

Status: Point in time view as at 13/08/2020.

Changes to legislation: Terrorism Act 2000, Cross Heading: Rights: Scotland is up to date with all changes known to be in force on or before 02 July 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

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](#)

PART I

TREATMENT OF PERSONS DETAINED UNDER SECTION 41 OR SCHEDULE 7

Rights: Scotland

- 16 (1) A person detained under Schedule 7 or section 41 at a ^[F1]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 ^[F2]place to another, he shall be entitled to exercise the right under sub-paragraph (1) in respect of the ^[F2]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 ^[F3]as mentioned in sub-paragraph (1) shall be entitled to consult a solicitor at any time, without delay.

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- (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) ^{F4}... 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.
- [^{F5}(10) A detained person must be informed of the rights under sub-paragraphs (1) and (6) on first being detained.]

Textual Amendments

- F1** 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)
- F2** 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)
- F3** 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)
- F4** Words in Sch. 8 para. 16(8) omitted (13.8.2020) by virtue of [Counter-Terrorism and Border Security Act 2019 \(c. 3\), ss. 17\(5\)\(a\), 27\(2\)\(a\)](#); S.I. 2020/792, reg. 2(b)
- F5** Sch. 8 para. 16(10) inserted (13.8.2020) by [Counter-Terrorism and Border Security Act 2019 \(c. 3\), ss. 17\(5\)\(b\), 27\(2\)\(a\)](#); S.I. 2020/792, reg. 2(b)

Modifications etc. (not altering text)

- C1** 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\(8\)](#)

- [^{F6}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.]

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Textual Amendments

F6 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 ^{F7}(1) This paragraph applies where a detained person exercises the right under paragraph 16(6) to consult a solicitor.
- (2) A police officer not below the rank of superintendent may, if it appears to the officer to be necessary on one of the grounds mentioned in sub-paragraph (3), direct that the right—
- (a) may not be exercised (or further exercised) by consulting the solicitor who attends for the purpose of the consultation or who would so attend but for the giving of the direction, but
- (b) may instead be exercised by consulting a different solicitor of the detained person's choosing.
- (2A) A direction under this paragraph may be given before or after a detained person's consultation with a solicitor has started (and if given after it has started the right to further consult that solicitor ceases on the giving of the direction).]
- (3) The grounds mentioned in paragraph 16(4) and (7) and in sub-paragraph ^{F8}(2)] 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 ^{F9}or 23A];
- (d) that it will further the operation of ^{F10}Part 2 or 3 of the Proceeds of Crime Act 2002] or the ^{M1}Proceeds of Crime (Northern Ireland) Order 1996 (confiscation of the proceeds of an offence).
- ^{F11}(4) 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
- (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

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- (c) the reason shall be recorded as soon as is reasonably practicable.

Textual Amendments

- F7** Sch. 8 para. 17(1)-(2A) substituted for Sch. 8 para. 17(1)(2) (13.8.2020) by Counter-Terrorism and Border Security Act 2019 (c. 3), ss. 17(6)(a), 27(2)(a); S.I. 2020/792, reg. 2(b)
- F8** Word in Sch. 8 para. 17(3) substituted (13.8.2020) by Counter-Terrorism and Border Security Act 2019 (c. 3), ss. 17(6)(b), 27(2)(a); S.I. 2020/792, reg. 2(b)
- F9** 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)
- F10** 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.
- F11** 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)

- C2** 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** S.I. 1996/1299 (N.I.9).

- 18 (1) Paragraphs 16 ^[F12]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 ^[F13]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,
- ^[F14](ab) intimation is to be made under paragraph 16(1) whether the person detained requests that it be made or not, and
- (ac) section 40 (right of under 18s to have access to other person) of the Criminal Justice (Scotland) Act 2016 applies as if the detained person were a person in police custody for the purposes of that section.]
- ^[F15](3) In relation to a person detained under Schedule 7 at a place other than a police station—
- (a) sub-paragraph (2), and
- (b) ^[F16]section 40 of the Criminal Justice (Scotland) Act 2016] as applied by that sub-paragraph,
- apply as if references to a constable included an examining officer.]
- ^[F17](4) For the purposes of sub-paragraph (2)—
- “child” means a person under 16 years of age,
- “parent” includes guardian and any person who has the care of the child mentioned in sub-paragraph (2).]

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Textual Amendments

- F12** 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)
- F13** 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)
- F14** Sch. 8 para. 18(2)(ab)(ac) substituted for words in Sch. 8 para. 18(2) (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 37\(a\)\(i\)](#); S.S.I. 2017/345, art. 3, [sch.](#) (with art. 4) (which affecting provision is extended to E.W.N.I. by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), arts. 2(1)(d), [18](#))
- F15** 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)
- F16** Words in Sch. 8 para. 18(3)(b) substituted (S.) (25.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential and Supplementary Modifications\) Regulations 2017 \(S.S.I. 2017/452\)](#), reg. 1, [sch. para. 13](#) (with reg. 2(2))
- F17** Sch. 8 para. 18(4) inserted (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), s. 117(2), [sch. 2 para. 37\(a\)\(ii\)](#); S.S.I. 2017/345, art. 3, [sch.](#) (with art. 4) (which affecting provision is extended to E.W.N.I. by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), arts. 2(1)(d), [18](#))

Modifications etc. (not altering text)

- C3** 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\(8\)](#)

- 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)

- 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\(8\)](#)

- 20 (1) Subject to the modifications specified in sub-paragraphs (2) and (3), section 18 of the ^{M2}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 ^{F18}....
- [^{F19}(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 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).

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(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.’]

[^{F20}(3) Subsections (3) to (5) shall not apply, ^{F21} ...

^{F22}(4)]

Textual Amendments

- F18** Words in Sch. 8 para. 20(1) repealed (25.1.2018) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\), s. 117\(2\), sch. 2 para. 37\(b\)](#); S.S.I. 2017/345, art. 3, [sch.](#) (with art. 4) (which affecting provision is extended to E.W. N.I. by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\), arts. 2\(1\)\(d\), 18](#))
- F19** Sch. 8 para. 20(2)-(2B) substituted for Sch. 8 para. 20(2) (14.12.2001) by [2001 c. 24, s. 89\(3\)](#)
- F20** Sch. 8 para. 20(3)(4) substituted for Sch. 8 para. 20(3) (14.12.2001) by [2001 c. 24, s. 89\(4\)](#)
- F21** 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)
- F22** 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

- M2** [1995 c. 46.](#)

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