

*Status: Point in time view as at 18/06/2009.*

*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 28 March 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 police station 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 friend of the detained person,
  - a relative, or
  - 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 sub-paragraph (1) in respect of the police station 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—
- made, and
  - complied with.
- (6) A person detained 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) Subject to paragraph 17, 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.

**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\(8\)](#)

- 17
- (1) An officer not below the rank of Assistant Chief Constable may direct that the consultation mentioned in paragraph 16(6) shall be in the presence of a uniformed officer not below the rank of inspector if it appears to the officer giving the direction to be necessary on one of the grounds mentioned in sub-paragraph (3).
  - (2) A uniformed officer directed to be present during a consultation shall be an officer who, in the opinion of the officer giving the direction, has no connection with the case.
  - (3) The grounds mentioned in paragraph 16(4) and (7) and in sub-paragraph (1) 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 <sup>[F1]</sup>or 23A];
    - (d) that it will further the operation of <sup>[F2]</sup>Part 2 or 3 of the Proceeds of Crime Act 2002] or the <sup>M1</sup>Proceeds of Crime (Northern Ireland) Order 1996 (confiscation of the proceeds of an offence).
  - <sup>[F3]</sup>(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)—

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

#### Textual Amendments

- F1** 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\(c\)](#)
- F2** 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.](#)
- F3** [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 and 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 police station 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, and
  - (b) section 15(4) of the <sup>M2</sup>Criminal Procedure (Scotland) Act 1995 shall apply to the person detained as it applies to a person who appears to a constable to be a child who is being detained as mentioned in paragraph (b) of section 15(1) of that Act,
- and in this sub-paragraph “child” and “parent” have the same meaning as in section 15(4) of that Act.

#### 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)

#### Marginal Citations

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

- 19 The Secretary of State shall, by order, make provision to require that—
- (a) except in such circumstances, and
  - (b) subject to such conditions,

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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 <sup>M3</sup>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 or a person detained under section 14 of that Act.

[<sup>F4</sup>(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).

(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.']

[<sup>F5</sup>(3) Subsections (3) to (5) shall not apply, but any relevant physical data or sample taken in pursuance of section 18 as applied by this paragraph may be retained but shall not be used by any person except for the purposes of a terrorist investigation or for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.

(4) In this paragraph—

- (a) a reference to crime includes a reference to any conduct which—
  - (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom); or
  - (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences; and
- (b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime

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or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom.]

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**Textual Amendments**

**F4** Sch. 8 para. 20(2)-(2B) substituted for Sch. 8 para. 20(2) (14.12.2001) by [2001 c. 24, s. 89\(3\)](#)

**F5** Sch. 8 para. 20(3)(4) substituted for Sch. 8 para. 20(3) (14.12.2001) by [2001 c. 24, s. 89\(4\)](#)

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**Marginal Citations**

**M3** [1995 c. 46.](#)

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