

**2011 No. 1739**

**CONSTITUTIONAL LAW**  
**DEVOLUTION, SCOTLAND**  
**CRIMINAL LAW**  
**LEGAL AID AND ADVICE**

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

*Made* - - - - *14th July 2011*

*Coming into force in accordance with article 1(2)*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(2), (3), (4) and (5) of the Scotland Act 1998(a).

In accordance with section 115(1) of, and 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.

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (Consequential Provisions) Order 2011.

(2) This Order comes into force on the day after that on which it is made.

(3) Articles 2 to 5 (and Schedule 1) extend to Scotland only.

(4) This article and articles 6 and 7 (and Schedule 2) extend to England and Wales, Scotland and Northern Ireland.

**Amendment of provisions relating to the investigation of Revenue and Customs offences in Scotland**

2.—(1) Schedule 1 amends Part 3 of the Criminal Law (Consolidation) (Scotland) Act 1995(b) to give suspects the right to have access to a solicitor, to increase the maximum period of

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(a) 1998 c. 46.

(b) 1995 c. 39 (“the 1995 Consolidation Act”).

detention under section 24 and to provide for the extension of that period of detention in certain circumstances.

(2) The amendments made by paragraph 2 of Schedule 1 do not affect section 24(5) of that Act<sup>(a)</sup> (detention and questioning at office of Revenue and Customs) as it applies by virtue of section 26(8) in respect of a person detained under section 26 (detention in connection with certain drug smuggling offences).

(3) The amendment made by paragraph 3 of Schedule 1 does not affect subsection 25(1) of that Act<sup>(b)</sup> as it applies by virtue of section 26(9) in respect of a person detained under section 26.

(4) The amendments made by Schedule 1 do not affect the operation of Part 3 of that Act (as it has effect immediately before the time at which this Order comes into force) in relation to—

- (a) a person who is detained under section 24 of that Act, where the period of detention began before that time;
- (b) a person who attends as mentioned in section 25A(1)(b) of that Act, where the period of attendance began before that time;
- (c) a person who is arrested and detained as mentioned in section 25A(1)(c) of that Act, where the arrest occurred before that time.

### **Availability of criminal advice and assistance for persons suspected of a Revenue and Customs offence and persons detained for certain drug smuggling offences**

3. In section 8A of the Legal Aid (Scotland) Act 1986<sup>(c)</sup> (power to provide for criminal advice and assistance to be available for certain clients without reference to the financial limits), in subsection (2)—

- (a) after “is” insert—  
“(a) ”; and
- (b) at the end insert—  
“(b) a person to whom section 25A of the Criminal Law (Consolidation) (Scotland) Act 1995 (right of suspects to have access to a solicitor: revenue and customs offences) applies; or
- (c) a person detained under section 26 of that Act (detention in connection with certain drug smuggling offences).”.

4.—(1) In regulation 8 of the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011<sup>(d)</sup> (criminal advice and assistance: automatic availability in certain circumstances) —

- (a) after “the Act” insert—  
“(a) ”; and
- (b) at the end insert—  
“(b) for any person to whom section 25A of the Criminal Law (Consolidation) (Scotland) Act 1995 (right of suspects to have access to a solicitor: revenue and customs offences) applies, in relation to a private consultation within the meaning of subsection (3) of that section; and
- (c) for any person detained under section 26 of that Act (detention in connection with certain drug smuggling offences), in relation to a consultation with a solicitor permitted by subsection (9)(b) of that section.”.

(2) The amendments made by paragraph (1) have no effect in relation to—

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(a) Subsection 24(5) of the 1995 Consolidation Act was amended by the Finance Act 2007 (c.11), Schedule 23, paragraph 4(b).  
(b) Subsection 25(1) of the 1995 Consolidation Act was amended by the Finance Act 2007 (c.11), Schedule 23, paragraph 5.  
(c) 1986 c. 47. Section 8A was inserted by the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), section 2(3).  
(d) S.S.I. 2011/217.

- (a) a person who is detained under section 24 or 26 of that Act, where the period of detention began before the time at which this Order comes into force;
- (b) a person who attends as mentioned in section 25A(1)(b) of that Act, where the period of attendance began before that time; or
- (c) a person who is arrested and detained as mentioned in section 25A(1)(c) of that Act, where the arrest occurred before that time.

**5.**—(1) In regulation 3(1) of the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011<sup>(a)</sup> (duty solicitors: advice for suspects)—

- (a) after “assistance to” insert—
  - “(a) ”; and
- (b) at the end insert—
  - “(b) a person to whom section 25A of the Criminal Law (Consolidation) (Scotland) Act 1995 (right of suspects to have access to a solicitor: revenue and customs offences) applies; or
  - (c) a person detained under section 26 of that Act (detention in connection with certain drug smuggling offences).”.

(2) The amendments made by paragraph (1) have no effect in relation to—

- (a) a person who is detained under section 24 or 26 of that Act, where the period of detention began before the time at which this Order comes into force;
- (b) a person who attends as mentioned in section 25A(1)(b) of that Act, where the period of attendance began before that time; or
- (c) a person who is arrested and detained as mentioned in section 25A(1)(c) of that Act, where the arrest occurred before that time.

**Amendment of provisions relating to cross-border arrest and detention by Scottish police**

**6.**—(1) Schedule 2 amends Part 10 of the Criminal Justice and Public Order Act 1994<sup>(b)</sup> to make further provision about the rights of persons arrested or detained under section 137(2) of that Act, including the right to have access to a solicitor, to increase the maximum period of detention and to provide for the extension of that period in certain circumstances.

(2) The amendments made by Schedule 2 do not affect the operation of that Part of that Act (as it has effect immediately before the time at which this Order comes into force) in relation to a person arrested or detained under section 137(2) of that Act where the arrest occurred or the period of detention began before that time.

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(a) S.S.I. 2011/163.  
 (b) 1994 c. 33.

## **Amendment of provisions relating to cross-border arrest and detention by officers of Revenue and Customs**

7.—(1) In section 87 of the Finance Act 2007<sup>(a)</sup> (cross-border exercise of powers by officers of Revenue and Customs), for subsection (3) substitute—

“(3) In the application of section 138<sup>(b)</sup> to an officer of Revenue and Customs—

(a) subsection (1B) shall be treated as if it provided as follows—

“(1B) Where a person is arrested under subsection (2) of the principal section but not charged in connection with an offence, subsections (2) to (9) of section 25A of the Criminal Law (Consolidation) (Scotland) Act 1995 (right of suspects to have access to a solicitor) apply with the following modifications—

- (a) omit the references to “other premises or place” in subsections (2) and (6);
- (b) the right under subsection (2) arises when the person is arrested;
- (c) the reference in subsection (2)(b) to the office of Revenue and Customs where the person is being detained is to be read as a reference to the police station to which the person is to be taken; and
- (d) subsection (6) is to be read as requiring that the person be informed of the rights under section 25A(2) and (3) on being arrested.”;

(b) in subsection (2), the references to the 1995 Act and to section 14(1) of that Act are to be treated as references to the Criminal Law (Consolidation) (Scotland) Act 1995 (“the Consolidation Act”) and to section 24(1) of that Act;

(c) subsection (2A) is to be treated as if it provided as follows—

“(2A) Those provisions are—

- (a) section 24(2) to (8A)<sup>(c)</sup> (detention and questioning at office of Revenue and Customs);
- (b) sections 24A and 24B (extension of period of detention under section 24);
- (c) section 25 (right to have someone informed when detained);
- (d) section 25A(2) to (9) (right of access to solicitor).”;

(d) in subsection (6) the reference to the 1995 Act is to be treated as a reference to the Consolidation Act;

(e) in subsection (7)—

- (i) the reference to section 14 is to be treated as a reference to section 24 of the Consolidation Act; and
- (ii) the reference to subsections (6) and (9) of section 14 is to be treated as a reference to subsections (5) and (8) of section 24;

(f) in subsection (8)—

- (i) the reference to section 15 is to be treated as a reference to section 25 of the Consolidation Act;
- (ii) paragraph (a) is to be treated as if it provided as follows—

“(a) in subsection (1)—

- (i) the words “other premises or place” (in both places) are to be treated as if they referred to a police station;

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(a) 2007 c. 11.

(b) Section 138 of the Criminal Justice and Public Order Act 1994 (c.33) is amended by paragraph 2 of Schedule 2 to this Order.

(c) Subsection 24(4) of the 1995 Consolidation Act was amended by the Crime and Disorder Act 1998 (c.37), section 110. Subsections 24(5) and (8) were amended by the Finance Act 2007 (c.11), Schedule 23, paragraphs 4(b) and (c). Subsection 24(8A) was inserted by the Finance Act 2007 (c.11), Schedule 23, paragraph 4(d).

- (ii) the reference in paragraph (a) to other premises is to be treated as a reference to a police station;”;
- (iii) paragraph (b) does not apply;
- (iv) the references in paragraph (c)(i) and (iii) to the right under subsection (1)(b) are to be treated as references to the right under section 25(1) to have someone informed when detained;
- (v) the reference in paragraph (c)(ii) to subsection (1)(b) is to be treated as a reference to section 25(1);
- (vi) the reference in paragraph (c)(iii) to subsection (2) is to be treated as a reference to the words in section 25(1) beginning “and the person shall be informed”;
- (vii) the reference to subsection (4) is to be treated as a reference to section 25(2); and
- (g) in subsection (9)—
  - (i) the reference to section 15A(a) is to be treated as a reference to section 25A;
  - (ii) paragraph (a) is to be treated as if it provided as follows—
    - “(a) the words “other premises or place” in subsections (2) and (6) are to be treated as referring to a police station;”;
  - (iii) in paragraph (b)(iii) the reference to section 15A(2) and (3) is to be treated as a reference to section 25A(2) and (3).”.

(2) The amendment made by paragraph (1) does not affect the operation of sections 136 to 139 of the Criminal Justice and Public Order Act 1994 (as they apply to officers of Revenue and Customs by virtue of section 87 of the Finance Act 1987 as it has effect immediately before the time at which this Order comes into force) in relation to a person arrested or detained under section 137(2) of that Act (as it applies to such officers) where the arrest occurred or the period of detention began before that time.

Signed by the authority of the Secretary of State

*David Mundell*  
Parliamentary Under Secretary of State  
Scotland Office

Dover House,  
London  
14th July 2011

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(a) Section 15A of the Criminal Procedure (Scotland) Act 1995 (c.46) was inserted by the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), section 1(4).

Amendments of Part 3 of the Criminal Law (Consolidation) (Scotland)  
Act 1995

**Introductory provision**

1. Part 3 of the Criminal Law (Consolidation) (Scotland) Act 1995(a) (investigation of Revenue and Customs offences) is amended as follows.

**Right of suspects to have access to a solicitor**

2. In section 24 (detention and questioning at office of Revenue and Customs), in subsection (5)—

- (a) in paragraph (e), for “section 25(1)” substitute “sections 25(1) and 25A(2) and (3)”; and
- (b) in paragraph (f), after “25(1)” insert “or 25A(2)”.

3. In section 25 (right to have someone informed when detained), in subsection (1) the words “solicitor and to one other” are repealed.

4. After section 25 insert—

**“25A. Right of suspects to have access to a solicitor**

(1) This section applies to a person (“the suspect”) who—

- (a) is detained under section 24;
- (b) attends voluntarily at an office of Revenue and Customs or any other premises or place for the purpose of being questioned by an officer on suspicion of having committed a Revenue and Customs offence; or
- (c) is arrested (but not charged) by an officer in connection with a Revenue and Customs offence and is being detained at an office of Revenue and Customs or any other premises or place for the purpose of being questioned by an officer in connection with the offence.

(2) The suspect has the right to have intimation sent to a solicitor of any or all of the following—

- (a) the fact of the suspect’s detention, voluntary attendance or arrest (as the case may be);
- (b) the office of Revenue and Customs or other premises or place at which the suspect is being detained or is attending; and
- (c) that the solicitor’s professional assistance is required by the suspect.

(3) The suspect also has a right to a private consultation with a solicitor—

- (a) before any questioning of the suspect by an officer begins; and
- (b) at any other time during such questioning.

(4) Subsection (3) is subject to subsections (8) and (9).

(5) In subsection (3) “consultation” means consultation by such means as may be appropriate in the circumstances (and may include, for example, consultation by means of telephone).

(6) The suspect must be informed of the rights under subsections (2) and (3)—

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(a) 1995 c. 39 (“the 1995 Consolidation Act”).

- (a) on arrival at the office of Revenue and Customs or other premises or place;
- (b) in the case where the suspect is detained under section 24 after such arrival, on the suspect's detention; and
- (c) in the case where the suspect is arrested as mentioned in subsection (1)(c) after such arrival, on arrest;

and it is immaterial in a case to which paragraph (b) or (c) applies whether or not the suspect has previously been informed of the rights.

(7) Where a suspect wishes to exercise the right to have intimation sent under subsection (2), the intimation must be sent by an officer—

- (a) without delay; or
- (b) if some delay is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders, with no more delay than is necessary.

(8) In exceptional circumstances, an officer may delay the suspect's exercise of the right under subsection (3) on any occasion so far as it is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders that the questioning of the suspect by an officer begins or continues without the suspect having exercised that right on that occasion.

(9) Subsection (3) does not apply in relation to the questioning of the suspect by an officer for the purpose of obtaining the information mentioned in section 24(8A)."

#### **Increase of maximum period of detention under section 24 from 6 to 12 hours**

5.—(1) Section 24 (detention and questioning at office of Revenue and Customs) is amended as follows.

(2) In subsection (2)—

- (a) for "Detention" substitute "Subject to section 24A, detention";
- (b) for "six hours" substitute "12 hours".

(3) In subsection (4), for "six hours" substitute "12 hours".

#### **Extension of period of detention under section 24**

6. After section 24 insert—

##### **"24A. Extension of period of detention under section 24**

(1) This section applies in relation to a person who is being detained under section 24 ("the detained person").

(2) Before the expiry of the period of 12 hours mentioned in section 24(2), a custody review officer may, subject to subsection (4), authorise that period to be extended in relation to the detained person by a further period of 12 hours.

(3) The further period of 12 hours starts from the time when the period of detention would have expired but for the authorisation.

(4) A custody review officer may authorise the extension under subsection (2) in relation to the detained person only if the officer is satisfied that—

- (a) the continued detention of the detained person is necessary to secure, obtain or preserve evidence (whether by questioning the person or otherwise) relating to an offence in connection with which the person is being detained;
- (b) the offence in connection with which the detained person is being detained is one that is an indictable offence; and
- (c) the investigation is being conducted diligently and expeditiously.

(5) Where section 24(4) applies in relation to the detained person, the references in subsection (2) of this section to the period of 12 hours mentioned in section 24(2) are to be read as references to that period as reduced in accordance with section 24(4).

(6) Where a custody review officer authorises the extension of the period of detention under subsection (2), section 24 has effect in relation to the detained person as if the references in it to the period of 12 hours were references to that period as extended by virtue of the authorisation.

(7) In this section and section 24B, “custody review officer” means an officer who—

- (a) is of a rank at least equivalent to that of a police inspector; and
- (b) has not been involved in the investigation in connection with which the person is detained.

#### **24B Extension under section 24A: procedure**

(1) This section applies where a custody review officer is considering whether to authorise the extension under section 24A(2) of the period of detention of a person who is being detained under section 24 (“the detained person”).

(2) Before deciding whether to authorise the extension, the custody review officer must give either of the following persons an opportunity to make representations—

- (a) the detained person; or
- (b) any solicitor representing the detained person who is available at the time the officer is considering whether to authorise the extension.

(3) Representations may be oral or written.

(4) The custody review officer may refuse to hear oral representations from the detained person if the officer considers that the detained person is unfit to make representations because of the person’s condition or behaviour.

(5) Where the custody review officer decides to authorise the extension, the officer must ensure that the following persons are informed of the decision and the grounds on which the extension is authorised—

- (a) the detained person; and
- (b) any solicitor representing the detained person who is available at the time the decision is made.

(6) Subsection (7) applies where—

- (a) the custody review officer decides to authorise the extension; and
- (b) at the time of the decision, the detained person has not exercised all the person’s rights under sections 25 and 25A.

(7) The custody review officer must—

- (a) ensure that the detained person is informed of the rights under sections 25 and 25A which the person has not yet exercised; and
- (b) if the officer considers there are possible grounds under section 25(1) or 25A(7)(b) or (8) (as the case may be) for delaying the exercise of any such right, decide whether or not to delay the exercise of the right.

(8) The custody review officer must make a written record of—

- (a) the officer’s decision on whether to authorise the extension; and
- (b) any of the following which apply—
  - (i) the grounds on which the extension is authorised;
  - (ii) the fact that the detained person and a solicitor have been informed as required by subsection (5);
  - (iii) the fact that the detained person has been informed as required by subsection (7)(a);



(iv) any decision on the matter referred to in subsection (7)(b) and, if the decision is to delay the exercise of a right, the grounds for the decision.”

## SCHEDULE 2

Article 6(1)

### Amendments of Part 10 of the Criminal Justice and Public Order Act 1994

1. In section 137 of the Criminal Justice and Public Order Act 1994(a) (cross-border powers of arrest and detention), in subsection (8)—

- (a) in paragraph (b), after “Scotland” insert “, but subject to the modifications in subsections (1A) and (1B) of section 138”;
- (b) in paragraph (c), for “subsection (6)” substitute “subsections (6) to (9)”.

2.—(1) Section 138 of that Act (cross-border powers of arrest etc. – supplementary provisions) is amended as follows.

(2) After subsection (1) insert—

“(1A) Where a person is arrested under subsection (2) of the principal section, section 15 of the Criminal Procedure (Scotland) Act 1995(b) (“the 1995 Act”) (right of persons arrested or detained to have intimation sent to another person) applies with the following modifications—

- (a) in subsections (1)(a) and (2), omit the reference to “other premises”;
- (b) the right under subsection (1)(a) arises when the person is arrested;
- (c) the reference in subsection (1)(a) to the place where the person is being held is to be read as a reference to the police station to which the person is to be taken;
- (d) subsection (2) is to be read as requiring that the person be informed of the right under subsection (1)(a) on being arrested; and
- (e) the rights and duties under subsection (4) arise when the person is arrested.

(1B) Where a person is arrested under subsection (2) of the principal section but not charged in connection with an offence, subsections (2) to (9) of section 15A of the 1995 Act(c) (right of suspects to have access to a solicitor) apply with the following modifications—

- (a) omit the references to “other premises or place” in subsections (2) and (6);
- (b) the right under subsection (2) arises when the person is arrested;
- (c) the reference in subsection (2)(b) to the police station where the person is being detained is to be read as a reference to the police station to which the person is to be taken; and
- (d) subsection (6) is to be read as requiring that the person be informed of the rights under section 15A(2) and (3) on being arrested.”

(3) For subsection (2) substitute—

“(2) Where a person is detained under subsection (2) of the principal section, the provisions of the 1995 Act listed in subsection (2A) below apply as they apply to detention under section 14(1) of that Act, but with the modifications mentioned in subsections (6) to (9) below.

(2A) Those provisions are—

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- (a) 1994 c. 33.
  - (b) The title of section 15 of the Criminal Procedure (Scotland) Act 1995 (c.46) (“the 1995 Procedure Act”) was amended by the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), section 1(3)(c). Subsections 15(1) and (4) were amended by the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), section 1(3)(a) and (b). Subsection 15 (6)(b) was amended by the Crime and Punishment (Scotland) Act 1997 (c.48), Schedule 1, paragraph 21(2).
  - (c) Section 15A of the 1995 Procedure Act was inserted by the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), section 1(4).

- (a) section 14(2) to (10)(a) (detention and questioning at police station);
- (b) sections 14A and 14B (extension of period of detention under section 14);
- (c) section 15(1), (2) and (4) to (6) (right of persons arrested or detained to have intimation sent to another person);
- (d) section 15A(2) to (9) (right of suspects to have access to a solicitor);
- (e) section 18(b) (prints, samples etc. in criminal investigations).”.

(4) For subsection (6) substitute—

“(6) The modifications of the 1995 Act referred to in subsection (2) above are as follows.

(7) In section 14—

- (a) the reference in subsection (2) to detention being terminated not more than 12 hours after it begins is to be read as a reference to its being terminated not more than 12 hours after the person’s arrival at the police station to which the person is taken under subsection (7)(c) or (e) of the principal section;
- (b) in subsections (6) and (9), omit the references to “other premises”.

(8) In section 15—

- (a) in subsection (1)(b), omit the references to “other premises or place”;
- (b) in subsection (2), omit the reference to “other premises”;
- (c) where the police station to which the person is to be taken is in Scotland—
  - (i) the right under subsection (1)(b) arises when the person is detained;
  - (ii) the reference in subsection (1)(b) to the police station where the person is being detained is to be read as a reference to the police station to which the person is to be taken;
  - (iii) subsection (2) is to be read as requiring that the person be informed of the right under subsection (1)(b) on being detained; and
  - (iv) the rights and duties under subsection (4) arise when the person is detained.

(9) In section 15A—

- (a) omit the references to “other premises or place” in subsections (2) and (6);
- (b) where the police station to which the person is to be taken is in Scotland—
  - (i) the right under subsection (2) arises when the person is detained;
  - (ii) the reference in subsection (2)(b) to the police station where the person is being detained is to be read as a reference to the police station to which the person is to be taken; and
  - (iii) subsection (6) is to be read as requiring that the person be informed of the rights under section 15A(2) and (3) on being detained.”.

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(a) Subsection 14(2) of the 1995 Procedure Act was amended by the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), section 3(1). Subsection 14(6) was amended by the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), section 1(2). Subsection 14(9) was amended by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), section 81(6)(a). Subsection 14(10) was inserted by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), section 81(6)(b).

(b) Subsection 18(2) of the 1995 Procedure Act was amended by the Crime and Punishment (Scotland) Act 1997 (c.48), section 47(1)(a). Subsection 18(3) was amended by the Crime and Disorder Act 1998 (c.37), Schedule 8, paragraph 117(a); the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), section 83(1); and the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 77(2)(a). Subsection 18(4) was amended by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), Schedule 6(1), paragraph 4(2). Subsection 18(6)(d) was repealed by the Criminal Justice (Scotland) Act 2003 (asp 7), section 55(2)(a). Subsection 18(6A) was inserted by the Criminal Justice (Scotland) Act 2003 (asp 7), section 55(2)(b). Subsection 18(7) was repealed by the Crime and Punishment (Scotland) Act 1997 (c.48), Schedule 3, paragraph 1. Subsections 18(7A) and (7B) were inserted by the Crime and Punishment (Scotland) Act 1997 (c.48), section 47(1)(d). Subsection 18(8)(c) was amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), Schedule 7, paragraph 30.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes provision consequential on the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (2010 asp 15) (“2010 ASP”). That Act makes provision concerning the right to have access to a solicitor of persons being questioned by a constable on suspicion of having committed an offence. It also extends the period for which persons may be detained by a constable from 6 to 12 hours, with a possible further extension up to a maximum of 24 hours. The Act also amends the Legal Aid (Scotland) Act 1986 (“1986 Act”) to enable the Scottish Ministers to make regulations providing for criminal advice and assistance to be made available to such suspects in certain circumstances without reference to financial limits.

Article 2 introduces Schedule 1 to the Order, which makes provision corresponding to the 2010 ASP in relation to persons being questioned by officers of Revenue and Customs and designated customs officials on suspicion of having committed a Revenue and Customs offence (“relevant suspects”). Schedule 1 amends Part 3 of the Criminal Law (Consolidation) (Scotland) Act 1995 (“1995 Act”) by inserting a new section 25A which makes provision in respect of the right of relevant suspects to have access to a solicitor prior to and during questioning. Further, it extends the period of detention under section 24 of the 1995 Act from 6 to 12 hours and it provides for that period to be further extended up to a maximum period of 24 hours in certain circumstances.

Article 3 allows criminal advice and assistance under the 1986 Act to be made available to relevant suspects.

Article 4 extends regulation 8 of the Advice and Assistance Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011 to provide for advice and assistance to be available to relevant suspects without reference to financial limits subject to transitional arrangements.

Article 5 extends regulation 3 of the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011, which provides for the availability of duty solicitors for suspects, to relevant suspects subject to transitional arrangements.

Article 6 introduces Schedule 2 to the Order, which amends Part 10 of the Criminal Justice and Public Order Act 1994 (“the 1994 Act”). It applies the right of persons arrested or detained to have intimation sent to another person and the right of suspects to have access to a solicitor under the Criminal Procedure (Scotland) Act 1995 (as amended by the 2010 ASP), with modifications, to persons who are arrested or detained by the Scottish police using the cross-border enforcement powers in Part 10 of the 1994 Act. Schedule 2 also extends the period for which persons may be detained to 12 hours after the person’s arrival at the police station to which the person is taken following detention under the 1994 Act and it provides for the possibility of further extension up to a maximum period of 24 hours.

Article 7 makes amendments to section 87 of the Finance Act 2007 to extend the amendments to Part 10 of the 1994 Act to cross-border detentions and arrests by officers of Revenue and Customs and designated customs officials.

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