

## SCHEDULES

### SCHEDULE 8

#### DETENTION

##### PART I

###### TREATMENT OF PERSONS DETAINED UNDER SECTION 41 OR SCHEDULE 7

###### *Rights: England, Wales and Northern Ireland*

- 6 (1) Subject to paragraph 8, a person detained under Schedule 7 or section 41 at a police station 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 police station to another, he shall be entitled to exercise the right under this paragraph in respect of the police station to which he is transferred.
- 7 (1) Subject to paragraphs 8 and 9, a person detained under Schedule 7 or section 41 at a police station 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.
- 8 (1) Subject to sub-paragraph (2), an 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—

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- (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
  - (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 serious arrestable offence,
  - (b) interference with or physical injury to any person,
  - (c) the alerting of persons who are suspected of having committed a serious arrestable offence but who have not been arrested for it,
  - (d) the hindering of the recovery of property obtained as a result of a serious arrestable offence or in respect of which a forfeiture order could be made under section 23,
  - (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.
- (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 committed an offence to which Part VI of the Criminal Justice Act 1988, Part I of the Proceeds of Crime (Scotland) Act 1995, or the Proceeds of Crime (Northern Ireland) Order 1996 (confiscation of the proceeds of an offence) applies,
  - (b) the detained person has benefited from the offence within the meaning of that Part or Order, and
  - (c) by informing the named person of the detained person's detention (in the case of an authorisation under sub-paragraph (1)(a)), or by the exercise of the right under paragraph 7 (in the case of an authorisation under sub-paragraph (1)(b)), the recovery of the value of that benefit will be hindered.
- (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) In this paragraph "serious arrestable offence" has the meaning given by section 116 of the Police and Criminal Evidence Act 1984 (in relation to England and Wales) and by Article 87 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (in relation to Northern Ireland); but it also includes—

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- (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).
- 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 at a police station in England or Wales, by an officer of at least the rank of Commander or Assistant Chief Constable, or
  - (b) where the person is detained at a police station in Northern Ireland, by an officer of at least the rank of Assistant Chief Constable.
- (3) A direction under this paragraph may be given only if the officer giving it has reasonable grounds for believing 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 the consequence specified in paragraph 8(5)(c).
- (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.
- 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—
  - (a) with the appropriate consent given in writing, or
  - (b) 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—
  - (a) with the appropriate consent given in writing, or
  - (b) 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—
  - (a) 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
  - (b) 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 the detained person only if—
  - (a) he is detained at a police station,

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- (b) the appropriate consent is given in writing,
  - (c) a police officer of at least the rank of superintendent authorises the sample to be taken, and
  - (d) subject to paragraph 13(2) and (3), the sample is taken by a constable.
- (6) An officer may give an authorisation under sub-paragraph (4)(a) or (5)(c) only if—
- (a) 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
  - (b) in any case, 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).
- (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.
- 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 paragraph 14(4), section 63A(1) of the Police and Criminal Evidence Act 1984 and Article 63A(1) of the 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—
- (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.
- 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,

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- (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 long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.
- 14 (1) This paragraph applies to—
  - (a) fingerprints or samples taken under paragraph 10 or 12, and
  - (b) information derived from those samples.
- (2) The fingerprints, samples or information may be used only for the purpose of a terrorist investigation.
- (3) In particular, a check may not be made against them under—
  - (a) section 63A(1) of the Police and Criminal Evidence Act 1984 (checking of fingerprints and samples), or
  - (b) Article 63A(1) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (checking of fingerprints and samples),except for the purpose of a terrorist investigation.
- (4) The fingerprints, samples or information may be checked, subject to sub-paragraph (2), against—
  - (a) other fingerprints or samples taken under paragraph 10 or 12 or information derived from those samples,
  - (b) relevant physical data or samples taken by virtue of paragraph 20,
  - (c) 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),

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- (d) 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), and
  - (e) fingerprints or samples taken under section 15(9) of, or paragraph 7(5) of Schedule 5 to, the Prevention of Terrorism (Temporary Provisions) Act 1989 or information derived from those samples.
- (5) This paragraph (other than sub-paragraph (4)) shall apply to fingerprints or samples taken under section 15(9) of, or paragraph 7(5) of Schedule 5 to, the Prevention of Terrorism (Temporary Provisions) Act 1989 and information derived from those samples as it applies to fingerprints or samples taken under paragraph 10 or 12 and the information derived from those samples.
- 15 (1) In the application of paragraphs 10 to 14 in relation to a person detained in England or Wales the following expressions shall have the meaning given by section 65 of the 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”.
- (2) In the application of paragraphs 10 to 14 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 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 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 Police and Criminal Evidence (Northern Ireland) Order 1989 (definitions).