

SCHEDULES

SCHEDULE 3

Section 34.

DETENTION OF TERRORISTS

Advisers

- 1 The Secretary of State shall for the purposes of this Schedule appoint such number of Advisers as he may determine to advise him on matters concerning the detention and release of terrorists.
- 2 An Adviser shall be a person who holds or has held judicial office in any part of the United Kingdom or who is—
 - (a) a person who has a ten year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990; or
 - (b) an advocate or solicitor in Scotland of at least ten years' standing; or
 - (c) a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least ten years' standing.
- 3 (1) An Adviser shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for reappointment.
(2) An Adviser may at any time by notice in writing to the Secretary of State resign his office.
(3) The Secretary of State may pay to the Advisers such remuneration and allowances as he may determine.

Interim custody orders

- 4 (1) Where it appears to the Secretary of State that there are grounds for suspecting that a person has been concerned—
 - (a) in the commission or attempted commission of any act of terrorism; or
 - (b) in directing, organising or training persons for the purpose of terrorism,the Secretary of State may make an interim custody order for the temporary detention of that person.
(2) An interim custody order shall be signed by the Secretary of State or a Minister of State or Under Secretary of State.
- 5 (1) The Secretary of State may, at any time before the expiration of the period of fourteen days following the date of an interim custody order, refer the case to an Adviser and, unless the case is so referred, the order shall cease to have effect at the expiration of that period.
(2) A reference to an Adviser under this paragraph shall be by notice in writing signed on behalf of the Secretary of State and a copy of the notice shall be sent to the person detained.

Reference to an Adviser

- 6 (1) As soon as possible after a case is referred to an Adviser under paragraph 5 above, the person detained shall be served with a statement in writing as to the nature of the terrorist activities of which he is suspected.
- (2) A person detained may, within seven days following the date on which he receives any such statement as is mentioned in sub-paragraph (1) above, send to the Secretary of State—
- (a) written representations concerning his case; and
 - (b) a written request that he be seen personally by an Adviser;
- and the Secretary of State shall send a copy of such representations or request to the Adviser concerned.
- (3) The Secretary of State may pay any reasonable costs or expenses incurred by a person detained in obtaining legal advice or legal assistance in connection with the preparation of any representations he may make concerning his case.
- 7 (1) Where the case of a person detained under an interim custody order is referred to an Adviser, he shall consider it and report to the Secretary of State whether or not in his opinion—
- (a) the person detained has been concerned in terrorist activities; and
 - (b) the detention of that person is necessary for the protection of the public.
- (2) In considering any case referred to him an Adviser shall have regard to any information (whether oral or in writing) which is made available to, or obtained by, him and to any representations (whether oral or in writing) made by the person detained.
- (3) No person shall be present during the consideration by an Adviser of the case of any person referred to him, except—
- (a) any person who for the time being is being seen by the Adviser;
 - (b) any assistant to the Adviser; and
 - (c) any person who is present in the interests of security.
- (4) The Secretary of State may, at the request of an Adviser, pay any reasonable expenses incurred by any person in connection with a reference to the Adviser.

Detention orders

- 8 (1) After receiving a report made by an Adviser under paragraph 7(1) above, the Secretary of State shall consider the case of the person to whom it relates and, if he is satisfied—
- (a) that the person has been concerned in the commission or attempted commission of any act of terrorism, or in directing, organising or training persons for the purpose of terrorism, and
 - (b) that the detention of that person is necessary for the protection of the public,
- the Secretary of State may make a detention order for the detention of that person.
- (2) If, on considering any case under sub-paragraph (1) above, the Secretary of State is not satisfied as mentioned in that sub-paragraph, he shall direct the release of the person concerned.
- (3) Subject to sub-paragraphs (4) and (5) below, where—

Status: This is the original version (as it was originally enacted).

- (a) a person is detained under an interim custody order; and
 - (b) a detention order is not made in respect of that person within the period of seven weeks following the date of the interim custody order,
- the interim custody order shall cease to have effect.
- (4) The Secretary of State may, where a person is required to be detained under an interim custody order, give a direction in writing extending the period of seven weeks mentioned in sub-paragraph (3) above (or that period as extended under this sub-paragraph) for a further period of one week if it is stated in the direction that the report of the Adviser in relation to that person's case has not been received before the sixth day immediately preceding the day on which the interim custody order would, but for the direction, cease to have effect.
 - (5) Not more than three directions under sub-paragraph (4) above shall be given in respect of any one interim custody order.
 - (6) A detention order shall be signed by the Secretary of State, and a direction under sub-paragraph (4) above shall be signed by the Secretary of State or a Minister of State or Under Secretary of State.

Supplemental

- 9 (1) The Secretary of State may at any time refer the case of a person detained under a detention order to an Adviser and, if so requested in writing in accordance with sub-paragraph (2) below by a person so detained, shall do so within fourteen days beginning with the receipt of the request.
- (2) A person detained under a detention order shall not be entitled to make a request for the purposes of sub-paragraph (1) above—
 - (a) before the expiration of the period of one year beginning with the date of the detention order; or
 - (b) within a period of six months from the date of the last notification under sub-paragraph (5) below.
- (3) On any reference under this paragraph, an Adviser shall consider the case and report to the Secretary of State whether or not the person's continued detention is necessary for the protection of the public.
- (4) Paragraphs 6(3) and 7(2) to (4) above shall apply for the purposes of a reference under this paragraph as they apply for the purposes of a reference under paragraph 5 above.
- (5) Where a case is referred to an Adviser in consequence of a request made in accordance with this paragraph, the Secretary of State shall, after receiving the report of the Adviser, reconsider the case of the person to whom it relates and, if he decides not to release that person, shall notify him of his decision.
- (6) A notification under sub-paragraph (5) above shall be by notice in writing and signed by the Secretary of State.
- 10 (1) The Secretary of State may, as respects a person detained under an interim custody order—
 - (a) direct his discharge unconditionally; or
 - (b) direct his release (whether or not subject to conditions) for a specified period.

Status: This is the original version (as it was originally enacted).

- (2) The Secretary of State may, as respects a person detained under a detention order—
- (a) direct his discharge unconditionally; or
 - (b) direct his release subject to conditions or for a specified period, or both.
- (3) The Secretary of State may recall to detention a person released under sub-paragraph (1)(b) or (2)(b) above and a person so recalled may be detained under the original interim custody or detention order, as the case may be.
- (4) Where a person is released under sub-paragraph (1)(b) above, any period during which he is not in detention shall be left out of account for the purposes of paragraphs 5(1), 6(2) and 8(3) above.
- 11 (1) A person required to be detained under an interim custody order or a detention order may be detained in a prison or in some other place approved for the purposes of this paragraph by the Secretary of State.
- (2) A person for the time being having custody of a person required to be detained as aforesaid shall have all the powers, authorities, protection and privileges of a constable.
- (3) Subject to any directions of the Secretary of State, a person required to be detained as aforesaid shall be treated as nearly as may be as if he were a prisoner detained in a prison on remand and any power of temporary removal for judicial, medical or other purposes shall apply accordingly.
- (4) A person required to be detained as aforesaid who is unlawfully at large may be arrested without warrant by any constable or any member of Her Majesty's forces on duty.
- 12 Where a person required to be detained under an interim custody order is unlawfully at large, the interim custody order shall not cease to have effect under paragraph 5 or 8 above while he remains at large; and, upon his being taken again into custody, those paragraphs shall have effect as if the date of the interim custody order were that of his being taken again into custody.
- 13 Any person who—
- (a) being detained under an interim custody order or detention order, escapes;
 - (b) rescues any person detained as aforesaid, or assists a person so detained in escaping or attempting to escape;
 - (c) fails to return to detention at the expiration of a period for which he was released under paragraph 10(1)(b) or (2)(b) above; or
 - (d) knowingly harbours any person required to be detained under an interim custody order or detention order, or gives him any assistance with intent to prevent, hinder or interfere with his being taken into custody,
- is guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding five years or a fine or both.
- 14 (1) Any document purporting to be an order, notice or direction made or given by the Secretary of State for the purposes of this Schedule and to be signed in accordance with this Schedule shall be received in evidence and shall, until the contrary is proved, be deemed to be duly made or given and signed.
- (2) Prima facie evidence of any such order, notice or direction may, in any legal proceedings, be given by the production of a document bearing a certificate purporting to be signed by or on behalf of the Secretary of State stating that the

document is a true copy of the order, notice or direction; and the certificate shall be received in evidence, and shall, until the contrary is proved, be deemed to be duly made and signed.

- 15 The Secretary of State may make such payments to persons released or about to be released from detention under this Schedule as he may, with the consent of the Treasury, determine.