

SCHEDULES

SCHEDULE 3

Section 22

BORDER SECURITY

PART 1

POWERS

Power to stop, question and detain

- 1 (1) An examining officer may question a person for the purpose of determining whether the person appears to be a person who is, or has been, engaged in hostile activity if condition 1 or condition 2 is met.
- (2) Condition 1 is met if—
 - (a) the person is at a port or in the border area, and
 - (b) the examining officer believes that the person's presence at the port or in the border area is connected with the person's—
 - (i) entry into, or departure from, Great Britain or Northern Ireland, or
 - (ii) travel by air within Great Britain or Northern Ireland.
- (3) Condition 2 is met if the person is on a ship or aircraft which has arrived at any place in Great Britain or Northern Ireland (whether from within or outside Great Britain or Northern Ireland).
- (4) An examining officer may exercise the powers under this paragraph whether or not there are grounds for suspecting that a person is or has been engaged in hostile activity.
- (5) A person is or has been engaged in hostile activity for the purposes of this Schedule if the person is or has been concerned in the commission, preparation or instigation of a hostile act that is or may be—
 - (a) carried out for, or on behalf of, a State other than the United Kingdom, or
 - (b) otherwise in the interests of a State other than the United Kingdom.
- (6) An act is a "hostile act" if it—
 - (a) threatens national security,
 - (b) threatens the economic well-being of the United Kingdom in a way relevant to the interests of national security, or
 - (c) is an act of serious crime.
- (7) For the purposes of this paragraph—
 - (a) it is immaterial—
 - (i) whether a person is aware that activity in which they are or have been engaged is hostile activity, or

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- (ii) whether a State for or on behalf of which, or in the interests of which, a hostile act is carried out has instigated, sanctioned, or is otherwise aware of, the carrying out of the act;
 - (b) “State” includes the government of a State and any organ of its government;
 - (c) references to a State other than the United Kingdom include references to any territory outside the United Kingdom;
 - (d) the reference to serious crime is to crime where—
 - (i) the offence, or one of the offences, which is or would be constituted by the conduct concerned is an offence for which a person who has reached the age of 18 (or, in relation to Scotland or Northern Ireland, 21) and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of 3 years or more, or
 - (ii) the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.
- 2 An examining officer may question a person who is in the border area for the purpose of determining whether the person’s presence in the area is connected with the person’s entry into, or departure from, Northern Ireland.
- 3 A person (“P”) questioned under paragraph 1 or 2 must—
- (a) give the examining officer any information in P’s possession that the officer requests;
 - (b) give the examining officer on request either a valid passport which includes a photograph or another document which establishes P’s identity;
 - (c) declare whether any documents of a kind specified by the examining officer are in P’s possession;
 - (d) give the examining officer on request any such document.
- 4 (1) For the purposes of exercising a power under paragraph 1 or 2 an examining officer may—
- (a) stop a person or vehicle;
 - (b) detain a person.
- (2) For the purpose of detaining a person under this paragraph, an examining officer may authorise the person’s removal from a ship, aircraft or vehicle.
- (3) Where a person is detained under this paragraph the provisions of Parts 2 and 3 of this Schedule (detention and review of detention) apply.
- (4) The power conferred by sub-paragraph (1)(a) to stop a vehicle does not include a power to stop an aircraft that is airborne.
- 5 (1) This paragraph applies where a person is questioned under paragraph 1 or 2.
- (2) At the end of the 1 hour period, the person may not be questioned under either of those paragraphs unless the person is detained under paragraph 4.
- (3) If the person is detained under paragraph 4, the person must be released not later than the end of the 6 hour period (unless detained under another power).
- (4) In this paragraph—
- “the 1 hour period” is the period of 1 hour beginning with the time the person is first questioned under paragraph 1 or 2;

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“the 6 hour period” is the period of 6 hours beginning with that time.

- (5) If a person detained under paragraph 4 is removed to hospital because the person needs medical treatment—
- (a) any time during which the person is being questioned under paragraph 1 or 2 in hospital or on the way there or back is to be included in calculating the 6 hour period, but
 - (b) any other time when the person is in hospital or on the way there or back is not to be included.
- 6 (1) An answer or information given orally by a person in response to a question asked under paragraph 1 or 2 may not be used in evidence in criminal proceedings.
- (2) Sub-paragraph (1) does not apply—
- (a) in the case of proceedings under paragraph 23,
 - (b) on a prosecution for perjury, or
 - (c) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the answer or information mentioned in sub-paragraph (1).
- (3) A statement may not be used by virtue of sub-paragraph (2)(c) unless—
- (a) evidence relating to it is adduced, or
 - (b) a question relating to it is asked,
- by or on behalf of the person in the proceedings arising out of the prosecution.
- (4) In sub-paragraph (2)(b) the reference to a prosecution for perjury is—
- (a) in the case of England and Wales, a reference to a prosecution for an offence under section 5 of the Perjury Act 1911;
 - (b) in the case of Northern Ireland, a reference to a prosecution for an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)).

Searches

- 7 An examining officer may, for the purpose of determining whether there are any persons the officer may wish to question under paragraph 1—
- (a) search a ship or aircraft;
 - (b) search anything on a ship or aircraft;
 - (c) search anything that the officer reasonably believes has been, or is about to be, on a ship or aircraft.
- 8 (1) An examining officer who questions a person under paragraph 1 may—
- (a) search the person;
 - (b) search anything on a ship or aircraft that the person has with them or which belongs to them;
 - (c) search anything which the person has with them or which belongs to them and which the officer reasonably believes has been, or is about to be, on a ship or aircraft;
 - (d) search a ship or aircraft for anything falling within paragraph (b);
 - (e) search a vehicle which is on a ship or aircraft;
 - (f) search a vehicle which the officer reasonably believes has been, or is about to be, on a ship or aircraft.

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- (2) Where an examining officer questions a person in the border area under paragraph 1 the officer may (in addition to the matters specified in sub-paragraph (1))—
- (a) search a vehicle;
 - (b) search anything in or on a vehicle;
 - (c) search anything which the officer reasonably believes has been, or is about to be, in or on a vehicle.
- (3) The powers conferred by sub-paragraphs (1) and (2) are exercisable only for the purposes of determining whether a person is or has been engaged in hostile activity.
- (4) A search of a person under this paragraph—
- (a) must be carried out by somebody of the same sex;
 - (b) does not extend to the carrying out of an intimate search.
- (5) A strip search of a person may not be carried out under this paragraph unless—
- (a) the person is detained under paragraph 4,
 - (b) the examining officer has reasonable grounds to suspect that the person is concealing something which may be evidence that the person is or has been engaged in hostile activity, and
 - (c) the search is authorised by a senior officer who has not been directly involved in the questioning of the person.
- (6) “Senior officer” means—
- (a) where the examining officer is a constable, a constable of a higher rank than the examining officer,
 - (b) where the examining officer is an immigration officer, an immigration officer of a higher grade than the examining officer, and
 - (c) where the examining officer is a customs officer, a customs officer of a higher grade than the examining officer.
- (7) In this paragraph—
- “intimate search” means a search which consists of a physical examination of a person’s body orifices other than the mouth;
- “strip search” means a search which is not an intimate search but involves the removal of an article of clothing which—
- (a) is being worn wholly or partly on the trunk, and
 - (b) is being so worn either next to the skin or next to an article of underwear.
- 9 (1) An examining officer may examine goods to which this paragraph applies for the purpose of determining whether they have been used in connection with a person’s engagement in hostile activity.
- (2) This paragraph applies to—
- (a) goods which have arrived in or are about to leave Great Britain or Northern Ireland on a ship or vehicle, and
 - (b) goods which have arrived at or are about to leave any place in Great Britain or Northern Ireland on an aircraft (whether the place they have come from or are going to is within or outside Great Britain or Northern Ireland).
- (3) The reference in sub-paragraph (2)(a) to goods which are about to leave Great Britain or Northern Ireland on a ship includes goods which—

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- (a) are held at premises operated by a sea cargo agent, and
 - (b) are to be delivered to a place in Great Britain or Northern Ireland for carriage on a ship.
- (4) The reference in sub-paragraph (2)(b) to goods which are about to leave any place in Great Britain or Northern Ireland on an aircraft includes goods which—
- (a) are held at premises operated by an air cargo agent, and
 - (b) are to be delivered to a place in Great Britain or Northern Ireland for carriage on an aircraft.
- (5) An examination under this paragraph may be carried out only—
- (a) at a port;
 - (b) at premises operated by a sea cargo agent or an air cargo agent;
 - (c) at a transit shed;
 - (d) at a designated examination location.
- (6) For the purposes of determining whether to carry out an examination under this paragraph an examining officer may—
- (a) board a ship or aircraft;
 - (b) enter premises operated by a sea cargo agent or an air cargo agent;
 - (c) enter a transit shed;
 - (d) enter a designated examination location.
- (7) In this paragraph—
- “air cargo agent” has the meaning given by section 21F(1) of the Aviation Security Act 1982;
 - “designated examination location” means a location designated by the Secretary of State under paragraph 9(2D) of Schedule 7 to the Terrorism Act 2000;
 - “goods” includes property of any description and containers;
 - “sea cargo agent” has the meaning given by section 41(1) of the Aviation and Maritime Security Act 1990;
 - “transit shed” has the meaning given by section 25A of the Customs and Excise Management Act 1979.
- 10 (1) An examining officer may authorise a person to carry out on the officer’s behalf a search or examination under any of paragraphs 7 to 9.
- (2) A person authorised under this paragraph is to be treated as an examining officer for the purposes of—
- (a) paragraphs 9(6) and 11, and
 - (b) Part 4 of this Schedule.

Retention of property

- 11 (1) This paragraph applies to any article which—
- (a) is given to an examining officer in accordance with paragraph 3(d),
 - (b) is searched or found on a search under paragraph 8, or
 - (c) is examined under paragraph 9.
- (2) An examining officer may retain the article—

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- (a) for the purpose of examination, for a period not exceeding 7 days beginning with the day on which the retention commences,
 - (b) while the officer believes that it may be needed for use as evidence in criminal proceedings,
 - (c) while the officer believes that it may be needed in connection with a decision of the Secretary of State whether to make a deportation order under the Immigration Act 1971,
 - (d) while the officer believes that it could be used in connection with the carrying out of a hostile act, or
 - (e) while the officer believes it necessary to do so for the purpose of preventing death or significant injury.
- 12 (1) This paragraph applies in relation to an article retained by virtue of paragraph 11(2)(d) or (e), other than an article in respect of which an authorisation is granted under paragraph 14.
- (2) The Investigatory Powers Commissioner (“the Commissioner”) must be informed of the article’s retention as soon as is reasonably practicable.
- (3) Sub-paragraph (4) applies where it appears to the Commissioner that there are reasonable grounds to believe—
- (a) that the article has been or could be used in connection with the carrying out of a hostile act, or
 - (b) that returning the article to the person from whom it was taken could result in a risk of death or significant injury to any person.
- (4) The Commissioner may—
- (a) direct that the article is destroyed, or
 - (b) authorise the retention and use of the article (subject to sub-paragraph (5)).
- (5) The Commissioner may authorise the retention and use of an article under sub-paragraph (4)(b) that consists of or includes confidential material only if satisfied that—
- (a) arrangements are in place that are sufficient for ensuring that the material is retained securely, and
 - (b) the material will be used only so far as necessary and proportionate for a relevant purpose.
- (6) If the Commissioner does not proceed under sub-paragraph (4) in relation to an article, the Commissioner must (subject to sub-paragraph (7)) direct that the article is returned to the person from whom it was taken.
- (7) Sub-paragraph (6) does not apply if the article is further retained under a power conferred by paragraph 11(2)(b) or (c).
- (8) In authorising the retention and use of an article under this paragraph the Commissioner may impose whatever conditions the Commissioner thinks appropriate in relation to its retention and use.
- (9) For the purposes of sub-paragraph (5)(b), the use of material is necessary for a relevant purpose if it is necessary—
- (a) in the interests of national security,
 - (b) in the interests of the economic well-being of the United Kingdom so far as those interests are also relevant to the interests of national security,

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- (c) for the purpose of preventing or detecting serious crime, or
 - (d) for the purpose of preventing death or significant injury.
- (10) In this paragraph “confidential material” means—
- (a) confidential journalistic material, within the meaning of the Investigatory Powers Act 2016 (see section 264(6) and (7) of that Act), and
 - (b) protected material as defined by sub-paragraph (11).
- (11) “Protected material”—
- (a) in relation to England and Wales, means—
 - (i) items subject to legal privilege, within the meaning of the Police and Criminal Evidence Act 1984 (see section 10 of that Act),
 - (ii) material falling within section 11(1)(a) or (b) of that Act (certain personal records, human tissue or tissue fluid held in confidence), or
 - (iii) material to which section 14(2) of that Act applies (other material acquired in course of a trade etc that is held in confidence);
 - (b) in relation to Scotland, means—
 - (i) items in respect of which a claim to confidentiality of communications could be maintained in legal proceedings, or
 - (ii) other material of a kind mentioned in paragraph (a)(ii) or (iii) of this sub-paragraph;
 - (c) in relation to Northern Ireland, means—
 - (i) items subject to legal privilege, within the meaning of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (see Article 12 of that Order),
 - (ii) material falling with Article 13(1)(a) or (b) of that Order (certain personal records, human tissue or tissue fluid held in confidence), or
 - (iii) material to which Article 16(2) of that Order applies (other material acquired in the course of a trade etc that is held in confidence).
- 13 (1) Before proceeding under paragraph 12 in relation to an article, the Commissioner—
- (a) must invite each affected party to make representations, before the end of whatever period the Commissioner may specify, about how the Commissioner should proceed under that paragraph, and
 - (b) must have regard to any representations made by an affected party before the end of that period.
- (2) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, exercises a function under paragraph 12 in relation to an article, an affected party may ask the Investigatory Powers Commissioner to decide whether to approve the way in which the function was exercised.
- (3) Each of the following is an “affected party” for the purposes of this paragraph—
- (a) where the examining officer is a constable, the responsible chief officer,
 - (b) the Secretary of State, and
 - (c) the person from whom the article was taken.
- (4) In sub-paragraph (3) “responsible chief officer” means—
- (a) in a case where the article was taken in connection with an investigation being conducted by a police force in England and Wales, the chief officer of police of that police force;

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- (b) in a case where the article was taken in connection with an investigation being conducted by the Police Service of Scotland, the chief constable of the Police Service of Scotland;
 - (c) in a case where the article was taken in connection with an investigation being conducted by the Police Service of Northern Ireland, the Chief Constable of the Police Service of Northern Ireland;
 - (d) in any other case—
 - (i) where the examining officer is a constable of a police force in England and Wales, the chief officer of police of that police force,
 - (ii) where the examining officer is a constable of the Police Service of Scotland, the chief constable of the Police Service of Scotland, or
 - (iii) where the examining officer is a constable of the Police Service of Northern Ireland, the Chief Constable of the Police Service of Northern Ireland.
- (5) Sub-paragraph (6) applies where —
- (a) a direction for the destruction of an article is given under paragraph 12, or
 - (b) authorisation for the retention and use of an article is granted under that paragraph.
- (6) The Commissioner must inform the person from whom the article was taken that—
- (a) a direction to destroy the article has been given, or
 - (b) (as the case may be) authorisation to retain and use the article has been granted (and in this case the Commissioner must provide details of any conditions subject to which that authorisation was granted).
- (7) A requirement under this paragraph to invite representations from, or to provide information to, the person from whom an article was taken applies only so far as it is reasonably practicable to do so.
- (8) Representations under sub-paragraph (1) must be made in writing.
- 14 (1) This paragraph applies where—
- (a) an article is retained by virtue of paragraph 11(2)(d) or (e), and
 - (b) the examining officer who retained the article considers that the urgency condition is met in relation to the article.
- (2) The urgency condition is met in relation to an article if—
- (a) there is an urgent need for the article to be examined or otherwise used for the purpose of preventing—
 - (i) the carrying out of a hostile act, or
 - (ii) death or significant injury,
 or for the purpose of mitigating the risk of any such act, death or injury occurring, and
 - (b) the time it would take for the requirements of paragraphs 12 and 13 to be complied with in relation to the article would not enable such use to take place with sufficient urgency.
- (3) The examining officer may apply to a senior officer for authorisation to continue to retain and use the article.
- (4) An application under sub-paragraph (3) in relation to an article may be made only to a senior officer who has not been directly involved in the exercise of any power

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under this Part of this Schedule to take the article or to question a person from whom the article was taken.

- (5) A senior officer may grant an authorisation under this paragraph for the retention and use of the article if satisfied—
- (a) that there are reasonable grounds for considering that the urgency condition is met in relation to the article, and
 - (b) in the case of an article that consists of or includes confidential material, that—
 - (i) arrangements are in place that are sufficient for ensuring that the material is retained securely, and
 - (ii) the material will be used only so far as necessary and proportionate for a purpose mentioned in sub-paragraph (2)(a).
- (6) An authorisation under this paragraph—
- (a) must be recorded in writing;
 - (b) may be granted subject to whatever conditions the senior officer thinks appropriate.
- (7) Paragraphs 15 and 16 contain further provision about authorisations granted under this paragraph.
- (8) In this paragraph—
- “confidential material” has the meaning given by paragraph 12(10) and (11);
 - “senior officer” means—
 - (a) where the examining officer is a constable, another constable of at least the rank of superintendent,
 - (b) where the examining officer is an immigration officer, an immigration officer of a higher grade than the examining officer, and
 - (c) where the examining officer is a customs officer, a customs officer of a higher grade than the examining officer.
- 15 (1) If a senior officer grants an authorisation under paragraph 14, the examining officer who applied for the authorisation must inform the Investigatory Powers Commissioner and each affected party of its grant.
- (2) The information required under sub-paragraph (1) must be given as soon as reasonably practicable and in any event within 24 hours after the grant of the authorisation.
- (3) An affected party may make representations to the Commissioner about how the Commissioner should proceed under paragraph 16 in respect of an authorisation granted under paragraph 14.
- (4) Representations under sub-paragraph (3) must be made in writing no later than the end of two working days beginning with the first working day after the day on which the authorisation is granted.
- (5) The information provided under sub-paragraph (1) must include an explanation of the right to make representations in writing and the time by which they must be made.

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- (6) The Commissioner must have regard to any representations received before the end of the time mentioned in sub-paragraph (4) in determining how to proceed under paragraph 16.
- (7) The requirement under this paragraph to provide information to the person from whom an article was taken applies only so far as it is reasonably practicable to do so.
- (8) In this paragraph and paragraph 16—
“affected party” has the meaning given by paragraph 13(3);
“working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the authorisation is granted.
- 16 (1) This paragraph applies after the Investigatory Powers Commissioner has considered any representations made about an authorisation in accordance with paragraph 15.
- (2) The Commissioner must—
(a) approve the grant of the authorisation, or
(b) cancel the authorisation.
- (3) A decision under sub-paragraph (2) must be made—
(a) after the end of the time for making representations referred to in paragraph 15(4), and
(b) before the end of three working days beginning with the first working day after the day on which the authorisation is granted.
- (4) If the decision under sub-paragraph (2) is to approve the grant of the authorisation, the retention and use of the article may continue in accordance with the conditions on which the authorisation was granted (subject to any further conditions or variation of the existing conditions that the Commissioner specifies).
- (5) If the decision under sub-paragraph (2) is to cancel the authorisation, any further use of the article must stop as soon as possible.
- (6) If the Commissioner cancels the authorisation the Commissioner may direct that the article—
(a) is destroyed, or
(b) is returned to the person from whom it was taken,
and the Commissioner may further direct that all reasonable steps are taken to secure that any information derived from the article is destroyed.
- (7) Sub-paragraphs (5) and (6) do not apply if the article is further retained under a power conferred by paragraph 11(2)(b) or (c).
- (8) The Commissioner must inform each affected party of the Commissioner’s decision under sub-paragraph (2).
- (9) The requirement under this paragraph to provide information to the person from whom the article was taken applies only so far as it is reasonably practicable to do so.
- (10) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, exercises a function under this paragraph in relation to an article, an affected party may ask the Investigatory Powers Commissioner to decide whether to approve the way in which the function was exercised.

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- (11) Nothing in this paragraph affects the lawfulness of—
- (a) anything done under an authorisation before it is cancelled;
 - (b) if anything is in the process of being done under an authorisation when it is cancelled—
 - (i) anything done before that thing could be stopped, or
 - (ii) anything done which it is not reasonably practicable to stop.

Power to make and retain copies

- 17 (1) This paragraph applies where the examining officer is a constable.
- (2) The officer may copy anything which—
- (a) is given to the officer in accordance with paragraph 3,
 - (b) is searched or found on a search under paragraph 8, or
 - (c) is examined under paragraph 9.
- (3) The copy may be retained—
- (a) for so long as it is necessary for the purpose of determining whether a person is or has been engaged in hostile activity,
 - (b) while the examining officer believes that it may be needed for use as evidence in criminal proceedings,
 - (c) while the examining 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,
 - (d) while the examining officer believes it necessary to retain the copy—
 - (i) in the interests of national security,
 - (ii) in the interests of the economic well-being of the United Kingdom so far as those interests are also relevant to the interests of national security, or
 - (iii) for the purpose of preventing or detecting an act of serious crime, or
 - (e) while the examining officer believes it necessary to retain the copy to prevent death or significant injury.
- 18 (1) This paragraph applies in relation to a copy consisting of or including confidential material that is retained by virtue of paragraph 17(3)(d) or (e), other than a copy in respect of which an authorisation is granted under paragraph 20.
- (2) The Investigatory Powers Commissioner (“the Commissioner”) must be informed of the copy’s retention as soon as is reasonably practicable.
- (3) The Commissioner may authorise the retention and use of the copy if both of the following two conditions are met.
- (4) The first condition is that it appears to the Commissioner that there are reasonable grounds to believe that it is necessary to retain the copy—
- (a) in the interests of national security,
 - (b) in the interests of the economic well-being of the United Kingdom so far as those interests are also relevant to the interests of national security,
 - (c) for the purpose of preventing or detecting an act of serious crime, or
 - (d) for the purpose of preventing death or significant injury.

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- (5) The second condition is that the Commissioner is satisfied that—
- (a) arrangements are in place that are sufficient for ensuring that any confidential material contained in the copy is retained securely, and
 - (b) the material will be used only so far as necessary and proportionate for a relevant purpose.
- (6) If the Commissioner does not proceed under sub-paragraph (3) in relation to a copy, the Commissioner must (subject to sub-paragraph (7)) direct that the copy is destroyed.
- (7) Sub-paragraph (6) does not apply if the copy is further retained under a power conferred by paragraph 17(3)(b) or (c).
- (8) In authorising the retention and use of a copy under sub-paragraph (3) the Commissioner may impose whatever conditions the Commissioner thinks appropriate in relation to its retention and use.
- (9) For the purposes of sub-paragraph (5)(b), the use of material is necessary for a relevant purpose if it is necessary—
- (a) in the interests of national security,
 - (b) in the interests of the economic well-being of the United Kingdom so far as those interests are also relevant to the interests of national security,
 - (c) for the purpose of preventing or detecting serious crime, or
 - (d) for the purpose of preventing death or significant injury.
- (10) In this paragraph “confidential material” has the meaning given by paragraph 12(10) and (11).
- 19 (1) Before proceeding under paragraph 18 in relation to a copy, the Commissioner—
- (a) must invite each affected party to make representations, before the end of whatever period the Commissioner may specify, about how the Commissioner should proceed under that paragraph, and
 - (b) must have regard to any representations made by an affected party before the end of that period.
- (2) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, exercises a function under paragraph 18 in relation to a copy, an affected party may ask the Investigatory Powers Commissioner to decide whether to approve the way in which the function was exercised.
- (3) Each of the following is an “affected party” for the purposes of this paragraph—
- (a) where the examining officer is a constable, the responsible chief officer,
 - (b) the Secretary of State, and
 - (c) the person from whom the article was taken from which the copy was made.
- (4) In sub-paragraph (3) “responsible chief officer” means—
- (a) in a case where the copy was made in connection with an investigation being conducted by a police force in England and Wales, the chief officer of police of that police force;
 - (b) in a case where the copy was made in connection with an investigation being conducted by the Police Service of Scotland, the chief constable of the Police Service of Scotland;

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- (c) in a case where the copy was made in connection with an investigation being conducted by the Police Service of Northern Ireland, the Chief Constable of the Police Service of Northern Ireland;
 - (d) in any other case—
 - (i) where the examining officer is a constable of a police force in England and Wales, the chief officer of police of that police force,
 - (ii) where the examining officer is a constable of the Police Service of Scotland, the chief constable of the Police Service of Scotland, or
 - (iii) where the examining officer is a constable of the Police Service of Northern Ireland, the Chief Constable of the Police Service of Northern Ireland.
- (5) Sub-paragraph (6) applies where—
- (a) a direction for the destruction of a copy is given under paragraph 18, or
 - (b) authorisation for the retention and use of a copy is granted under that paragraph.
- (6) The Commissioner must inform the person from whom the article was taken from which the copy was made that—
- (a) a direction to destroy the copy has been given, or
 - (b) (as the case may be) authorisation to retain and use the copy has been granted (and in this case the Commissioner must provide details of any conditions subject to which that authorisation was granted).
- (7) A requirement under this paragraph to invite representations from, or to provide information to, the person from whom an article was taken from which a copy was made applies only so far as it is reasonably practicable to do so.
- (8) Representations under sub-paragraph (1) must be made in writing.
- 20 (1) This paragraph applies where—
- (a) a copy consisting of or including confidential material is retained by virtue of paragraph 17(3)(d) or (e), and
 - (b) the examining officer who retained the copy considers that the urgency condition is met in relation to the copy.
- (2) The urgency condition is met in relation to a copy if—
- (a) there is an urgent need for the copy to be examined or otherwise used for the purpose of preventing—
 - (i) the carrying out of a hostile act, or
 - (ii) death or significant injury,or for the purpose of mitigating the risk of any such act, death or injury occurring, and
 - (b) the time it would take for the requirements of paragraphs 18 and 19 to be complied with in relation to the copy would not enable such use to take place with sufficient urgency.
- (3) The examining officer may apply to a senior officer for authorisation to continue to retain and use the copy.
- (4) An application under sub-paragraph (3) in relation to a copy may be made only to a senior officer who has not been directly involved in the exercise of any power under

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this Part of this Schedule to make the copy or to question a person from whom the article was taken from which the copy was made.

- (5) A senior officer may grant an authorisation under this paragraph for the retention and use of a copy if satisfied that—
- (a) there are reasonable grounds for considering that the urgency condition is met in relation to the copy,
 - (b) arrangements are in place that are sufficient for ensuring that confidential material contained in the copy is retained securely, and
 - (c) the material will be used only so far as necessary and proportionate for a purpose mentioned in sub-paragraph (2)(a).
- (6) An authorisation under this paragraph—
- (a) must be recorded in writing;
 - (b) may be granted subject to whatever conditions the senior officer thinks appropriate.
- (7) Paragraphs 21 and 22 contain further provision about authorisations granted under this paragraph.
- (8) In this paragraph—
- “confidential material” has the meaning given by paragraph 12(10) and (11);
- “senior officer” means—
- (a) where the examining officer is a constable, another constable of at least the rank of superintendent,
 - (b) where the examining officer is an immigration officer, an immigration officer of a higher grade than the examining officer, and
 - (c) where the examining officer is a customs officer, a customs officer of a higher grade than the examining officer.
- 21 (1) If a senior officer grants an authorisation under paragraph 20, the examining officer who applied for the authorisation must inform the Investigatory Powers Commissioner and each affected party of its grant.
- (2) The information required under sub-paragraph (1) must be given as soon as reasonably practicable and in any event within 24 hours after the grant of the authorisation.
- (3) An affected party may make representations to the Commissioner about how the Commissioner should proceed under paragraph 22 in respect of an authorisation granted under paragraph 20.
- (4) Representations under sub-paragraph (3) must be made in writing no later than the end of two working days beginning with the first working day after the day on which the authorisation is granted.
- (5) The information provided under sub-paragraph (1) must include an explanation of the right to make representations in writing and the time by which they must be made.
- (6) The Commissioner must have regard to any representations made before the end of the time mentioned in sub-paragraph (4) in determining how to proceed under paragraph 22.

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- (7) The requirement under this paragraph to provide information to the person from whom an article was taken from which the copy was made applies only so far as it is reasonably practicable to do so.
- (8) In this paragraph and paragraph 22—
“affected party” has the meaning given by paragraph 19(3);
“working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the authorisation is granted.
- 22 (1) This paragraph applies after the Investigatory Powers Commissioner has considered any representations made about an authorisation in accordance with paragraph 21.
- (2) The Commissioner must—
(a) approve the grant of the authorisation, or
(b) cancel the authorisation.
- (3) A decision under sub-paragraph (2) must be made—
(a) after the end of the period for making representations referred to in paragraph 21(4), and
(b) before the end of three working days beginning with the first working day after the day on which the authorisation is granted.
- (4) If the decision under sub-paragraph (2) is to approve the grant of the authorisation, the retention and use of the copy may continue in accordance with the conditions on which the authorisation was granted (subject to any further conditions or variation of the existing conditions that the Commissioner specifies).
- (5) If the decision under sub-paragraph (2) is to cancel the authorisation, any further use of the copy must stop as soon as possible.
- (6) If the Commissioner cancels the authorisation the Commissioner may direct that—
(a) the copy is destroyed, and
(b) all reasonable steps are taken to secure that any information derived from the copy is also destroyed.
- (7) Sub-paragraphs (5) and (6) do not apply if the copy is further retained under a power conferred by paragraph 17(3)(b) or (c).
- (8) The Commissioner must inform each affected party of the Commissioner’s decision under sub-paragraph (2).
- (9) The requirement under this paragraph to provide information to the person from whom the article was taken from which the copy was made applies only so far as it is reasonably practicable to do so.
- (10) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, exercises a function under this paragraph in relation to a copy, an affected party may ask the Investigatory Powers Commissioner to decide whether to approve the way in which the function was exercised.
- (11) Nothing in this paragraph affects the lawfulness of—
(a) anything done under an authorisation before it cancelled;

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- (b) if anything is in the process of being done under an authorisation when it is cancelled—
 - (i) anything done before that thing could be stopped, or
 - (ii) anything done which it is not reasonably practicable to stop.

Offences

- 23 (1) A person commits an offence if the person—
- (a) wilfully fails to comply with a duty imposed under or by virtue of this Part of this Schedule, or
 - (b) wilfully obstructs, or seeks to frustrate, a search or examination under or by virtue of this Part of this Schedule.
- (2) A person guilty of an offence under this paragraph is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 4 on the standard scale, or to both;
 - (b) on summary conviction in Scotland or Northern Ireland, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding level 4 on the standard scale, or to both.
- (3) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales), the reference in sub-paragraph (2)(a) to 51 weeks is to be read as a reference to 3 months.
- (4) Proceedings for an offence under this paragraph are not to be started—
- (a) in England and Wales, except with the consent of the Director of Public Prosecutions;
 - (b) in Northern Ireland, except with the consent of the Director of Public Prosecutions for Northern Ireland.
- (5) But if it appears to the Director of Public Prosecutions or the Director of Public Prosecutions for Northern Ireland that an offence under this paragraph has been committed for a purpose wholly or partly connected with the affairs of a country other than the United Kingdom, consent may be given for the purposes of this paragraph only with the permission—
- (a) in the case of the Director of Public Prosecutions, of the Attorney General, and
 - (b) in the case of the Director of Public Prosecutions for Northern Ireland, of the Advocate General for Northern Ireland.

Exercise of powers

- 24 The powers conferred by this Part of this Schedule are exercisable in spite of the rights conferred by section 1 of the Immigration Act 1971 (general principles regulating entry into and staying in the United Kingdom).

PART 2

DETENTION

Place of detention

- 25 (1) A detainee may be detained at a place designated under paragraph 1(1) of Schedule 8 to the Terrorism Act 2000 as a place where persons may be detained under Schedule 7 to that Act.
- (2) A detainee may be taken in the custody of an examining officer or of a person acting under an examining officer's authority to and from any place where the detainee's attendance is required for the purpose of—
- (a) the detainee's examination under Part 1 of this Schedule,
 - (b) establishing the detainee's nationality or citizenship, or
 - (c) making arrangements for the detainee's admission to a country or territory outside the United Kingdom.
- (3) Where a detainee is arrested in one part of the United Kingdom and all or part of the detainee's detention takes place in another part, the provisions of this Part of this Schedule which apply to detention in a particular part of the United Kingdom apply in relation to the detainee while detained in that part.
- (4) In this Part of this Schedule—
- (a) references to a police station include references to any place that is designated as mentioned in sub-paragraph (1);
 - (b) "detainee" means a person detained under Part 1 of this Schedule.

Identification

- 26 (1) An examining officer may take any steps which are reasonably necessary for—
- (a) photographing the detainee,
 - (b) measuring the detainee, or
 - (c) identifying the detainee.
- (2) This paragraph does not confer the power to take—
- (a) fingerprints, non-intimate samples or intimate samples (see instead paragraph 34 below for power to take fingerprints and non-intimate samples), or
 - (b) relevant physical data or samples as mentioned in section 18 of the Criminal Procedure (Scotland) Act 1995 as applied by paragraph 42 below (see instead that paragraph).

Video recording of interviews

- 27 (1) This paragraph applies to any interview by a constable of a detainee that takes place in a police station.
- (2) The video recording (with sound) of interviews to which this paragraph applies must be carried out in accordance with any relevant code of practice under Part 4 of this Schedule.

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Status

- 28 A detainee is to be deemed to be in legal custody throughout the period of the detainee's detention.

Rights: England, Wales and Northern Ireland

- 29 (1) Subject to paragraph 32, a detainee who is detained at a place in England, Wales or Northern Ireland is entitled, if the detainee so requests, to have one named person informed as soon as is reasonably practicable that the detainee is being detained there.
- (2) The person named must be—
- (a) a friend of the detainee,
 - (b) a relative, or
 - (c) a person who is known to the detainee or who is likely to take an interest in the detainee's welfare.
- (3) Where a detainee is transferred from one place to another, the detainee is to be entitled to exercise the right under this paragraph in respect of the place to which the detainee is transferred.
- (4) A detainee must be informed of the right under this paragraph on first being detained.
- 30 (1) Subject to paragraphs 32 and 33, a detainee who is detained in England, Wales or Northern Ireland is entitled, if the detainee so requests, to consult a solicitor as soon as is reasonably practicable, privately and at any time.
- (2) Where a request is made under sub-paragraph (1), the request and the time at which it was made must be recorded.
- (3) A detainee must be informed of the right under this paragraph on first being detained.
- 31 (1) This paragraph applies where a detainee makes a request to consult a solicitor.
- (2) The examining officer may not question the detainee under paragraph 1 or 2 until the detainee has consulted a solicitor (or no longer wishes to do so).
- (3) Sub-paragraph (2) does not apply if the examining officer reasonably believes that postponing the questioning until then would be likely to prejudice determination of the relevant matters.
- (4) The powers conferred by paragraph 8 (search powers where a person is questioned under paragraph 1) may be used when questioning is postponed because of sub-paragraph (2).
- (5) The detainee is entitled to consult a solicitor in person.
- (6) Sub-paragraph (5) does not apply if the examining officer reasonably believes that the time it would take to consult a solicitor in person would be likely to prejudice determination of the relevant matters.
- (7) In that case the examining officer may require any consultation to take place in another way.
- (8) In this paragraph "the relevant matters" means the matters the examining officer seeks to determine under paragraph 1 or 2.
- 32 (1) A police officer of at least the rank of superintendent may authorise a delay—

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- (a) in informing the person named by a detainee under paragraph 29;
 - (b) in permitting a detainee to consult a solicitor under paragraph 30.
 - (2) An officer may give an authorisation under sub-paragraph (1) only if the officer has reasonable grounds for believing—
 - (a) in the case of an authorisation under sub-paragraph (1)(a), that informing the named person of the detainee’s detention will have any of the consequences specified in sub-paragraph (3), or
 - (b) in the case of an authorisation under sub-paragraph (1)(b), that the exercise of the right under paragraph 30 at the time when the detainee desires to exercise it will have any of the consequences specified in sub-paragraph (3).
 - (3) Those consequences are—
 - (a) interference with or harm to evidence of an indictable offence,
 - (b) interference with or physical injury to any person,
 - (c) the alerting of persons who are suspected of having committed an indictable offence but who have not been arrested for it,
 - (d) the hindering of the recovery of property obtained as a result of an indictable offence, or
 - (e) interference with the gathering of information about the commission, preparation or instigation of acts carried out in connection with a person’s engagement in hostile activity.
 - (4) If an authorisation under sub-paragraph (1) is given orally, the person giving it must confirm it in writing as soon as is reasonably practicable.
 - (5) Where an authorisation under sub-paragraph (1) is given—
 - (a) the detainee is to be told the reason for the delay as soon as is reasonably practicable, and
 - (b) the reason is to be recorded as soon as is reasonably practicable.
 - (6) Where the reason for authorising delay ceases to subsist there may be no further delay in permitting the exercise of the right in the absence of a further authorisation under sub-paragraph (1).
- 33 (1) This paragraph applies where a detainee exercises the right under paragraph 30 to consult a solicitor.
- (2) A police officer of at least the rank of superintendent may direct that the right—
 - (a) may not be exercised (or further exercised) by consulting the solicitor who attends for the purpose of the consultation or who would so attend but for the giving of the direction, but
 - (b) may instead be exercised by consulting a different solicitor of the detainee’s choosing.
 - (3) A direction under this paragraph may be given before or after a detainee’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).
 - (4) A direction under this paragraph may be given only if the officer giving it has reasonable grounds for believing—
 - (a) that, unless the direction is given, the exercise of the right by the detainee will have any of the consequences specified in paragraph 32(3), or

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- (b) that the detainee has benefited from the detainee’s criminal conduct and that, unless the direction is given, the exercise of the right by the detainee will hinder the recovery of the value of the property constituting the benefit.
- (5) For the purposes of sub-paragraph (4) the question whether a person has benefited from the person’s criminal conduct is to be decided in accordance with Part 2 of the Proceeds of Crime Act 2002.

Fingerprints and samples: England, Wales and Northern Ireland

- 34 (1) This paragraph applies where a detainee is detained in England, Wales or Northern Ireland.
- (2) Fingerprints may be taken from the detainee only if they are taken by a constable—
- (a) with the appropriate consent given in writing, or
 - (b) without that consent under sub-paragraph (4).
- (3) A non-intimate sample may be taken from the detainee only if it is taken by a constable—
- (a) with the appropriate consent given in writing, or
 - (b) without that consent under sub-paragraph (4).
- (4) Fingerprints or a non-intimate sample may be taken from the detainee without the appropriate consent only if—
- (a) the detainee is detained at a police station and a police officer of at least the rank of superintendent authorises the fingerprints or sample to be taken, or
 - (b) the detainee has been convicted of a recordable offence and, where a non-intimate sample is to be taken, was convicted of the offence on or after 10th April 1995 (or 29th July 1996 where the non-intimate sample is to be taken in Northern Ireland).
- (5) An officer may give an authorisation under sub-paragraph (4)(a) only if—
- (a) in the case of the taking of fingerprints or samples, condition 1 is met, or
 - (b) in the case of the taking of fingerprints, condition 2 is met.
- (6) Condition 1 is met if the officer is satisfied that it is necessary for the fingerprints or sample to be taken in order to assist in determining whether the detainee is or has been engaged in hostile activity.
- (7) Condition 2 is met if—
- (a) the officer is satisfied that the fingerprints of the detainee will facilitate the ascertainment of the detainee’s identity, and
 - (b) the detainee has refused to identify himself or herself or the officer has reasonable grounds for suspecting that the detainee is not who the detainee claims to be.
- (8) In this paragraph references to ascertaining a person’s identity include references to showing that the person is not a particular person.
- (9) If an authorisation under sub-paragraph (4)(a) is given orally, the person giving it must confirm it in writing as soon as is reasonably practicable.
- 35 (1) Before fingerprints or a sample are taken from a person under paragraph 34, the person must be informed—

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- (a) that the fingerprints or sample may be used for the purposes of—
 - (i) a relevant search, as defined by paragraph 43(6),
 - (ii) section 63A(1) of the Police and Criminal Evidence Act 1984, or
 - (iii) Article 63A(1) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)), and
 - (b) where the fingerprints or sample are to be taken under paragraph 34(2)(a), (3)(a) or (4)(b), of the reason for taking the fingerprints or sample.
- (2) Before fingerprints or a sample are taken from a detainee upon an authorisation given under paragraph 34(4)(a), the detainee must be informed—
- (a) that the authorisation has been given,
 - (b) of the grounds upon which it has been given, and
 - (c) where relevant, of the nature of the offence in which it is suspected that the detainee has been involved.
- (3) After fingerprints or a sample are taken under paragraph 34, any of the following which apply must be recorded as soon as reasonably practicable—
- (a) the fact that the person has been informed in accordance with sub-paragraphs (1) and (2),
 - (b) the reason referred to in sub-paragraph (1)(b),
 - (c) the authorisation given under paragraph 34(4)(a),
 - (d) the grounds upon which that authorisation has been given, and
 - (e) the fact that the appropriate consent has been given.
- (4) Where a sample of hair is to be taken under paragraph 34, the sample may be taken either by cutting hairs or by plucking hairs with their roots so long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.
- 36 (1) In the application of paragraphs 26, 34 and 35 in relation to a person detained in England or Wales, the following expressions have the meaning given by section 65 of the Police and Criminal Evidence Act 1984—
- (a) “appropriate consent”,
 - (b) “fingerprints”,
 - (c) “intimate sample”,
 - (d) “non-intimate sample”, and
 - (e) “sufficient”.
- (2) In the application of section 65(2A) of the Police and Criminal Evidence Act 1984 for the purposes of sub-paragraph (1) of this paragraph, the reference to the destruction of a sample under section 63R of that Act is a reference to the destruction of a sample under paragraph 43 of this Schedule.
- (3) In the application of paragraphs 26, 34 and 35 in relation to a person detained in Northern Ireland, the expressions listed in sub-paragraph (1) have the meaning given by Article 53 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).
- (4) In paragraph 34 “recordable offence” has—
- (a) in relation to a detainee in England or Wales, the meaning given by section 118(1) of the Police and Criminal Evidence Act 1984, and

- (b) in relation to a detainee in Northern Ireland, the meaning given by Article 2(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

Rights: Scotland

- 37 (1) A detainee who is detained at a place in Scotland is entitled to have intimation of the detention and of the place sent without delay to a solicitor and to another person named by the detainee.
- (2) The person named must be—
- (a) a friend of the detainee,
 - (b) a relative, or
 - (c) a person who is known to the detainee or who is likely to take an interest in the detainee’s welfare.
- (3) A detainee who is transferred from one place to another is entitled to exercise the right under sub-paragraph (1) in respect of the place to which the detainee is transferred.
- (4) A police officer not below 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 39(4) or where paragraph 39(5) applies.
- (5) Where a detainee requests that the intimation be made, the time when the request—
- (a) is made, and
 - (b) is complied with,
- must be recorded.
- (6) A person detained as mentioned in sub-paragraph (1) is entitled to consult a solicitor at any time, without delay.
- (7) A police officer not below 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 39(4) or where paragraph 39(5) applies.
- (8) The consultation must be held in private.
- (9) A detainee must be informed of the rights under sub-paragraphs (1) and (6) on first being detained.
- 38 (1) This paragraph applies where a detainee in Scotland requests to consult a solicitor.
- (2) The examining officer may not question the detainee under paragraph 1 or 2 until the person has consulted a solicitor (or no longer wishes to do so).
- (3) Sub-paragraph (2) does not apply if the examining officer reasonably believes that postponing the questioning until then would be likely to prejudice determination of the relevant matters.
- (4) The powers given by paragraph 8 (search powers where a person is questioned under paragraph 1) may be used when questioning is postponed because of sub-paragraph (2).
- (5) The detainee is entitled to consult a solicitor in person.

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- (6) Sub-paragraph (5) does not apply if the examining officer reasonably believes that the time it would take to consult a solicitor in person would be likely to prejudice determination of the relevant matters.
- (7) In that case the examining officer may require any consultation to take place in another way.
- (8) In this paragraph “the relevant matters” means the matters the examining officer seeks to determine under paragraph 1 or 2.
- 39 (1) Sub-paragraph (2) applies where a detainee exercises the right under paragraph 37(6) to consult a solicitor.
- (2) A police officer not below the rank of superintendent may, if it appears to the officer to be necessary on one of the grounds mentioned in sub-paragraph (4), direct that the right—
- (a) may not be exercised (or further exercised) by consulting the solicitor who attends for the purpose of the consultation or who would so attend but for the giving of the direction, but
 - (b) may instead be exercised by consulting a different solicitor of the detainee’s choosing.
- (3) A direction under this paragraph may be given before or after a detainee’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).
- (4) The grounds mentioned in paragraph 37(4) and (7) and in sub-paragraph (2) 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;
 - (d) that it will further the operation of Part 2 or 3 of the Proceeds of Crime Act 2002 or the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)) (confiscation of the proceeds of an offence);
 - (e) that it will further the gathering of information about the commission, preparation or instigation of acts carried out in connection with a person’s engagement in hostile activity.
- (5) This sub-paragraph applies where an officer mentioned in paragraph 37(4) or (7) has reasonable grounds for believing that—
- (a) the detainee has benefited from the detainee’s 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 detainee’s detention (in the case of an authorisation under paragraph 37(4)), or
 - (ii) the exercise of the entitlement under paragraph 37(6) (in the case of an authorisation under paragraph 37(7)).
- (6) For the purposes of sub-paragraph (5) the question whether a person has benefited from the person’s criminal conduct is to be decided in accordance with Part 3 of the Proceeds of Crime Act 2002.

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- (7) Where delay is authorised in the exercising of any of the rights mentioned in paragraph 37(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 detainee 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.
- 40 (1) Paragraphs 37 to 39 have effect in relation to a detainee 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 the detainee appears to a constable to be a child—
- (a) the other person named by the detainee in pursuance of paragraph 37(1) must be the detainee’s parent,
 - (b) intimation is to be made under paragraph 37(1) whether the detainee requests that it be made or not, and
 - (c) section 40 of the Criminal Justice (Scotland) Act 2016 (right of under 18s to have access to other person) applies as if the detainee were a person in police custody for the purposes of that section.
- (3) In relation to a detainee who is detained at a place other than a police station, sub-paragraph (2) applies as if references to a constable included an examining officer.
- (4) 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.
- 41 (1) Subject to sub-paragraph (2), where a detainee is permitted to consult a solicitor, the solicitor is to be allowed to be present at any interview carried out in connection with an investigation carried out for the purposes of Part 1 of this Schedule.
- (2) A police officer not below the rank of Assistant Chief Constable may direct that the solicitor is not to be allowed to be present at an interview (or part of an interview) if the officer is satisfied that the solicitor’s behaviour during the interview would interfere with, or obstruct, the conduct of the interview.

Fingerprints and samples: Scotland

- 42 (1) Subject to the following modification, section 18 of the Criminal Procedure (Scotland) Act 1995 (procedure for taking certain prints and samples) applies to a detainee detained at a police station in Scotland under Part 1 of this Schedule as it applies to a person arrested.
- (2) The modification is that section 18 applies as if—
- (a) for subsection (2) of that section the following were substituted—

“(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 the officer is satisfied that it is necessary to do so in order to assist in determining whether that person is or has been engaged in hostile activity.

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- (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 fingerprints will facilitate the ascertainment of the person’s identity; and
 - (b) the person has refused to identify himself or herself or the constable has reasonable grounds for suspecting that the person is not who the person claims to be.”;
- (b) subsections (3) to (5) were omitted;
- (c) after subsection (8) there were inserted—
- “(9) In this section—
- (a) references to a “detained person” are references to a person detained under Part 1 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019;
 - (b) the reference to engagement in hostile activity is to be read in accordance with paragraph 1 of that Schedule.”

Destruction and retention of fingerprints and samples etc: United Kingdom

- 43 (1) This paragraph applies to—
- (a) fingerprints taken under paragraph 34,
 - (b) a DNA profile derived from a DNA sample taken under paragraph 34,
 - (c) relevant physical data taken or provided by virtue of paragraph 42, and
 - (d) a DNA profile derived from a DNA sample taken by virtue of paragraph 42.
- (2) Fingerprints, relevant physical data and DNA profiles to which this paragraph applies (“paragraph 43 material”) must be destroyed if it appears to the responsible chief officer of police that the taking or providing of the material or, in the case of a DNA profile, the taking of the sample from which the DNA profile was derived, was unlawful.
- (3) In any other case, paragraph 43 material must be destroyed unless it is retained under a power conferred by paragraph 44, 46 or 47.
- (4) Paragraph 43 material which ceases to be retained under a power mentioned in sub-paragraph (3) may continue to be retained under any other power which applies to it.
- (5) Nothing in this paragraph prevents a relevant search, in relation to paragraph 43 material, from being carried out within such time as may reasonably be required for the search if the responsible chief officer of police considers the search to be desirable.
- (6) For the purposes of sub-paragraph (5), “a relevant search” is a search carried out for the purpose of checking the material against—
- (a) other fingerprints or samples taken under paragraph 34 or a DNA profile derived from such a sample,
 - (b) any of the relevant physical data, samples or information mentioned in section 19C(1) of the Criminal Procedure (Scotland) Act 1995,
 - (c) fingerprints or samples taken under paragraph 10 or 12 of Schedule 8 to the Terrorism Act 2000 or a DNA profile derived from a sample taken under one of those paragraphs,

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- (d) any of the relevant physical data, samples or information held by virtue of section 56 of the Criminal Justice (Scotland) Act 2003,
 - (e) material to which section 18 of the Counter-Terrorism Act 2008 applies,
 - (f) any of the fingerprints, data or samples obtained under paragraph 1 or 4 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011, or information derived from such samples,
 - (g) any of the fingerprints, samples and information mentioned in section 63A(1)(a) and (b) of the Police and Criminal Evidence Act 1984 (checking of fingerprints and samples), and
 - (h) any of the fingerprints, samples and information mentioned in Article 63A(1)(a) and (b) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (checking of fingerprints and samples).
- 44 (1) Paragraph 43 material may be retained indefinitely in the case of a detainee who—
- (a) has previously been convicted of a recordable offence (other than a single exempt conviction), or an offence in Scotland which is punishable by imprisonment, or
 - (b) is so convicted before the end of the period within which the material may be retained by virtue of this paragraph.
- (2) In sub-paragraph (1)—
- (a) the reference to a recordable offence includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute—
 - (i) a recordable offence under the law of England and Wales if done there, or
 - (ii) a recordable offence under the law of Northern Ireland if done there, (and, in the application of sub-paragraph (1) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted);
 - (b) the reference to an offence in Scotland which is punishable by imprisonment includes an offence under the law of a country or territory outside the United Kingdom where the act constituting the offence would constitute an offence under the law of Scotland which is punishable by imprisonment if done there (and, in the application of sub-paragraph (1) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted).
- (3) In the case of a person who has no previous convictions, or only one exempt conviction, the material may be retained until the end of the retention period specified in sub-paragraph (4).
- (4) The retention period is—
- (a) in the case of fingerprints or relevant physical data, the period of 6 months beginning with the date on which the fingerprints or relevant physical data were taken or provided, and
 - (b) in the case of a DNA profile, the period of 6 months beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).

- 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
 - (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

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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);
 - (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

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- (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.
- 46 (1) Paragraph 43 material may be retained for as long as a national security determination made by a chief officer of police has effect in relation to it.
- (2) A national security determination is made if a chief officer of police determines that it is necessary for any paragraph 43 material to be retained for the purposes of national security.
- (3) A national security determination—
 - (a) must be made in writing,
 - (b) has effect for a maximum of 5 years beginning with the date on which the determination is made, and
 - (c) may be renewed.
- (4) In this paragraph “chief officer of police” means—
 - (a) a chief officer of police of a police force in England and Wales,
 - (b) the chief constable of the Police Service of Scotland, or
 - (c) the Chief Constable of the Police Service of Northern Ireland.
- 47 (1) This paragraph applies where paragraph 43 material is or includes a person’s fingerprints (“the original fingerprints”).
- (2) A constable may make a determination under this paragraph in respect of any further fingerprints taken from, or provided by, the same person (“the further fingerprints”) if conditions 1 and 2 are met.
- (3) Condition 1 is met if the further fingerprints—
 - (a) are paragraph 43 material,
 - (b) are taken or provided under or by virtue of—
 - (i) Part 5 of the Police and Criminal Evidence Act 1984,
 - (ii) Article 61 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)),
 - (iii) any provision, power or authority mentioned in section 18G(1) of the Criminal Procedure (Scotland) Act 1995,
 - (iv) paragraph 10 of Schedule 8 to the Terrorism Act 2000, or
 - (v) paragraph 1 or 4 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011, or
 - (c) are material to which section 18 of the Counter-Terrorism Act 2008 applies.
- (4) Condition 2 is met if—

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- (a) in a case where the further fingerprints are material to which section 18 of the Counter-Terrorism Act 2008 applies, the original fingerprints and the further fingerprints are held under the law of the same part of the United Kingdom;
 - (b) in any other case, the original fingerprints and the further fingerprints were taken from or provided by the person in the same part of the United Kingdom.
- (5) Where a determination under this paragraph is made in respect of the further fingerprints—
 - (a) the further fingerprints may be retained for as long as the original fingerprints are retained under any power conferred by paragraph 44 or 46, and
 - (b) a requirement under any enactment to destroy the further fingerprints does not apply for as long as their retention is authorised by paragraph (a).
- (6) Sub-paragraph (5)(a) does not prevent the further fingerprints being retained after the original fingerprints fall to be destroyed if the continued retention of the further fingerprints is authorised under any enactment.
- (7) A written record must be made of a determination under this paragraph.
- 48 (1) If fingerprints or relevant physical data are required by paragraph 43 to be destroyed, any copies of the fingerprints or relevant physical data held by a police force must also be destroyed.
- (2) If a DNA profile is required by that paragraph to be destroyed, no copy may be retained by a police force except in a form which does not include information which identifies the person to whom the DNA profile relates.
- 49 (1) This paragraph applies to—
 - (a) samples taken under paragraph 34, or
 - (b) samples taken by virtue of paragraph 42.
- (2) Samples to which this paragraph applies must be destroyed if it appears to the responsible chief officer of police that the taking of the sample was unlawful.
- (3) Subject to this, the rule in sub-paragraph (4) or (as the case may be) (5) applies.
- (4) A DNA sample to which this paragraph applies must be destroyed—
 - (a) as soon as a DNA profile has been derived from the sample, or
 - (b) if sooner, before the end of the period of 6 months beginning with the date on which the sample was taken.
- (5) Any other sample to which this paragraph applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken.
- (6) Nothing in this paragraph prevents a relevant search, in relation to samples to which this paragraph applies, from being carried out within such time as may reasonably be required for the search if the responsible chief officer of police considers the search to be desirable.
- (7) In this paragraph “a relevant search” has the meaning given by paragraph 43(6).
- 50 (1) Any material to which paragraph 43 or 49 applies must not be used other than—
 - (a) in the interests of national security,
 - (b) for the purposes of a terrorist investigation, as defined by section 32 of the Terrorism Act 2000,

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- (c) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or
 - (d) for purposes related to the identification of a deceased person or of the person to whom the material relates.
 - (2) Subject to sub-paragraph (1), a relevant search (within the meaning given by paragraph 43(6)) may be carried out in relation to material to which paragraph 43 or 49 applies if the responsible chief officer of police considers the search to be desirable.
 - (3) Material which is required by paragraph 43 or 49 to be destroyed must not at any time after it is required to be destroyed be used—
 - (a) in evidence against the person to whom the material relates, or
 - (b) for the purposes of the investigation of any offence.
 - (4) In this paragraph—
 - (a) the reference to using material includes a reference to allowing any check to be made against it and to disclosing it to any person;
 - (b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom.
 - (5) Sub-paragraphs (1), (2) and (4) do not form part of the law of Scotland.
- 51 In paragraphs 43 to 50—
- “DNA profile” means any information derived from a DNA sample;
 - “DNA sample” means any material that has come from a human body and consists of or includes human cells;
 - “fingerprints” has the meaning given by section 65(1) of the Police and Criminal Evidence Act 1984;
 - “paragraph 43 material” has the meaning given by paragraph 43(2);
 - “police force” means any of the following—
 - (a) the metropolitan police force;
 - (b) a police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);
 - (c) the City of London police force;
 - (d) the Police Service of Scotland;
 - (e) the Scottish Police Authority;
 - (f) the Police Service of Northern Ireland;
 - (g) the Police Service of Northern Ireland Reserve;
 - (h) the Ministry of Defence Police;
 - (i) the Royal Navy Police;
 - (j) the Royal Military Police;
 - (k) the Royal Air Force Police;
 - (l) the British Transport Police;
 - “recordable offence” has—
 - (a) in relation to a conviction in England and Wales, the meaning given by section 118(1) of the Police and Criminal Evidence Act 1984, and

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(b) in relation to a conviction in Northern Ireland, the meaning given by Article 2(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12));

“relevant physical data” has the meaning given by section 18(7A) of the Criminal Procedure (Scotland) Act 1995;

“responsible chief officer of police” means, in relation to fingerprints or samples taken in England or Wales, or a DNA profile derived from a sample so taken, the chief officer of police for the police area—

(a) in which the material concerned was taken, or

(b) in the case of a DNA profile, in which the sample from which the DNA profile was derived was taken;

“responsible chief officer of police” means, in relation to relevant physical data or samples taken or provided in Scotland, or a DNA profile derived from a sample so taken or provided, the chief constable of the Police Service of Scotland;

“responsible chief officer of police” means, in relation to fingerprints or samples taken in Northern Ireland, or a DNA profile derived from a sample so taken, the Chief Constable of the Police Service of Northern Ireland.

PART 3

REVIEW OF DETENTION

General requirements

- 52 (1) The detention of a person (“the detainee”) under Part 1 of this Schedule must be periodically reviewed by a review officer.
- (2) The first review must be carried out before the end of the period of one hour beginning with the detainee’s detention under that Part.
- (3) Subsequent reviews must be carried out at intervals of not more than two hours.
- (4) The review officer may authorise a detainee’s continued detention under Part 1 of this Schedule only if satisfied that it is necessary for the purposes of exercising a power under paragraph 1 or 2.
- (5) If on a review under this paragraph the review officer does not authorise a detainee’s continued detention, the detainee must be released (unless detained under another power).
- (6) In this Part of this Schedule “review officer” means a senior officer who has not been directly involved in questioning the detainee under paragraph 1 or 2.
- (7) “Senior officer” means—
- (a) where the examining officer is a constable, a constable of a higher rank than the examining officer,
 - (b) where the examining officer is an immigration officer, an immigration officer of a higher grade than the examining officer, and
 - (c) where the examining officer is a customs officer, a customs officer of a higher grade than the examining officer.

Representations

- 53 (1) Before determining whether to authorise a detainee's continued detention, a review officer must give either of the following persons an opportunity to make representations about the detention—
- (a) the detainee, or
 - (b) a solicitor representing the detainee 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 detainee if the officer considers that the detainee is unfit to make representations because of the detainee's condition or behaviour.

Rights

- 54 (1) Where a review officer authorises continued detention the officer must inform the detainee—
- (a) of any of the detainee's rights under paragraph 29 or 30 (in the case of a detainee in England, Wales or Northern Ireland), or paragraph 37 (in the case of a detainee in Scotland), which have not yet been exercised, and
 - (b) if the exercise of any of those rights is being delayed in accordance with the provisions of paragraph 31 or 37, of the fact that it is being delayed.
- (2) Where a review of a detainee's detention is being carried out at a time when the detainee's exercise of a right under paragraph 29 or 30 (in the case of a detainee in England, Wales or Northern Ireland), or paragraph 37 (in the case of a detainee in Scotland), is being delayed—
- (a) the review officer must consider whether the reason or reasons for which the delay was authorised continue to subsist, and
 - (b) if in the review officer's opinion the reason or reasons have ceased to subsist, the review officer must inform the officer who authorised the delay of that opinion (unless the review officer was that officer).

Record

- 55 (1) A review officer carrying out a review must make a written record of the outcome of the review and of any of the following which apply—
- (a) the fact that the officer is satisfied that continued detention is necessary for the purposes of exercising a power under paragraph 1 or 2,
 - (b) the fact that the detainee has been informed as required under paragraph 54(1),
 - (c) the officer's conclusion on the matter considered under paragraph 54(2)(a), and
 - (d) the fact that the officer has taken action under paragraph 54(2)(b).
- (2) The review officer must inform the detainee whether the officer is authorising continued detention, and if so that the officer is satisfied that continued detention is necessary for the purposes of exercising a power under paragraph 1 or 2.
- (3) Sub-paragraph (2) does not apply where the detainee is—
- (a) incapable of understanding what is said,
 - (b) violent or likely to become violent, or

- (c) in urgent need of medical attention.

PART 4

CODES OF PRACTICE

- 56 (1) The Secretary of State must issue codes of practice about—
- (a) training to be undertaken by constables, immigration officers and customs officers who are to act as examining officers or exercise other functions under this Schedule,
 - (b) the exercise by such persons of functions conferred on them by virtue of this Schedule,
 - (c) the video recording (with sound) of interviews by constables of persons detained under Part 1 of this Schedule at a police station, and
 - (d) reviews under Part 3 of this Schedule.
- (2) An examining officer must perform the functions conferred by virtue of this Schedule in accordance with any relevant code of practice in operation under sub-paragraph (1)(b).
- (3) A code of the kind mentioned in sub-paragraph (1)(c)—
- (a) may make different provision in relation to a particular part of the United Kingdom;
 - (b) may make different provision for different parts of the United Kingdom.
- (4) A code of the kind mentioned in sub-paragraph (1)(d) must include provision about training to be undertaken by persons who are to act as review officers.
- (5) The failure of an examining officer to observe a provision of a code does not of itself make the officer liable to criminal or civil proceedings.
- (6) A code—
- (a) is admissible in evidence in criminal and civil proceedings, and
 - (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.
- (7) The Secretary of State may revise a code and issue the revised code.
- 57 (1) Before issuing a code under paragraph 56 the Secretary of State must—
- (a) publish a draft code,
 - (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 such representations.
- (2) The Secretary of State must lay a draft of the code before Parliament.
- (3) After the code has been laid before Parliament the Secretary of State may bring it into operation by regulations.
- (4) Sub-paragraphs (1) to (3) apply to the issue of a revised code as they apply to the first issue of the code.
- (5) Regulations under sub-paragraph (3) must be made by statutory instrument.

- (6) A statutory instrument containing regulations under sub-paragraph (3) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

PART 5

RELATED POWERS

Entry

- 58 (1) An examining officer may enter a vehicle for the purpose of exercising a function conferred on the officer by virtue of this Schedule.
- (2) In this paragraph “vehicle” includes an aircraft, hovercraft, train or vessel.

Reasonable force

- 59 (1) An examining officer may if necessary use reasonable force for the purpose of exercising a power conferred on the officer by virtue of this Schedule.
- (2) Sub-paragraph (1) does not apply in relation to the powers conferred by paragraphs 1 or 2.

Information

- 60 (1) Information acquired by an examining officer may be supplied—
- (a) to the Secretary of State for use in relation to immigration;
 - (b) to the Commissioners for Her Majesty’s Revenue and Customs or a customs officer;
 - (c) to a constable;
 - (d) to the National Crime Agency;
 - (e) to a person specified in regulations made by the Secretary of State for use of a kind specified in the regulations.
- (2) Information acquired by a customs officer or an immigration officer may be supplied to an examining officer.
- (3) A person may be specified in regulations under this paragraph only if the person exercises public functions (whether or not in the United Kingdom).
- (4) Regulations under this paragraph must be made by statutory instrument.
- (5) A statutory instrument containing regulations under this paragraph may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

Other police powers

- 61 A power conferred by virtue of this Schedule on a constable—
- (a) is additional to powers exercisable at common law or by virtue of any other enactment, and
 - (b) is not to be taken to affect those powers.

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PART 6

REVIEW OF POWERS

- 62 (1) The Investigatory Powers Commissioner (“the Commissioner”) must—
- (a) keep under review the operation of the preceding provisions of this Schedule, and
 - (b) as soon as reasonably practicable after the end of each calendar year, make a report to the Secretary of State about the outcome of the review for that calendar year.
- (2) The Commissioner may, at any time, make any such report to the Secretary of State, on any matter relating to the function of the Commissioner under sub-paragraph (1) (a), as the Commissioner considers appropriate.
- (3) On receiving a report under this paragraph the Secretary of State must—
- (a) publish the report, and
 - (b) lay a copy of the published report before Parliament together with a statement as to whether any part of the report has been excluded from publication under sub-paragraph (4).
- (4) The Secretary of State may, after consultation with the Commissioner, exclude from publication any part of a report received under this paragraph if, in the opinion of the Secretary of State, the publication of that part would be contrary to the public interest or prejudicial to—
- (a) national security,
 - (b) the prevention or detection of crime,
 - (c) the economic well-being of the United Kingdom, or
 - (d) the continued discharge of the functions of any public authority whose activities include activities that are subject to review by the Commissioner.
- (5) Section 229(6) and (7) of the Investigatory Powers Act 2016 (duty not to act contrary to public interest etc) apply to the exercise of functions under this paragraph as they apply to the exercise of functions under that Act.
- (6) In section 231 of the Investigatory Powers Act 2016 (error reporting), the reference in subsection (9)(a) to any other enactment does not include this Schedule.
- (7) The duty in section 234(1) of the Investigatory Powers Act 2016 (annual and other reports) to make a report about the carrying out of functions does not apply in relation to the functions of the Commissioner under this Schedule.
- (8) In this paragraph “public authority” means a public authority within the meaning of section 6 of the Human Rights Act 1998, other than a court or tribunal.

PART 7

CROSS-CHANNEL RAIL SERVICES

- 63 (1) At the end of Schedule 4 to the Channel Tunnel (International Arrangements) Order 1993 (S.I. 1993/1813) insert—

Counter-Terrorism and Border Security Act 2019

- “7 (1) Schedule 3 to the Counter-Terrorism and Border Security Act 2019 (border security) is modified as follows.
- (2) In paragraph 1—
- (a) in sub-paragraph (2) omit—
 - (i) “or in the border area”, in both places where it occurs;
 - (ii) “or Northern Ireland”, where it occurs in paragraph (b) (i);
 - (iii) paragraph (b)(ii);
 - (b) in sub-paragraph (3)—
 - (i) for “ship or aircraft” substitute “through train or shuttle train”;
 - (ii) omit “or Northern Ireland”, in both places where it occurs;
 - (c) after sub-paragraph (3) insert—

“(3A) An examination under sub-paragraph (1) may be commenced in a train during the period when it is a control area.”
- (3) Omit paragraph 2.
- (4) In paragraph 4—
- (a) in sub-paragraph (1), for “vehicle” substitute “through train or shuttle train”;
 - (b) in sub-paragraph (2), for “ship, aircraft or vehicle” substitute “through train or shuttle train”;
 - (c) omit sub-paragraph (4).
- (5) In paragraph 7, for “ship or aircraft”, in each place where it occurs, substitute “through train or shuttle train”.
- (6) In paragraph 8—
- (a) in sub-paragraph (1), for “ship or aircraft”, in each place where it occurs, substitute “through train or shuttle train”;
 - (b) omit sub-paragraph (2).
- (7) In paragraph 9—
- (a) in sub-paragraph (2)—
 - (i) in paragraph (a) omit “or Northern Ireland”;
 - (ii) in paragraph (a) for “ship or vehicle” substitute “through train or shuttle train”;
 - (iii) omit paragraph (b);
 - (b) omit sub-paragraphs (3) and (4);
 - (c) in sub-paragraph (5), omit paragraph (b);
 - (d) in sub-paragraph (6)—
 - (i) for “ship or aircraft” substitute “through train or shuttle train”;
 - (ii) omit paragraph (b).

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- (8) Omit paragraph 63.
- (9) In paragraph 64—
- (a) in sub-paragraph (4) omit the references to “ship” and “vehicle” and for “an airport and a hoverport” substitute “a railway station or other place where persons embark or disembark, or goods are loaded or unloaded, on or from a through train or shuttle train (as the case may be)”;
 - (b) in sub-paragraph (5), for “ship or aircraft”, in both places, substitute “through train or shuttle train”;
 - (c) omit sub-paragraph (6).
- (10) In the following provisions, omit “or 2”—
- (a) paragraph 3;
 - (b) paragraph 4(1);
 - (c) paragraph 5(1);
 - (d) paragraph 6;
 - (e) paragraph 31(2) and (8);
 - (f) paragraph 52(4) and (6);
 - (g) paragraph 55(1)(a) and (2).
- (11) In the following provisions, after “this Schedule” insert “or the Channel Tunnel (International Arrangements) Order 1993”—
- (a) paragraph 56(1) and (2) (in each place where the words occur);
 - (b) paragraph 59(1);
 - (c) paragraph 61.”
- (2) Nothing in sub-paragraph (1) affects the power in section 11 of the Channel Tunnel Act 1987 to revoke or amend any provision of the Order amended by that sub-paragraph.

PART 8

INTERPRETATION

- 64 (1) This paragraph applies for the purposes of this Schedule.
- (2) References to engagement in hostile activity are to be read in accordance with paragraph 1(5); and references to a “hostile act” are to be read in accordance with paragraph 1(6).
- (3) “Examining officer” means—
- (a) a constable,
 - (b) an immigration officer who is designated as an examining officer for the purposes of Schedule 7 to the Terrorism Act 2000 (see paragraph 1(1)(b) of that Schedule), and
 - (c) a customs officer who is designated for the purposes of that Schedule (see paragraph 1(1)(c) of that Schedule).
- (4) The following terms have the meaning given—
- “act” includes omission;

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- “article” includes a substance and any other thing;
- “customs officer” means an officer of Revenue and Customs;
- “immigration officer” means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971;
- “the Investigatory Powers Commissioner” and “Judicial Commissioner” have the same meanings as in the Investigatory Powers Act 2016 (see section 263(1) of that Act);
- “port” includes an airport and a hoverport;
- “property” includes property wherever situated and whether real or personal, heritable or moveable, and things in action and other intangible or incorporeal property;
- “ship” includes a hovercraft;
- “vehicle” includes a train.
- (5) A place is to be treated as a port in relation to a person if an examining officer believes the person—
- (a) has gone there for the purpose of embarking on a ship or aircraft, or
 - (b) has arrived there on disembarking from a ship or aircraft.
- (6) A place is within the “border area” if it is in Northern Ireland and—
- (a) it is no more than one mile from the border between Northern Ireland and the Republic of Ireland, or
 - (b) it is the first place at which a train travelling from the Republic of Ireland stops for the purposes of allowing passengers to leave.
- (7) References to crime include references to any conduct which—
- (a) constitutes one or more criminal offences, or
 - (b) 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.
- (8) References to an enactment include references to—
- (a) an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978,
 - (b) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
 - (c) an enactment comprised in, or in an instrument made under, Northern Ireland legislation.
- (9) References to serious crime are to be read in accordance with paragraph 1(7)(d).
- (10) References to a part of the United Kingdom are references to—
- (a) England and Wales,
 - (b) Scotland, or
 - (c) Northern Ireland.