68, 69 and 72 of the Children's Hearings (Scotland) Act 2011(6).

(4) Despite the coming into force of section 54 of the 2016 Act in accordance with article 3, the power of a constable at common law to arrest a person to whom this article applies in respect of an offence while the person remains in police custody following the arrest or detention referred to in paragraph (1) continues to have effect on and after the appointed day.

(5) But the power referred to in paragraph (4) continues to have effect only for the purpose of immediately charging the person with an offence.

(6) Section 66 was amended by [S.S.I. 2013/211](#) schedule 1 paragraph 20(7).