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SCHEDULES

SCHEDULE 8

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\(7\)\(b\)\(i\)](#))
- 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](#)

[^{F1}PART 4

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

Textual Amendments

- F1** 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—

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“(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 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

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- 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 “—
“*(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—

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- (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 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.]

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