

*Changes to legislation: Terrorism Act 2000, Paragraph 20G is up to date with all changes known to be in force on or before 20 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) View outstanding changes*

## SCHEDULES

### SCHEDULE 8 **U.K.**

#### DETENTION

##### Modifications etc. (not altering text)

- C1** 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](#)
- 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\(7\)\(b\)\(ii\)\(iii\)](#))

### PART I **U.K.**

#### TREATMENT OF PERSONS DETAINED UNDER SECTION 41 [<sup>F1</sup>OR 43B] OR SCHEDULE 7

##### Textual Amendments

- F1** Words in Sch. 8 Pt. 1 heading inserted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\), ss. 184\(2\)\(b\), 208\(5\)\(w\)](#)

*<sup>F1</sup>Destruction and retention of fingerprints and samples etc: United Kingdom*

##### Textual Amendments

- F1** 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\(b\)](#)

- 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.

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- (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
  - (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.

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(14) Nothing in this paragraph prevents a relevant search, in relation to samples to which this paragraph applies, from being carried out within such time as may reasonably be required for the search if the responsible chief officer of police considers the search to be desirable.

(15) In this paragraph—

“ancillary offence”, in relation to an offence for the time being listed in section 41(1) of the Counter-Terrorism Act 2008, means—

- (a) aiding, abetting, counselling or procuring the commission of the offence, or
- (b) inciting, attempting or conspiring to commit the offence;

“qualifying offence”—

- (a) in relation to the investigation of an offence committed in England and Wales, has the meaning given by section 65A of the Police and Criminal Evidence Act 1984,
- (b) in relation to the investigation of an offence committed in Scotland, means a relevant offence, an offence for the time being listed in section 41(1) of the Counter-Terrorism Act 2008 or an ancillary offence to an offence so listed, and
- (c) in relation to the investigation of an offence committed in Northern Ireland, has the meaning given by Article 53A of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

“relevant court” means—

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

“relevant offence” has the same meaning as in section 19A of the Criminal Procedure (Scotland) Act 1995;

“a relevant search” has the meaning given by paragraph 20A(6).]

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**Changes and effects yet to be applied to :**

- Sch. 8 para. 20A-20I inserted by [2010 c. 17 s. 18\(3\)](#) (This amendment not applied to [legislation.gov.uk](#). Ss. 16-19 repealed (31.10.2013) without ever being in force by 2012 c. 9, Sch. 9 para. 4(2), Sch. 10 Pt. 1; S.I. 2013/2104, art. 3(c)(d))

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 4 para. 11(1)(aa) inserted by [2003 c. 44 Sch. 36 para. 14\(2\)](#)
- Sch. 4 para. 11(2A) inserted by [2003 c. 44 Sch. 36 para. 14\(3\)](#)
- Sch. 4 para. 11(1)(aa) words substituted by [2015 c. 2 Sch. 11 para. 17\(2\)](#)
- Sch. 4 para. 11(2A) words substituted by [2015 c. 2 Sch. 11 para. 17\(3\)](#)
- Sch. 8 para. 14(2A) inserted by [2008 c. 28 s. 16\(3\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 16 repealed (31.10.2013) by 2012 c. 9, Sch. 10 Pt. 1; S.I. 2013/2104, art. 3(d))
- Sch. 8 para. 14(4)(ba) inserted by [2008 c. 28 s. 16\(5\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 16 repealed (31.10.2013) by 2012 c. 9, Sch. 10 Pt. 1; S.I. 2013/2104, art. 3(d))
- Sch. 8 para. 15(1)(aa)(ab) inserted by [2010 c. 17 s. 17\(4\)\(b\)](#) (This amendment not applied to [legislation.gov.uk](#). Ss. 16-19 repealed (31.10.2013) without ever being in force by 2012 c. 9, Sch. 9 para. 4(2), Sch. 10 Pt. 1; S.I. 2013/2104, art. 3(c)(d))
- Sch. 8 para. 15(2A) inserted by [2010 c. 17 s. 17\(7\)](#) (This amendment not applied to [legislation.gov.uk](#). Ss. 16-19 repealed (31.10.2013) without ever being in force by 2012 c. 9, Sch. 9 para. 4(2), Sch. 10 Pt. 1; S.I. 2013/2104, art. 3(c)(d))
- Sch. 8 para. 15(4) inserted by [2010 c. 17 s. 17\(8\)](#) (This amendment not applied to [legislation.gov.uk](#). Ss. 16-19 repealed (31.10.2013) without ever being in force by 2012 c. 9, Sch. 9 para. 4(2), Sch. 10 Pt. 1; S.I. 2013/2104, art. 3(c)(d))
- Sch. 8 para. 14F(3)(b) and word omitted by [2012 c. 10 Sch. 24 para. 22](#) (This amendment not applied to [legislation.gov.uk](#). The substitution of Sch. 8 para. 14F was repealed (31.10.2013) without ever being in force by 2012 c. 9, Sch. 9 para. 4(2), Sch. 10 Pt. 1; S.I. 2013/2104, art. 3(c)(d))
- Sch. 8 para. 14-14I substituted for Sch. 8 para. 14 by [2010 c. 17 s. 17\(2\)](#) (This amendment not applied to [legislation.gov.uk](#). Ss. 16-19 repealed (31.10.2013) without ever being in force by 2012 c. 9, Sch. 9 para. 4(2), Sch. 10 Pt. 1; S.I. 2013/2104, art. 3(c)(d))
- Sch. 8 para. 20(3)-(3C) substituted for Sch. 8 para. 20(3) by [2010 c. 17 s. 18\(2\)\(a\)](#) (This amendment not applied to [legislation.gov.uk](#). Ss. 16-19 repealed (31.10.2013) without ever being in force by 2012 c. 9, Sch. 9 para. 4(2), Sch. 10 Pt. 1; S.I. 2013/2104, art. 3(c)(d))
- Sch. 8 para. 20F(3) words omitted by [2012 c. 10 Sch. 24 para. 23](#) (This amendment not applied to [legislation.gov.uk](#). The insertion of Sch. 8 para. 20F was repealed (31.10.2013) without ever being in force by 2012 c. 9, Sch. 9 para. 4(2), Sch. 10 Pt. 1; S.I. 2013/2104, art. 3(c)(d))