

## SCHEDULES

### SCHEDULE 3

#### BORDER SECURITY

#### PART 2

#### DETENTION

##### *Destruction and retention of fingerprints and samples etc: United Kingdom*

- 45 (1) For the purposes of paragraph 44, a person is to be treated as having been convicted of an offence if—
- (a) in relation to a recordable offence in England and Wales or Northern Ireland—
    - (i) the person has been given a caution in respect of the offence which, at the time of the caution, the person has admitted,
    - (ii) the person has been found not guilty of the offence by reason of insanity,
    - (iii) the person has been found to be under a disability and to have done the act charged in respect of the offence, or
    - (iv) the person has been warned or reprimanded under section 65 of the Crime and Disorder Act 1998 for the offence,
  - (b) in relation to an offence in Scotland punishable by imprisonment, the person has accepted or has been deemed to accept—
    - (i) a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995,
    - (ii) a compensation offer under section 302A of that Act,
    - (iii) a combined offer under section 302B of that Act, or
    - (iv) a work offer under section 303ZA of that Act,
  - (c) in relation to an offence in Scotland punishable by imprisonment, the person has been acquitted on account of the person's insanity at the time of the offence or (as the case may be) by virtue of section 51A of the Criminal Procedure (Scotland) Act 1995,
  - (d) a finding in respect of the person has been made under section 55(2) of the Criminal Procedure (Scotland) Act 1995 in relation to an offence in Scotland punishable by imprisonment,
  - (e) the person, having been given a fixed penalty notice under section 129(1) of the Antisocial Behaviour etc (Scotland) Act 2004 in connection with an offence in Scotland punishable by imprisonment, has paid—
    - (i) the fixed penalty, or
    - (ii) (as the case may be) the sum which the person is liable to pay by virtue of section 131(5) of that Act, or

---

*Status: This is the original version (as it was originally enacted).*

---

- (f) in relation to an offence in Scotland punishable by imprisonment, the person has been discharged absolutely by order under section 246(3) of the Criminal Procedure (Scotland) Act 1995.
- (2) Paragraph 44 and this paragraph, so far as they relate to persons convicted of an offence, have effect despite anything in the Rehabilitation of Offenders Act 1974.
- (3) But a person is not to be treated as having been convicted of an offence if that conviction is a disregarded conviction or caution by virtue of section 92 or 101A of the Protection of Freedoms Act 2012.
- (4) For the purposes of paragraph 44—
- (a) a person has no previous convictions if the person has not previously been convicted—
    - (i) in England and Wales or Northern Ireland of a recordable offence, or
    - (ii) in Scotland of an offence which is punishable by imprisonment, and
  - (b) if the person has previously been convicted of a recordable offence in England and Wales or Northern Ireland, the conviction is exempt if it is in respect of a recordable offence, other than a qualifying offence, committed when the person was aged under 18.
- (5) In sub-paragraph (4) “qualifying offence” has—
- (a) in relation to a conviction in respect of a recordable offence committed in England and Wales, the meaning given by section 65A of the Police and Criminal Evidence Act 1984, and
  - (b) in relation to a conviction in respect of a recordable offence committed in Northern Ireland, the meaning given by Article 53A of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).
- (6) For the purposes of sub-paragraph (4)—
- (a) a person is to be treated as having previously been convicted in England and Wales of a recordable offence if—
    - (i) the person has previously been convicted of an offence under the law of a country or territory outside the United Kingdom, and
    - (ii) the act constituting the offence would constitute a recordable offence under the law of England and Wales if done there (whether or not it constituted such an offence when the person was convicted);
  - (b) a person is to be treated as having previously been convicted in Northern Ireland of a recordable offence if—
    - (i) the person has previously been convicted of an offence under the law of a country or territory outside the United Kingdom, and
    - (ii) the act constituting the offence would constitute a recordable offence under the law of Northern Ireland if done there (whether or not it constituted such an offence when the person was convicted);
  - (c) a person is to be treated as having previously been convicted in Scotland of an offence which is punishable by imprisonment if—
    - (i) the person has previously been convicted of an offence under the law of a country or territory outside the United Kingdom, and
    - (ii) the act constituting the offence would constitute an offence punishable by imprisonment under the law of Scotland if done there (whether or not it constituted such an offence when the person was convicted);

---

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

---

- (d) the reference in sub-paragraph (4)(b) to a qualifying offence includes a reference to an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute a qualifying offence under the law of England and Wales if done there or (as the case may be) under the law of Northern Ireland if done there (whether or not it constituted such an offence when the person was convicted).
- (7) For the purposes of paragraph 44 and this paragraph—
- (a) offence, in relation to any country or territory outside the United Kingdom, includes an act punishable under the law of that country or territory, however it is described;
  - (b) a person has in particular been convicted of an offence under the law of a country or territory outside the United Kingdom if—
    - (i) a court exercising jurisdiction under the law of that country or territory has made in respect of such an offence a finding equivalent to a finding that the person is not guilty by reason of insanity, or
    - (ii) such a court has made in respect of such an offence a finding equivalent to a finding that the person is under a disability and did the act charged against the person in respect of the offence.
- (8) If a person is convicted of more than one offence arising out of a single course of action, those convictions are to be treated as a single conviction for the purposes of calculating under paragraph 44 whether the person has been convicted of only one offence.
- (9) Nothing in paragraph 44 prevents the start of a new retention period in relation to paragraph 43 material if a person is detained again under Part 1 of this Schedule when an existing retention period (whether or not extended) is still in force in relation to that material.