

SCHEDULES

SCHEDULE 1

AMENDMENTS OF REGIMES OTHER THAN PACE

PART 1

MATERIAL SUBJECT TO THE TERRORISM ACT 2000

- 1 (1) Schedule 8 to the Terrorism Act 2000 (treatment of persons detained under section 41 or Schedule 7 of that Act) is amended as follows.
- (2) Omit paragraph 14 (retention of material: England and Wales and Northern Ireland).
- (3) In paragraph 20 (retention of material: Scotland)—
 - (a) in sub-paragraph (3), omit the words from “but” to the end of the sub-paragraph, and
 - (b) omit sub-paragraph (4).
- (4) After paragraph 20 insert—

“Destruction and retention of fingerprints and samples etc: United Kingdom

- 20A (1) This paragraph applies to—
- (a) fingerprints taken under paragraph 10,
 - (b) a DNA profile derived from a DNA sample taken under paragraph 10 or 12,
 - (c) relevant physical data taken or provided by virtue of paragraph 20, and
 - (d) a DNA profile derived from a DNA sample taken by virtue of paragraph 20.
- (2) Fingerprints, relevant physical data and DNA profiles to which this paragraph applies (“paragraph 20A material”) must be destroyed if it appears to the responsible chief officer of police that—
- (a) the taking or providing of the material or, in the case of a DNA profile, the taking of the sample from which the DNA profile was derived, was unlawful, or
 - (b) the material was taken or provided, or (in the case of a DNA profile) was derived from a sample taken, from a person in connection with that person’s arrest under section 41 and the arrest was unlawful or based on mistaken identity.
- (3) In any other case, paragraph 20A material must be destroyed unless it is retained under any power conferred by paragraphs 20B to 20E.

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- (4) Paragraph 20A material which ceases to be retained under a power mentioned in sub-paragraph (3) may continue to be retained under any other such power which applies to it.
 - (5) Nothing in this paragraph prevents a relevant search, in relation to paragraph 20A material, from being carried out within such time as may reasonably be required for the search if the responsible chief officer of police considers the search to be desirable.
 - (6) For the purposes of sub-paragraph (5), “a relevant search” is a search carried out for the purpose of checking the material against—
 - (a) other fingerprints or samples taken under paragraph 10 or 12 or a DNA profile derived from such a sample,
 - (b) any of the relevant physical data, samples or information mentioned in section 19C(1) of the Criminal Procedure (Scotland) Act 1995,
 - (c) any of the relevant physical data, samples or information held by virtue of section 56 of the Criminal Justice (Scotland) Act 2003,
 - (d) material to which section 18 of the Counter-Terrorism Act 2008 applies,
 - (e) any of the fingerprints, data or samples obtained under paragraph 1 or 4 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011, or information derived from such samples,
 - (f) any of the fingerprints, samples and information mentioned in section 63A(1)(a) and (b) of the Police and Criminal Evidence Act 1984 (checking of fingerprints and samples), and
 - (g) any of the fingerprints, samples and information mentioned in Article 63A(1)(a) and (b) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (checking of fingerprints and samples).
- 20B
- (1) This paragraph applies to paragraph 20A material relating to a person who is detained under section 41.
 - (2) In the case of a person who has previously been convicted of a recordable offence (other than a single exempt conviction), or an offence in Scotland which is punishable by imprisonment, or is so convicted before the end of the period within which the material may be retained by virtue of this paragraph, the material may be retained indefinitely.
 - (3) In the case of a person who has no previous convictions, or only one exempt conviction, the material may be retained until the end of the retention period specified in sub-paragraph (4).
 - (4) The retention period is—
 - (a) in the case of fingerprints or relevant physical data, the period of 3 years beginning with the date on which the fingerprints or relevant physical data were taken or provided, and
 - (b) in the case of a DNA profile, the period of 3 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more

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than one DNA sample, the date on which the first of those samples was taken).

- (5) The responsible chief officer of police or a specified chief officer of police may apply to a relevant court for an order extending the retention period.
- (6) An application for an order under sub-paragraph (5) must be made within the period of 3 months ending on the last day of the retention period.
- (7) An order under sub-paragraph (5) may extend the retention period by a period which—
 - (a) begins with the date on which the material would otherwise be required to be destroyed under this paragraph, and
 - (b) ends with the end of the period of 2 years beginning with that date.
- (8) The following persons may appeal to the relevant appeal court against an order under sub-paragraph (5), or a refusal to make such an order—
 - (a) the responsible chief officer of police;
 - (b) a specified chief officer of police;
 - (c) the person from whom the material was taken.
- (9) In Scotland—
 - (a) an application for an order under sub-paragraph (5) is to be made by summary application;
 - (b) an appeal against an order under sub-paragraph (5), or a refusal to make such an order, must be made within 21 days of the relevant court’s decision, and the relevant appeal court’s decision on any such appeal is final.
- (10) In this paragraph—

“relevant court” means—

 - (a) in England and Wales, a District Judge (Magistrates’ Courts),
 - (b) in Scotland, the sheriff—
 - (i) in whose sheriffdom the person to whom the material relates resides,
 - (ii) in whose sheriffdom that person is believed by the applicant to be, or
 - (iii) to whose sheriffdom that person is believed by the applicant to be intending to come; and
 - (c) in Northern Ireland, a district judge (magistrates’ court) in Northern Ireland;

“the relevant appeal court” means—

 - (a) in England and Wales, the Crown Court,
 - (b) in Scotland, the sheriff principal, and
 - (c) in Northern Ireland, the County Court in Northern Ireland;

“a specified chief officer of police” means—

 - (a) in England and Wales and Northern Ireland—

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- (i) the chief officer of the police force of the area in which the person from whom the material was taken resides, or
 - (ii) a chief officer of police who believes that the person is in, or is intending to come to, the chief officer's police area, and
 - (b) in Scotland—
 - (i) the chief constable of the police force in the area in which the person who provided the material, or from whom it was taken, resides, or
 - (ii) a chief constable who believes that the person is in, or is intending to come to, the area of the chief constable's police force.
- 20C (1) This paragraph applies to paragraph 20A material relating to a person who is detained under Schedule 7.
- (2) In the case of a person who has previously been convicted of a recordable offence (other than a single exempt conviction), or an offence in Scotland which is punishable by imprisonment, or is so convicted before the end of the period within which the material may be retained by virtue of this paragraph, the material may be retained indefinitely.
- (3) In the case of a person who has no previous convictions, or only one exempt conviction, the material may be retained until the end of the retention period specified in sub-paragraph (4).
- (4) The retention period is—
- (a) in the case of fingerprints or relevant physical data, the period of 6 months beginning with the date on which the fingerprints or relevant physical data were taken or provided, and
 - (b) in the case of a DNA profile, the period of 6 months beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).
- 20D (1) For the purposes of paragraphs 20B and 20C, a person is to be treated as having been convicted of an offence if—
- (a) in relation to a recordable offence in England and Wales or Northern Ireland—
 - (i) the person has been given a caution in respect of the offence which, at the time of the caution, the person has admitted,
 - (ii) the person has been found not guilty of the offence by reason of insanity,
 - (iii) the person has been found to be under a disability and to have done the act charged in respect of the offence, or
 - (iv) the person has been warned or reprimanded under section 65 of the Crime and Disorder Act 1998 for the offence,
 - (b) the person, in relation to an offence in Scotland punishable by imprisonment, has accepted or has been deemed to accept—

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- (i) a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995,
 - (ii) a compensation offer under section 302A of that Act,
 - (iii) a combined offer under section 302B of that Act, or
 - (iv) a work offer under section 303ZA of that Act,
 - (c) the person, in relation to an offence in Scotland punishable by imprisonment, has been acquitted on account of the person's insanity at the time of the offence or (as the case may be) by virtue of section 51A of the Criminal Procedure (Scotland) Act 1995,
 - (d) a finding in respect of the person has been made under section 55(2) of the Criminal Procedure (Scotland) Act 1995 in relation to an offence in Scotland punishable by imprisonment,
 - (e) the person, having been given a fixed penalty notice under section 129(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 in connection with an offence in Scotland punishable by imprisonment, has paid—
 - (i) the fixed penalty, or
 - (ii) (as the case may be) the sum which the person is liable to pay by virtue of section 131(5) of that Act, or
 - (f) the person, in relation to an offence in Scotland punishable by imprisonment, has been discharged absolutely by order under section 246(3) of the Criminal Procedure (Scotland) Act 1995.
- (2) Paragraphs 20B and 20C and this paragraph, so far as they relate to persons convicted of an offence, have effect despite anything in the Rehabilitation of Offenders Act 1974.
- (3) But a person is not to be treated as having been convicted of an offence if that conviction is a disregarded conviction or caution by virtue of section 92 of the Protection of Freedoms Act 2012.
- (4) For the purposes of paragraphs 20B and 20C—
 - (a) a person has no previous convictions if the person has not previously been convicted—
 - (i) in England and Wales or Northern Ireland of a recordable offence, or
 - (ii) in Scotland of an offence which is punishable by imprisonment, and
 - (b) if the person has previously been convicted of a recordable offence in England and Wales or Northern Ireland, the conviction is exempt if it is in respect of a recordable offence, other than a qualifying offence, committed when the person was aged under 18.
- (5) In sub-paragraph (4), “qualifying offence” has—
 - (a) in relation to a conviction in respect of a recordable offence committed in England and Wales, the meaning given by section 65A of the Police and Criminal Evidence Act 1984, and
 - (b) in relation to a conviction in respect of a recordable offence committed in Northern Ireland, the meaning given by Article

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53A of the Police and Criminal Evidence (Northern Ireland)
 Order 1989 (S.I. 1989/1341 (N.I. 12)).

- (6) If a person is convicted of more than one offence arising out of a single course of action, those convictions are to be treated as a single conviction for the purposes of calculating under paragraph 20B or 20C whether the person has been convicted of only one offence.
 - (7) Nothing in paragraph 20B or 20C prevents the start of a new retention period in relation to paragraph 20A material if a person is detained again under section 41 or (as the case may be) Schedule 7 when an existing retention period (whether or not extended) is still in force in relation to that material.
- 20E
- (1) Paragraph 20A material may be retained for as long as a national security determination made by the responsible chief officer of police has effect in relation to it.
 - (2) A national security determination is made if the responsible chief officer of police determines that it is necessary for any paragraph 20A material to be retained for the purposes of national security.
 - (3) A national security determination—
 - (a) must be made in writing,
 - (b) has effect for a maximum of 2 years beginning with the date on which the determination is made, and
 - (c) may be renewed.
- 20F
- (1) If fingerprints or relevant physical data are required by paragraph 20A to be destroyed, any copies of the fingerprints or relevant physical data held by a police force must also be destroyed.
 - (2) If a DNA profile is required by that paragraph to be destroyed, no copy may be retained by a police force except in a form which does not include information which identifies the person to whom the DNA profile relates.
- 20G
- (1) This paragraph applies to—
 - (a) samples taken under paragraph 10 or 12, or
 - (b) samples taken by virtue of paragraph 20.
 - (2) Samples to which this paragraph applies must be destroyed if it appears to the responsible chief officer of police that—
 - (a) the taking of the sample was unlawful, or
 - (b) the sample was taken from a person in connection with that person's arrest under section 41 and the arrest was unlawful or based on mistaken identity.
 - (3) Subject to this, the rule in sub-paragraph (4) or (as the case may be) (5) applies.
 - (4) A DNA sample to which this paragraph applies must be destroyed—
 - (a) as soon as a DNA profile has been derived from the sample, or
 - (b) if sooner, before the end of the period of 6 months beginning with the date on which the sample was taken.

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- (5) Any other sample to which this paragraph applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken.
- (6) The responsible chief officer of police may apply to a relevant court for an order to retain a sample to which this paragraph applies beyond the date on which the sample would otherwise be required to be destroyed by virtue of sub-paragraph (4) or (5) if—
 - (a) the sample was taken from a person detained under section 41 in connection with the investigation of a qualifying offence, and
 - (b) the responsible chief officer of police considers that the condition in sub-paragraph (7) is met.
- (7) The condition is that, having regard to the nature and complexity of other material that is evidence in relation to the offence, the sample is likely to be needed in any proceedings for the offence for the purposes of—
 - (a) disclosure to, or use by, a defendant, or
 - (b) responding to any challenge by a defendant in respect of the admissibility of material that is evidence on which the prosecution proposes to rely.
- (8) An application under sub-paragraph (6) must be made before the date on which the sample would otherwise be required to be destroyed by virtue of sub-paragraph (4) or (5).
- (9) If, on an application made by the responsible chief officer of police under sub-paragraph (6), the relevant court is satisfied that the condition in sub-paragraph (7) is met, it may make an order under this sub-paragraph which—
 - (a) allows the sample to be retained for a period of 12 months beginning with the date on which the sample would otherwise be required to be destroyed by virtue of sub-paragraph (4) or (5), and
 - (b) may be renewed (on one or more occasions) for a further period of not more than 12 months from the end of the period when the order would otherwise cease to have effect.
- (10) An application for an order under sub-paragraph (9) (other than an application for renewal)—
 - (a) may be made without notice of the application having been given to the person from whom the sample was taken, and
 - (b) may be heard and determined in private in the absence of that person.
- (11) In Scotland, an application for an order under sub-paragraph (9) (including an application for renewal) is to be made by summary application.
- (12) A sample retained by virtue of an order under sub-paragraph (9) must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.

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- (13) A sample that ceases to be retained by virtue of an order under sub-paragraph (9) must be destroyed.
- (14) Nothing in this paragraph prevents a relevant search, in relation to samples to which this paragraph applies, from being carried out within such time as may reasonably be required for the search if the responsible chief officer of police considers the search to be desirable.
- (15) In this paragraph—
- “ancillary offence”, in relation to an offence for the time being listed in section 41(1) of the Counter-Terrorism Act 2008, means—
- (a) aiding, abetting, counselling or procuring the commission of the offence, or
 - (b) inciting, attempting or conspiring to commit the offence; “qualifying offence”—
 - (a) in relation to the investigation of an offence committed in England and Wales, has the meaning given by section 65A of the Police and Criminal Evidence Act 1984,
 - (b) in relation to the investigation of an offence committed in Scotland, means a relevant offence, an offence for the time being listed in section 41(1) of the Counter-Terrorism Act 2008 or an ancillary offence to an offence so listed, and
 - (c) in relation to the investigation of an offence committed in Northern Ireland, has the meaning given by Article 53A of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).
- “relevant court” means—
- (a) in England and Wales, a District Judge (Magistrates’ Courts),
 - (b) in Scotland, the sheriff—
 - (i) in whose sheriffdom the person to whom the sample relates resides,
 - (ii) in whose sheriffdom that person is believed by the responsible chief officer of police to be, or
 - (iii) to whose sheriffdom that person is believed by the responsible chief officer of police to be intending to come; and
 - (c) in Northern Ireland, a district judge (magistrates’ court) in Northern Ireland;
- “relevant offence” has the same meaning as in section 19A of the Criminal Procedure (Scotland) Act 1995;
- “a relevant search” has the meaning given by paragraph 20A(6).
- 20H (1) Any material to which paragraph 20A or 20G applies must not be used other than—
- (a) in the interests of national security,
 - (b) for the purposes of a terrorist investigation,

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- (c) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or
 - (d) for purposes related to the identification of a deceased person or of the person to whom the material relates.
 - (2) Subject to sub-paragraph (1), a relevant search (within the meaning given by paragraph 20A(6)) may be carried out in relation to material to which paragraph 20A or 20G applies if the responsible chief officer of police considers the search to be desirable.
 - (3) Material which is required by paragraph 20A or 20G to be destroyed must not at any time after it is required to be destroyed be used—
 - (a) in evidence against the person to whom the material relates, or
 - (b) for the purposes of the investigation of any offence.
 - (4) In this paragraph—
 - (a) the reference to using material includes a reference to allowing any check to be made against it and to disclosing it to any person,
 - (b) the reference to crime includes a reference to any conduct which—
 - (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom), or
 - (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences, and
 - (c) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom.
 - (5) Sub-paragraphs (1), (2) and (4) do not form part of the law of Scotland.
- 20I Paragraphs 20A to 20F and 20H do not apply to paragraph 20A material relating to a person detained under section 41 which is, or may become, disclosable under—
- (a) the Criminal Procedure and Investigations Act 1996, or
 - (b) a code of practice prepared under section 23 of that Act and in operation by virtue of an order under section 25 of that Act.
- 20J In paragraphs 20A to 20I—
- “DNA profile” means any information derived from a DNA sample;
 - “DNA sample” means any material that has come from a human body and consists of or includes human cells;
 - “fingerprints” has the meaning given by section 65(1) of the Police and Criminal Evidence Act 1984 (Part 5 definitions);
 - “paragraph 20A material” has the meaning given by paragraph 20A(2);
 - “police force” means any of the following—
 - (a) the metropolitan police force;

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- (b) a police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);
- (c) the City of London police force;
- (d) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967;
- (e) the Scottish Police Services Authority;
- (f) the Police Service of Northern Ireland;
- (g) the Police Service of Northern Ireland Reserve;
- (h) the Ministry of Defence Police;
- (i) the Royal Navy Police;
- (j) the Royal Military Police;
- (k) the Royal Air Force Police;
- (l) the British Transport Police;

“recordable offence” has—

- (a) in relation to a conviction in England and Wales, the meaning given by section 118(1) of the Police and Criminal Evidence Act 1984, and
- (b) in relation to a conviction in Northern Ireland, the meaning given by Article 2(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989;

“relevant physical data” has the meaning given by section 18(7A) of the Criminal Procedure (Scotland) Act 1995;

“responsible chief officer of police” means, in relation to fingerprints or samples taken in England or Wales, or a DNA profile derived from a sample so taken, the chief officer of police for the police area—

- (a) in which the material concerned was taken, or
- (b) in the case of a DNA profile, in which the sample from which the DNA profile was derived was taken;

“responsible chief officer of police” means, in relation to relevant physical data or samples taken or provided in Scotland, or a DNA profile derived from a sample so taken or provided, the chief constable of the police force for the area—

- (a) in which the material concerned was taken or provided, or
- (b) in the case of a DNA profile, in which the sample from which the DNA profile was derived was taken;

“responsible chief officer of police” means, in relation to fingerprints or samples taken in Northern Ireland, or a DNA profile derived from a sample so taken, the Chief Constable of the Police Service of Northern Ireland.”

- (5) In paragraph 11(1)(a), for “paragraph 14(4),” substitute “a relevant search (within the meaning given by paragraph 20A(6)) or for the purposes of”.
- (6) In paragraph 15(1) for “paragraphs 10 to 14” substitute “paragraphs 10 to 13”.
- (7) After paragraph 15(1) insert—

“(1A) In the application of section 65(2A) of the Police and Criminal Evidence Act 1984 for the purposes of sub-paragraph (1) of this paragraph, the

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reference to the destruction of a sample under section 63R of that Act is a reference to the destruction of a sample under paragraph 20G of this Schedule.”

(8) In paragraph 15(2) for “paragraphs 10 to 14” substitute “paragraphs 10 to 13”.