

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Seventh Delegated Legislation Committee

DRAFT CRIMINAL JUSTICE (SCOTLAND) ACT 2016  
(CONSEQUENTIAL PROVISIONS) ORDER 2017

*Tuesday 5 December 2017*

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**Saturday 9 December 2017**

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**The Committee consisted of the following Members:**

*Chair:* MRS ANNE MAIN

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|--|--|
| † Costa, Alberto ( <i>South Leicestershire</i> ) (Con)               | † McCarthy, Kerry ( <i>Bristol East</i> ) (Lab)                                    |
| † Duguid, David ( <i>Banff and Buchan</i> ) (Con)                    | † McDonald, Stuart C. ( <i>Cumbernauld, Kilsyth and Kirkintilloch East</i> ) (SNP) |
| † Ellis, Michael ( <i>Deputy Leader of the House of Commons</i> )    | † Masterton, Paul ( <i>East Renfrewshire</i> ) (Con)                               |
| † Elmore, Chris ( <i>Ogmore</i> ) (Lab)                              | † Penrose, John ( <i>Weston-super-Mare</i> ) (Con)                                 |
| † Gaffney, Hugh ( <i>Coatbridge, Chryston and Bellshill</i> ) (Lab)  | Phillips, Jess ( <i>Birmingham, Yardley</i> ) (Lab)                                |
| † Jack, Mr Alister ( <i>Dumfries and Galloway</i> ) (Con)            | † Reeves, Ellie ( <i>Lewisham West and Penge</i> ) (Lab)                           |
| † Kerr, Stephen ( <i>Stirling</i> ) (Con)                            | † Shelbrooke, Alec ( <i>Elmet and Rothwell</i> ) (Con)                             |
| † Killen, Gerard ( <i>Rutherglen and Hamilton West</i> ) (Lab/Co-op) | † Whittaker, Craig ( <i>Calder Valley</i> ) (Con)                                  |
| † Laird, Lesley ( <i>Kirkcaldy and Cowdenbeath</i> ) (Lab)           | Claire Cozens, Gail Bartlett, <i>Committee Clerks</i>                              |
|  | † <b>attended the Committee</b>  |

## Seventh Delegated Legislation Committee

*Tuesday 5 December 2017*

[MRS ANNE MAIN *in the Chair*]

### Draft Criminal Justice (Scotland) Act 2016 (Consequential Provisions) Order 2017

2.30 pm

**The Deputy Leader of the House of Commons (Michael Ellis):** I beg to move,

That the Committee has considered the draft Criminal Justice (Scotland) Act 2016 (Consequential Provisions) Order 2017.

The draft order was laid before the House on 13 September 2017. It will enable the full delivery of the policy set out in the Criminal Justice (Scotland) Act 2016, which was passed by the Scottish Parliament on 8 December 2015, with commencement now due on 25 January 2018.

The 2016 Act stems from a review of criminal justice in Scotland by the then Lord Justice Clerk, Lord Carloway, which reported in November 2011. The review, which arose from a decision of the UK Supreme Court that gave suspects a right to legal advice before questioning by police in Scotland, culminated in a series of recommendations aimed at modernising and enhancing the efficiency of the Scottish criminal justice system. Provisions of the Act developed from the review's recommendations include reforms of arrest and custody laws, designed to provide flexibility for police in conducting investigations while ensuring fairness for suspects. The Act will build on 2010 reforms to allow suspects access to a lawyer regardless of whether they are to be interviewed by the police. It states specifically that the police have a duty not to deprive people of their liberty unnecessarily.

Many of the reforms that the 2016 Act will introduce give rise to the need to amend the law elsewhere in the United Kingdom, or to make provision in relation to Scotland where they apply to reserved matters. As neither activity is within the competence of the Scottish Parliament, the draft order is needed. It has been drafted using the UK Government's powers under section 104 of the Scotland Act 1998 to make legislative changes that are "necessary or expedient in consequence of...any Act of the Scottish Parliament".

The draft order makes provisions about arrests effected both within and outside Scotland in connection with crimes committed in Scotland, the investigation of Scots law crimes and extradition matters in Scotland. Schedule 1 will ensure that cross-border enforcement and assistance continue to work effectively; for example, when a Scottish warrant is executed in England, Wales or Northern Ireland, provisions in the 2016 Act on arrest procedure and rights of suspects will apply. Schedule 2 covers the effects of the Act on reserved forces—the Ministry of

Defence police, the British Transport police and the Civil Nuclear Constabulary. Schedule 3 relates to the impact of the Act on immigration, officers of Her Majesty's Revenue and Customs, designated customs officers and the National Crime Agency. Schedule 4 covers the application of the Act to persons subject to service law, and schedule 5 makes provision in regard to a person arrested in connection with extradition proceedings.

Reserved forces exercising the powers and privileges of a police constable in Scotland will be bound by a stop and search code of practice issued under section 73 of the 2016 Act. The draft order will amend the Act to ensure that UK Government and reserved bodies subject to the terms of the code are fully consulted when any amendments to the code are considered. It also makes reference to a code of practice that will apply to investigative bodies reporting criminal offences in Scotland to the Crown Office and the Procurator Fiscal Service.

The draft order is a wide-ranging and complex instrument that has required close working between Ministers and officials of the UK and Scottish Governments. It is a good example of the two Governments working together to make the devolution settlement work. I commend it to the Committee.

2.35 pm

**Lesley Laird** (Kirkcaldy and Cowdenbeath) (Lab): It is a pleasure to serve under your chairmanship, Mrs Main.

The Criminal Justice (Scotland) Act 2016 introduced reforms that will help to modernise, improve and enhance the efficiency of the Scottish criminal justice system. It does so by aiming to promote best practice and places an emphasis on streamlining the system. The draft order is a necessary step to make provisions as a result of the 2016 Act and makes a few alterations that I would like to touch upon today.

The draft order will enable the Lord Advocate, when acting under section 57 of the 2016 Act, to specify bodies and deal with matters that 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. It will also require constables, officials and officers to have regard to the code of practice when searching a person who is not in police custody. Modifications are being made as a result of the 2016 Act; in particular, article 24(3) expands the procedural requirements made in relation to the 2016 Act to reflect the application to constables in non-territorial police forces.

Essentially, the main aims of the draft order are to lay down provisions to facilitate the streamlining of the statute book, and I am sure we can all see the benefit of that. It is a necessary piece of legislation to ensure that the UK statute book is not duplicated or contradicted in any way. For that reason, the Labour party supports the order.

*Question put and agreed to.*

2.37 pm

*Committee rose.*