

2018 No. 46

CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
CRIMINAL PROCEDURE

**The Criminal Justice (Scotland) Act 2016 (Consequential
Provisions) Order 2018**

Made - - - - - *16th January 2018*

Coming into force in accordance with article 2

CONTENTS

Introductory

1. Citation
2. Commencement
3. Extent
4. Meaning of the 2016 Act

Criminal investigations

5. Cross-border enforcement by constables of territorial police forces
6. Exercise of functions by constables and members of non-territorial police organisations
7. Exercise of functions by other officials

Service offences etc.

8. Service offences etc.

Extradition

9. Persons arrested in connection with extradition proceedings

Codes of practice under the 2016 Act

10. Code of practice about investigative functions
11. Code of practice about searches
12. Duty of other officials to have regard to code of practice about searches

Further modifications of enactments

13. Legal Aid (Scotland) Act 1986
14. Criminal Justice and Public Order Act 1994
15. Criminal Procedure (Scotland) Act 1995
16. Criminal Law (Consolidation) (Scotland) Act 1995
17. Crime and Disorder Act 1998
18. Terrorism Act 2000
19. Finance Act 2007

20. UK Borders Act 2007
21. Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (Consequential Provisions) Order 2011
22. Crime and Courts Act 2013
23. Immigration Act 2016
24. 2016 Act

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- SCHEDULE 1 — Cross-border enforcement by constables of territorial police forces
- SCHEDULE 2 — Exercise of functions by constables and members of non-territorial police organisations
- SCHEDULE 3 — Exercise of functions by officials other than police constables
- PART 1 — General
- PART 2 — Application of 2016 Act to immigration officers
- PART 3 — Application of 2016 Act to designated customs officials
- PART 4 — Application of 2016 Act to officers of Revenue and Customs
- PART 5 — Application of 2016 Act to designated NCA officers
- PART 6 — Transfers and co-operation
- SCHEDULE 4 — Application of Part 1 of 2016 Act in relation to service offences etc.
- SCHEDULE 5 — Persons arrested in connection with extradition proceedings

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(4) and (5) of the Scotland Act 1998(a).

In accordance with paragraphs 1, 2 and 3 of Schedule 7 to that Act a draft of this Order has been laid before and approved by a resolution of each House of Parliament.

Introductory

Citation

1. This Order may be cited as the Criminal Justice (Scotland) Act 2016 (Consequential Provisions) Order 2018.

Commencement

2.—(1) The following provisions come into force on the day after the day on which this Order is made—

- (a) articles 1 to 4;
- (b) articles 10 to 12;
- (c) article 14;
- (d) article 18; and
- (e) article 24(1) and (3).

(a) 1998 c.46.

(2) The following provisions come into force on the day after the day on which the Order is made or, if later, the day on which section 14 of the Criminal Procedure (Scotland) Act 1995(a) is repealed—

- (a) articles 5 to 9;
- (b) article 13;
- (c) articles 15 to 17;
- (d) articles 19 to 23;
- (e) article 24(2); and
- (f) the Schedules.

Extent

3.—(1) The following provisions extend to Scotland only—

- (a) article 7 and Schedule 3;
- (b) article 8 and Schedule 4;
- (c) article 9 and Schedule 5;
- (d) articles 10 to 17;
- (e) articles 23 and 24.

(2) Article 18 extends to England and Wales and Northern Ireland only.

(3) Paragraphs 2 and 3 of Schedule 2 extend to England and Wales and Scotland only.

(4) Any provision of this Order not mentioned in paragraphs (1) to (3) extends to England and Wales, Scotland and Northern Ireland.

Meaning of the 2016 Act

4. In this Order, “the 2016 Act” means the Criminal Justice (Scotland) Act 2016(b).

Criminal investigations

Cross-border enforcement by constables of territorial police forces

5.—(1) Schedule 1 modifies Part 10 of the Criminal Justice and Public Order Act 1994(c).

(2) Schedule 1 does not apply in relation to a case in which a person is arrested or detained before this article comes into force.

(a) 1995 c.46; paragraph 27(a) of Schedule 2 to the 2016 Act provides for the repeal of section 14 of the 1995 Act. Paragraph 27(a) is to come into force on a day appointed by the Scottish Ministers in an order under section 117(2) of the 2016 Act.

(b) 2016 asp 1.

(c) 1994 c.33. Part 10 of the 1994 Act is amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), Schedule 4, paragraph 93(6); the Youth Justice and Criminal Evidence Act 1999 (c.23), Schedule 4, paragraph 23; the Powers of Criminal Courts (Sentencing) Act 2000 (c.6), Schedule 9, paragraph 161; the Terrorism Act 2000 (c.11), Schedule 15, paragraph 9; the Anti-terrorism, Crime and Security Act 2001 (c.24), Schedule 7, paragraphs 17 to 19; the Proceeds of Crime Act 2002 (c.29), Schedule 11, paragraph 24; the Serious Organised Crime and Police Act 2005 (c.15), Schedule 7, paragraph 47; the Finance Act 2007 (c.11), section 87(6); the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/288), Schedule 1, paragraph 28; the Criminal Justice and Immigration Act 2008 (c.4), Schedule 4, paragraph 42; the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (Consequential Provisions) Order 2011 (S.I. 2011/1739), Schedule 2; the Policing and Crime Act 2017 (c.3), Part 4, Chapter 8.

Exercise of functions by constables and members of non-territorial police organisations

6. Schedule 2 makes provision about the application of the 2016 Act in relation to—

- (a) the Ministry of Defence Police;
- (b) the British Transport Police Force; and
- (c) the Civil Nuclear Constabulary.

Exercise of functions by other officials

7.—(1) Schedule 3 makes provision about the application of the 2016 Act in relation to—

- (a) immigration officers;
- (b) designated customs officials; and
- (c) officers of Revenue and Customs.

(2) Nothing in Parts 2 to 5 of Schedule 3 causes a provision contained in Part 1 of the 2016 Act to apply in relation to a case in which a person is arrested before this article comes into force.

(3) Nothing in Parts 2 to 5 of Schedule 3 causes a provision of the 2016 Act to apply in relation to a case if—

- (a) the provision is contained in Part 1 of the 2016 Act and it would not apply in relation to the case had the arrest of the person in question been effected in Scotland by a constable of the Police Service of Scotland under section 1 of that Act; or
- (b) the provision is contained in Part 2 of the 2016 Act and it would not apply in relation to the case had the search of the person in question been carried out in Scotland by a constable of the Police Service of Scotland.

Service offences etc.

Service offences etc.

8.—(1) Schedule 4 makes provision about the application of the 2016 Act in relation to persons in police custody by virtue of sections 313 to 318 of the Armed Forces Act 2006^(a) (arrest and detention by civil authorities).

(2) Nothing in Schedule 4 causes a provision of the 2016 Act to apply in relation to a case in which, before this article comes into force, a person—

- (a) is arrested; or
- (b) surrenders to a constable as being a person subject to service law who has deserted or is absent without leave.

(3) Nothing in Schedule 4 causes a provision of the 2016 Act to apply in relation to a case—

- (a) in which a person is arrested, if the provision would not apply in relation to the case had the arrest been effected under section 1 of that Act; or
- (b) in which a person surrenders to a constable as being a person subject to service law who has deserted or is absent without leave, if the provision would not apply in relation to the case had the person instead been arrested under section 1 of that Act at the time the person surrendered to the constable.

(4) For the purposes of paragraph (3), it is irrelevant that the hypothetical arrest under section 1 of the 2016 Act which is referred to in that paragraph could not be lawfully effected.

(a) 2006 c.52.

Extradition

Persons arrested in connection with extradition proceedings

9.—(1) Schedule 5 modifies the Criminal Procedure (Scotland) Act 1995^(a) (“the 1995 Act”) and the 2016 Act as they apply in relation to persons arrested in connection with extradition proceedings.

(2) Paragraph (3) makes transitional provision in relation to section 18H of the 1995 Act (which is inserted by paragraph 1 of Schedule 5).

(3) Where—

- (a) relevant data or relevant samples were taken, or provided, in connection with extradition proceedings; and
- (b) before this article comes into force those proceedings were finally determined (within the meaning of section 18H(4) of the 1995 Act),

section 18H applies in relation to the data, the samples and any information derived from the samples subject to the modification that the reference in subsection (2) to the final determination of the extradition proceedings is to be read as a reference to the coming into force of this article.

(4) In paragraph (3)—

- “relevant data” means physical data to which section 18H of the 1995 Act applies; and
- “relevant samples” means samples to which that section applies.

Codes of practice under the 2016 Act

Code of practice about investigative functions

10.—(1) A code of practice issued by the Lord Advocate under section 57 of the 2016 Act may deal with matters which, by virtue of section 29(2)(b) or (c) of the Scotland Act 1998, it is outside the legislative competence of the Scottish Parliament to make provision about.

(2) Without prejudice to the generality of paragraph (1), the Lord Advocate may, in exercise of the function conferred by section 57(3)(b) of the 2016 Act, specify a body in a code notwithstanding that it is outside the legislative competence of the Scottish Parliament to make provision about that body or functions which are exercisable by it or on its behalf.

(3) Nothing in this article permits a code to deal with matters other than—

- (a) the questioning, and recording of questioning, of persons suspected of committing offences; and
- (b) the conduct of identification procedures involving such persons.

(4) In section 57(5) of the 2016 Act—

- (a) the word “and” at the end of paragraph (g) is repealed; and
- (b) after that paragraph insert—

“(ga) any body which the Lord Advocate intends to specify in the code under subsection (3)(b) and (where relevant) the Secretary of State, and”.

Code of practice about searches

11.—(1) The 2016 Act is amended as follows.

(2) In section 74(4)—

- (a) at the end of paragraph (b), omit the word “or”; and

(a) 1995 c.46.

- (b) after paragraph (c) insert—
- “(d) the British Transport Police Authority,
 - (e) the chief constable of the British Transport Police Force,
 - (f) the Civil Nuclear Police Authority,
 - (g) the chief constable of the Civil Nuclear Constabulary,
 - (h) the chief constable of the Ministry of Defence Police, or
 - (i) the Secretary of State.”.

(3) In section 76(2), after paragraph (e) insert—

- “(ea) the British Transport Police Authority,
- (eb) the chief constable of the British Transport Police Force,
- (ec) the Civil Nuclear Police Authority,
- (ed) the chief constable of the Civil Nuclear Constabulary,
- (ee) the chief constable of the Ministry of Defence Police,
- (ef) the Commissioners for Her Majesty’s Revenue and Customs,
- (eg) the Director of Border Revenue,
- (eh) the National Crime Agency,
- (ei) for each of the persons mentioned in paragraphs (ea) to (eh), the Secretary of State.”.

Duty of other officials to have regard to code of practice about searches

12.—(1) An immigration officer, a designated customs official and an officer of Revenue and Customs must have regard to any code of practice issued under section 73 of the 2016 Act in exercising any function corresponding to a function to which the code applies.

(2) In this article, “immigration officer” and “designated customs official” have the meaning given by paragraph 1 of Schedule 3.

Further modifications of enactments

Legal Aid (Scotland) Act 1986

13.—(1) In section 8A(2) of the Legal Aid (Scotland) Act 1986^(a) (“the Legal Aid Act”), paragraphs (b) and (c) are repealed.

(2) To the extent that they were made in reliance on paragraph (b) or (c) of section 8A(2) of the Legal Aid Act, any regulations which had effect immediately before the relevant time continue to have effect as they did immediately before the relevant time in relation to a case in which a person is arrested or detained before the relevant time.

(3) In paragraph (2), “the relevant time” means the time at which this article comes into force.

Criminal Justice and Public Order Act 1994

14.—(1) The Criminal Justice and Public Order Act 1994 is modified in accordance with paragraphs (3) and (4).

^(a) 1986 c.47. Section 8A was inserted by the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), section 2(3); it has been amended by S.I. 2011/1739; by the Scottish Civil Justice Council and Criminal Legal Assistance (Scotland) Act 2013 (asp 3), sections 17 and 23(4); and by the Crime and Courts Act 2013 (c.22), Schedule 21, Part 3, paragraph 50.

(2) If (in whatever terms) an enactment makes transitional provision to keep a part of a subsection in effect in relation to certain cases despite the repeal of that part^(a), that part of the subsection remains in effect in accordance with the transitional provision despite the repeal of the whole subsection by paragraph (3) or (4).

(3) In section 136, subsection (5) (insofar as not otherwise repealed) is repealed on the later of—

- (a) the day that paragraph (a) of the subsection is repealed by Schedule 17 to the Policing and Crime Act 2017^(b);
- (b) the day that paragraph (b) of the subsection is repealed by Schedule 1 to this Order.

(4) In section 137, subsection (8) (insofar as not otherwise repealed) is repealed on the later of—

- (a) the day that paragraph (a) of the subsection is repealed by Schedule 17 to the Policing and Crime Act 2017;
- (b) the day that paragraphs (b) and (c) of the subsection are repealed by Schedule 1 to this Order.

Criminal Procedure (Scotland) Act 1995

15.—(1) Section 307 of the Criminal Procedure (Scotland) Act 1995 is modified in accordance with paragraphs (3) and (4).

(2) Those modifications do not apply in relation to a case in which a person is arrested or detained before this article comes into force.

(3) In subsection (1AA) the words “(within the meaning of Part 3 of the Criminal Law (Consolidation) (Scotland) Act 1995)^(c)” are repealed.

(4) After that subsection insert—

“(1AB) In subsection (1AA)—

“immigration offence” means—

- (a) an offence involving conduct which relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement); or
- (b) (insofar as it is not an offence within paragraph (a)) an offence under the Immigration Acts or in relation to which a power of arrest is conferred on an immigration officer by the Immigration Acts;

“nationality offence” means an offence involving conduct which is undertaken for the purposes of, or otherwise in relation to, an enactment in—

- (a) the British Nationality Act 1981^(d);
- (b) the Hong Kong Act 1985^(e);
- (c) the Hong Kong (War Wives and Widows) Act 1996^(f);
- (d) the British Nationality (Hong Kong) Act 1997^(g);

(a) For example, article 5(2).
(b) 2017 c.3.
(c) 1995 c.39.
(d) 1981 c.61.
(e) 1985 c.15.
(f) 1996 c.41.
(g) 1997 c.20.

- (e) the British Overseas Territories Act 2002(a);
- (f) an instrument made under any of those Acts.

(1AC) In subsection (1AB), “the Immigration Acts” has the meaning given by section 61 of the UK Borders Act 2007(b).”

Criminal Law (Consolidation) (Scotland) Act 1995

16.—(1) Part 3 of the Criminal Law (Consolidation) (Scotland) Act 1995 is modified in accordance with paragraphs (3) to (7).

(2) Those modifications do not apply in relation to a case in which a person is arrested or detained before this article comes into force.

(3) Subsection (3) of section 23P is repealed(c).

(4) Sections 24 to 25A(d) are repealed.

(5) In section 26, for subsections (8) to (10) substitute—

“(7A) An officer may use reasonable force in exercising any power conferred by this section, except as regards a requirement under subsection (2).

(7B) Sections 3 and 6(1), (2) and (8) of the Criminal Justice (Scotland) Act 2016 (giving and recording of information) apply in relation to a person detained by an officer under this section in connection with the commission of a relevant offence as they apply in relation to a person arrested by the officer in respect of that offence.

(7C) Sections 31 to 34 and 38 to 44 of that Act (questioning, and intimation and access to others) apply in relation to a person detained under this section in connection with the commission of a relevant offence as they apply in relation to a person in custody following arrest by an officer in respect of that offence.

(7D) A person may not be detained under this section on any grounds if the person has been detained under this section before on the same grounds or on grounds arising out of the same circumstances.”.

(6) Section 26A is repealed.

(7) In section 26B(e)—

(a) in subsection (1), the definitions of “immigration offence” and “nationality offence” are repealed;

(b) for the definition of “officer” in that subsection, substitute—

““officer” means an officer of Revenue and Customs;”;

(c) in subsection (2), paragraph (b) and the “or” preceding it are repealed.

Crime and Disorder Act 1998

17.—(1) Section 110 of the Crime and Disorder Act 1998(f) is repealed.

(2) The modification made by paragraph (1) does not apply in relation to a case in which a person is detained before this article comes into force.

(a) 2002 c.8.

(b) 2007 c.30.

(c) Section 23P was inserted by the Finance Act 2007, Schedule 23, paragraph 3.

(d) Sections 24A and 24B were inserted by S.I. 2011/1739, Schedule 1, paragraph 6; section 25A was inserted by S.I. 2011/1739, Schedule 1, paragraph 4.

(e) Section 26B was inserted by the Finance Act 2007, Schedule 23, paragraph 7.

(f) 1998 c.37.

Terrorism Act 2000

18. The amendments made to Schedule 8 to the Terrorism Act 2000(a) by paragraph 37 of Schedule 2 to the 2016 Act extend also to England and Wales and Northern Ireland.

Finance Act 2007

19.—(1) The Finance Act 2007(b) is modified in accordance with paragraphs (3) and (4).

(2) Those modifications do not apply in relation to a case in which a person is arrested or detained before this article comes into force.

(3) In section 87—

(a) before subsection (3)(c) insert—

“(2E) In the application of those sections to an officer of Revenue and Customs—

(a) sections 136(4B) and 137(7B) apply with the omission of the words from “and, if the constable” to the end;

(b) section 137ZA applies with the omission of subsection (6).”;

(b) subsection (3) is repealed.

(4) Paragraphs 4 and 5 of Schedule 23 are repealed.

UK Borders Act 2007

20.—(1) In section 2(1A)(a) of the UK Borders Act 2007(d) (power of immigration officer to detain individual thought liable to detention by constable), for “detained by a constable under section 14 of the Criminal Procedure (Scotland) Act 1995” substitute “arrested by a constable under section 1 of the Criminal Justice (Scotland) Act 2016”.

(2) The modification made by paragraph (1) does not apply in relation to a case in which a person is detained before this article comes into force.

Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (Consequential Provisions) Order 2011

21.—(1) The following provisions of the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (Consequential Provisions) Order 2011(e) are revoked—

(a) articles 2, 6 and 7;

(b) Schedules 1 and 2.

(2) The modifications made by paragraph (1) do not apply in relation to a case in which a person is arrested or detained before this article comes into force.

Crime and Courts Act 2013

22.—(1) The Crime and Courts Act 2013(f) is modified in accordance with paragraphs (3) and (4).

(2) Those modifications do not apply in relation to a case in which a person is arrested or detained before this article comes into force.

(a) 2000 c.11.

(b) 2007 c.11.

(c) New subsections (2A) to (2D) are to be inserted into section 87 (from a date to be appointed) by the Policing and Crime Act 2017, Schedule 17, paragraph 9.

(d) 2007 c.30. Section 2(1A) is inserted by the Borders, Citizenship and Immigration Act 2009 (c.11), section 52(1); it is amended by the Counter-Terrorism and Security Act 2015 (c.6), section 10(8).

(e) S.I. 2011/1739.

(f) 2013 c.22.

- (3) Subsections (9) to (12) of section 55 are repealed.
- (4) Paragraphs 43, 45 to 47, 48(a) and 49 of Schedule 21 are repealed.

Immigration Act 2016

- 23.**—(1) Section 56 of the Immigration Act 2016(a) is repealed.
- (2) The modification made by paragraph (1) does not apply in relation to a case in which a person is arrested or detained before this article comes into force.

2016 Act

- 24.**—(1) The 2016 Act is modified as follows.
- (2) In section 58 (disapplication in relation to service offences), after subsection (2) insert—
 - “(2A) This section is subject to Schedule 4 to the Criminal Justice (Scotland) Act 2016 (Consequential Provisions) Order 2017 (S.I. 2017/xxxx).”.
- (3) In section 70(2)(b) (provisions about possession of alcohol), after sub-paragraph (i) insert—
 - “(ia) the chief constable of the British Transport Police Force,
 - (ib) the chief constable of the Civil Nuclear Constabulary,
 - (ic) the chief constable of the Ministry of Defence Police.”.

Dover House
London
16th January 2018

David Mundell
Secretary of State
Scotland Office

(a) 2016 c.19.

Cross-border enforcement by constables of territorial police forces

Modification of Part 10 of the Criminal Justice and Public Order Act 1994

1. The Criminal Justice and Public Order Act 1994 is amended as follows.
2. In section 136 (execution of warrants)—
 - (a) before subsection (5) insert—

“(4B) Where, under subsection (2)(a) or (3)(b), a constable executes a warrant issued in Scotland, any enactment or rule of law which concerns—

 - (a) the powers and duties of a constable who executes such a warrant;
 - (b) the rights of a person arrested under such a warrant;
 - (c) the procedures to be followed after an arrest under such a warrant,

applies in relation to the arrest (subject to the modifications set out in section 137ZA) as though the warrant had been executed in Scotland and, if the constable who executed it is not a constable of a police force in Scotland, as though the constable were(a).”;
 - (b) in subsection (5), paragraph (b) is repealed.
3. In section 137 (cross-border powers of arrest etc.)—
 - (a) in subsection (2), the words “or detention” are repealed;
 - (b) in subsection (7)—
 - (i) the words “or, as the case may be detained,” are repealed;
 - (ii) for paragraph (b) substitute—

“(ba) if he arrested him in England or Wales under subsection (2) above and has charged him with an offence, to take the person arrested to the nearest convenient police station in Scotland or to a police station within a sheriffdom in which the offence is being investigated;

(bb) if he arrested him in England or Wales under subsection (2) above and has not charged him with an offence, to take the person arrested either to a police station in Scotland mentioned in paragraph (ba) above, or to the nearest convenient designated police station in England or Wales;

(bc) if he arrested him in England or Wales under subsection (3) above, to take the person arrested to the nearest convenient designated police station in Northern Ireland or to a designated police station in Northern Ireland in which the offence is being investigated;”;
 - (iii) paragraph (c) is repealed;
 - (iv) in paragraph (d)—
 - (aa) after the word “Ireland” insert “under subsection (1) above”;
 - (bb) the words from “or to the nearest” to the end of the paragraph are repealed;
 - (v) after paragraph (d) insert—

“(da) if he arrested him in Northern Ireland under subsection (2) above and has charged him with an offence, to take the person arrested to such police station in Scotland as is mentioned in paragraph (ba) above;

(a) A new subsection (4A) is to be inserted into section 136 (on a date to be appointed) by the Policing and Crime Act 2017 (c.3), Schedule 17, paragraph 7.

(db) if he arrested him in Northern Ireland under subsection (2) above and has not charged him with an offence, to take the person arrested either to such police station in Scotland as is mentioned in paragraph (ba) above, or to the nearest convenient designated police station in Northern Ireland;”;

(vi) paragraph (e) is repealed;

(c) before subsection (8) insert—

“(7B) Where a constable arrests a person under a power exercised by virtue of subsection (2) above, any enactment or rule of law which concerns—

(a) the powers and duties of a constable who effects an arrest under the power;

(b) the rights of a person arrested under the power;

(c) the procedures to be followed after an arrest under the power,

applies in relation to the arrest (subject to the modifications set out in section 137ZA) as though the arrest had been effected in Scotland and, if the constable who executed it is not a constable of a police force in Scotland, as though the constable were(a).”;

(d) in subsection (8), paragraphs (b) and (c) are repealed.

4. After section 137 insert—

“137ZA. Arrest under section 136 or 137 in connection with offence in Scotland

(1) This section makes provision about the application of Part 1 of the Criminal Justice (Scotland) Act 2016 (“the 2016 Act”) in relation to a person who is arrested by a constable—

(a) in execution of a warrant under section 136(2)(a) or (3)(b); or

(b) under section 137(2).

(2) If, following the arrest, the arrested person is to be taken directly to a place in Scotland to be held in custody, at the same time as being informed in accordance with section 3 of the 2016 Act of the matters mentioned in that section, the person must also be informed of the person’s right to have intimation sent under section 38 of the 2016 Act.

(3) Section 4 of the 2016 Act applies subject to the following modifications—

(a) subsection (1) does not apply;

(b) in subsection (2), as it applies in relation to a person arrested under section 137(2) of this Act, the reference to subsection (1) and the words “this section” in paragraph (b) are to be read as references to section 137(7) of this Act;

(c) in subsection (3), the reference to subsection (1) and the words “this section” are to be read as references to section 136(4) or (as the case may be) section 137(7) of this Act.

(4) In each of sections 5(1)(b), 7(2)(b), 15(3) and 37(4)(b) of the 2016 Act, the reference to section 4 of that Act is to be read as a reference to section 136(4) or (as the case may be) section 137(7) of this Act.

(5) References in Part 1 of the 2016 Act to a police station are to be read as including police stations in England, Wales and Northern Ireland.

(6) If the arrested person is in a police station in England, Wales or Northern Ireland, sections 33(6)(b)(ii) and 42(5)(b)(ii) of the 2016 Act are to be read as though they referred to any person who performs at that police station a function which is equivalent to a function performed at police stations in Scotland by members of police staff appointed under section 26(1) of the Police and Fire Reform (Scotland) Act 2012.”.

(a) A new subsection (7A) is to be inserted into section 137 (on a date to be appointed) by the Policing and Crime Act 2017, Schedule 17, paragraph 8.

5. In section 138 (powers of arrest: supplementary provisions)—

- (a) subsections (1A) to (2A)(a) are repealed; and
- (b) subsections (6) to (9)(b) are repealed.

6. In section 140(4), for the words from “the arrested” to the end, substitute—

“any enactment or rule of law which concerns—

- (a) the powers and duties of a constable who effects an arrest under a power which a constable of the Police Service of Scotland could have exercised to effect the arrest;
- (b) the rights of a person arrested under that power of arrest;
- (c) the procedures to be followed after an arrest under that power,

applies in relation to the arrest as though the constable who effected the arrest were a constable of a police force in Scotland.”

(a) Section 138(1A) and (1B) were inserted and sections 138(2) and (2A) were substituted for section 138(2) by S.I. 2011/1739.
(b) Section 138(6) to (9) were substituted for section 138(6) by S.I. 2011/1739.

Exercise of functions by constables and members of non-territorial police organisations

Application of 2016 Act to Ministry of Defence Police

1. After section 2C of the Ministry of Defence Police Act 1987(a) insert—

“2D Exercise of powers and privileges in Scotland

(1) Where a member of the Ministry of Defence Police exercises in Scotland any power or privilege of a constable, Parts 1 and 2 of the Criminal Justice (Scotland) Act 2016 (in this section “the 2016 Act”) apply in relation to the exercise as though the power or privilege were exercised by a constable of the Police Service of Scotland.

(2) For the purposes of subsection (1)—

- (a) in section 64 of the 2016 Act (police custody), references to a person arrested by a constable are to be read as including a person arrested by a member of the Ministry of Defence Police,
- (b) section 69 of the 2016 Act (publication of information by police) does not apply.”.

Application of 2016 Act to British Transport Police Force

2. After section 31 of the Railways and Transport Safety Act 2003(b) insert—

“31A Exercise of powers and privileges in Scotland

(1) Where a constable of the Police Force exercises in Scotland any power or privilege of a constable, Parts 1 and 2 of the Criminal Justice (Scotland) Act 2016 (in this section “the 2016 Act”) apply in relation to the exercise as though the power or privilege were exercised by a constable of the Police Service of Scotland.

(2) For the purposes of subsection (1)—

- (a) in section 64 of the 2016 Act (police custody), references to a person arrested by a constable are to be read as including a person arrested by a constable of the Police Force,
- (b) section 69 of the 2016 Act (publication of information by police) does not apply.”.

Application of 2016 Act to Civil Nuclear Constabulary

3. After section 56 of the Energy Act 2004(c) insert—

“56A Exercise of powers and privileges in Scotland

(1) Where a member of the Constabulary exercises in Scotland any power or privilege of a constable, Parts 1 and 2 of the Criminal Justice (Scotland) Act 2016 (in this section “the 2016 Act”) apply in relation to the exercise as though the power or privilege were exercised by a constable of the Police Service of Scotland.

(a) 1987 c.4. Section 2C is inserted by the Serious Organised Crime and Police Act 2005 (c.15), Schedule 4, paragraphs 48 and 50; it is amended by the Crime and Courts Act 2013 (c.22), Schedule 8, paragraph 31.

(b) 2003 c.20.

(c) 2004 c.20.

- (2) For the purposes of subsection (1)—
- (a) in section 64 of the 2016 Act (police custody), references to a person arrested by a constable are to be read as including a person arrested by a member of the Constabulary,
 - (b) section 69 of the 2016 Act (publication of information by police) does not apply.”

SCHEDULE 3

Article 7

Exercise of functions by officials other than police constables

PART 1

General

Interpretation

1.—(1) In this Schedule—

“constable” has the meaning given by section 99(1) of the Police and Fire Reform (Scotland) Act 2012(a);

“designated customs official” means a person who is designated as a general customs official under section 3(1) of the Borders, Citizenship and Immigration Act 2009(b) or as a customs revenue official under section 11(1) of that Act;

“Home Office custody suite” means premises wholly or partly used for the detention of persons by designated customs officials;

“immigration offence” means—

- (a) an offence involving conduct which relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement); or
- (b) (insofar as it is not an offence within paragraph (a)) an offence under the Immigration Acts or in relation to which a power of arrest is conferred on an immigration officer by the Immigration Acts;

“immigration officer” means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971(c);

“nationality offence” means an offence involving conduct which is undertaken for the purposes of, or otherwise in relation to, an enactment in—

- (a) the British Nationality Act 1981(d);
- (b) the Hong Kong Act 1985(e);
- (c) the Hong Kong (War Wives and Widows) Act 1996(f);
- (d) the British Nationality (Hong Kong) Act 1997(g);
- (e) the British Overseas Territories Act 2002(h);
- (f) an instrument made under any of those Acts;

“office of Revenue and Customs” means premises wholly or partly occupied by Her Majesty’s Revenue and Customs.

(2) In sub-paragraph (1), “the Immigration Acts” has the meaning given by section 61 of the UK Borders Act 2007(i).

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- (a) 2012 asp 8.
 - (b) 2009 c.11.
 - (c) 1971 c.77. The amendments to Schedule 2 are not relevant to this Order.
 - (d) 1981 c.61.
 - (e) 1985 c.15.
 - (f) 1996 c.41.
 - (g) 1997 c.20.
 - (h) 2002 c.8.
 - (i) 2007 c.30.

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^(a) 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”.

(a) 2016 asp 1.

Section 66 (cases involving removal of person)

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

“(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(a);
- (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(b) 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.

PART 3

Application of 2016 Act to designated customs officials

Introductory

Application of 2016 Act in relation to designated customs officials

8.—(1) Chapters 1 to 6 of Part 1 of the 2016 Act 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

(a) 1995 c.46.
(b) 2011 asp 1.

relation to arrest and custody by designated customs officials and searches by them, 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 a designated customs official.

General adaptations

General adaptations

9. In the provisions of the 2016 Act mentioned in paragraph 9, 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	a designated customs official
the rank of sergeant	the grade of officer
the rank of inspector	the grade of higher officer
police custody	customs custody as defined by paragraph 13
a police station	a police station or Home Office custody suite

Specific adaptations

Section 1 (power of a designated customs official)

10.—(1) Section 1 applies only in relation to a Revenue and Customs offence relating to a general customs matter or customs revenue matter.

(2) In sub-paragraph (1)—

- (a) “Revenue and Customs offence” has the meaning given by subsection (2) of section 23A of the Criminal Law (Consolidation) (Scotland) Act 1995(a);
- (b) “general customs matter” and “customs revenue matter” have the meaning given by Part 1 of the Borders, Citizenship and Immigration Act 2009.

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

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

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

(a) Section 23A was inserted by the Finance Act 2007 (c.11); subsection (2) was amended by the Employment Act 2008 (c.24), section 12(2) and the Criminal Finances Act 2017 (c.22), section 18(2).

Section 66 (cases involving removal of person)

12. Section 66 applies with the substitution for subsection (3) of—

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

Supplementary

Customs custody

13.—(1) For the purposes of provisions of the 2016 Act as applied by this Part of this Schedule, a person is in customs custody from the time the person is arrested by a designated customs official, or is transferred in accordance with the law into the custody of a designated customs official, 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;
- (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 a designated customs official;
- (f) the Principal Reporter directs under section 65(2)(b) of the Children’s Hearings (Scotland) Act 2011 that the person continue to be kept in a place of safety.

Powers of search etc. under other enactments

14. Where a person is arrested by a designated customs official under section 1 of the 2016 Act(a), a designated customs official may exercise any power that would be exercisable by a designated customs official if the person had been arrested under another enactment that confers power on a designated customs official to arrest in relation to the same offence.

PART 4

Application of 2016 Act to officers of Revenue and Customs

Introductory

Application of 2016 Act in relation to officers of Revenue and Customs

15.—(1) Chapters 1 to 6 of Part 1 of the 2016 Act 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 officers of Revenue and Customs and searches by them, subject to the adaptations in this Part.

(a) 2016 asp 1.

(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 officer of Revenue and Customs.

General adaptations

General adaptations

16. In the provisions of the 2016 Act mentioned in paragraph 16, 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 officer of Revenue and Customs
the rank of sergeant	the grade of officer
the rank of inspector	the grade of higher officer
police custody	Revenue and Customs custody as defined by paragraph 21
a police station	a police station, office of Revenue and Customs or Home Office custody suite

Specific adaptations

Section 1 (power of an officer of Revenue and Customs)

17.—(1) Section 1 applies only in relation to a Revenue and Customs offence.

(2) In sub-paragraph (1) “Revenue and Customs offence” has the meaning given by subsection (2) of section 23A of the Criminal Law (Consolidation) (Scotland) Act 1995(a).

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

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

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

Section 65 (limitation on what enables search of person not in custody)

19.—(1) Section 65 does not limit any power of an officer of Revenue and Customs to carry out a protective search—

- (a) of a person whom the officer finds in or on premises entered by the officer under the authority of a warrant under section 23E of the Criminal Law (Consolidation) (Scotland) Act 1995(b); or

(a) 1995 c.39. Section 23A was inserted by the Finance Act 2007 (c.11); subsection (2) was amended by the Employment Act 2008 (c.24), section 12(2) and the Criminal Finances Act 2017 (c.22), section 18(2).

(b) Section 23E was inserted by the Finance Act 2007 (c.11).

(b) of a person in relation to whom the officer is exercising any power under section 23M of that Act.

(2) In this paragraph “protective search” means a search in the circumstances described in section 66(1)(b) of the 2016 Act for the purpose described in section 66(2).

Section 66 (cases involving removal of person)

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

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

Supplementary

Revenue and Customs custody

21.—(1) For the purposes of provisions of the 2016 Act as applied by this Part of this Schedule, a person is in Revenue and Customs custody from the time the person is arrested by an officer of Revenue and Customs, or is transferred into the custody of an officer of Revenue and Customs, 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 under section 28(2) or (3) of the Criminal Procedure (Scotland) Act 1995(a);
- (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 officer of Revenue and Customs;
- (f) the Principal Reporter directs under section 65(2)(b) of the Children’s Hearings (Scotland) Act 2011 that the person continue to be kept in a place of safety.

Powers of search etc. under other enactments

22. Where a person is arrested by an officer of Revenue and Customs under section 1 of the 2016 Act, an officer of Revenue and Customs may exercise any power that would be exercisable by such an officer if the person had been arrested under another enactment that confers power on an officer of Revenue and Customs to arrest in relation to the same offence.

PART 5

Application of 2016 Act to designated NCA officers

Application to designated NCA officers: adaptations

23.—(1) In the application in relation to a designated NCA officer of a provision of the 2016 Act that is applied by this Schedule in relation to an immigration officer, a general customs

(a) 1995 c.46.

official or an officer of Revenue and Customs, the following entries are substituted for the corresponding entries in the table in paragraph 3, 9 or 16—

<i>1. Reference in 2016 Act</i>	<i>2. How reference is to be read</i>
the rank of sergeant	grade 4
the rank of inspector	grade 3

(2) In section 11(2) of the 2016 Act, in its application in relation to a designated NCA officer, for paragraph (a) read—

“(a) is of or above grade 3, and”.

(3) In this paragraph—

“designated NCA officer” means a National Crime Agency officer designated under section 10 of the Crime and Courts Act 2013(a) as having the powers of an immigration officer, a general customs official or an officer of Revenue and Customs;

“general customs official” means a person who is designated as a general customs official under section 3(1) of the Borders, Citizenship and Immigration Act 2009(b).

PART 6

Transfers and co-operation

Transfer

24.—(1) A person who is in immigration custody, customs custody, Revenue and Customs custody or police custody as a result of being arrested under section 1 of the 2016 Act or of being transferred under this paragraph, may be transferred as follows.

(2) A person in immigration custody may be transferred to customs custody or police custody.

(3) A person in customs custody may be transferred to Revenue and Customs custody or police custody.

(4) A person in Revenue and Customs custody may be transferred to customs custody or police custody.

(5) A person in police custody may be transferred to immigration custody, customs custody or Revenue and Customs custody.

(6) This paragraph does not affect any other power of transfer.

Co-operation

25.—(1) Where in relation to anything done by a relevant officer (“R”) a provision of the 2016 Act, as applied by this Schedule, confers a power or imposes a duty on a relevant officer who may or must be a person other than R, the power may be exercised or the duty performed by a constable (and where it is, the power or duty is to be read without the modifications made by this Schedule).

(2) Where in relation to anything done by a constable (“C”)—

(a) a provision of the 2016 Act confers a power or imposes a duty on a constable who may or must be a person other than C; and

(a) 2013 c.22; section 10 was amended by the Policing and Crime Act 2017 (c.3), section 158(3).

(b) 2009 c.11.

(b) the provision is applied by this Schedule to a relevant officer, the power may be exercised or the duty performed by a relevant officer (and where it is, the power or duty is to be read with the modifications made by this Schedule).

(3) In this paragraph “relevant officer” means an immigration officer, a designated customs official or an officer of Revenue and Customs.

SCHEDULE 4

Article 8

Application of Part 1 of 2016 Act in relation to service offences etc.

General

1.—(1) Section 58 of the 2016 Act (disapplication of Part 1 in relation to service offences) is subject to this Schedule.

(2) In this Schedule, “constable” has the meaning given by section 99(1) of the Police and Fire Reform (Scotland) Act 2012, subject to sub-paragraph (3).

(3) In this Schedule and any provision of Part 1 of the 2016 Act as applied by this Schedule, references to a constable include references to a member of the Ministry of Defence Police.

(4) Subject to sub-paragraph (6), a provision of that Part that is not applied by a paragraph of this Schedule, and that would otherwise apply in the case to which the paragraph relates, does not apply in that case.

(5) For the purposes of provisions of that Part applied by this Schedule, section 64 of the 2016 Act (meaning of police custody) applies—

- (a) as if in subsection (1) the reference to the person’s arrest by a constable included a reference to the person’s surrender to a constable as being a person subject to service law who has deserted or is absent without leave;
- (b) with the substitution for subsection (2)(b), (c), (ca) and (cb) of—
 - “(b) the person is transferred to service custody,
 - (c) the person is brought before a court in accordance with section 314(4) or 315(4)(b) of the Armed Forces Act 2006,
 - (ca) the person is taken to a place in accordance with section 318(1)(b) of that Act (place in which person sentenced to service detention is required in accordance with law to be detained),”.

(6) Section 58(2) of the 2016 Act does not limit the effect of an amendment or repeal made by schedule 2 to that Act.

Arrest under warrant of judge advocate

2.—(1) The following provisions of Part 1 of the 2016 Act apply where a person is arrested by a constable under a warrant under section 313 of the Armed Forces Act 2006 (warrant of judge advocate for arrest for service offence).

(2) Section 3 (information to be given on arrest) applies with the following modifications—

- (a) in paragraph (d) omit “other than to give the information specified in section 34(4),”;
- (b) after paragraph (d) add—
 - “(da) of the person’s right to have intimation sent under section 38;”;
- (c) omit paragraph (e)(ii).

(3) Section 5 (information to be given at police station) applies with the following modifications—

- (a) in subsection (1)(b) omit “in accordance with section 4”;
- (b) in subsection (2)(a) omit “other than to give the information specified in section 34(4),”;
- (c) in subsection (2)(b) omit “and to have access” and sub-paragraphs (ii) and (iv).

(4) In section 6 (information to be recorded by police)—

- (a) subsection (1) applies;
- (b) subsection (2) applies, but omitting paragraphs (a) and (c).

- (5) Section 38 (right to have intimation sent to other person) applies.
- (6) Section 39 (right to have intimation sent: under 18s) applies with the following modifications—
 - (a) omit subsections (2), (3) and (4)(b);
 - (b) in subsection (6), in paragraph (a) omit from “and agrees to attend” to the end, and at the end of paragraph (b) add—
 - “, or
 - (c) the person is transferred to service custody.”.
- (7) Section 41 (social work involvement in relation to under 18s) applies with the following modifications—
 - (a) in subsection (4) omit “and 40”;
 - (b) in subsection (7) for “to 40” substitute “and 39”.
- (8) Section 42 (support for vulnerable persons) applies.
- (9) Section 43 (right to have intimation sent to a solicitor) applies, omitting subsection (1)(c) and (d).
- (10) Section 45 (use of reasonable force) applies.
- (11) Section 46 (common law power of entry) applies.
- (12) Section 50 (duty not to detain unnecessarily) applies.
- (13) Section 51 (duty to consider child’s wellbeing) applies, omitting subsection (1)(a), (c) and (d).
- (14) Section 52 (duties in relation to children in custody) applies.

Arrest of deserters and absentees without leave

- 3.—**(1) The following provisions of Part 1 of the 2016 Act apply where—
- (a) a person is arrested by a constable under section 314 of the Armed Forces Act 2006 (arrest by constable of deserters and absentees without leave); or
 - (b) a person is arrested by a constable under a warrant under subsection (2) of that section.
- (2) Section 3 (information to be given on arrest) applies with the omission in paragraph (d) of “other than to give the information specified in section 34(4),”.
- (3) Section 4 (arrested person to be taken to police station) applies, omitting subsection (3).
- (4) Section 5 (information to be given at police station) applies with the omission in subsection (2)(a) of “other than to give the information specified in section 34(4),”.
- (5) In section 6 (information to be recorded by police)—
- (a) subsection (1) applies;
 - (b) subsection (2) applies, but omitting paragraph (c).
- (6) Section 22 (under 18s to be kept in place of safety prior to court) applies with the following modifications—
- (a) in subsection (1)(a) for the reference to section 21(2) of the 2016 Act substitute a reference to section 314(4) of the Armed Forces Act 2006;
 - (b) in subsection (1)(b) omit sub-paragraph (i);
 - (c) in subsection (2) omit the reference to release under section 25.
- (7) Section 23 (notice to parent that under 18 to be brought before court) applies with the following modifications—
- (a) in subsection (1) omit “or under 16 years of age”;
 - (b) in subsection (1)(a) for the reference to section 21(2) of the 2016 Act substitute a reference to section 314(4) of the Armed Forces Act 2006;

(c) omit subsection (1)(b);

(d) omit subsection (2)(d).

(8) Section 24 (notice to local authority that under 18 to be brought before court) applies with the following modifications—

(a) in subsection (1)(a) for the reference to section 21(2) of the 2016 Act substitute a reference to section 314(4) of the Armed Forces Act 2006;

(b) omit subsection (1)(b);

(c) omit subsection (2)(a);

(d) omit subsection (3)(c);

(e) in subsection (4)(a) omit “or (as the case may be) (b)”;

(f) omit subsection (4)(c).

(9) Section 38 (right to have intimation sent to other person) applies, omitting subsections (2)(a) and (3)(a) except for the purposes of section 41(7).

(10) Section 39 (right to have intimation sent: under 18s) applies, omitting subsection (7)(a) except for the purposes of section 41(7).

(11) Section 40 (right of under 18s to have access to other person) applies, omitting subsection (1) except for the purposes of section 41(7).

(12) Section 41 (social work involvement in relation to under 18s) applies.

(13) Section 42 (support for vulnerable persons) applies.

(14) Section 43 (right to have intimation sent to a solicitor) applies, omitting subsection (1)(d).

(15) Section 44 (right to consultation with solicitor) applies.

(16) Section 45 (use of reasonable force) applies.

(17) Section 46 (common law power of entry) applies.

(18) Section 50 (duty not to detain unnecessarily) applies.

(19) Section 51 (duty to consider child’s wellbeing) applies, omitting subsection (1)(a), (c) and (d).

(20) Section 52 (duties in relation to children in custody) applies.

Deserters and absentees without leave surrendering to constable

4. Where a person surrenders to a constable as being a person subject to service law who has deserted or is absent without leave, section 3 of the 2016 Act (information to be given on arrest) applies with the following modifications—

(a) for “When a constable arrests a person” substitute “When a person surrenders to a constable as being a person subject to service law who has deserted or is absent without leave”;

(b) for paragraphs (a) to (c) substitute—

“(a) that the person has surrendered as being a person subject to service law who has deserted or (as the case may be) who is absent without leave, and”;

(c) in paragraph (d) omit “other than to give the information specified in section 34(4),”;

(d) omit paragraph (e).

Surrender of deserters and absentees: transfer to service custody

5.—(1) The following provisions of Part 1 of the 2016 Act apply where—

(a) a person’s case is considered under subsection (3) of section 315 of the Armed Forces Act 2006 (deserters and absentees without leave surrendering to civilian police); and

- (b) the person considering the case acts under subsection (4)(a) of that section (power to arrange for person to be transferred to service custody).
- (2) Section 5 (information to be given at police station) applies with the following modifications—
- (a) in subsection (1)(a) for “been arrested” substitute “surrendered”;
 - (b) in subsection (1)(b) for the reference to section 4 of the 2016 Act substitute a reference to section 315(1) of the Armed Forces Act 2006;
 - (c) in subsection (2)(a) omit “other than to give the information specified in section 34(4),”;
 - (d) omit subsection (2)(b)(ii) and (iv).
- (3) In section 6 (information to be recorded by police)—
- (a) subsection (1) applies, substituting references to surrender, or surrender to a constable, for references to arrest, or arrest by a constable;
 - (b) subsection (2) applies, but—
 - (i) omitting paragraphs (a) and (c); and
 - (ii) substituting a reference to surrender to a constable for the reference to arrest by a constable;
- (4) Section 38 (right to have intimation sent to other person) applies, omitting subsections (2)(a) and (3)(a) except for the purposes of section 41(7).
- (5) Section 39 (right to have intimation sent: under 18s) applies with the following modifications—
- (a) omit subsections (2), (3) and (4)(b);
 - (b) in subsection (6), in paragraph (a) omit from “and agrees to attend” to the end, and at the end of paragraph (b) add—
 - “; or
 - (c) the person is transferred to service custody.”;
 - (c) in subsection (7) omit paragraph (a) except for the purposes of section 41(7).
- (6) Section 41 (social work involvement in relation to under 18s) applies with the following modifications—
- (a) in subsection (4) omit “and 40”;
 - (b) in subsection (7) for “to 40” substitute “and 39”.
- (7) Section 42 (support for vulnerable persons) applies.
- (8) Section 43 (right to have intimation sent to a solicitor) applies, omitting subsection (1)(c) and (d).
- (9) Section 45 (use of reasonable force) applies.
- (10) Section 50 (duty not to detain unnecessarily) applies.
- (11) Section 51 (duty to consider child’s wellbeing) applies, omitting subsection (1)(a), (c) and (d).
- (12) Section 52 (duties in relation to children in custody) applies.

Surrender of deserters and absentees: bringing before court of summary jurisdiction

- 6.—(1) The following provisions of Part 1 of the 2016 Act apply where—
- (a) a person’s case is considered under subsection (3) of section 315 of the Armed Forces Act 2006 (deserters and absentees without leave surrendering to civilian police); and
 - (b) the person considering the case acts under subsection (4)(b) of that section (power to arrange for person to be brought before court of summary jurisdiction).

(2) Section 5 (information to be given at police station) applies with the following modifications—

- (a) in subsection (1)(a) for “been arrested” substitute “surrendered”;
- (b) in subsection (1)(b) for the reference to section 4 of the 2016 Act substitute a reference to section 315(1) of the Armed Forces Act 2006;
- (c) in subsection (2)(a) omit “other than to give the information specified in section 34(4),”.

(3) In section 6 (information to be recorded by police)—

- (a) subsection (1) applies, substituting references to surrender, or surrender to a constable, for references to arrest, or arrest by a constable;
- (b) subsection (2) applies, but—
 - (i) omitting paragraphs (a) and (c); and
 - (ii) substituting a reference to surrender to a constable for the reference to arrest by a constable;

(4) Section 22 (under 18s to be kept in place of safety prior to court) applies with the following modifications—

- (a) in subsection (1)(a) for the reference to section 21(2) of the 2016 Act substitute a reference to section 315(4)(b) of the Armed Forces Act 2006;
- (b) in subsection (1)(b) omit sub-paragraph (i);
- (c) in subsection (2) omit the reference to release under section 25.

(5) Section 23 (notice to parent that under 18 to be brought before court) applies with the following modifications—

- (a) in subsection (1) omit “or under 16 years of age”;
- (b) in subsection (1)(a) for the reference to section 21(2) of the 2016 Act substitute a reference to section 315(4)(b) of the Armed Forces Act 2006;
- (c) omit subsection (1)(b);
- (d) omit subsection (2)(d).

(6) Section 24 (notice to local authority that under 18 to be brought before court) applies with the following modifications—

- (a) in subsection (1)(a) for the reference to section 21(2) of the 2016 Act substitute a reference to section 315(4)(b) of the Armed Forces Act 2006;
- (b) omit subsection (1)(b);
- (c) omit subsection (2)(a);
- (d) omit subsection (3)(c);
- (e) in subsection (4)(a) omit “or (as the case may be) (b)”;
- (f) omit subsection (4)(c).

(7) Section 38 (right to have intimation sent to other person) applies, omitting subsections (2)(a) and (3)(a) except for the purposes of section 41(7).

(8) Section 39 (right to have intimation sent: under 18s) applies, omitting subsection (7)(a) except for the purposes of section 41(7).

(9) Section 40 (right of under 18s to have access to other person) applies, omitting subsection (5)(b).

(10) Section 41 (social work involvement in relation to under 18s) applies.

(11) Section 42 (support for vulnerable persons) applies.

(12) Section 43 (right to have intimation sent to a solicitor) applies, omitting subsection (1)(d).

(13) Section 44 (right to consultation with solicitor) applies.

(14) Section 45 (use of reasonable force) applies.

- (15) Section 50 (duty not to detain unnecessarily) applies.
- (16) Section 51 (duty to consider child’s wellbeing) applies, omitting subsection (1)(a), (c) and (d).
- (17) Section 52 (duties in relation to children in custody) applies.

Surrender of deserters and absentees: transfer to service custody

- 7.—(1) The following provisions of Part 1 of the 2016 Act apply where—
- (a) a person’s case is considered under subsection (3) of section 315 of the Armed Forces Act 2006 (deserters and absentees without leave surrendering to civilian police); and
 - (b) the person considering the case acts under subsection (4)(c) of that section (power to release person subject to condition to enable the person to be taken into service custody).
- (2) Section 5 (information to be given at police station) applies with the following modifications—
- (a) in subsection (1)(a) for “been arrested” substitute “surrendered”;
 - (b) in subsection (1)(b) for the reference to section 4 of the 2016 Act substitute a reference to section 315(1) of the Armed Forces Act 2006;
 - (c) in subsection (2)(a) omit “other than to give the information specified in section 34(4),”;
 - (d) omit subsection (2)(b)(ii) and (iv).
- (3) In section 6 (information to be recorded by police)—
- (a) subsection (1) applies, substituting references to surrender, or surrender to a constable, for references to arrest, or arrest by a constable;
 - (b) subsection (2) applies, but—
 - (i) omitting paragraphs (a) and (c); and
 - (ii) substituting a reference to surrender to a constable for the reference to arrest by a constable;
 - (c) subsection (7) applies, substituting a reference to section 315(4)(c) of the Armed Forces Act 2006 for the reference to section 16 of the 2016 Act.
- (4) Section 38 (right to have intimation sent to other person) applies, omitting subsections (2)(a) and (3)(a) except for the purposes of section 41(7).
- (5) Section 39 (right to have intimation sent: under 18s) applies with the following modifications—
- (a) omit subsections (2), (3) and (4)(b);
 - (b) in subsection (6), in paragraph (a) omit from “and agrees to attend” to the end;
 - (c) in subsection (7) omit paragraph (a) except for the purposes of section 41(7).
- (6) Section 41 (social work involvement in relation to under 18s) applies with the following modifications—
- (a) in subsection (4) omit “and 40”;
 - (b) in subsection (7) for “to 40” substitute “and 39”.
- (7) Section 42 (support for vulnerable persons) applies.
- (8) Section 43 (right to have intimation sent to a solicitor) applies, omitting subsection (1)(c) and (d).
- (9) Section 45 (use of reasonable force) applies.
- (10) Section 50 (duty not to detain unnecessarily) applies.
- (11) Section 51 (duty to consider child’s wellbeing) applies, omitting subsection (1)(a), (c) and (d).
- (12) Section 52 (duties in relation to children in custody) applies.

Arrest under warrant under section 317 of Armed Forces Act 2006

8.—(1) The following provisions of Part 1 of the 2016 Act apply where a person is arrested by a constable under a warrant under section 317 of the Armed Forces Act 2006 (failure to comply with condition to enable person to be taken into service custody).

(2) Section 3 (information to be given on arrest) applies with the following modifications—

- (a) omit paragraph (b);
- (b) in paragraph (d) omit “other than to give the information specified in section 34(4),”;
- (c) after paragraph (d) add—
 - “(da) of the person’s right to have intimation sent under section 38;”;
- (d) omit paragraph (e)(ii).

(3) Section 5 (information to be given at police station) applies with the following modifications—

- (a) in subsection (1)(b) omit “in accordance with section 4”;
- (b) in subsection (2)(a) omit “other than to give the information specified in section 34(4),”;
- (c) omit subsection (2)(b)(ii) and (iv).

(4) In section 6 (information to be recorded by police)—

- (a) subsection (1) applies, omitting paragraph (b);
- (b) subsection (2) applies, omitting paragraphs (a) and (c).

(5) Section 38 (right to have intimation sent to other person) applies, omitting subsections (2)(a) and (3)(a) except for the purposes of section 41(7).

(6) Section 39 (right to have intimation sent: under 18s) applies with the following modifications—

- (a) omit subsections (2), (3) and (4)(b);
- (b) in subsection (6), in paragraph (a) omit from “and agrees to attend” to the end, and at the end of paragraph (b) add—
 - “, or
 - (c) the person is transferred to service custody.”;
- (c) in subsection (7) omit paragraph (a) except for the purposes of section 41(7).

(7) Section 41 (social work involvement in relation to under 18s) applies with the following modifications—

- (a) in subsection (4) omit “and 40”;
- (b) in subsection (7) for “to 40” substitute “and 39”.

(8) Section 42 (support for vulnerable persons) applies.

(9) Section 43 (right to have intimation sent to a solicitor) applies, omitting subsection (1)(c) and (d).

(10) Section 45 (use of reasonable force) applies.

(11) Section 46 (common law power of entry) applies.

(12) Section 50 (duty not to detain unnecessarily) applies.

(13) Section 51 (duty to consider child’s wellbeing) applies, omitting subsection (1)(a), (c) and (d).

(14) Section 52 (duties in relation to children in custody) applies.

Arrest of persons unlawfully at large

9.—(1) The following provisions of Part 1 of the 2016 Act apply where a person is arrested by a constable under section 318(1) of the Armed Forces Act 2006 (person sentenced to service detention and unlawfully at large).

- (2) Section 3 (information to be given on arrest) applies with the following modifications—
- (a) omit paragraph (b);
 - (b) in paragraph (d) omit “other than to give the information specified in section 34(4),”;
 - (c) after paragraph (d) add—
 - “(da) of the person’s right to have intimation sent under section 38;”;
 - (d) omit paragraph (e)(ii).
- (3) Section 5(2) (information to be given as soon as reasonably practicable) applies when the person is in police custody, with the following modifications—
- (a) in paragraph (a) omit “other than to give the information specified in section 34(4),”;
 - (b) omit paragraph (b)(i) and (iv).
- (4) In section 6 (information to be recorded by police)—
- (a) subsection (1) applies;
 - (b) subsection (2) applies, omitting paragraphs (a), (b)(ii) and (c).
- (5) Section 38 (right to have intimation sent to other person) applies, omitting subsections (2)(a) and (3)(a) except for the purposes of section 41(7).
- (6) Section 39 (right to have intimation sent: under 18s) applies with the following modifications—
- (a) omit subsections (2), (3) and (4)(b);
 - (b) in subsection (6), in paragraph (a) omit from “and agrees to attend” to the end, and at the end of paragraph (b) add—
 - “, or
 - (c) the person is transferred to the place in which the person is required in accordance with law to be detained.”;
 - (c) in subsection (7) omit paragraph (a) except for the purposes of section 41(7).
- (7) Section 41 (social work involvement in relation to under 18s) applies with the following modifications—
- (a) in subsection (4) omit “and 40”;
 - (b) in subsection (7) for “to 40” substitute “and 39”.
- (8) Section 42 (support for vulnerable persons) applies.
- (9) Section 43 (right to have intimation sent to a solicitor) applies, omitting subsection (1)(c) and (d).
- (10) Section 45 (use of reasonable force) applies.
- (11) Section 46 (common law power of entry) applies.
- (12) Section 50 (duty not to detain unnecessarily) applies.
- (13) Section 51 (duty to consider child’s wellbeing) applies, omitting subsection (1)(a), (c) and (d).
- (14) Section 52 (duties in relation to children in custody) applies.

Persons arrested in connection with extradition proceedings

Modification of the Criminal Procedure (Scotland) Act 1995

- 1.—(1) Section 18 of the Criminal Procedure (Scotland) Act 1995 is modified as follows.
- (2) In subsection (2), after “suspected offence” insert “or the relevant offence (within the meaning of section 164(3) of the Extradition Act 2003(a))”.
- (3) In subsection (3), for “subsection (4)” substitute “subsections (3A) and (4)”.
- (4) After subsection (3), insert—
- “(3A) Subsection (3) does not apply to—
- (a) relevant physical data taken under subsection (2) from, or provided under that subsection by, a person arrested under an extradition arrest power (within the meaning of section 174(2) of the Extradition Act 2003), and
- (b) any sample, or any information derived from a sample, taken under subsection (6) or (6A) from a person arrested under such a power (but see section 18H).”.
- (5) After section 18G(b), insert—

“18H Retention of samples etc.: extradition

- (1) This section applies to—
- (a) relevant physical data taken under section 18(2) from, or provided under that subsection by, a person arrested under an extradition arrest power (within the meaning of section 174(2) of the Extradition Act 2003), and
- (b) any sample, or any information derived from a sample, taken under section 18(6) or (6A) from a person arrested under an extradition arrest power (within the meaning of section 174(2) of the Extradition Act 2003).
- (2) All record of any relevant physical data, all samples and all information derived from such samples must be destroyed as soon as possible following the final determination of the extradition proceedings.
- (3) The duty under subsection (2) to destroy samples taken under section 18(6) or (6A) and information derived from such samples does not apply where the circumstances in paragraph (a) or (b) of section 18(4) apply to the sample or information (and where such circumstances apply, the restrictions in section 18(5) apply to the sample or information retained).
- (4) For the purposes of this section, extradition proceedings are finally determined—
- (a) if the person is extradited, on the day of the extradition,
- (b) if the person is discharged and there is no right of appeal under the Extradition Act 2003 against the decision which resulted in the order for the person’s discharge, when the person is discharged, on the day of the discharge,
- (c) where the person is discharged at an extradition hearing or by the Scottish Ministers under section 93 of the Extradition Act 2003—
- (i) if no application is made to the High Court for leave to appeal against the decision within the period during which such an application may be made, at the end of that period,
- (ii) if such an application is made and is refused, on the day of the refusal,

(a) 2003 c.41.

(b) Section 18G was inserted by the Protection of Freedoms Act 2012 (c.9), Schedule 1, paragraph 6(3).

- (d) where the High Court orders the person’s discharge or dismisses an appeal against a decision to discharge the person—
 - (i) if no application is made to the High Court for permission to appeal to the Supreme Court within the 28 day period starting with the day of the High Court’s decision, at the end of that period,
 - (ii) if such an application is made to the High Court and is refused, and no application is made to the Supreme Court for permission to appeal to the Supreme Court within the period of 28 days starting with the day of the refusal, at the end of that period,
 - (iii) if such an application is made to the Supreme Court and is refused, on the day of the refusal,
 - (iv) if permission to appeal to the Supreme Court is granted, but no appeal is made within the period of 28 days starting with the day on which permission is granted, at the end of that period,
 - (v) if there is an appeal to the Supreme Court against the High Court’s decision, on the day on which the appeal is refused, is abandoned or is upheld with the effect that the person is discharged,
 - (e) if an appeal to the Supreme Court is upheld with the effect that the person is discharged, on the day of the decision to uphold the appeal.
- (5) In subsection (4)—
- “extradition hearing” has the meaning given by section 68 or as the case may be section 140 of the Extradition Act 2003,
- “extradition proceedings” means proceedings under the Extradition Act 2003.”.

Modification of the 2016 Act

2. After section 57C of the 2016 Act(a), insert—

“57D Arrest under an extradition arrest power

(1) In a case where a person is arrested under an extradition arrest power (within the meaning of section 174(2) of the Extradition Act 2003), this Part applies subject to the following further modifications.

(2) The following do not apply—

- (a) sections 3 and 4,
- (b) sections 25 to 30,
- (c) section 50.

(3) In section 5—

- (a) subsection (1)(b) is to be read as if the words “in accordance with section 4” were omitted,
- (b) subsection (2)(a) is to be read as if the words “other than to give the information specified in section 34(4)” were omitted, and
- (c) subsection (3) is to be read as if the words “of Articles 3 and 4” were omitted.

(4) Section 6 is to be read as if—

- (a) in subsection (1)(c) the words “in accordance with section 4” were omitted,
- (b) subsection (1)(d) were omitted,
- (c) subsection (2)(a) were omitted,

(a) Section 57A to C are inserted into the Criminal Justice (Scotland) Act 2016 by the Criminal Justice (Scotland) Act 2016 (Modification of Part 1 and Ancillary Provision) Regulations 2017 (S.S.I. x/2017).

- (d) subsection (2)(c) were omitted, and
 - (e) subsections (3) to (8) were omitted.
- (6) Section 23 is to be read as if—
- (a) subsection (1)(b) were omitted,
 - (b) subsection (2)(d) were omitted.
- (7) Section 24 is to be read as if subsection (1)(b) were omitted.
- (8) Section 48 is to be read as if—
- (a) for subsection (2) there were substituted—
 - “(2) This subsection applies to a person who is in police custody having been arrested under an extradition arrest power (within the meaning of section 174(2) of the Extradition Act 2003).”, and
 - (b) for subsection (3) there were substituted—
 - “(3) In subsection (1), “the relevant offence” means the offence that would have been committed were the act constituting the relevant offence (within the meaning of section 164(3) of the Extradition Act 2003) done in Scotland.””.

EXPLANATORY NOTE

(This note is not part of the Order)

The Order makes provision in consequence of the Criminal Justice (Scotland) Act 2016 (“the 2016 Act”).

Article 10 enables the Lord Advocate, when acting under section 57 of the 2016 Act, to specify bodies and deal with matters in the Code of Practice on investigative functions which would otherwise be outwith the legislative competence of the Scottish Parliament in terms of section 29(2)(b) or (c) of the Scotland Act 1998.

Articles 11 and 12 provide in relation to the code of practice about search of a person not in police custody under section 73 of the 2016 Act which applies to persons exercising the functions of a constable. Article 12 requires other officials and officers to have regard to the code when exercising a corresponding function.

Articles 13, 15 to 23 and 24(2) make modifications consequential on provision in the 2016 Act or other provision in the Order. Article 24(3) expands the procedural requirements in relation to regulations made under section 70 of the 2016 Act to reflect the application to constables in non-territorial police forces.

Article 14 makes provision to tidy up the statute book as a consequence of the combined effects on the Criminal Justice and Public Order Act 1994 (“the 1994 Act”) of Schedule 1 to the Order and provisions of the Policing and Crime Act 2017 which are not yet in force.

Schedule 1 modifies the 1994 Act. Section 136 of the 1994 Act allows an arrest to be effected in England and Wales or Northern Ireland under a Scottish warrant. Section 137 allows a constable of the Police Service of Scotland to arrest someone who is in England and Wales or Northern Ireland without a warrant in connection with a Scottish crime in certain circumstances. Section 140 allows a constable of a police force in England and Wales or Northern Ireland to arrest a person in Scotland in certain circumstances. In each of these situations, Schedule 1 amends the relevant section to ensure that the laws applicable to an arrest effected in Scotland by a constable of the Police Service of Scotland will apply. Paragraph 4 inserts section 137ZA into the 1994 Act, which adjusts the operation of the 2016 Act rules as they apply to arrests effected outside Scotland. The rest of the Schedule removes from the 1994 Act references to provisions of the Criminal Procedure (Scotland) Act 1995 which are repealed by the 2016 Act.

Schedule 2 makes provision to apply Parts 1 and 2 of the 2016 Act where the Ministry of Defence Police, the British Transport Police Force and the Civil Nuclear Constabulary exercise police powers in Scotland.

Schedule 3 makes provision about the application of the 2016 Act in relation to immigration officers, designated customs officials and officers of Revenue and Customs; and modifies Part 3 of the Criminal Law Consolidation (Scotland) Act 1995 (“the 1995 Act”), which applies to such officers and officials. Part 5 deals with the application of the 2016 Act to National Crime Agency officers.

Part 6 of Schedule 3 makes provision in connection with the transfer of a person between different types of custody and provides for cooperation between officers.

Schedule 4 makes provision about the application of the 2016 Act in relation to persons in police custody in Scotland by virtue of sections 313 to 318 of the Armed Forces Act 2006 (“the 2006 Act”). Section 315 of the 2006 Act makes provision with respect to a person who surrenders to a civilian police officer as being a deserter or absent without leave. Sections 313 to 318 of the 2006 Act provide for arrest and detention of persons subject to service law by civilian police officers in certain limited circumstances and set out the procedures which apply following such arrest or surrender, including procedures for transfer of a person into service custody.

Schedule 5 modifies the Criminal Procedure (Scotland) Act 1995 (“the Criminal Procedure Act”) and the 2016 Act as they apply in relation to a person arrested in connection with extradition proceedings.

Paragraph 1 modifies provisions of the Criminal Procedure Act which regulate the taking of relevant physical data (as defined in section 7A of that Act, and including fingerprints) and other more intimate samples from a person who has been arrested and is in police custody, and the retention and destruction of those data and samples, and any information derived from them.

Paragraph 2 modifies the application of the 2016 Act in the case of a person arrested under an extradition arrest power. Sections 3, 4 and 25 to 30 of the 2016 Act are expressly dis-applied as these provisions relate to the procedure to be followed when a person is arrested in connection with a domestic criminal investigation.

Section 5 of the 2016 Act obliges police to provide a person in police custody with certain information. Schedule 5 modifies this obligation to information relevant in the case of a person arrested under an extradition arrest power, including information which must be provided in the case of a person arrested in connection with a European arrest warrant in order to comply with the Directive 2012/13/EU of the European Parliament and of the Council of 22nd May 2012 on the right to information in criminal proceedings.

Section 6 of the 2016 Act is modified to limit the obligation to record information to information relevant in the case of a person arrested under an extradition power. Section 48 of the 2016 Act is modified to clarify that the effect of that provision applies in the case of a person arrested under an extradition arrest power.

A full regulatory impact assessment for this Order has not been produced as no impact on the private or voluntary sectors is foreseen.

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