

## SCHEDULES

### SCHEDULE 1

Section 1

#### SEIZURE OF PASSPORTS ETC FROM PERSONS SUSPECTED OF INVOLVEMENT IN TERRORISM

##### *Interpretation*

- 1 (1) The following definitions have effect for the purposes of this Schedule.
- (2) “Immigration officer” means a person who is appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971.
- (3) “Customs official” means a person who is designated as a general customs official under section 3(1) of the Borders, Citizenship and Immigration Act 2009 or as a customs revenue official under section 11(1) of that Act.
- (4) “Qualified officer” means an immigration officer or customs official who is designated by the Secretary of State for the purposes of this Schedule.
- (5) “Senior police officer” means a police officer of at least the rank of superintendent.
- (6) “Travel document” means anything that is or appears to be—
  - (a) a passport, or
  - (b) a ticket or other document that permits a person to make a journey by any means from a place within Great Britain to a place outside Great Britain, or from a place within Northern Ireland to a place outside the United Kingdom.
- (7) “Passport” means—
  - (a) a United Kingdom passport (within the meaning of the Immigration Act 1971),
  - (b) a passport issued by or on behalf of the authorities of a country or territory outside the United Kingdom, or by or on behalf of an international organisation, or
  - (c) a document that can be used (in some or all circumstances) instead of a passport.
- (8) “Port” means—
  - (a) an airport,
  - (b) a sea port,
  - (c) a hoverport,
  - (d) a heliport,
  - (e) a railway station where passenger trains depart for, or arrive from, places outside the United Kingdom, or
  - (f) any other place at which a person is able, or attempting, to get on or off any craft, vessel or vehicle in connection with entering or leaving Great Britain or Northern Ireland.

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- (9) A place is “in the border area” if it is in Northern Ireland and is no more than one mile from the border between Northern Ireland and the Republic of Ireland.
- (10) “Involvement in terrorism-related activity” is any one or more of the following—
- (a) the commission, preparation or instigation of acts of terrorism;
  - (b) conduct that facilitates the commission, preparation or instigation of such acts, or is intended to do so;
  - (c) conduct that gives encouragement to the commission, preparation or instigation of such acts, or is intended to do so;
  - (d) conduct that gives support or assistance to individuals who are known or believed by the person concerned to be involved in conduct falling within paragraph (a).
- It is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism in general.
- (11) “Terrorism” and “terrorist” have the same meaning as in the Terrorism Act 2000 (see sections 1(1) to (4) and 40 of that Act).
- (12) “Judicial authority” means—
- (a) in England and Wales, a District Judge (Magistrates’ Courts) who is—
    - (i) designated under paragraph 29(4)(a) of Schedule 8 to the Terrorism Act 2000, or
    - (ii) designated for the purposes of this Schedule by the Lord Chief Justice of England and Wales;
  - (b) in Scotland, the sheriff;
  - (c) in Northern Ireland, a county court judge, or a district judge (magistrates’ courts) who is—
    - (i) designated under paragraph 29(4)(c) of Schedule 8 to the Terrorism Act 2000, or
    - (ii) designated for the purposes of this Schedule by the Lord Chief Justice of Northern Ireland.
- (13) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his or her functions under sub-paragraph (12)(a)(ii).
- (14) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his or her functions under sub-paragraph (12)(c)(ii)—
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).
- (15) “The 14-day period” and “the 30-day period” have the meanings given by paragraphs 5(2) and 8(7) respectively.

#### *Powers of search and seizure etc*

- 2 (1) This paragraph applies in the case of a person at a port in Great Britain if a constable has reasonable grounds to suspect that the person—
- (a) is there with the intention of leaving Great Britain for the purpose of involvement in terrorism-related activity outside the United Kingdom, or

- (b) has arrived in Great Britain with the intention of leaving it soon for that purpose.
- (2) This paragraph applies in the case of a person at a port in Northern Ireland, or in the border area, if a constable has reasonable grounds to suspect that the person—
  - (a) is there with the intention of leaving the United Kingdom for the purpose of involvement in terrorism-related activity outside the United Kingdom, or
  - (b) has arrived in Northern Ireland with the intention of leaving the United Kingdom soon for that purpose.
- (3) The constable may—
  - (a) exercise any of the powers in sub-paragraph (5) in the case of the person, or
  - (b) direct a qualified officer to do so.
- (4) A qualified officer must (if able to do so) comply with any direction given by a constable under sub-paragraph (3)(b).
- (5) The powers are—
  - (a) to require the person to hand over all travel documents in his or her possession to the constable or (as the case may be) the qualified officer;
  - (b) to search for travel documents relating to the person and to take possession of any that the constable or officer finds;
  - (c) to inspect any travel document relating to the person;
  - (d) to retain any travel document relating to the person that is lawfully in the possession of the constable or officer.
- (6) The power in sub-paragraph (5)(b) is a power to search—
  - (a) the person;
  - (b) anything that the person has with him or her;
  - (c) any vehicle in which the officer believes the person to have been travelling or to be about to travel.
- (7) A constable or qualified officer—
  - (a) may stop a person or vehicle for the purpose of exercising a power in sub-paragraph (5)(a) or (b);
  - (b) may if necessary use reasonable force for the purpose of exercising a power in sub-paragraph (5)(a) or (b);
  - (c) may authorise a person to carry out on the constable's or officer's behalf a search under sub-paragraph (5)(b).
- (8) A constable or qualified officer exercising a power in sub-paragraph (5)(a) or (b) must tell the person that—
  - (a) the person is suspected of intending to leave Great Britain or (as the case may be) the United Kingdom for the purpose of involvement in terrorism-related activity outside the United Kingdom, and
  - (b) the constable or officer is therefore entitled under this Schedule to exercise the power.
- (9) Where a travel document relating to the person is in the possession of an immigration officer or customs official (whether a qualified officer or not), the constable may direct the officer or official—
  - (a) to pass the document to a constable as soon as practicable, and

- (b) in the meantime to retain it.

The officer or official must comply with any such direction.

*Travel documents in possession of immigration officers or customs officials*

- 3 (1) Where—
- (a) a travel document lawfully comes into the possession of an immigration officer or customs official (whether a qualified officer or not) without a power under paragraph 2 being exercised, and
  - (b) as soon as possible after taking possession of the document, the officer or official asks a constable whether the constable wishes to give a direction under paragraph 2(9) in relation to the document,
- the officer or official may retain the document until the constable tells him or her whether or not the constable wishes to give such a direction.
- (2) A request under sub-paragraph (1) must be considered as soon as possible.

*Authorisation by senior police officer for retention of travel document*

- 4 (1) Where a travel document is in the possession of a constable or qualified officer as a result of the exercise of a power under paragraph 2, the relevant constable must as soon as possible either—
- (a) seek authorisation from a senior police officer for the document to be retained, or
  - (b) ensure that the document is returned to the person to whom it relates.
- “The relevant constable” means the constable by whom, or on whose direction, the power was exercised.
- (2) The document may be retained while an application for authorisation is considered.
- (3) A constable or qualified officer retaining a travel document under sub-paragraph (2) must tell the person to whom the document relates that—
- (a) the person is suspected of intending to leave Great Britain or (as the case may be) the United Kingdom for the purpose of involvement in terrorism-related activity outside the United Kingdom, and
  - (b) the constable or officer is therefore entitled under this Schedule to retain the document while the matter is considered by a senior police officer.

This does not apply if the constable or qualified officer expects the application for authorisation to be dealt with immediately, or if sub-paragraph (4) has been complied with.

- (4) An immigration officer or customs official to whom a direction is given under paragraph 2(9) must tell the person to whom the travel document in question relates that—
- (a) the person is suspected of intending to leave Great Britain or (as the case may be) the United Kingdom for the purpose of involvement in terrorism-related activity outside the United Kingdom, and
  - (b) a constable is therefore entitled under this Schedule to retain the document while the matter is considered by a senior police officer.

This does not apply if the immigration officer or customs official expects the application for authorisation to be dealt with immediately.

- (5) If an application for authorisation is granted—
  - (a) the travel document must be passed to a constable if it is not already in the possession of a constable, and
  - (b) paragraph 5 applies.
- (6) If an application for authorisation is refused, the travel document must be returned to the person as soon as possible.
- (7) A senior police officer may grant an application for authorisation only if satisfied that there are reasonable grounds for the suspicion referred to in paragraph 2(1) or (2).
- (8) An authorisation need not be in writing.
- (9) Sub-paragraphs (1)(b) and (6) are subject to paragraph 7 and to any power or provision not in this Schedule under which the document may be lawfully retained or otherwise dealt with.

#### *Retention or return of documents seized*

- 5 (1) Where authorisation is given under paragraph 4 for a travel document relating to a person to be retained, it may continue to be retained—
  - (a) while the Secretary of State considers whether to cancel the person's passport,
  - (b) while consideration is given to charging the person with an offence,
  - (c) while consideration is given to making the person subject to any order or measure to be made or imposed by a court, or by the Secretary of State, for purposes connected with protecting members of the public from a risk of terrorism, or
  - (d) while steps are taken to carry out any of the actions mentioned in paragraphs (a) to (c).
- (2) But a travel document may not be retained under this Schedule after the end of the period of 14 days beginning with the day after the document was taken ("the 14-day period"), unless that period is extended under paragraph 8 or 11(3).
- (3) The travel document must be returned to the person as soon as possible—
  - (a) once the 14-day period (or the 14-day period as extended under paragraph 8 or 11(3)) expires;
  - (b) once the power in sub-paragraph (1) ceases to apply, if that happens earlier.

This is subject to paragraph 7 and to any power or provision not in this Schedule under which the document may be lawfully retained or otherwise dealt with.
- (4) The constable to whom a travel document is passed under paragraph 2(9) or 4(5)(a), or who is in possession of it when authorisation is given under paragraph 4, must explain to the person the effect of sub-paragraphs (1) to (3).
- (5) The constable must also tell the person, if he or she has not been told already under paragraph 2(8) or 4(3) or (4), that the person is suspected of intending to leave Great Britain or (as the case may be) the United Kingdom for the purpose of involvement in terrorism-related activity outside the United Kingdom.

*Review of retention of travel documents*

- 6 (1) This paragraph applies where—
- (a) authorisation is given under paragraph 4 for a travel document relating to a person to be retained, and
  - (b) the document is still being retained by a constable at the end of the period of 72 hours beginning when the document was taken from the person (“the 72-hour period”).
- (2) A police officer who is—
- (a) of at least the rank of chief superintendent, and
  - (b) of at least as high a rank as the senior police officer who gave the authorisation,
- must carry out a review of whether the decision to give authorisation was flawed.
- (3) The reviewing officer must—
- (a) begin carrying out the review within the 72-hour period,
  - (b) complete the review as soon as possible, and
  - (c) communicate the findings of the review in writing to the relevant chief constable.
- (4) The relevant chief constable must consider those findings and take whatever action seems appropriate.
- (5) If a power under paragraph 2 was exercised in relation to the travel document by an immigration officer or customs official designated under paragraph 17, the reviewing officer must also communicate the findings of the review in writing to the Secretary of State.
- (6) In this paragraph—
- “reviewing officer” means the officer carrying out a review under this paragraph;
  - “relevant chief constable” means—
- (a) (except where paragraph (b) or (c) applies) the chief officer of police under whose direction and control is the constable retaining the document;
  - (b) the chief constable of the Police Service of Scotland, if the constable retaining the document is under that chief constable’s direction and control;
  - (c) the chief constable of the Police Service of Northern Ireland, if the constable retaining the document is under that chief constable’s direction and control.

*Detention of document for criminal proceedings etc*

- 7 (1) A requirement under paragraph 4 or 5 to return a travel document in the possession of a constable or qualified officer does not apply while the constable or officer has power to detain it under sub-paragraph (2).
- (2) The constable or qualified officer may detain the document—
- (a) while the constable or officer believes that it may be needed for use as evidence in criminal proceedings, or

- (b) while the constable or officer believes that it may be needed in connection with a decision by the Secretary of State whether to make a deportation order under the Immigration Act 1971.

*Extension of 14-day period by judicial authority*

- 8 (1) A senior police officer may apply to a judicial authority for an extension of the 14-day period.
- (2) An application must be made before the end of the 14-day period.
- (3) An application may be heard only if reasonable efforts have been made to give to the person to whom the application relates a notice stating—
  - (a) the time when the application was made;
  - (b) the time and place at which it is to be heard.
- (4) On an application—
  - (a) the judicial authority must grant an extension if satisfied that the relevant persons have been acting diligently and expeditiously in relation to the matters and steps referred to in sub-paragraph (5);
  - (b) otherwise, the judicial authority must refuse to grant an extension.
- (5) In sub-paragraph (4) “the relevant persons” means—
  - (a) the persons responsible for considering whichever of the matters referred to in paragraph 5(1)(a) to (c) are under consideration, and
  - (b) the persons responsible for taking whichever of the steps referred to in paragraph 5(1)(d) are being taken or are intended to be taken.
- (6) An extension must be for a further period ending no later than the end of the 30-day period.
- (7) “The 30-day period” means the period of 30 days beginning with the day after the document in question was taken.
- 9 (1) The person to whom an application under paragraph 8 relates—
  - (a) must be given an opportunity to make oral or written representations to the judicial authority about the application;
  - (b) subject to sub-paragraph (3), is entitled to be legally represented at the hearing.
- (2) A judicial authority must adjourn the hearing of an application to enable the person to whom the application relates to obtain legal representation where the person—
  - (a) is not legally represented,
  - (b) is entitled to be legally represented, and
  - (c) wishes to be legally represented.
- (3) A judicial authority may exclude any of the following persons from any part of the hearing—
  - (a) the person to whom the application relates;
  - (b) anyone representing that person.
- 10 (1) A person who has made an application under paragraph 8 may apply to the judicial authority for an order that specified information upon which he or she intends to rely be withheld from—

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- (a) the person to whom the application relates, and
    - (b) anyone representing that person.
  - (2) A judicial authority may make an order under sub-paragraph (1) in relation to specified information only if satisfied that there are reasonable grounds for believing that if the information was disclosed—
    - (a) evidence of an offence under any of the provisions mentioned in section 40(1)(a) of the Terrorism Act 2000 would be interfered with or harmed,
    - (b) the recovery of property obtained as a result of an offence under any of those provisions would be hindered,
    - (c) the recovery of property in respect of which a forfeiture order could be made under section 23 or 23A of that Act would be hindered,
    - (d) the apprehension, prosecution or conviction of a person who is suspected of being a terrorist would be made more difficult as a result of the person being alerted,
    - (e) the prevention of an act of terrorism would be made more difficult as a result of a person being alerted,
    - (f) the gathering of information about the commission, preparation or instigation of an act of terrorism would be interfered with,
    - (g) a person would be interfered with or physically injured, or
    - (h) national security would be put at risk.
  - (3) The judicial authority must direct that the following be excluded from the hearing of an application under this paragraph—
    - (a) the person to whom the application under paragraph 8 relates;
    - (b) anyone representing that person.
- 11 (1) A judicial authority may adjourn the hearing of an application under paragraph 8 only if the hearing is adjourned to a date before the expiry of the 14-day period.
- (2) Sub-paragraph (1) does not apply to an adjournment under paragraph 9(2).
- (3) If an application is adjourned under paragraph 9(2) to a date after the expiry of the 14-day period, the judicial authority must extend the period until that date.
- 12 (1) If an extension is granted under paragraph 8 for a period ending before the end of the 30-day period, one further application may be made under that paragraph.
- (2) Paragraphs 8 to 11 apply to a further application as if references to the 14-day period were references to that period as previously extended.

*Restriction on repeated use of powers*

- 13 (1) Where—
- (a) a power under paragraph 4 or 5 to retain a document relating to a person is exercised, and
  - (b) powers under this Schedule have been exercised in the same person's case on two or more occasions in the previous 6 months,
- this Schedule has effect with the following modifications.
- (2) References to 14 days (in paragraph 5(2) and elsewhere) are to be read as references to 5 days.



- (3) Paragraph 8 has effect as if the following were substituted for sub-paragraph (4)—
- “(4) On an application, the judicial authority must grant an extension if satisfied that—
- (a) the relevant persons have been acting diligently and expeditiously in relation to the matters and steps referred to in sub-paragraph (5), and
  - (b) there are exceptional circumstances justifying the further use of powers under this Schedule in relation to the same person.
- Otherwise, the judicial authority must refuse to grant an extension.”

*Persons unable to leave the United Kingdom*

- 14 (1) This paragraph applies where a person’s travel documents are retained under this Schedule with the result that, for the period during which they are so retained (“the relevant period”), the person is unable to leave the United Kingdom.
- (2) The Secretary of State may make whatever arrangements he or she thinks appropriate in relation to the person—
- (a) during the relevant period;
  - (b) on the relevant period coming to an end.
- (3) If at any time during the relevant period the person does not have leave to enter or remain in the United Kingdom, the person’s presence in the United Kingdom at that time is nevertheless not unlawful for the purposes of the Immigration Act 1971.

*Offences*

- 15 (1) A person who is required under paragraph 2(5)(a) to hand over all travel documents in the person’s possession commits an offence if he or she fails without reasonable excuse to do so.
- (2) A person who intentionally obstructs, or seeks to frustrate, a search under paragraph 2 commits an offence.
- (3) A person guilty of an offence under this paragraph is liable on summary conviction—
- (a) to imprisonment for a term not exceeding 6 months, or
  - (b) to a fine, which in Scotland or Northern Ireland may not exceed level 5 on the standard scale,
- or to both.
- 16 A qualified officer exercising a power under paragraph 2 has the same powers of arrest without warrant as a constable in relation to an offence under paragraph 15.

*Accredited immigration officers and customs officials*

- 17 (1) For the purposes of this paragraph, a qualified officer is an “accredited” immigration officer or customs official if designated as such by the Secretary of State.
- (2) Sub-paragraphs (1), (2) and (3)(a) of paragraph 2 apply to an accredited immigration officer or customs official as they apply to a constable.

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- (3) In paragraph 2(3)(b) and (4) “qualified officer” does not include an accredited immigration officer or customs official.
- (4) In paragraphs 2(9) and 3 “immigration officer or customs official” does not include an accredited immigration officer or customs official.
- (5) Paragraph 4(1) has effect, in relation to a travel document that is in the possession of an accredited immigration officer or customs official as a result of the exercise of a power under paragraph 2 by that officer or official, as if the reference to the relevant constable were a reference to that officer or official.

### *Code of practice*

- 18 (1) The Secretary of State must issue a code of practice with regard to the exercise of functions under this Schedule.
- (2) The code of practice must in particular deal with the following matters—
  - (a) the procedure for making designations under paragraphs 1(4) and 17;
  - (b) training to be undertaken by persons who are to exercise powers under this Schedule;
  - (c) the exercise by constables, immigration officers and customs officials of functions conferred on them by virtue of this Schedule;
  - (d) information to be given to a person in whose case a power under this Schedule is exercised;
  - (e) how and when that information is to be given;
  - (f) reviews under paragraph 6.
- (3) A constable, immigration officer or customs official must perform functions conferred on him or her by virtue of this Schedule in accordance with any relevant provision included in the code by virtue of sub-paragraph (2)(c) to (e).
- (4) The failure by a constable, immigration officer or customs official to observe any such provision does not of itself make him or her liable to criminal or civil proceedings.
- (5) The code of practice—
  - (a) is admissible in evidence in criminal and civil proceedings;
  - (b) is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.
- 19 (1) Before issuing the code of practice the Secretary of State must—
  - (a) publish it in draft,
  - (b) consider any representations made about the draft, and
  - (c) if the Secretary of State thinks it appropriate, modify the draft in the light of any representations made.
- (2) The Secretary of State must lay a draft of the code before Parliament.
- (3) Anything done before the day on which this Act is passed is as valid as if done on or after that day for the purposes of sub-paragraphs (1) and (2).
- (4) Once the code has been laid in draft before Parliament the Secretary of State may bring it into operation by regulations made by statutory instrument.

- (5) The first regulations under sub-paragraph (4) cease to have effect at the end of the period of 40 days beginning with the day on which the Secretary of State makes the regulations, unless a resolution approving the regulations is passed by each House of Parliament during that period.
  - (6) A statutory instrument containing any subsequent regulations under sub-paragraph (4) may not be made unless a draft of the instrument has been laid before each House of Parliament and approved by a resolution of each House.
  - (7) If regulations cease to have effect under sub-paragraph (5)—
    - (a) the code of practice to which the regulations relate also ceases to have effect, but
    - (b) that does not affect anything previously done, or the power to make new regulations or to issue a new code.
  - (8) For the purposes of sub-paragraph (5), the period of 40 days is to be computed in accordance with section 7(1) of the Statutory Instruments Act 1946.
- 20 (1) The Secretary of State may revise the code of practice and issue the revised code.
- (2) Paragraph 19 has effect in relation to the issue of a revised code as it has effect in relation to the first issue of the code.