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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**

PART II

REVIEW OF DETENTION UNDER SECTION 41

Requirement

21 (1) A person's detention shall be periodically reviewed by a review officer.

(2) The first review shall be carried out as soon as is reasonably practicable after the time of the person's arrest.

(3) Subsequent reviews shall, subject to paragraph 22, be carried out at intervals of not more than 12 hours.

(4) No review of a person's detention shall be carried out after a warrant extending his detention has been issued under Part III.

Postponement

22 (1) A review may be postponed if at the latest time at which it may be carried out in accordance with paragraph 21—

(a) the detained person is being questioned by a police officer and an officer is satisfied that an interruption of the questioning to carry out the review would prejudice the investigation in connection with which the person is being detained,

(b) no review officer is readily available, or

(c) it is not practicable for any other reason to carry out the review.

(2) Where a review is postponed it shall be carried out as soon as is reasonably practicable.

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(3) For the purposes of ascertaining the time within which the next review is to be carried out, a postponed review shall be deemed to have been carried out at the latest time at which it could have been carried out in accordance with paragraph 21.

Grounds for continued detention

23 (1) A review officer may authorise a person's continued detention only if satisfied that it is necessary—

(a) to obtain relevant evidence whether by questioning him or otherwise,

(b) to preserve relevant evidence,

(c) pending a decision whether to apply to the Secretary of State for a deportation notice to be served on the detained person,

(d) pending the making of an application to the Secretary of State for a deportation notice to be served on the detained person,

(e) pending consideration by the Secretary of State whether to serve a deportation notice on the detained person, or

(f) pending a decision whether the detained person should be charged with an offence.

(2) The review officer shall not authorise continued detention by virtue of sub-paragraph (1)(a) or (b) unless he is satisfied that the investigation in connection with which the person is detained is being conducted diligently and expeditiously.

(3) The review officer shall not authorise continued detention by virtue of sub-paragraph (1)(c) to (f) unless he is satisfied that the process pending the completion of which detention is necessary is being conducted diligently and expeditiously.

(4) In sub-paragraph (1)(a) and (b) "relevant evidence" means evidence which—

(a) relates to the commission by the detained person of an offence under any of the provisions mentioned in section 40(1)(a), or

(b) indicates that the detained person falls within section 40(1)(b).

(5) In sub-paragraph (1) "deportation notice" means notice of a decision to make a deportation order under the Immigration Act 1971.

Review officer

24 (1) The review officer shall be an officer who has not been directly involved in the investigation in connection with which the person is detained.

(2) In the case of a review carried out within the period of 24 hours beginning with the time of arrest, the review officer shall be an officer of at least the rank of inspector.

(3) In the case of any other review, the review officer shall be an officer of at least the rank of superintendent.

25 (1) This paragraph applies where—

(a) the review officer is of a rank lower than superintendent,

(b) an officer of higher rank than the review officer gives directions relating to the detained person, and

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(c) those directions are at variance with the performance by the review officer of a duty imposed on him under this Schedule.

(2) The review officer shall refer the matter at once to an officer of at least the rank of superintendent.

Representations

26 (1) Before determining whether to authorise a person's continued detention, a review officer shall give either of the following persons an opportunity to make representations about the detention—

(a) the detained person, or

(b) a solicitor representing him who is available at the time of the review.

(2) Representations may be oral or written.

(3) A review officer may refuse to hear oral representations from the detained person if he considers that he is unfit to make representations because of his condition or behaviour.

Rights

27 (1) Where a review officer authorises continued detention he shall inform the detained person—

(a) of any of his rights under paragraphs 6 and 7 which he has not yet exercised, and

(b) if the exercise of any of his rights under either of those paragraphs is being delayed in accordance with the provisions of paragraph 8, of the fact that it is being so delayed.

(2) Where a review of a person's detention is being carried out at a time when his exercise of a right under either of those paragraphs is being delayed—

(a) the review officer shall consider whether the reason or reasons for which the delay was authorised continue to subsist, and

(b) if in his opinion the reason or reasons have ceased to subsist, he shall inform the officer who authorised the delay of his opinion (unless he was that officer).

(3) In the application of this paragraph to Scotland, for the references to paragraphs 6, 7 and 8 substitute references to paragraph 16.

(4) The following provisions (requirement to bring an accused person before the court after his arrest) shall not apply to a person detained under section 41—

(a) section 135(3) of the [M1]Criminal Procedure (Scotland) Act 1995, and

(b) Article 8(1) of the [M2]Criminal Justice (Children) (Northern Ireland) Order 1998.

(5) Section 22(1) of the [M3]Criminal Procedure (Scotland) Act 1995 (interim liberation by officer in charge of police station) shall not apply to a person detained under section 41.

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Marginal Citations

M1 1995 c. 46.
M2 S.I. 1998/1504 (N.I. 9).
M3 1995 c. 46.

Record

28 (1) A review officer carrying out a review shall make a written record of the outcome of the review and of any of the following which apply—

(a) the grounds upon which continued detention is authorised,
(b) the reason for postponement of the review,
(c) the fact that the detained person has been informed as required under paragraph 27(1),
(d) the officer's conclusion on the matter considered under paragraph 27(2)(a),
(e) the fact that he has taken action under paragraph 27(2)(b), and
(f) the fact that the detained person is being detained by virtue of section 41(5) or (6).

(2) The review officer shall—

(a) make the record in the presence of the detained person, and
(b) inform him at that time whether the review officer is authorising continued detention, and if he is, of his grounds.

(3) Sub-paragraph (2) shall not apply where, at the time when the record is made, the detained person is—

(a) incapable of understanding what is said to him,
(b) violent or likely to become violent, or
(c) in urgent need of medical attention.

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