
STATUTORY INSTRUMENTS

2018 No. 46

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

Further modifications of enactments

Legal Aid (Scotland) Act 1986

13.—(1) In section 8A(2) of the Legal Aid (Scotland) Act 1986(1) (“the Legal Aid Act”), paragraphs (b) and (c) are repealed.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

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(3) In section 136, subsection (5) (insofar as not otherwise repealed) is repealed on the later of—

- (a) the day that paragraph (a) of the subsection is repealed by Schedule 17 to the Policing and Crime Act 2017(3);
- (b) the day that paragraph (b) of the subsection is repealed by Schedule 1 to this Order.

(4) In section 137, subsection (8) (insofar as not otherwise repealed) is repealed on the later of—

- (a) the day that paragraph (a) of the subsection is repealed by Schedule 17 to the Policing and Crime Act 2017;
- (b) the day that paragraphs (b) and (c) of the subsection are repealed by Schedule 1 to this Order.

(1) 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) For example, article 5(2).

(3) 2017 c.3.

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)(4)” 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(5);
- (b) the Hong Kong Act 1985(6);
- (c) the Hong Kong (War Wives and Widows) Act 1996(7);
- (d) the British Nationality (Hong Kong) Act 1997(8);
- (e) the British Overseas Territories Act 2002(9);
- (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(10).”

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(11).

(4) Sections 24 to 25A(12) are repealed.

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

(4) 1995 c.39.

(5) 1981 c.61.

(6) 1985 c.15.

(7) 1996 c.41.

(8) 1997 c.20.

(9) 2002 c.8.

(10) 2007 c.30.

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

(12) 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.

“(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(13)—

(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(14) 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.

Terrorism Act 2000

18. The amendments made to Schedule 8 to the Terrorism Act 2000(15) 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(16) 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)(17) 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;

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

(14) 1998 c.37.

(15) 2000 c.11.

(16) 2007 c.11.

(17) 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.

- (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(**18**) (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(**19**) 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(**20**) 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) 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(**21**) 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 2018 ([S.I. 2018/46](#)).”.

(18) [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).

(19) [S.I. 2011/1739](#).

(20) [2013 c.22](#).

(21) [2016 c.19](#).

- (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,”.