
*Changes to legislation: There are currently no known outstanding effects
for the National Security Act 2023, Part 3. (See end of Document for details)*

SCHEDULES

SCHEDULE 6

DETENTION UNDER SECTION 27

PART 3

RIGHTS OF PERSONS DETAINED UNDER SECTION 27: SCOTLAND

- 15 (1) A person detained under [section 27](#) at a place in Scotland is entitled to have intimation of the person's detention and of the place where the person is being detained sent without delay to a solicitor and to another person named by the detained person.
- (2) The person named must be—
- (a) a friend of the detained person,
 - (b) a relative of the detained person, or
 - (c) a person who is known to the detained person or who is likely to take an interest in the detained person's welfare.
- (3) Where a detained person is transferred from one place to another, the person is entitled to exercise the right under [sub-paragraph \(1\)](#) in respect of the place to which the person is transferred.
- (4) A police officer of at least the rank of superintendent may authorise a delay in making intimation where, in the officer's view, the delay is necessary on one of the grounds mentioned in [paragraph 16\(3\)](#) or where [paragraph 16\(4\)](#) applies.
- (5) Where a detained person requests that the intimation be made, a record must be made of the time at which the request was made and complied with.
- (6) A person who is detained as mentioned in [sub-paragraph \(1\)](#) is entitled to consult a solicitor at any time, without delay.
- (7) A police officer of at least the rank of superintendent may authorise a delay in holding the consultation where, in the officer's view, the delay is necessary on one of the grounds mentioned in [paragraph 16\(3\)](#) or where [paragraph 16\(4\)](#) applies.
- (8) The consultation is to be private.
- (9) A detained person must be permitted to exercise the rights under [this paragraph](#) before the end of the period mentioned in [section 27\(3\)](#).
- (10) A detained person must be informed of the rights under [sub-paragraphs \(1\)](#) and [\(6\)](#) on first being detained.

Commencement Information

II Sch. 6 para. 15 not in force at Royal Assent, see 100(1)

Changes to legislation: There are currently no known outstanding effects for the National Security Act 2023, Part 3. (See end of Document for details)

I2 Sch. 6 para. 15 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

- 16 (1) Where a person exercises the right under [paragraph 15\(6\)](#) to consult a solicitor, a police officer of at least the rank of superintendent may, if it appears to the officer to be necessary on one of the grounds mentioned in [sub-paragraph \(3\)](#), direct that—
- (a) the person may not consult the solicitor who attends for the purpose of the consultation, or who would so attend but for the giving of the direction, but
 - (b) the person may consult a different solicitor of the person's choosing.
- (2) A direction under [this paragraph](#) may be given before or after a detained person's consultation with a solicitor has started (and, if given after it has started, the right to further consult that solicitor ceases on the giving of the direction).
- (3) The grounds mentioned in [paragraph 15\(4\)](#) 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 an indictable offence;
 - (d) that it will further the operation of Part 2, 3 or 4 of the Proceeds of Crime Act 2002 (confiscation of the proceeds of an offence).
- (4) This sub-paragraph applies where an officer mentioned in [paragraph 15\(4\)](#) or [\(7\)](#) has reasonable grounds for believing that—
- (a) the detained person has benefited from their 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 15\(4\)](#)), or
 - (ii) the exercise of the entitlement under [paragraph 15\(6\)](#) (in the case of an authorisation under [paragraph 15\(7\)](#)).
- (5) For the purposes of [sub-paragraph \(4\)](#), whether the detained person has benefited from their criminal conduct is to be decided in accordance with Part 3 of the Proceeds of Crime Act 2002.
- (6) Where delay is authorised in the exercising of any of the rights mentioned in [paragraph 15\(1\)](#) and [\(6\)](#)—
- (a) if the authorisation is given orally, the person giving it must confirm it in writing as soon as is reasonably practicable,
 - (b) the detained person must be told the reason for the delay as soon as is reasonably practicable, and
 - (c) the reason must be recorded as soon as is reasonably practicable.

Commencement Information

I3 Sch. 6 para. 16 not in force at Royal Assent, see 100(1)

I4 Sch. 6 para. 16 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

- 17 (1) [Paragraphs 15](#) and [16](#) have effect, in relation to a person detained under [section 27](#), 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.

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- (2) But, where a person who is detained under [section 27](#) at a place in Scotland appears to a constable to be a child—
- (a) the other person named by the person detained in pursuance of [paragraph 15\(1\)](#) must be that person’s parent,
 - (b) intimation is to be made under [paragraph 15\(1\)](#) whether the detained person requests that it be made or not, and
 - (c) section 40 of the [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#) (right of under 18s to have access to other person) applies as if the detained person were a person in police custody for the purposes of that section.
- (3) For the purposes of [sub-paragraph \(2\)](#)—
- “child” means a person under 16 years of age;
 - “parent” includes guardian and any person who has the care of the child mentioned in [sub-paragraph \(2\)](#).

Commencement Information

- I5** Sch. 6 para. 17 not in force at Royal Assent, see 100(1)
I6 Sch. 6 para. 17 in force at 20.12.2023 by [S.I. 2023/1272](#), [reg. 2\(a\)](#)

- 18 (1) Subject to the modifications specified in sub-paragraphs (2) and (3), section 18 of the Criminal Procedure (Scotland) Act 1995 (procedure for taking certain prints and samples) applies to a person detained under [section 27](#) at a police station in Scotland as it applies to a person arrested.
- (2) For subsection (2) of section 18 substitute—
- “(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) the constable reasonably suspects that the person has been involved in foreign power threat activity, and
 - (b) the constable reasonably believes that the relevant physical data will tend to confirm or disprove the person’s involvement.
 - (2A) A constable may also take fingerprints from a detained person or require the person to provide them if—
 - (a) the constable is satisfied that the person’s fingerprints will help determine their identity, and
 - (b) the person has refused to identify themselves or the constable has reasonable grounds for suspecting that the person is not who they claim to be.
 - (2B) In this section references to determining a person’s identity include references to showing that a detained person is not a particular person.”
- (3) Subsections (3) to (5) of section 18 do not apply.

Commencement Information

- I7** Sch. 6 para. 18 not in force at Royal Assent, see 100(1)
I8 Sch. 6 para. 18 in force at 20.12.2023 by [S.I. 2023/1272](#), [reg. 2\(a\)](#)

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