

Status: Point in time view as at 31/01/2017.

Changes to legislation: Terrorism Act 2000, SCHEDULE 8 is up to date with all changes known to be in force on or before 26 June 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)

SCHEDULES

SCHEDULE 8

Section 41 and Schedule 7, para. 6.

DETENTION

Modifications etc. (not altering text)

- C1** Schs. 7, 8, 14 extended (with modifications) (coming into force in accordance with art. 1(2) of the extending S.I.) by [The Nationality, Immigration and Asylum Act 2002 \(Juxtaposed Controls\) Order 2003 \(S.I. 2003/2818\)](#), [art. 11\(1\)\(b\)](#), Sch. 2; (as amended (31.3.2021) by [The Nationality, Immigration and Asylum Act 2002 \(Juxtaposed Controls\) \(Amendment\) Order 2021 \(S.I. 2021/311\)](#), arts. 1(2), [2\(7\)\(b\)\(i\)](#))
- C2** Sch. 8 applied (with modifications) (25.7.2006) by [Terrorism Act 2006 \(c. 11\)](#), [s. 25\(1\)\(3\)\(4\)](#); S.I. 2006/1936, [art. 2](#)

PART I

TREATMENT OF PERSONS DETAINED UNDER SECTION 41 OR SCHEDULE 7

Place of detention

- 1 (1) The Secretary of State shall designate places at which persons may be detained under Schedule 7 or section 41.
- (2) In this Schedule a reference to a police station includes a reference to any place which the Secretary of State has designated under sub-paragraph (1) as a place where a person may be detained under section 41.
- (3) Where a person is detained under Schedule 7, he may be taken in the custody of an examining officer or of a person acting under an examining officer's authority to and from any place where his attendance is required for the purpose of—
- (a) his examination under that Schedule,
 - (b) establishing his nationality or citizenship, or
 - (c) making arrangements for his admission to a country or territory outside the United Kingdom.
- (4) A constable who arrests a person under section 41 shall take him as soon as is reasonably practicable to the police station which the constable considers the most appropriate.
- (5) In this [F1Schedule] “examining officer” has the meaning given in Schedule 7.
- (6) Where a person is arrested in one Part of the United Kingdom and all or part of his detention takes place in another Part, the provisions of this Schedule which apply to detention in a particular Part of the United Kingdom apply in relation to him while he is detained in that Part.

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Textual Amendments

- F1** Word in Sch. 8 para. 1(5) substituted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014](#) (c. 12), s. 185(1), [Sch. 9 para. 5\(2\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)

Modifications etc. (not altering text)

- C3** Sch. 8 para. 1 applied with modifications (N.I.) (1.3.2015) by [The Police \(Northern Ireland\) Act 2000](#) (Designated Places of Detention: Lay Visitors) Order 2015 (S.R. 2015/29), arts. 1, 2
- C4** Sch. 8 paras. 1(6), 2, 6-9, 16-19 applied (with modifications) (11.3.2005) by [Prevention of Terrorism Act 2005](#) (c. 2), s. 5(8)

Commencement Information

- I1** Sch. 8 para. 1 wholly in force at 19.2.2001; Sch. 8 para. 1 not in force at Royal Assent see s. 128; Sch. 8 para. 1(1) in force at 31.10.2000 by [S.I. 2000/2944](#), [art. 2\(I\)\(i\)](#); Sch. 8 in force at 19.2.2001 in so far as not already in force by [S.I. 2001/421](#), [art. 2](#)

Identification

- 2 (1) An authorised person may take any steps which are reasonably necessary for—
- photographing the detained person,
 - measuring him, or
 - identifying him.
- (2) In sub-paragraph (1) “authorised person” means any of the following—
- a constable,
 - a prison officer,
 - a person authorised by the Secretary of State, and
 - in the case of a person detained under Schedule 7, an examining officer^{F2}....
- (3) This paragraph does not confer the power to take—
- fingerprints, non-intimate samples or intimate samples (within the meaning given by paragraph 15 below), or
 - relevant physical data or samples as mentioned in section 18 of the^{M1}Criminal Procedure (Scotland) Act 1995 as applied by paragraph 20 below.

Textual Amendments

- F2** Words in Sch. 8 para. 2(2)(d) omitted (31.7.2014) by virtue of [Anti-social Behaviour, Crime and Policing Act 2014](#) (c. 12), s. 185(1), [Sch. 9 para. 5\(3\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)

Modifications etc. (not altering text)

- C5** Sch. 8 para. 2 extended (N.I.) (8.4.2003) by [Police \(Northern Ireland\) Act 2003](#) (c. 6), ss. 30, 31, [Sch. 2 Pt. 2 para. 21](#)
- C6** Sch. 8 paras. 1(6), 2, 6-9, 16-19 applied (with modifications) (11.3.2005) by [Prevention of Terrorism Act 2005](#) (c. 2), s. 5(8)

Marginal Citations

- M1** 1995 c. 46.

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Audio and video recording of interviews

- 3 (1) The Secretary of State shall—
 - (a) issue a code of practice about the audio recording of interviews to which this paragraph applies, and
 - (b) make an order requiring the audio recording of interviews to which this paragraph applies in accordance with any relevant code of practice under paragraph (a).
- (2) The Secretary of State may make an order requiring the video recording of—
 - (a) interviews to which this paragraph applies;
 - (b) interviews to which this paragraph applies which take place in a particular Part of the United Kingdom.
- (3) An order under sub-paragraph (2) shall specify whether the video recording which it requires is to be silent or with sound.
- (4) Where an order is made under sub-paragraph (2)—
 - (a) the Secretary of State shall issue a code of practice about the video recording of interviews to which the order applies, and
 - (b) the order shall require the interviews to be video recorded in accordance with any relevant code of practice under paragraph (a).
- (5) Where the Secretary of State has made an order under sub-paragraph (2) requiring certain interviews to be video recorded with sound—
 - (a) he need not make an order under sub-paragraph (1)(b) in relation to those interviews, but
 - (b) he may do so.
- (6) This paragraph applies to any interview by a constable of a person detained under Schedule 7 or section 41 if the interview takes place in a police station.
- (7) A code of practice under this paragraph—
 - (a) may make provision in relation to a particular Part of the United Kingdom;
 - (b) may make different provision for different Parts of the United Kingdom.
- 4 (1) This paragraph applies to a code of practice under paragraph 3.
- (2) Where the Secretary of State proposes to issue a code of practice he shall—
 - (a) publish a draft,
 - (b) consider any representations made to him about the draft, and
 - (c) if he thinks it appropriate, modify the draft in the light of any representations made to him.
- (3) The Secretary of State shall lay a draft of the code before Parliament.
- (4) When the Secretary of State has laid a draft code before Parliament he may bring it into operation by order.
- (5) The Secretary of State may revise a code and issue the revised code; and sub-paragraphs (2) to (4) shall apply to a revised code as they apply to an original code.
- (6) The failure by a constable to observe a provision of a code shall not of itself make him liable to criminal or civil proceedings.
- (7) A code—

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- (a) shall be admissible in evidence in criminal and civil proceedings, and
- (b) shall be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

Commencement Information

I2 Sch. 8 Pt. I para. 4 partly in force; Sch. 8 Pt. I para. 4 not in force at Royal Assent see s. 128; Sch. 8 Pt. I para. 4(1)-(5) in force at 12.10.2000 by [S.I. 2000/2800](#), [art. 2\(c\)\(ii\)](#); Sch. 8 in force at 19.2.2001 in so far as not already in force by [S.I. 2001/421](#), [art. 2](#)

Status

- 5 A detained person shall be deemed to be in legal custody throughout the period of his detention.

Rights: England, Wales and Northern Ireland

- 6 (1) Subject to paragraph 8, a person detained under Schedule 7 or section 41 at a ^{F3}place] in England, Wales or Northern Ireland shall be entitled, if he so requests, to have one named person informed as soon as is reasonably practicable that he is being detained there.
- (2) The person named must be—
- (a) a friend of the detained person,
 - (b) a relative, or
 - (c) a person who is known to the detained person or who is likely to take an interest in his welfare.
- (3) Where a detained person is transferred from one ^{F3}place] to another, he shall be entitled to exercise the right under this paragraph in respect of the ^{F3}place] to which he is transferred.

Textual Amendments

F3 Word in [Sch. 8 para. 6](#) substituted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014](#) (c. 12), s. 185(1), [Sch. 9 para. 5\(4\)](#) (with ss. 21, 33, 42, 58, 75, 93); [S.I. 2014/1916](#), art. 3(b)

Modifications etc. (not altering text)

C7 Sch. 8 paras. 1(6), 2, 6-9, 16-19 applied (with modifications) (11.3.2005) by [Prevention of Terrorism Act 2005](#) (c. 2), [s. 5\(8\)](#)

- 7 (1) Subject to paragraphs 8 and 9, a person detained under Schedule 7 or section 41 ^{F4}... in England, Wales or Northern Ireland shall be entitled, if he so requests, to consult a solicitor as soon as is reasonably practicable, privately and at any time.
- (2) Where a request is made under sub-paragraph (1), the request and the time at which it was made shall be recorded.

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Textual Amendments

F4 Words in Sch. 8 para. 7(1) omitted (31.7.2014) by virtue of [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 9 para. 5\(5\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)

Modifications etc. (not altering text)

C8 Sch. 8 paras. 1(6), 2, 6-9, 16-19 applied (with modifications) (11.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\)](#), s. 5(8)

- [^{F5}7A (1) This paragraph applies where a person detained under Schedule 7 requests to consult a solicitor.
- (2) The examining officer may not question the detained person under paragraph 2 or 3 of Schedule 7 until the person has consulted a solicitor (or no longer wishes to do so).
 - (3) Sub-paragraph (2) does not apply if the examining officer reasonably believes that postponing the questioning until then would be likely to prejudice determination of the relevant matters.
 - (4) The powers given by paragraph 8 of Schedule 7 (search powers where a person is questioned under paragraph 2 of Schedule 7) may be used when questioning is postponed because of sub-paragraph (2).
 - (5) The detained person is entitled to consult a solicitor in person.
 - (6) Sub-paragraph (5) does not apply if the examining officer reasonably believes that the time it would take to consult a solicitor in person would be likely to prejudice determination of the relevant matters.
 - (7) In that case the examining officer may require any consultation to take place in another way.
 - (8) In this paragraph “the relevant matters” means the matters the examining officer seeks to determine under paragraph 2 or 3 of Schedule 7.]

Textual Amendments

F5 Sch. 8 para. 7A inserted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 9 para. 5\(6\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)

- 8 (1) Subject to sub-paragraph (2), [^{F6}a police officer] of at least the rank of superintendent may authorise a delay—
- (a) in informing the person named by a detained person under paragraph 6;
 - (b) in permitting a detained person to consult a solicitor under paragraph 7.
- (2) But where a person is detained under section 41 he must be permitted to exercise his rights under paragraphs 6 and 7 before the end of the period mentioned in subsection (3) of that section.
- (3) Subject to sub-paragraph (5), an officer may give an authorisation under sub-paragraph (1) only if he has reasonable grounds for believing—
- (a) in the case of an authorisation under sub-paragraph (1)(a), that informing the named person of the detained person’s detention will have any of the consequences specified in sub-paragraph (4), or

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- (b) in the case of an authorisation under sub-paragraph (1)(b), that the exercise of the right under paragraph 7 at the time when the detained person desires to exercise it will have any of the consequences specified in sub-paragraph (4).
- (4) Those consequences are—
- (a) interference with or harm to evidence of a [^{F7}serious offence] ,
 - (b) interference with or physical injury to any person,
 - (c) the alerting of persons who are suspected of having committed a [^{F7}serious offence] but who have not been arrested for it,
 - (d) the hindering of the recovery of property obtained as a result of a [^{F7}serious offence] or in respect of which a forfeiture order could be made under section 23 [^{F8}or 23A],
 - (e) interference with the gathering of information about the commission, preparation or instigation of acts of terrorism,
 - (f) the alerting of a person and thereby making it more difficult to prevent an act of terrorism, and
 - (g) the alerting of a person and thereby making it more difficult to secure a person’s apprehension, prosecution or conviction in connection with the commission, preparation or instigation of an act of terrorism.
- [^{F9}(5) An officer may also give an authorisation under sub-paragraph (1) if he has reasonable grounds for believing that—
- (a) the detained person has benefited from his criminal conduct, and
 - (b) the recovery of the value of the property constituting the benefit will be hindered by—
 - (i) informing the named person of the detained person’s detention (in the case of an authorisation under sub-paragraph (1)(a)), or
 - (ii) the exercise of the right under paragraph 7 (in the case of an authorisation under sub-paragraph (1)(b)).
- (5A) For the purposes of sub-paragraph (5) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 2 of the Proceeds of Crime Act 2002.]
- (6) If an authorisation under sub-paragraph (1) is given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.
- (7) Where an authorisation under sub-paragraph (1) is given—
- (a) the detained person shall be told the reason for the delay as soon as is reasonably practicable, and
 - (b) the reason shall be recorded as soon as is reasonably practicable.
- (8) Where the reason for authorising delay ceases to subsist there may be no further delay in permitting the exercise of the right in the absence of a further authorisation under sub-paragraph (1).
- (9) [^{F10}In this paragraph, references to a “serious offence” are ^{F11}... to an indictable offence, ^{F11}... ; but also include—]
- (a) an offence under any of the provisions mentioned in section 40(1)(a) of this Act, and
 - (b) an attempt or conspiracy to commit an offence under any of the provisions mentioned in section 40(1)(a).

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Textual Amendments

- F6** Words in Sch. 8 para. 8(1) substituted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 9 para. 5\(7\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
- F7** Words in Sch. 8 para. 8(4) substituted (1.1.2006 subject to art. 2(2) of the commencing S.I.) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 111, [Sch. 7 para. 48\(1\)\(a\)](#); S.I. 2005/3495, [art. 2\(1\)\(m\)](#)
- F8** Words in Sch. 8 para. 8(4)(d) inserted (18.6.2009) by [Counter-Terrorism Act 2008 \(c. 28\)](#), ss. 39, 100(5), [Sch. 3 para. 6](#) (with s. 101(2)); S.I. 2009/1256, [art. 2\(c\)](#)
- F9** Sch. 8 para. 8(5)(5A) substituted for Sch. 8 para. 8(5) (24.3.2003 subject to certain provisions in the commencing instruments) by [2002 c. 29](#), s. 456, [Sch. 11 para. 39\(2\)](#); S.I. 2003/333, [art. 2](#), Sch. (as amended by S.I. 2003/531); S.S.I. 2003/210, [art. 2](#), Sch.
- F10** Words in Sch. 8 para. 8(9) substituted (1.1.2006 subject to art. 2(2) of the commencing S.I.) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 111, [Sch. 7 para. 48\(1\)\(b\)](#); S.I. 2005/3495, [art. 2\(1\)\(m\)](#)
- F11** Words in Sch. 8 para. 8(9) repealed (N.I.) (1.3.2007) by [The Police and Criminal Evidence \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/288 \(N.I. 2\)\)](#), arts. 15, 41, Sch. 1 para. 35, [Sch. 2](#)

Modifications etc. (not altering text)

- C9** Sch. 8 paras. 1(6), 2, 6-9, 16-19 applied (with modifications) (11.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\)](#), s. 5(8)

- 9 (1) A direction under this paragraph may provide that a detained person who wishes to exercise the right under paragraph 7 may consult a solicitor only in the sight and hearing of a qualified officer.
- (2) A direction under this paragraph may be given—
- (a) where the person is detained^{F12} ... in England or Wales, by [^{F13}a police officer] of at least the rank of Commander or Assistant Chief Constable, or
- (b) where the person is detained^{F12} ... in Northern Ireland, by [^{F13}a police officer] of at least the rank of Assistant Chief Constable.
- [^{F14}(3) A direction under this paragraph may be given only if the officer giving it has reasonable grounds for believing—
- (a) that, unless the direction is given, the exercise of the right by the detained person will have any of the consequences specified in paragraph 8(4), or
- (b) that the detained person has benefited from his criminal conduct and that, unless the direction is given, the exercise of the right by the detained person will hinder the recovery of the value of the property constituting the benefit.]
- (4) In this paragraph “a qualified officer” means a police officer who—
- (a) is of at least the rank of inspector,
- (b) is of the uniformed branch of the force of which the officer giving the direction is a member, and
- (c) in the opinion of the officer giving the direction, has no connection with the detained person’s case.
- (5) A direction under this paragraph shall cease to have effect once the reason for giving it ceases to subsist.

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Textual Amendments

- F12** Words in Sch. 8 para. 9(2)(a) (b) omitted (31.7.2014) by virtue of [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), **Sch. 9 para. 5(8)(a)** (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
- F13** Words in Sch. 8 para. 9(2)(a) (b) substituted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), **Sch. 9 para. 5(8)(b)** (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
- F14** Sch. 8 para. 9(3) substituted (16.2.2009) by [Counter-Terrorism Act 2008 \(c. 28\)](#), **ss. 82(1), 100(5)** (with s. 101(2)); S.I. 2009/58, **art. 2(g)**

Modifications etc. (not altering text)

- C10** Sch. 8 paras. 1(6), 2, 6-9, 16-19 applied (with modifications) (11.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\)](#), s. 5(8)

- 10 (1) This paragraph applies where a person is detained in England, Wales or Northern Ireland under Schedule 7 or section 41.
- (2) Fingerprints may be taken from the detained person only if they are taken by a constable—
- with the appropriate consent given in writing, or
 - without that consent under sub-paragraph (4).
- (3) A non-intimate sample may be taken from the detained person only if it is taken by a constable—
- with the appropriate consent given in writing, or
 - without that consent under sub-paragraph (4).
- (4) Fingerprints or a non-intimate sample may be taken from the detained person without the appropriate consent only if—
- he is detained at a police station and a police officer of at least the rank of superintendent authorises the fingerprints or sample to be taken, or
 - he has been convicted of a recordable offence and, where a non-intimate sample is to be taken, he was convicted of the offence on or after 10th April 1995 (or 29th July 1996 where the non-intimate sample is to be taken in Northern Ireland).
- (5) An intimate sample may be taken from [^{F15}a person detained under section 41, but only] if—
- he is detained at a police station,
 - the appropriate consent is given in writing,
 - a police officer of at least the rank of superintendent authorises the sample to be taken, and
 - subject to paragraph 13(2) and (3), the sample is taken by a constable.
- (6) [^{F16}Subject to sub-paragraph (6A)] an officer may give an authorisation under sub-paragraph (4)(a) or (5)(c) only if—
- in the case of a person detained under section 41, the officer reasonably suspects that the person has been involved in an offence under any of the provisions mentioned in section 40(1)(a), and the officer reasonably believes that the fingerprints or sample will tend to confirm or disprove his involvement, or

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- (b) in any case [^{F17}in which an authorisation under that sub-paragraph may be given], the officer is satisfied that the taking of the fingerprints or sample from the person is necessary in order to assist in determining whether he falls within section 40(1)(b).

[^{F18}(6A) An officer may also give an authorisation under sub-paragraph (4)(a) for the taking of fingerprints if—

- (a) he is satisfied that the fingerprints of the detained person will facilitate the ascertainment of that person's identity; and
(b) that person has refused to identify himself or the officer has reasonable grounds for suspecting that that person is not who he claims to be.

(6B) In this paragraph references to ascertaining a person's identity include references to showing that he is not a particular person.]

- (7) If an authorisation under sub-paragraph (4)(a) or (5)(c) is given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.

Textual Amendments

- F15** Words in Sch. 8 para. 10(5) substituted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 9 para. 6\(2\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
F16 Words in Sch. 8 para. 10(6) inserted (14.12.2001) by [2001 c. 24, s. 89\(2\)](#)
F17 Words in Sch. 8 para. 10(6)(b) inserted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 9 para. 6\(3\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
F18 Sch. 8 para. 10(6A)(6B) inserted (14.12.2001) by [2001 c. 14, s. 89\(2\)](#)

Modifications etc. (not altering text)

- C11** Sch. 8 para. 10(2) extended (N.I.) (8.4.2003) by [Police \(Northern Ireland\) Act 2003 \(c. 6\)](#), ss. 30, 31, [Sch. 2 Pt. 2 para. 15](#)
C12 Sch. 8 para. 10(3) extended (N.I.) (8.4.2003) by [Police \(Northern Ireland\) Act 2003 \(c. 6\)](#), ss. 30, 31, [Sch. 2 Pt. 2 para. 18](#)

- 11 (1) Before fingerprints or a sample are taken from a person under paragraph 10, he shall be informed—
- (a) that the fingerprints or sample may be used for the purposes of [^{F19}a relevant search (within the meaning given by paragraph 20A(6)) or for the purposes of] section 63A(1) of the ^{M2}Police and Criminal Evidence Act 1984 and Article 63A(1) of the ^{M3}Police and Criminal Evidence (Northern Ireland) Order 1989 (checking of fingerprints and samples), and
- (b) where the fingerprints or sample are to be taken under paragraph 10(2)(a), (3)(a) or (4)(b), of the reason for taking the fingerprints or sample.
- (2) Before fingerprints or a sample are taken from a person upon an authorisation given under paragraph 10(4)(a) or (5)(c), he shall be informed—
- (a) that the authorisation has been given,
(b) of the grounds upon which it has been given, and
(c) where relevant, of the nature of the offence in which it is suspected that he has been involved.
- (3) After fingerprints or a sample are taken under paragraph 10, there shall be recorded as soon as is reasonably practicable any of the following which apply—

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- (a) the fact that the person has been informed in accordance with sub-paragraphs (1) and (2),
- (b) the reason referred to in sub-paragraph (1)(b),
- (c) the authorisation given under paragraph 10(4)(a) or (5)(c),
- (d) the grounds upon which that authorisation has been given, and
- (e) the fact that the appropriate consent has been given.

Textual Amendments

F19 Words in Sch. 8 para. 11(1)(a) substituted (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\)](#), s. 120, [Sch. 1 para. 1\(5\)](#) (with s. 97); S.I. 2013/1814, art. 2(j)

Marginal Citations

M2 1984 c. 60.

M3 S.I. 1989/1341 (N.I. 12).

- 12 (1) This paragraph applies where—
- (a) two or more non-intimate samples suitable for the same means of analysis have been taken from a person under paragraph 10,
 - (b) those samples have proved insufficient, and
 - (c) the person has been released from detention.
- (2) An intimate sample may be taken from the person if—
- (a) the appropriate consent is given in writing,
 - (b) a police officer of at least the rank of superintendent authorises the sample to be taken, and
 - (c) subject to paragraph 13(2) and (3), the sample is taken by a constable.
- (3) Paragraphs 10(6) and (7) and 11 shall apply in relation to the taking of an intimate sample under this paragraph; and a reference to a person detained under section 41 shall be taken as a reference to a person who was detained under section 41 when the non-intimate samples mentioned in sub-paragraph (1)(a) were taken.
- 13 (1) Where appropriate written consent to the taking of an intimate sample from a person under paragraph 10 or 12 is refused without good cause, in any proceedings against that person for an offence—
- (a) the court, in determining whether to commit him for trial or whether there is a case to answer, may draw such inferences from the refusal as appear proper, and
 - (b) the court or jury, in determining whether that person is guilty of the offence charged, may draw such inferences from the refusal as appear proper.
- (2) An intimate sample other than a sample of urine or a dental impression may be taken under paragraph 10 or 12 only by a registered medical practitioner acting on the authority of a constable.
- (3) An intimate sample which is a dental impression may be taken under paragraph 10 or 12 only by a registered dentist acting on the authority of a constable.
- (4) Where a sample of hair other than pubic hair is to be taken under paragraph 10 the sample may be taken either by cutting hairs or by plucking hairs with their roots so

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long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.

^{F20}14

Textual Amendments

F20 Sch. 8 para. 14 repealed (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 1 para. 1\(2\), Sch. 10 Pt. 1](#) (with s. 97); S.I. 2013/1814, art. 2(h)

15 (1) In the application of [^{F21}paragraphs 10 to 13] in relation to a person detained in England or Wales the following expressions shall have the meaning given by section 65 of the ^{M4}Police and Criminal Evidence Act 1984 (Part V definitions)—

- (a) “appropriate consent”,
- (b) “fingerprints”,
- (c) “insufficient”,
- (d) “intimate sample”,
- (e) “non-intimate sample”,
- (f) “registered dentist”, and
- (g) “sufficient”.

[^{F22}(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 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.]

(2) In the application of [^{F23}paragraphs 10 to 13] in relation to a person detained in Northern Ireland the expressions listed in sub-paragraph (1) shall have the meaning given by Article 53 of the ^{M5}Police and Criminal Evidence (Northern Ireland) Order 1989 (definitions).

(3) In paragraph 10 “recordable offence” shall have—
(a) in relation to a person detained in England or Wales, the meaning given by section 118(1) of the ^{M6}Police and Criminal Evidence Act 1984 (general interpretation), and
(b) in relation to a person detained in Northern Ireland, the meaning given by Article 2(2) of the ^{M7}Police and Criminal Evidence (Northern Ireland) Order 1989 (definitions).

Textual Amendments

F21 Words in Sch. 8 para. 15(1) substituted (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 1 para. 1\(6\)](#) (with s. 97); S.I. 2013/1814, art. 2(j)

F22 Sch. 8 para. 15(1A) inserted (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 1 para. 1\(7\)](#) (with s. 97); S.I. 2013/1814, art. 2(j)

F23 Words in Sch. 8 para. 15(2) substituted (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 1 para. 1\(8\)](#) (with s. 97); S.I. 2013/1814, art. 2(j)

Marginal Citations

M4 1984 c. 60.

M5 S.I. 1989/1341 (N.I. 12).

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- M6** 1984 c. 60.
M7 S.I. 1989/1341 (N.I. 12).

Rights: Scotland

- 16 (1) A person detained under Schedule 7 or section 41 at a [^{F24}place] in Scotland shall be entitled to have intimation of his detention and of the place where he is being detained sent without delay to a solicitor and to another person named by him.
- (2) The person named must be—
- (a) a friend of the detained person,
 - (b) a relative, or
 - (c) a person who is known to the detained person or who is likely to take an interest in his welfare.
- (3) Where a detained person is transferred from one [^{F25}place] to another, he shall be entitled to exercise the right under sub-paragraph (1) in respect of the [^{F25}place] to which he is transferred.
- (4) A police officer not below the rank of superintendent may authorise a delay in making intimation where, in his view, the delay is necessary on one of the grounds mentioned in paragraph 17(3) or where paragraph 17(4) applies.
- (5) Where a detained person requests that the intimation be made, there shall be recorded the time when the request is—
- (a) made, and
 - (b) complied with.
- (6) A person detained [^{F26}as mentioned in sub-paragraph (1)] shall be entitled to consult a solicitor at any time, without delay.
- (7) A police officer not below the rank of superintendent may authorise a delay in holding the consultation where, in his view, the delay is necessary on one of the grounds mentioned in paragraph 17(3) or where paragraph 17(4) applies.
- (8) Subject to paragraph 17, the consultation shall be private.
- (9) Where a person is detained under section 41 he must be permitted to exercise his rights under this paragraph before the end of the period mentioned in subsection (3) of that section.

Textual Amendments

- F24** Word in Sch. 8 para. 16(1) substituted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), s. 185\(1\), Sch. 9 para. 5\(9\)\(a\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
- F25** Word in Sch. 8 para. 16(3) substituted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), s. 185\(1\), Sch. 9 para. 5\(9\)\(a\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
- F26** Words in Sch. 8 para. 16(6) inserted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), s. 185\(1\), Sch. 9 para. 5\(9\)\(b\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)

Modifications etc. (not altering text)

- C13** Sch. 8 paras. 1(6), 2, 6-9, 16-19 applied (with modifications) (11.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\), s. 5\(8\)](#)

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- [^{F27}16A(1) This paragraph applies where a person detained under Schedule 7 requests to consult a solicitor.
- (2) The examining officer may not question the detained person under paragraph 2 or 3 of Schedule 7 until the person has consulted a solicitor (or no longer wishes to do so).
 - (3) Sub-paragraph (2) does not apply if the examining officer reasonably believes that postponing the questioning until then would be likely to prejudice determination of the relevant matters.
 - (4) The powers given by paragraph 8 of Schedule 7 (search powers where a person is questioned under paragraph 2 of Schedule 7) may be used when questioning is postponed because of sub-paragraph (2).
 - (5) The detained person is entitled to consult a solicitor in person.
 - (6) Sub-paragraph (5) does not apply if the examining officer reasonably believes that the time it would take to consult a solicitor in person would be likely to prejudice determination of the relevant matters.
 - (7) In that case the examining officer may require any consultation to take place in another way.
 - (8) In this paragraph “the relevant matters” means the matters the examining officer seeks to determine under paragraph 2 or 3 of Schedule 7.]

Textual Amendments

F27 Sch. 8 para. 16A inserted (31.7.2014) by Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), s. 185(1), Sch. 9 para. 5(10) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)

- 17 (1) [^{F28}A police officer] not below the rank of Assistant Chief Constable may direct that the consultation mentioned in paragraph 16(6) shall be in the presence of a uniformed [^{F29}police] officer not below the rank of inspector if it appears to the officer giving the direction to be necessary on one of the grounds mentioned in sub-paragraph (3).
- (2) A uniformed officer directed to be present during a consultation shall be an officer who, in the opinion of the officer giving the direction, has no connection with the case.
 - (3) The grounds mentioned in paragraph 16(4) and (7) and in sub-paragraph (1) are—
 - (a) that it is in the interests of the investigation or prevention of crime;
 - (b) that it is in the interests of the apprehension, prosecution or conviction of offenders;
 - (c) that it will further the recovery of property obtained as a result of the commission of an offence or in respect of which a forfeiture order could be made under section 23 [^{F30}or 23A];
 - (d) that it will further the operation of [^{F31}Part 2 or 3 of the Proceeds of Crime Act 2002] or the ^{M8}Proceeds of Crime (Northern Ireland) Order 1996 (confiscation of the proceeds of an offence).
 - (4) [^{F32}This sub-paragraph applies where an officer mentioned in paragraph 16(4) or (7) has reasonable grounds for believing that—
 - (a) the detained person has benefited from his criminal conduct, and

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- (b) the recovery of the value of the property constituting the benefit will be hindered by—
 - (i) informing the named person of the detained person’s detention (in the case of an authorisation under paragraph 16(4)), or
 - (ii) the exercise of the entitlement under paragraph 16(6) (in the case of an authorisation under paragraph 16(7)).
- (4A) For the purposes of sub-paragraph (4) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 3 of the Proceeds of Crime Act 2002.]
- (5) Where delay is authorised in the exercising of any of the rights mentioned in paragraph 16(1) and (6)—
 - (a) if the authorisation is given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable,
 - (b) the detained person shall be told the reason for the delay as soon as is reasonably practicable, and
 - (c) the reason shall be recorded as soon as is reasonably practicable.

Textual Amendments

- F28** Words in Sch. 8 para. 17(1) substituted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), s. 185\(1\), Sch. 9 para. 5\(11\)\(a\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
- F29** Word in Sch. 8 para. 17(1) inserted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), s. 185\(1\), Sch. 9 para. 5\(11\)\(b\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
- F30** Words in Sch. 8 para. 17(3)(c) inserted (18.6.2009) by [Counter-Terrorism Act 2008 \(c. 28\), ss. 39, 100\(5\), Sch. 3 para. 6](#) (with s. 101(2)); S.I. 2009/1256, [art. 2\(c\)](#)
- F31** Words in Sch. 8 para. 17(3)(d) substituted (24.3.2003 subject to certain provisions in the commencing instruments) by [2002 c. 29, s. 456, Sch. 11 para. 39\(3\)](#); S.I. 2003/333, [art. 2](#), Sch. (as amended by S.I. 2003/531); S.S.I. 2003/210, [art. 2](#), Sch.
- F32** Sch. 8 para. 17(4)(4A) substituted for Sch. 8 para. 17(4) (24.3.2003 subject to certain provisions in the commencing instruments) by [2002 c. 29, s. 456, Sch. 11 para. 39\(4\)](#); S.I. 2003/333, [art. 2](#), Sch. (as amended by S.I. 2003/531); S.S.I. 2003/210, [art. 2](#), Sch.

Modifications etc. (not altering text)

- C14** Sch. 8 paras. 1(6), 2, 6-9, 16-19 applied (with modifications) (11.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\), s. 5\(8\)](#)

Marginal Citations

- M8** [S.I. 1996/1299 \(N.I.9\)](#).

- 18 (1) Paragraphs 16 [^{F33}to] 17 shall have effect, in relation to a person detained under section 41 or Schedule 7, in place of any enactment or rule of law under or by virtue of which a person arrested or detained may be entitled to communicate or consult with any other person.
- (2) But, where a person detained under Schedule 7 or section 41 at a [^{F34}place] in Scotland appears to a constable to be a child—
 - (a) the other person named by the person detained in pursuance of paragraph 16(1) shall be that person’s parent, and
 - (b) section 15(4) of the ^{M9}Criminal Procedure (Scotland) Act 1995 shall apply to the person detained as it applies to a person who appears to a constable to be

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a child who is being detained as mentioned in paragraph (b) of section 15(1) of that Act,

and in this sub-paragraph “child” and “parent” have the same meaning as in section 15(4) of that Act.

[^{F35}(3) In relation to a person detained under Schedule 7 at a place other than a police station—

- (a) sub-paragraph (2), and
- (b) section 15(4) of the Criminal Procedure (Scotland) Act 1995 as applied by that sub-paragraph,

apply as if references to a constable included an examining officer.]

Textual Amendments

- F33** Word in Sch. 8 para. 18(1) substituted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 9 para. 5\(12\)\(a\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
- F34** Word in Sch. 8 para. 18(2) substituted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 9 para. 5\(12\)\(b\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
- F35** Sch. 8 para. 18(3) inserted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 9 para. 5\(12\)\(c\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)

Modifications etc. (not altering text)

- C15** Sch. 8 paras. 1(6), 2, 6-9, 16-19 applied (with modifications) (11.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\)](#), s. 5(8)

Marginal Citations

- M9** 1995 c. 46.

19 The Secretary of State shall, by order, make provision to require that—

- (a) except in such circumstances, and
- (b) subject to such conditions,

as may be specified in the order, where a person detained has been permitted to consult a solicitor, the solicitor shall be allowed to be present at any interview carried out in connection with a terrorist investigation or for the purposes of Schedule 7.

Modifications etc. (not altering text)

- C16** Sch. 8 paras. 1(6), 2, 6-9, 16-19 applied (with modifications) (11.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\)](#), s. 5(8)

20 (1) Subject to the modifications specified in sub-paragraphs (2) and (3), section 18 of the ^{M10}Criminal Procedure (Scotland) Act 1995 (procedure for taking certain prints and samples) shall apply to a person detained under Schedule 7 or section 41 at a police station in Scotland as it applies to a person arrested or a person detained under section 14 of that Act.

[^{F36}(2) Subject to subsection (2A), a constable may take from a detained person or require a detained person to provide relevant physical data only if—

- (a) in the case of a person detained under section 41 of the Terrorism Act 2000, he reasonably suspects that the person has been involved in an offence

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- under any of the provisions mentioned in section 40(1)(a) of that Act and he reasonably believes that the relevant physical data will tend to confirm or disprove his involvement; or
- (b) in any case, he is satisfied that it is necessary to do so in order to assist in determining whether the person falls within section 40(1)(b).
- (2A) A constable may also take fingerprints from a detained person or require him to provide them if—
- (a) he is satisfied that the fingerprints of that person will facilitate the ascertainment of that person’s identity; and
- (b) that person has refused to identify himself or the constable has reasonable grounds for suspecting that that person is not who he claims to be.
- (2B) In this section references to ascertaining a person’s identity include references to showing that he is not a particular person.’]

[^{F37}(3) Subsections (3) to (5) shall not apply, ^{F38}...

^{F39}(4).....]

Textual Amendments

- F36** Sch. 8 para. 20(2)-(2B) substituted for Sch. 8 para. 20(2) (14.12.2001) by [2001 c. 24, s. 89\(3\)](#)
- F37** Sch. 8 para. 20(3)(4) substituted for Sch. 8 para. 20(3) (14.12.2001) by [2001 c. 24, s. 89\(4\)](#)
- F38** Sch. 8 para. 20(3): words from “but” to the end of the sub-paragraph repealed (31.10.2013) by virtue of [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 1 para. 1\(3\)\(a\), Sch. 10 Pt. 1](#) (with s. 97); S.I. 2013/1814, art. 2(h)
- F39** Sch. 8 para. 20(4) repealed (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 1 para. 1\(3\)\(b\), Sch. 10 Pt. 1](#) (with s. 97); S.I. 2013/1814, art. 2(h)

Marginal Citations

- M10** [1995 c. 46.](#)

[^{F40}Destruction and retention of fingerprints and samples etc: United Kingdom

Textual Amendments

- F40** Sch. 8 paras. 20A-20J and cross-heading inserted (31.10.2013 for all paras. except para. 20F(1) (which is in force 31.1.2014), and except, for specified purposes, para. 20G) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 1 para. 1\(4\)](#) (with s. 97); S.I. 2013/1814, arts. 2(i), [3\(b\)](#)

- 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—

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- (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.
- (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.
- [In sub-paragraph (2) —
- ^{F41}(2A) (a) the reference to a recordable offence includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute—

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- (i) a recordable offence under the law of England and Wales if done there, or
 - (ii) a recordable offence under the law of Northern Ireland if done there, (and, in the application of sub-paragraph (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted);
 - (b) the reference to an offence in Scotland which is punishable by imprisonment includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute an offence under the law of Scotland which is punishable by imprisonment if done there (and, in the application of sub-paragraph (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted).]
- (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 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—

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“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—
 - (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) [^{F42}the chief constable of the Police Service of Scotland, where—
 - (i) the person who provided the material, or from whom it was taken, resides in Scotland, or
 - (ii) the chief constable believes that the person is in, or is intending to come to, Scotland.]

Textual Amendments

- F41** Sch. 8 para. 20B(2A) inserted (31.1.2017 for specified purposes, 3.4.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), [ss. 71\(2\), 183\(1\)\(5\)\(e\)](#); S.I. 2017/399, reg. 2, Sch. para. 20
- F42** Words in Sch. 8 para. 20B(10) substituted (13.5.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 11 para. 125\(2\)](#) (with [ss. 21, 33, 42, 58, 75, 93](#)); S.I. 2014/949, art. 3, Sch. para. 23(l)

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.

[In sub-paragraph (2) —

- ^{F43}(2A) (a) the reference to a recordable offence includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute—
 - (i) a recordable offence under the law of England and Wales if done there, or

Status: Point in time view as at 31/01/2017.

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- (ii) a recordable offence under the law of Northern Ireland if done there, (and, in the application of sub-paragraph (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted);
 - (b) the reference to an offence in Scotland which is punishable by imprisonment includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute an offence under the law of Scotland which is punishable by imprisonment if done there (and, in the application of sub-paragraph (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted).]
- (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).

Textual Amendments

F43 Sch. 8 para. 20C(2A) inserted (31.1.2017 for specified purposes, 3.4.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), ss. **71(3)**, **183(1)(5)(e)**; S.I. 2017/399, reg. 2, Sch. para. 20

- 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—
 - (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,

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- (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 53A of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).
- [For the purposes of sub-paragraph (4)—
- ^{F44}(5A) (a) a person is to be treated as having previously been convicted in England and Wales of a recordable offence if—
- (i) the person has previously been convicted of an offence under the law of a country or territory outside the United Kingdom, and
 - (ii) the act constituting the offence would constitute a recordable offence under the law of England and Wales if done there (whether or not it constituted such an offence when the person was convicted);

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- (b) a person is to be treated as having previously been convicted in Northern Ireland of a recordable offence if—
 - (i) the person has previously been convicted of an offence under the law of a country or territory outside the United Kingdom, and
 - (ii) the act constituting the offence would constitute a recordable offence under the law of Northern Ireland if done there (whether or not it constituted such an offence when the person was convicted);
 - (c) a person is to be treated as having previously been convicted in Scotland of an offence which is punishable by imprisonment if—
 - (i) the person has previously been convicted of an offence under the law of a country or territory outside the United Kingdom, and
 - (ii) the act constituting the offence would constitute an offence punishable by imprisonment under the law of Scotland if done there (whether or not it constituted such an offence when the person was convicted);
 - (d) the reference in sub-paragraph (4)(b) to a qualifying offence includes a reference to an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute a qualifying offence under the law of England and Wales if done there or (as the case may be) under the law of Northern Ireland if done there (whether or not it constituted such an offence when the person was convicted).
- (5B) For the purposes of paragraphs 20B and 20C and this paragraph—
- (a) offence, in relation to any country or territory outside the United Kingdom, includes an act punishable under the law of that country or territory, however it is described;
 - (b) a person has in particular been convicted of an offence under the law of a country or territory outside the United Kingdom if—
 - (i) a court exercising jurisdiction under the law of that country or territory has made in respect of such an offence a finding equivalent to a finding that the person is not guilty by reason of insanity, or
 - (ii) such a court has made in respect of such an offence a finding equivalent to a finding that the person is under a disability and did the act charged against the person in respect of the offence.]
- (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.

Textual Amendments

F44 Sch. 8 para. 20D(5A)(5B) inserted (31.1.2017 for specified purposes, 3.4.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), ss. [71\(4\)](#), [183\(1\)\(5\)\(e\)](#); S.I. 2017/399, reg. 2, Sch. para. 20

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- 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.
- (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

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- (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.
- (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

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(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,

(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.

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- (5) Sub-paragraphs (1), (2) and (4) do not form part of the law of Scotland.
- 20I ^{F45}(1) [^{F46}Paragraphs 20A to 20H do not apply to 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.
- [A sample that—
- ^{F47}(2) (a) falls within sub-paragraph (1), and
- (b) but for that sub-paragraph would be required to be destroyed under paragraph 20G,
- must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.
- (3) A sample that once fell within sub-paragraph (1) but no longer does, and so becomes a sample to which paragraph 20G applies, must be destroyed immediately if the time specified for its destruction under that paragraph has already passed.]

Textual Amendments

- F45** Sch. 8 para. 20I(1): Sch. 8 para. 20I renumbered as Sch. 8 para. 20I(1) (13.5.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), **ss. 146(2)(b)**, 185(1) (with **ss. 21, 33, 42, 58, 75, 93**); [S.I. 2014/949](#), art. 3, Sch. para. 13
- F46** Words in Sch. 8 para. 20I substituted (13.5.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), **ss. 146(2)(a)**, 185(1) (with **ss. 21, 33, 42, 58, 75, 93**); [S.I. 2014/949](#), art. 3, Sch. para. 13
- F47** Sch. 8 para. 20I(2), (3) inserted (13.5.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), **ss. 146(2)(b)**, 185(1) (with **ss. 21, 33, 42, 58, 75, 93**); [S.I. 2014/949](#), art. 3, Sch. para. 13

- 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;
 - (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) [^{F48}the Police Service of Scotland;
 - (e) the Scottish Police 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;

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- (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 [F49 the Police Service of Scotland] —
- (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.]

Textual Amendments

- F48** Sch. 8 para. 20J: in definition of “police force” paras. (d)(e) substituted (13.5.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), **Sch. 11 para. 125(3)(a)** (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/949, art. 3, Sch. para. 23(1)
- F49** Words in Sch. 8 para. 20J substituted (13.5.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), **Sch. 11 para. 125(3)(b)** (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/949, art. 3, Sch. para. 23(1)

[F50] PART 1A

REVIEW OF DETENTION UNDER SCHEDULE 7

Textual Amendments

- F50** Sch. 8 Pt. 1A inserted (13.5.2014 for para. 20K(8)(9) and otherwise 1.4.2015) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), **Sch. 9 para. 7(3)** (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/949, art. 3, Sch. para. 21(b); S.I. 2014/1916, **art. 4**

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General requirements

- 20K (1) A person's detention under Schedule 7 must be periodically reviewed by a review officer.
- (2) The first review must be carried out before the end of the period of one hour beginning with the person's detention under that Schedule.
- (3) Subsequent reviews must be carried out at intervals of not more than two hours.
- (4) The review officer may authorise a person's continued detention under Schedule 7 only if satisfied that it is necessary for the purposes of exercising a power under paragraph 2 or 3 of that Schedule.
- (5) If on a review under this paragraph the review officer does not authorise a person's continued detention, the person must be released (unless detained under another power).
- (6) In this Part of this Schedule “review officer” means a senior officer who has not been directly involved in questioning the detained person under paragraph 2 or 3 of Schedule 7.
- (7) “Senior officer” means—
- (a) where the examining officer is a constable, a constable of a higher rank than the examining officer,
 - (b) where the examining officer is an immigration officer, an immigration officer of a higher grade than the examining officer, and
 - (c) where the examining officer is a customs officer, a customs officer of a higher grade than the examining officer.
- (8) The Secretary of State must under paragraph 6 of Schedule 14 issue a code of practice about reviews under this Part of this Schedule.
- (9) The code of practice must include provision about training to be undertaken by persons who are to act as review officers.

Representations

- 20L (1) Before determining whether to authorise a person's continued detention, a review officer must give either of the following persons an opportunity to make representations about the detention—
- (a) the detained person, or
 - (b) a solicitor representing the detained person who is available at the time of the review.
- (2) Representations may be oral or written.
- (3) A 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 detained person's condition or behaviour.

Rights

- 20M (1) Where a review officer authorises continued detention the officer must inform the detained person—

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- (a) of any of the detained person's rights under paragraphs 6 and 7 which have not yet been exercised, and
 - (b) if the exercise of any of those rights is being delayed in accordance with the provisions of paragraph 8, of the fact that it is being delayed.
- (2) Where a review of a person's detention is being carried out at a time when the person's exercise of a right under paragraph 6 or 7 is being delayed—
- (a) the review officer must consider whether the reason or reasons for which the delay was authorised continue to subsist, and
 - (b) if in the review officer's opinion the reason or reasons have ceased to subsist, the review officer must inform the officer who authorised the delay of that opinion (unless the review officer was that officer).
- (3) In the application of this paragraph to Scotland, for the references to paragraphs 6, 7 and 8 substitute references to paragraph 16.

Record

- 20N (1) A review officer carrying out a review must make a written record of the outcome of the review and of any of the following which apply—
- (a) the fact that the officer is satisfied that continued detention is necessary for the purposes of exercising a power under paragraph 2 or 3 of Schedule 7,
 - (b) the fact that the detained person has been informed as required under paragraph 20M(1),
 - (c) the officer's conclusion on the matter considered under paragraph 20M(2)(a), and
 - (d) the fact that the officer has taken action under paragraph 20M(2)(b).
- (2) The review officer must inform the detained person whether the officer is authorising continued detention, and if so that the officer is satisfied that continued detention is necessary for the purposes of exercising a power under paragraph 2 or 3 of Schedule 7.
- (3) Sub-paragraph (2) does not apply where the detained person is—
- (a) incapable of understanding what is said,
 - (b) violent or likely to become violent, or
 - (c) in urgent need of medical attention.]

PART II

REVIEW OF DETENTION UNDER SECTION 41

Requirement

- 21 (1) A person's detention shall be periodically reviewed by a review officer.
- (2) The first review shall be carried out as soon as is reasonably practicable after the time of the person's arrest.
- (3) Subsequent reviews shall, subject to paragraph 22, be carried out at intervals of not more than 12 hours.

Status: Point in time view as at 31/01/2017.

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- (4) No review of a person's detention shall be carried out after a warrant extending his detention has been issued under Part III.

Postponement

- 22 (1) A review may be postponed if at the latest time at which it may be carried out in accordance with paragraph 21—
- (a) the detained person is being questioned by a police officer and an officer is satisfied that an interruption of the questioning to carry out the review would prejudice the investigation in connection with which the person is being detained,
 - (b) no review officer is readily available, or
 - (c) it is not practicable for any other reason to carry out the review.
- (2) Where a review is postponed it shall be carried out as soon as is reasonably practicable.
- (3) For the purposes of ascertaining the time within which the next review is to be carried out, a postponed review shall be deemed to have been carried out at the latest time at which it could have been carried out in accordance with paragraph 21.

Grounds for continued detention

- 23 (1) A review officer may authorise a person's continued detention only if satisfied that it is necessary—
- (a) to obtain relevant evidence whether by questioning him or otherwise,
 - (b) to preserve relevant evidence,
 - [^{F51}(ba) pending the result of an examination or analysis of any relevant evidence or of anything the examination or analysis of which is to be or is being carried out with a view to obtaining relevant evidence;]
 - (c) pending a decision whether to apply to the Secretary of State for a deportation notice to be served on the detained person,
 - (d) pending the making of an application to the Secretary of State for a deportation notice to be served on the detained person,
 - (e) pending consideration by the Secretary of State whether to serve a deportation notice on the detained person, or
 - (f) pending a decision whether the detained person should be charged with an offence.
- (2) The review officer shall not authorise continued detention by virtue of subparagraph (1)(a) or (b) unless he is satisfied that the investigation in connection with which the person is detained is being conducted diligently and expeditiously.
- (3) The review officer shall not authorise continued detention by virtue of subparagraph (1)(c) to (f) unless he is satisfied that the process pending the completion of which detention is necessary is being conducted diligently and expeditiously.
- (4) In [^{F52}this paragraph]“relevant evidence” means evidence which—
- (a) relates to the commission by the detained person of an offence under any of the provisions mentioned in section 40(1)(a), or
 - (b) indicates that the detained person falls within section 40(1)(b).

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- (5) In sub-paragraph (1) “deportation notice” means notice of a decision to make a deportation order under the Immigration Act 1971.

Textual Amendments

- F51** Sch. 8 para. 23(1)(ba) inserted (25.7.2006) by [Terrorism Act 2006 \(c. 11\), s. 24\(1\)](#) (with [s. 24\(6\)](#)); [S.I. 2006/1936, art. 2](#)
- F52** Words in Sch. 8 para. 23(4) substituted (25.7.2006) by [Terrorism Act 2006 \(c. 11\), s. 24\(4\)](#) (with [s. 24\(6\)](#)); [S.I. 2006/1936, art. 2](#)

Review officer

- 24 (1) The review officer shall be an officer who has not been directly involved in the investigation in connection with which the person is detained.
- (2) In the case of a review carried out within the period of 24 hours beginning with the time of arrest, the review officer shall be an officer of at least the rank of inspector.
- (3) In the case of any other review, the review officer shall be an officer of at least the rank of superintendent.
- 25 (1) This paragraph applies where—
- (a) the review officer is of a rank lower than superintendent,
 - (b) an officer of higher rank than the review officer gives directions relating to the detained person, and
 - (c) those directions are at variance with the performance by the review officer of a duty imposed on him under this Schedule.
- (2) The review officer shall refer the matter at once to an officer of at least the rank of superintendent.

Representations

- 26 (1) Before determining whether to authorise a person’s continued detention, a review officer shall give either of the following persons an opportunity to make representations about the detention—
- (a) the detained person, or
 - (b) a solicitor representing him who is available at the time of the review.
- (2) Representations may be oral or written.
- (3) A review officer may refuse to hear oral representations from the detained person if he considers that he is unfit to make representations because of his condition or behaviour.

Rights

- 27 (1) Where a review officer authorises continued detention he shall inform the detained person—
- (a) of any of his rights under paragraphs 6 and 7 which he has not yet exercised, and

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- (b) if the exercise of any of his rights under either of those paragraphs is being delayed in accordance with the provisions of paragraph 8, of the fact that it is being so delayed.
- (2) Where a review of a person's detention is being carried out at a time when his exercise of a right under either of those paragraphs is being delayed—
 - (a) the review officer shall consider whether the reason or reasons for which the delay was authorised continue to subsist, and
 - (b) if in his opinion the reason or reasons have ceased to subsist, he shall inform the officer who authorised the delay of his opinion (unless he was that officer).
- (3) In the application of this paragraph to Scotland, for the references to paragraphs 6, 7 and 8 substitute references to paragraph 16.
- (4) The following provisions (requirement to bring an accused person before the court after his arrest) shall not apply to a person detained under section 41—
 - (a) section 135(3) of the ^{M11}Criminal Procedure (Scotland) Act 1995, and
 - (b) Article 8(1) of the ^{M12}Criminal Justice (Children) (Northern Ireland) Order 1998.
- (5) Section 22(1) of the ^{M13}Criminal Procedure (Scotland) Act 1995 (interim liberation by officer in charge of police station) shall not apply to a person detained under section 41.

Marginal Citations

M11 1995 c. 46.

M12 S.I. 1998/1504 (N.I. 9).

M13 1995 c. 46.

Record

- 28 (1) A review officer carrying out a review shall make a written record of the outcome of the review and of any of the following which apply—
- (a) the grounds upon which continued detention is authorised,
 - (b) the reason for postponement of the review,
 - (c) the fact that the detained person has been informed as required under paragraph 27(1),
 - (d) the officer's conclusion on the matter considered under paragraph 27(2)(a),
 - (e) the fact that he has taken action under paragraph 27(2)(b), and
 - (f) the fact that the detained person is being detained by virtue of section 41(5) or (6).
- (2) The review officer shall—
- (a) make the record in the presence of the detained person, and
 - (b) inform him at that time whether the review officer is authorising continued detention, and if he is, of his grounds.
- (3) Sub-paragraph (2) shall not apply where, at the time when the record is made, the detained person is—

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- (a) incapable of understanding what is said to him,
- (b) violent or likely to become violent, or
- (c) in urgent need of medical attention.

PART III

EXTENSION OF DETENTION UNDER SECTION 41

Warrants of further detention

- 29 (1) [^{F53}Each of the following—
- (a) in England and Wales, a Crown Prosecutor,
 - (b) in Scotland, the Lord Advocate or a procurator fiscal,
 - (c) in Northern Ireland, the Director of Public Prosecutions for Northern Ireland,
 - (d) in any part of the United Kingdom, a police officer of at least the rank of superintendent,
- may] apply to a judicial authority for the issue of a warrant of further detention under this Part.
- (2) A warrant of further detention—
- (a) shall authorise the further detention under section 41 of a specified person for a specified period, and
 - (b) shall state the time at which it is issued.
- (3) [^{F54}Subject to sub-paragraph (3A) and paragraph 36], the specified period in relation to a person shall [^{F55}be] the period of seven days beginning—
- (a) with the time of his arrest under section 41, or
 - (b) if he was being detained under Schedule 7 when he was arrested under section 41, with the time when his examination under that Schedule began.
- [^{F56}(3A) A judicial authority may issue a warrant of further detention in relation to a person which specifies a shorter period as the period for which that person's further detention is authorised if—
- (a) the application for the warrant is an application for a warrant specifying a shorter period; or
 - (b) the judicial authority is satisfied that there are circumstances that would make it inappropriate for the specified period to be as long as the period of seven days mentioned in sub-paragraph (3).]

(4) In this Part “judicial authority” means—

 - (a) in England and Wales, ^{F57}. . . a District Judge (Magistrates’ Courts) who is designated for the purpose of this Part [^{F58}by the Lord Chief Justice of England and Wales ^{F59}. . .],
 - (b) in Scotland, the sheriff, and
 - (c) in Northern Ireland, a county court judge, or a resident magistrate who is designated for the purpose of this Part [^{F60}by the Lord Chief Justice of Northern Ireland ^{F59}. . .].

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- [^{F61}(5) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under sub-paragraph (4)(a).
- (6) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under sub-paragraph (4)(c)—
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
 - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

Textual Amendments

- F53** Words in Sch. 8 para. 29(1) substituted (25.7.2006) by [Terrorism Act 2006 \(c. 11\), s. 23\(2\)](#) (with (12)); [S.I. 2006/1936, art. 2](#)
- F54** Words in Sch. 8 para. 29(3) substituted (25.7.2006) by [Terrorism Act 2006 \(c. 11\), s. 23\(3\)\(a\)](#) (with (12)); [S.I. 2006/1936, art. 2](#)
- F55** Words in Sch. 8 para. 29(3) substituted (25.7.2006) by [Terrorism Act 2006 \(c. 11\), s. 23\(3\)\(b\)](#) (with (12)); [S.I. 2006/1936, art. 2](#)
- F56** Sch. 8 para. 29(3A) inserted (25.7.2006) by [Terrorism Act 2006 \(c. 11\), s. 23\(4\)](#) (with (12)); [S.I. 2006/1936, art. 2](#)
- F57** Words in Sch. 8 para. 29(4)(a) repealed (1.4.2005) by [Courts Act 2003 \(c. 39\), s. 109\(1\)\(3\), Sch. 8 para. 391, Sch. 10; S.I. 2005/910, art. 3\(y\)\(bb\)](#)
- F58** Words in Sch. 8 para. 29(4)(a) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), s. 15\(1\), Sch. 4 para. 290\(2\)\(a\); S.I. 2006/1014, art. 2\(a\), Sch. 1 paras. 10, 11\(x\)](#)
- F59** Words in Sch. 8 para. 29(4)(a)(c) repealed (16.2.2009) by [Counter-Terrorism Act 2008 \(c. 28\), ss. 82\(2\), 99, 100\(5\), Sch. 9 Pt. 6 \(with s. 101\(2\)\); S.I. 2009/58, art. 2\(g\)](#)
- F60** Words in Sch. 8 para. 29(4)(c) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), s. 15\(1\), Sch. 4 para. 290\(2\)\(b\); S.I. 2006/1014, art. 2\(a\), Sch. 1 paras. 10, 11\(x\)](#)
- F61** Sch. 8 para. 29(5)(6) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), s. 15\(1\), Sch. 4 para. 290\(2\)\(c\); S.I. 2006/1014, art. 2\(a\), Sch. 1 paras. 10, 11\(x\)](#)

Time limit

- 30 (1) An application for a warrant shall be made—
- (a) during the period mentioned in section 41(3), or
 - (b) within six hours of the end of that period.
- (2) The judicial authority hearing an application made by virtue of sub-paragraph (1)(b) shall dismiss the application if he considers that it would have been reasonably practicable to make it during the period mentioned in section 41(3).
- (3) For the purposes of this Schedule, an application for a warrant is made when written or oral notice of an intention to make the application is given to a judicial authority.

Notice

- 31 An application for a warrant may not be heard unless the person to whom it relates has been given a notice stating—
- (a) that the application has been made,
 - (b) the time at which the application was made,
 - (c) the time at which it is to be heard, and

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- (d) the grounds upon which further detention is sought.

Grounds for extension

- 32 (1) A judicial authority may issue a warrant of further detention only if satisfied that—
- (a) there are reasonable grounds for believing that the further detention of the person to whom the application relates is necessary [^{F62}as mentioned in sub-paragraph (1A)] , and
 - (b) the investigation in connection with which the person is detained is being conducted diligently and expeditiously.
- [^{F63}(1A) The further detention of a person is necessary as mentioned in this sub-paragraph if it is necessary—
- (a) to obtain relevant evidence whether by questioning him or otherwise;
 - (b) to preserve relevant evidence; or
 - (c) pending the result of an examination or analysis of any relevant evidence or of anything the examination or analysis of which is to be or is being carried out with a view to obtaining relevant evidence.]
- (2) In [^{F64}this paragraph]“relevant evidence” means, in relation to the person to whom the application relates, evidence which—
- (a) relates to his commission of an offence under any of the provisions mentioned in section 40(1)(a), or
 - (b) indicates that he is a person falling within section 40(1)(b).

Textual Amendments

- F62** Words in Sch. 8 para. 32(1) substituted (25.7.2006) by [Terrorism Act 2006 \(c. 11\), s. 24\(2\)](#) (with (6)); [S.I. 2006/1936, art. 2](#)
- F63** Sch. 8 para. 32(1A) inserted (25.7.2006) by [Terrorism Act 2006 \(c. 11\), s. 24\(3\)](#) (with (6)); [S.I. 2006/1936, art. 2](#)
- F64** Words in Sch. 8 para. 32(2) substituted (25.7.2006) by [Terrorism Act 2006 \(c. 11\), s. 24\(5\)](#) (with (6)); [S.I. 2006/1936, art. 2](#)

Representation

- 33 (1) The person to whom an application relates shall—
- (a) be given an opportunity to make oral or written representations to the judicial authority about the application, and
 - (b) subject to sub-paragraph (3), be entitled to be legally represented at the hearing.
- (2) A judicial authority shall adjourn the hearing of an application to enable the person to whom the application relates to obtain legal representation where—
- (a) he is not legally represented,
 - (b) he is entitled to be legally represented, and
 - (c) he wishes to be so represented.
- (3) A judicial authority may exclude any of the following persons from any part of the hearing—
- (a) the person to whom the application relates;

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(b) anyone representing him.

[^{F65}(4) A judicial authority may, after giving an opportunity for representations to be made by or on behalf of the applicant and the person to whom the application relates, direct—

- (a) that the hearing of the application must be conducted, and
- (b) that all representations by or on behalf of a person for the purposes of the hearing must be made,

by such means (whether a live television link or other means) falling within sub-paragraph (5) as may be specified in the direction and not in the presence (apart from by those means) of the applicant, of the person to whom the application relates or of any legal representative of that person.

(5) A means of conducting the hearing and of making representations falls within this sub-paragraph if it allows the person to whom the application relates and any legal representative of his (without being present at the hearing and to the extent that they are not excluded from it under sub-paragraph (3))—

- (a) to see and hear the judicial authority and the making of representations to it by other persons; and
- (b) to be seen and heard by the judicial authority.

(6) If the person to whom the application relates wishes to make representations about whether a direction should be given under sub-paragraph (4), he must do so by using the facilities that will be used if the judicial authority decides to give a direction under that sub-paragraph.

(7) Sub-paragraph (2) applies to the hearing of representations about whether a direction should be given under sub-paragraph (4) in the case of any application as it applies to a hearing of the application.

(8) A judicial authority shall not give a direction under sub-paragraph (4) unless—

- (a) it has been notified by the Secretary of State that facilities are available at the place where the person to whom the application relates is held for the judicial authority to conduct a hearing by means falling within sub-paragraph (5); and
- (b) that notification has not been withdrawn.

(9) If in a case where it has power to do so a judicial authority decides not to give a direction under sub-paragraph (4), it shall state its reasons for not giving it.]

Textual Amendments

F65 Sch. 8 paras. 33(4)-(9) inserted (E.W.N.I.) (1.8.2001) by 2001 c. 16, s. 75; S.I. 2001/2223, art. 3(d)

Information

34 (1) The [^{F66}person] who has made an application for a warrant may apply to the judicial authority for an order that specified information upon which he intends to rely be withheld from—

- (a) the person to whom the application relates, and
- (b) anyone representing him.

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- (2) Subject to sub-paragraph (3), a judicial authority may make an order under sub-paragraph (1) in relation to specified information only if satisfied that there are reasonable grounds for believing that if the information were disclosed—
- (a) evidence of an offence under any of the provisions mentioned in section 40(1)(a) would be interfered with or harmed,
 - (b) the recovery of property obtained as a result of an offence under any of those provisions would be hindered,
 - (c) the recovery of property in respect of which a forfeiture order could be made under section 23 [^{F67}or 23A] would be hindered,
 - (d) the apprehension, prosecution or conviction of a person who is suspected of falling within section 40(1)(a) or (b) would be made more difficult as a result of his being alerted,
 - (e) the prevention of an act of terrorism would be made more difficult as a result of a person being alerted,
 - (f) the gathering of information about the commission, preparation or instigation of an act of terrorism would be interfered with, or
 - (g) a person would be interfered with or physically injured.
- ^{F68}(3) A judicial authority may also make an order under sub-paragraph (1) in relation to specified information if satisfied that there are reasonable grounds for believing that—
- (a) the detained person has benefited from his criminal conduct, and
 - (b) the recovery of the value of the property constituting the benefit would be hindered if the information were disclosed.
- (3A) For the purposes of sub-paragraph (3) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 2 or 3 of the Proceeds of Crime Act 2002.]
- (4) The judicial authority shall direct that the following be excluded from the hearing of the application under this paragraph—
- (a) the person to whom the application for a warrant relates, and
 - (b) anyone representing him.

Textual Amendments

- F66** Word in Sch. 8 para. 34(1) substituted (25.7.2006) by [Terrorism Act 2006 \(c. 11\), s. 23\(5\)](#); S.I. 2006/1936, [art. 2](#)
- F67** Words in Sch. 8 para. 34(2)(c) inserted (18.6.2009) by [Counter-Terrorism Act 2008 \(c. 28\), ss. 39, 100\(5\), Sch. 3 para. 6](#) (with [s. 101\(2\)](#)); S.I. 2009/1256, [art. 2\(c\)](#)
- F68** Sch. 8 para. 34(3)(3A) substituted for Sch. 8 para. 34(3) (24.3.2003 subject to certain provisions in the commencing instruments) by [2002 c. 29, s. 456, Sch. 11 para. 39\(5\)](#); S.I. 2003/333, [art. 2](#), Sch. (as amended by S.I. 2003/531); S.S.I. 2003/210, [art. 2](#), Sch.

Adjournments

- 35 (1) A judicial authority may adjourn the hearing of an application for a warrant only if the hearing is adjourned to a date before the expiry of the period mentioned in section 41(3).
- (2) This paragraph shall not apply to an adjournment under paragraph 33(2).

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Extensions of warrants

- 36 [F69](1) Each of the following—
- (a) in England and Wales, a Crown Prosecutor,
 - (b) in Scotland, the Lord Advocate or a procurator fiscal,
 - (c) in Northern Ireland, the Director of Public Prosecutions for Northern Ireland,
 - (d) in any part of the United Kingdom, a police officer of at least the rank of superintendent,
- may] apply F70 . . . for the extension or further extension of the period specified in a warrant of further detention.
- [F71(1A) The person to whom an application under sub-paragraph (1) may be made [F72 is a judicial authority]
- . . .
- F73(1B)]
- (2) Where the period specified is extended, the warrant shall be endorsed with a note stating the new specified period.
- [F74(3) Subject to sub-paragraph (3AA), the period by which the specified period is extended or further extended shall be the period which—
- (a) begins with the time specified in sub-paragraph (3A); and
 - (b) ends with whichever is the earlier of—
 - (i) the end of the period of seven days beginning with that time; and
 - (ii) the end of the period of [F75 14 days] beginning with the relevant time.
- (3A) The time referred to in sub-paragraph (3)(a) is—
- (a) in the case of a warrant specifying a period which has not previously been extended under this paragraph, the end of the period specified in the warrant, and
 - (b) in any other case, the end of the period for which the period specified in the warrant was last extended under this paragraph.
- (3AA) A judicial authority F76 . . . may extend or further extend the period specified in a warrant by a shorter period than is required by sub-paragraph (3) if—
- (a) the application for the extension is an application for an extension by a period that is shorter than is so required; or
 - (b) the judicial authority F76 . . . is satisfied that there are circumstances that would make it inappropriate for the period of the extension to be as long as the period so required.]

[F77(3B) In this paragraph “ the relevant time ”, in relation to a person, means—

 - (a) the time of his arrest under section 41, or
 - (b) if he was being detained under Schedule 7 when he was arrested under section 41, the time when his examination under that Schedule began.]

(4) Paragraphs 30(3) and 31 to 34 shall apply to an application under this paragraph as they apply to an application for a warrant of further detention F78 . . .

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(5) A judicial authority ^{F79}... may adjourn the hearing of an application under sub-paragraph (1) only if the hearing is adjourned to a date before the expiry of the period specified in the warrant.

(6) Sub-paragraph (5) shall not apply to an adjournment under paragraph 33(2).

^{F80}(7)

Textual Amendments

- F69** Words in Sch. 8 para. 36(1) substituted (25.7.2006) by [Terrorism Act 2006 \(c. 11\), s. 23\(2\)](#) (with (12)); [S.I. 2006/1936, art. 2](#)
- F70** Words in Sch. 8 para. 36(1) repealed (25.7.2006) by [Terrorism Act 2006 \(c. 11\)](#), ss. 23(6), 37, Sch. 3 (with s. 23(12)); [S.I. 2006/1936, art. 2](#)
- F71** Sch. 8 para. 36(1A)(1B) inserted (25.7.2006) by [Terrorism Act 2006 \(c. 11\), s. 23\(6\)](#) (with (12)); [S.I. 2006/1936, art. 2](#)
- F72** Words in Sch. 8 para. 36(1A) substituted (10.7.2012) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 9 para. 26\(2\)](#) (with s. 97); [S.I. 2012/1205, art. 4\(k\)\(l\)](#)
- F73** Sch. 8 para. 36(1B) repealed (10.7.2012) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 9 para. 26\(3\)\(a\), Sch. 10 Pt. 4](#) (with s. 97); [S.I. 2012/1205, art. 4\(k\)\(l\)](#)
- F74** Sch. 8 para. 36(3)-(3AA) substituted for Sch. 8 para. 36(3)(3A) (25.7.2006) by [Terrorism Act 2006 \(c. 11\), s. 23\(7\)](#) (with (12)); [S.I. 2006/1936, art. 2](#)
- F75** Words in Sch. 8 para. 36(3)(b)(ii) substituted (10.7.2012) by [Protection of Freedoms Act 2012 \(c. 9\), ss. 57\(1\), 120](#) (with s. 97); [S.I. 2012/1205, art. 4\(a\)](#)
- F76** Words in Sch. 8 para. 36(3AA) repealed (10.7.2012) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 9 para. 26\(3\)\(b\), Sch. 10 Pt. 4](#) (with s. 97); [S.I. 2012/1205, art. 4\(k\)\(l\)](#)
- F77** Sch. 8 para. 36(3A)(3B) inserted (20.1.2004) by [Criminal Justice Act 2003 \(c. 44\), s. 306\(4\)](#); [S.I. 2004/81, art. 2\(2\)](#) (with art. 2(8))
- F78** Words in Sch. 8 para. 36(4) repealed (10.7.2012) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 9 para. 26\(3\)\(c\), Sch. 10 Pt. 4](#) (with s. 97); [S.I. 2012/1205, art. 4\(k\)\(l\)](#)
- F79** Words in Sch. 8 para. 36(5) repealed (10.7.2012) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 9 para. 26\(3\)\(d\), Sch. 10 Pt. 4](#) (with s. 97); [S.I. 2012/1205, art. 4\(k\)\(l\)](#)
- F80** Sch. 8 para. 36(7) repealed (10.7.2012) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 9 para. 26\(3\)\(e\), Sch. 10 Pt. 4](#) (with s. 97); [S.I. 2012/1205, art. 4\(k\)\(l\)](#)

Modifications etc. (not altering text)

- C17** S. 36 extended (E.W.) (2.12.2002) by [2002 c. 30, s. 38, Sch. 4 Pt. 1 para. 14](#); [S.I. 2002/2750, art. 2\(a\)\(ii\)\(d\)](#)

Detention - conditions

[^{F81}37 (1) This paragraph applies where—

- (a) a person (“the detained person”) is detained by virtue of a warrant issued under this Part of this Schedule; and
- (b) his detention is not authorised by virtue of section 41(5) or (6) or otherwise apart from the warrant.

(2) If it at any time appears to the police officer or other person in charge of the detained person's case that any of the matters mentioned in paragraph 32(1)(a) and (b) on which the judicial authority ^{F82}... last authorised his further detention no longer apply, he must—

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- (a) if he has custody of the detained person, release him immediately; and
 - (b) if he does not, immediately inform the person who does have custody of the detained person that those matters no longer apply in the detained person's case.
- (3) A person with custody of the detained person who is informed in accordance with this paragraph that those matters no longer apply in his case must release that person immediately.]

Textual Amendments

- F81** Sch. 8 para. 37 substituted (25.7.2006) by [Terrorism Act 2006 \(c. 11\)](#), s. 23(11) (with (12)); S.I. 2006/1936, art. 2
- F82** Words in Sch. 8 para. 37(2) repealed (10.7.2012) by [Protection of Freedoms Act 2012 \(c. 9\)](#), s. 120, Sch. 9 para. 26(4), [Sch. 10 Pt. 4](#) (with s. 97); S.I. 2012/1205, art. 4(k)(l)

[^{F83}PART 4

EMERGENCY POWER WHEN PARLIAMENT DISSOLVED ETC. FOR TEMPORARY EXTENSION OF MAXIMUM PERIOD FOR DETENTION UNDER SECTION 41

Textual Amendments

- F83** Sch. 8 Pt. 4 inserted (10.7.2012) by [Protection of Freedoms Act 2012 \(c. 9\)](#), ss. 58(1), 120 (with s. 97); S.I. 2012/1205, art. 4(b)

- 38 (1) The Secretary of State may make a temporary extension order if—
- (a) either—
 - (i) Parliament is dissolved, or
 - (ii) Parliament has met after a dissolution but the first Queen's Speech of the Parliament has not yet taken place, and
 - (b) the Secretary of State considers that it is necessary by reason of urgency to make such an order.
- (2) A temporary extension order is an order which provides, in relation to the period of three months beginning with the coming into force of the order, for paragraphs 36 and 37 to be read as if—
- (a) in paragraph 36(3)(b)(ii) for “14 days” there were substituted “28 days”, and
 - (b) the other modifications in sub-paragraphs (3) and (4) were made.
- (3) The other modifications of paragraph 36 are—
- (a) the insertion at the beginning of sub-paragraph (1) of “Subject to sub-paragraphs (1ZA) to (1ZI),”
 - (b) the insertion, after sub-paragraph (1), of—

“(1ZA) Sub-paragraph (1ZB) applies in relation to any proposed application under sub-paragraph (1) for the further extension of the period specified in a warrant of further detention where the grant (otherwise than in accordance with sub-paragraph (3AA)(b)) of the application

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Changes to legislation: Terrorism Act 2000, SCHEDULE 8 is up to date with all changes known to be in force on or before 26 June 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)

would extend the specified period to a time that is more than 14 days after the relevant time.

- (1ZB) No person may make such an application—
- (a) in England and Wales, without the consent of the Director of Public Prosecutions,
 - (b) in Scotland, without the consent of the Lord Advocate, and
 - (c) in Northern Ireland, without the consent of the Director of Public Prosecutions for Northern Ireland,

unless the person making the application is the person whose consent is required.

- (1ZC) The Director of Public Prosecutions must exercise personally any function under sub-paragraph (1ZB) of giving consent.

- (1ZD) The only exception is if—

- (a) the Director is unavailable, and
- (b) there is another person who is designated in writing by the Director acting personally as the person who is authorised to exercise any such function when the Director is unavailable.

- (1ZE) In that case—

- (a) the other person may exercise the function but must do so personally, and
- (b) the Director acting personally—
 - (i) must review the exercise of the function as soon as practicable, and
 - (ii) may revoke any consent given.

- (1ZF) Where the consent is so revoked after an application has been made or extension granted, the application is to be dismissed or (as the case may be) the extension is to be revoked.

- (1ZG) Sub-paragraphs (1ZC) to (1ZF) apply instead of any other provisions which would otherwise have enabled any function of the Director of Public Prosecutions under sub-paragraph (1ZB) of giving consent to be exercised by a person other than the Director.

- (1ZH) The Director of Public Prosecutions for Northern Ireland must exercise personally any function under sub-paragraph (1ZB) of giving consent unless the function is exercised personally by the Deputy Director of Public Prosecutions for Northern Ireland by virtue of section 30(4) or (7) of the Justice (Northern Ireland) Act 2002 (powers of Deputy Director to exercise functions of Director).

- (1ZI) Sub-paragraph (1ZH) applies instead of section 36 of the Act of 2002 (delegation of the functions of the Director of Public Prosecutions for Northern Ireland to persons other than the Deputy Director) in relation to the functions of the Director of Public Prosecutions for Northern Ireland and the Deputy Director of Public Prosecutions for Northern Ireland under, or (as the case may be) by virtue of, sub-paragraph (1ZB) above of giving consent.”,

- (c) the substitution, for “a judicial authority” in sub-paragraph (1A), of “—

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- “(a) in the case of an application falling within sub-paragraph (1B), a judicial authority; and
 - (b) in any other case, a senior judge”;
 - (d) the insertion, after sub-paragraph (1A), of—
 - “(1B) An application for the extension or further extension of a period falls within this sub-paragraph if—
 - (a) the grant of the application otherwise than in accordance with sub-paragraph (3AA)(b) would extend that period to a time that is no more than 14 days after the relevant time; and
 - (b) no application has previously been made to a senior judge in respect of that period.”;
 - (e) the insertion, after “judicial authority” in both places in sub-paragraph (3AA) where it appears, of “or senior judge”;
 - (f) the insertion, after “detention” in sub-paragraph (4), of
 - “but, in relation to an application made by virtue of sub-paragraph (1A)(b) to a senior judge, as if—
 - (a) references to a judicial authority were references to a senior judge; and
 - (b) references to the judicial authority in question were references to the senior judge in question”;
 - (g) the insertion, after “judicial authority” in sub-paragraph (5), of “or senior judge”, and
 - (h) the insertion, after sub-paragraph (6), of—
 - “(7) In this paragraph and paragraph 37 “senior judge” means a judge of the High Court or of the High Court of Justiciary.”
- (4) The modification of paragraph 37 is the insertion, in sub-paragraph (2), after “judicial authority”, of “or senior judge”.
- (5) A temporary extension order applies, except so far as it provides otherwise, to any person who is being detained under section 41 when the order comes into force (as well as any person who is subsequently detained under that section).
- (6) The Secretary of State may by order revoke a temporary extension order if the Secretary of State considers it appropriate to do so (whether or not the conditions mentioned in paragraphs (a) and (b) of sub-paragraph (1) are met).
- (7) Sub-paragraph (8) applies if—
 - (a) any of the following events occurs—
 - (i) the revocation without replacement of a temporary extension order,
 - (ii) the expiry of the period of three months mentioned in sub-paragraph (2) in relation to such an order,
 - (iii) the ceasing to have effect of such an order by virtue of section 123(6B) and (6C), and
 - (b) at that time—
 - (i) a person is being detained by virtue of a further extension under paragraph 36,
 - (ii) the person's further detention was authorised by virtue of the temporary extension order concerned (before its revocation, expiry

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or ceasing to have effect) for a period ending more than 14 days after the relevant time (within the meaning given by paragraph 36(3B)),
(iii) that 14 days has expired, and
(iv) the person's detention is not otherwise authorised by law.

(8) The person with custody of that individual must release the individual immediately.

(9) Subject to sub-paragraphs (7) and (8), the fact that—

- (a) a temporary extension order is revoked,
 - (b) the period of three months mentioned in sub-paragraph (2) has expired in relation to such an order, or
 - (c) such an order ceases to have effect by virtue of section 123(6B) and (6C),
- is without prejudice to anything previously done by virtue of the order or to the making of a new order.]

Status:

Point in time view as at 31/01/2017.

Changes to legislation:

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