EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force various provisions of the Criminal Justice (Scotland) Act 2016 ("the 2016 Act").

Article 2 contains provisions required for the interpretation of the Order.

Article 3 brings into force, on 25th January 2018, the provisions of the 2016 Act specified in the schedule of the Order.

Section 1 of the 2016 Act creates a power of arrest by a constable without warrant on reasonable suspicion of an offence. Section 2 makes further provision regarding its exercise. Sections 3 to 15 provide for the procedure to be followed after an arrest. Sections 16 to 19 enable the release of a suspect subject to conditions while the police investigation is continuing. Under schedule 1 (introduced by section 16), breach of such a condition is a criminal offence.

Sections 20 to 30 deal with matters arising after the individual has been charged with an offence, including first appearance in court and the police power to release the individual on an undertaking to appear in court. Schedule 1 equally applies to breach of an undertaking by virtue of section 26(6).

Sections 31 to 33, 38 to 41 and 43 to 44 deal with rights of suspects including the rights to have intimation sent to another person, to consult a solicitor and to have a solicitor present during interview. Sections 34 to 37 make provision regarding police powers of questioning, including the ability of the court to authorise post-charge questioning. Sections 45 to 53 and 55 deal with ancillary matters, while section 54 abolishes certain powers of arrest.

Section 56 introduces schedule 2, which contains modifications of enactments, including the repeal or amendment of aspects of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act"). Sections 58 and 59 exclude certain matters from the scope of Part 1 of the 2016 Act.

Sections 57 and 97 require the Lord Advocate to issue a code concerning the questioning of suspects and the conduct of identification procedures and to publish a statement setting out criteria for prosecuting offences.

Section 109 provides for the admissibility in evidence of statements made by an accused while being questioned in connection with an offence.

Section 110(1) and (2)(b) make provision for an accused who is in custody to participate in proceedings by live television link. This will become possible in principle for the first calling of the case in court. The Lord Justice General will specify by direction the particular types of hearing in which an accused may appear by live link.

Article 4 of the Order makes provision relating to individuals arrested or detained before 25th January 2018 and still in police custody at the beginning of that day. Pre-existing procedures for the custody and treatment of suspects will apply to this group instead of the new provisions commenced by Article 3. The common law power of a constable to arrest such a person immediately prior to charge will continue to have effect.

Article 5 provides for the continuation of provisions of the 1995 Act about release on undertaking (otherwise repealed by the 2016 Act) in relation to individuals released before 25th January 2018.

Article 6 ensures that an individual previously detained under section 14 of the 1995 Act (repealed by the 2016 Act) can only be arrested under section 1 of the 2016 Act for the purpose of charging them with an offence, and cannot be held in custody for further pre-charge investigation.

Article 7 preserves the old rules relating to police interviews contained in section 15A of the 1995 Act in relation to any voluntary interview beginning before 25th January 2018.

Article 8 prevents the court from authorising post-charge questioning of certain individuals who were arrested or detained before 25th January 2018.

Article 9 provides for section 109 of the 2016 Act to apply only in relation to statements made during interviews where the interview begins on or after 25th January 2018.

Article 10 preserves the provisions of section 80 of the Criminal Justice (Scotland) Act 2003 in relation to applications for live links granted under that section before 25th January 2018.