

**Changes to legislation:** Criminal Justice (Scotland) Act 2016, PART 2 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULE 2 MODIFICATIONS IN CONNECTION WITH PART 1

### PART 2

#### FURTHER MODIFICATIONS

##### *The 1995 Act*

26 The 1995 Act is amended as follows.

#### Commencement Information

**I1** Sch. 2 para. 26 in force at 25.1.2018 by S.S.I. 2017/345, art. 3, sch.

27 These provisions are repealed—

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

#### Commencement Information

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

28 (1) In section 18—

- (a) in subsection (1), the words “or is detained under section 14(1) of this Act” are repealed,
- (b) in subsection (2), the words “or detained” are repealed.

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

(3) In section 18D—

- (a) in subsection (2)(a), the words “or detained” are repealed,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

(4) In subsection (8)(b) of section 19AA, the words “or detention under section 14(1) of this Act” are repealed.

#### Commencement Information

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

29 In section 28—

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

**Changes to legislation:** *Criminal Justice (Scotland) Act 2016, PART 2 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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

#### Commencement Information

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

30 After section 28 there is inserted—

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

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

**Changes to legislation:** Criminal Justice (Scotland) Act 2016, PART 2 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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

#### Commencement Information

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

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

#### Commencement Information

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

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

#### Commencement Information

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

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

**Changes to legislation:** *Criminal Justice (Scotland) Act 2016, PART 2 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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

**Commencement Information**

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

34 Before section 261A there is inserted—

*“Statements made after charge*

**Exception to rule on inadmissibility**

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

**Commencement Information**

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

*Other enactments*

35 In subsection (2)(a) of section 8A of the Legal Aid (Scotland) Act 1986, for the words “section 15A of the Criminal Procedure (Scotland) Act 1995 (right of suspects to have access to a solicitor)” there is substituted “ section 32 (right to have solicitor present) of the Criminal Justice (Scotland) Act 2016 ”.

**Commencement Information**

**I10** Sch. 2 para. 35 in force at 25.1.2018 by S.S.I. 2017/345, art. 3, sch. (with art. 4)

36 In section 6D of the Road Traffic Act 1988, for subsection (2A) there is substituted—

“(2A) Instead of, or before, arresting a person under this section, a constable may detain the person at or near the place where the preliminary test was, or would have been, administered with a view to imposing on the person there a requirement under section 7.”.

**Commencement Information**

**I11** Sch. 2 para. 36 in force at 25.1.2018 by S.S.I. 2017/345, art. 3, sch. (with art. 4)

37 In Schedule 8 to the Terrorism Act 2000—

- (a) in paragraph 18—

**Changes to legislation:** *Criminal Justice (Scotland) Act 2016, PART 2 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (i) in sub-paragraph (2), for the words from “and” at the end of paragraph (a) to the end of the sub-paragraph there is substituted—
  - “(ab) intimation is to be made under paragraph 16(1) whether the person detained requests that it be made or not, and
  - (ac) section 40 (right of under 18s to have access to other person) of the Criminal Justice (Scotland) Act 2016 applies as if the detained person were a person in police custody for the purposes of that section.”,
- (ii) after sub-paragraph (3) there is inserted—
  - “(4) For the purposes of sub-paragraph (2)—
    - “child” means a person under 16 years of age,
    - “parent” includes guardian and any person who has the care of the child mentioned in sub-paragraph (2).”,
- (b) in paragraph 20(1), the words “or a person detained under section 14 of that Act” are repealed,
- (c) in paragraph 27—
  - (i) in sub-paragraph (4), paragraph (a) is repealed,
  - (ii) sub-paragraph (5) is repealed.

**Modifications etc. (not altering text)**

**C1** Sch. 2 para. 37: amendments made to 2000 c. 11, **Sch. 8** extended to E.W.N.I. (17.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), arts. 2(1)(d), **18**

**Commencement Information**

**I12** Sch. 2 para. 37 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, **sch.** (with art. 4)

38 In the schedule to the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002, paragraph 2 is repealed.

**Commencement Information**

**I13** Sch. 2 para. 38 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, **sch.**

39 In the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010, sections 1, 3 and 4 are repealed.

**Commencement Information**

**I14** Sch. 2 para. 39 in force at 25.1.2018 by [S.S.I. 2017/345](#), art. 3, **sch.** (with art. 4)

40 In the Children's Hearings (Scotland) Act 2011—

- (a) in section 65—
  - (i) for subsection (1) there is substituted—
    - “(1) Subsection (2) applies where the Principal Reporter is informed under subsection (2) of section 53 of the Criminal

**Changes to legislation:** *Criminal Justice (Scotland) Act 2016, PART 2 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- Justice (Scotland) Act 2016 that a child is being kept in a place of safety under subsection (3) of that section.”,
- (ii) in subsection (2), for the words “in the” there is substituted “ in a ”,
- (b) in section 66(1), for sub-paragraph (vii) there is substituted—
- “(vii) information under section 53 of the Criminal Justice (Scotland) Act 2016, or”,
- (c) in section 68(4)(e)(vi), for the words “section 43(5) of the Criminal Procedure (Scotland) Act 1995 (c.46)” there is substituted “ section 53 of the Criminal Justice (Scotland) Act 2016 ”,
- (d) in section 69, for subsection (3) there is substituted—
- “(3) If—
- (a) the determination under section 66(2) is made following the Principal Reporter receiving information under section 53 of the Criminal Justice (Scotland) Act 2016, and
- (b) at the time the determination is made the child is being kept in a place of safety,
- the children's hearing must be arranged to take place no later than the third day after the Principal Reporter receives the information mentioned in paragraph (a).”,
- (e) in section 72(2)(b), for the words “in the” there is substituted “ in a ”.

**Commencement Information**

**I15** Sch. 2 para. 40 in force at 25.1.2018 by S.S.I. 2017/345, art. 3, sch. (with art. 4)

- 41 In section 20 of the Police and Fire Reform (Scotland) Act 2012, subsections (2) and (3) are repealed.

**Commencement Information**

**I16** Sch. 2 para. 41 in force at 25.1.2018 by S.S.I. 2017/345, art. 3, sch.

**Changes to legislation:**

Criminal Justice (Scotland) Act 2016, PART 2 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

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

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