

SCHEDULE 3

Exercise of functions by officials other than police constables

PART 2

Application of 2016 Act to immigration officers

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⁽¹⁾;
- (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⁽²⁾ 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.

(1) 1995 c.46.
(2) 2011 asp 1.