

*Status: Point in time view as at 11/05/2001.*

*Changes to legislation: Terrorism Act 2000, SCHEDULE 8 is up to date with all changes known to be in force on or before 20 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 8

Section 41 and Schedule 7, para. 6.

#### DETENTION

##### Modifications etc. (not altering text)

- C1** Schs. 7, 8, 14 extended (with modifications) (coming into force in accordance with art. 1(2) of the extending S.I.) by [The Nationality, Immigration and Asylum Act 2002 \(Juxtaposed Controls\) Order 2003 \(S.I. 2003/2818\)](#), [art. 11\(1\)\(b\)](#), Sch. 2; (as amended (31.3.2021) by [The Nationality, Immigration and Asylum Act 2002 \(Juxtaposed Controls\) \(Amendment\) Order 2021 \(S.I. 2021/311\)](#), arts. 1(2), [2\(7\)\(b\)\(i\)](#))
- C2** Sch. 8 applied (with modifications) (25.7.2006) by [Terrorism Act 2006 \(c. 11\)](#), [s. 25\(1\)\(3\)\(4\)](#); S.I. 2006/1936, [art. 2](#)

#### PART I

##### TREATMENT OF PERSONS DETAINED UNDER SECTION 41 OR SCHEDULE 7

###### *Place of detention*

- 1 (1) The Secretary of State shall designate places at which persons may be detained under Schedule 7 or section 41.
- (2) In this Schedule a reference to a police station includes a reference to any place which the Secretary of State has designated under sub-paragraph (1) as a place where a person may be detained under section 41.
- (3) Where a person is detained under Schedule 7, he 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 his attendance is required for the purpose of—
- (a) his examination under that Schedule,
  - (b) establishing his nationality or citizenship, or
  - (c) making arrangements for his admission to a country or territory outside the United Kingdom.
- (4) A constable who arrests a person under section 41 shall take him as soon as is reasonably practicable to the police station which the constable considers the most appropriate.
- (5) In this paragraph “examining officer” has the meaning given in Schedule 7.
- (6) Where a person is arrested in one Part of the United Kingdom and all or part of his detention takes place in another Part, the provisions of this Schedule which apply to detention in a particular Part of the United Kingdom apply in relation to him while he is detained in that Part.

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**Modifications etc. (not altering text)**

- C3** Sch. 8 paras. 1(6), 2, 6-9, 16-19 applied (with modifications) (11.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\), s. 5\(8\)](#)

**Commencement Information**

- I1** Sch. 8 para. 1 wholly in force at 19.2.2001; Sch. 8 para. 1 not in force at Royal Assent see s. 128; Sch. 8 para. 1(1) in force at 31.10.2000 by [S.I. 2000/2944](#), [art. 2\(I\)\(i\)](#); Sch. 8 in force at 19.2.2001 in so far as not already in force by [S.I. 2001/421](#), [art. 2](#)

*Identification*

- 2 (1) An authorised person may take any steps which are reasonably necessary for—
- (a) photographing the detained person,
  - (b) measuring him, or
  - (c) identifying him.
- (2) In sub-paragraph (1) “authorised person” means any of the following—
- (a) a constable,
  - (b) a prison officer,
  - (c) a person authorised by the Secretary of State, and
  - (d) in the case of a person detained under Schedule 7, an examining officer (within the meaning of that Schedule).
- (3) This paragraph does not confer the power to take—
- (a) fingerprints, non-intimate samples or intimate samples (within the meaning given by paragraph 15 below), or
  - (b) relevant physical data or samples as mentioned in section 18 of the <sup>M1</sup>Criminal Procedure (Scotland) Act 1995 as applied by paragraph 20 below.

**Modifications etc. (not altering text)**

- C4** Sch. 8 para. 2 extended (N.I.) (8.4.2003) by [Police \(Northern Ireland\) Act 2003 \(c. 6\), ss. 30, 31, Sch. 2 Pt. 2 para. 21](#)
- C5** Sch. 8 paras. 1(6), 2, 6-9, 16-19 applied (with modifications) (11.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\), s. 5\(8\)](#)

**Marginal Citations**

- M1** 1995 c. 46.

*Audio and video recording of interviews*

- 3 (1) The Secretary of State shall—
- (a) issue a code of practice about the audio recording of interviews to which this paragraph applies, and
  - (b) make an order requiring the audio recording of interviews to which this paragraph applies in accordance with any relevant code of practice under paragraph (a).

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- (2) The Secretary of State may make an order requiring the video recording of—
    - (a) interviews to which this paragraph applies;
    - (b) interviews to which this paragraph applies which take place in a particular Part of the United Kingdom.
  - (3) An order under sub-paragraph (2) shall specify whether the video recording which it requires is to be silent or with sound.
  - (4) Where an order is made under sub-paragraph (2)—
    - (a) the Secretary of State shall issue a code of practice about the video recording of interviews to which the order applies, and
    - (b) the order shall require the interviews to be video recorded in accordance with any relevant code of practice under paragraph (a).
  - (5) Where the Secretary of State has made an order under sub-paragraph (2) requiring certain interviews to be video recorded with sound—
    - (a) he need not make an order under sub-paragraph (1)(b) in relation to those interviews, but
    - (b) he may do so.
  - (6) This paragraph applies to any interview by a constable of a person detained under Schedule 7 or section 41 if the interview takes place in a police station.
  - (7) A code of practice under this paragraph—
    - (a) may make provision in relation to a particular Part of the United Kingdom;
    - (b) may make different provision for different Parts of the United Kingdom.
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- (1) This paragraph applies to a code of practice under paragraph 3.
  - (2) Where the Secretary of State proposes to issue a code of practice he shall—
    - (a) publish a draft,
    - (b) consider any representations made to him about the draft, and
    - (c) if he thinks it appropriate, modify the draft in the light of any representations made to him.
  - (3) The Secretary of State shall lay a draft of the code before Parliament.
  - (4) When the Secretary of State has laid a draft code before Parliament he may bring it into operation by order.
  - (5) The Secretary of State may revise a code and issue the revised code; and sub-paragraphs (2) to (4) shall apply to a revised code as they apply to an original code.
  - (6) The failure by a constable to observe a provision of a code shall not of itself make him liable to criminal or civil proceedings.
  - (7) A code—
    - (a) shall be admissible in evidence in criminal and civil proceedings, and
    - (b) shall be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

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#### Commencement Information

- I2** Sch. 8 Pt. I para. 4 partly in force; Sch. 8 Pt. I para. 4 not in force at Royal Assent see s. 128; Sch. 8 Pt. I para. 4(1)-(5) in force at 12.10.2000 by S.I. 2000/2800, art. 2(c)(ii); Sch. 8 in force at 19.2.2001 in so far as not already in force by S.I. 2001/421, art. 2

#### Status

- 5 A detained person shall be deemed to be in legal custody throughout the period of his detention.

#### *Rights: England, Wales and Northern Ireland*

- 6 (1) Subject to paragraph 8, a person detained under Schedule 7 or section 41 at a police station in England, Wales or Northern Ireland shall be entitled, if he so requests, to have one named person informed as soon as is reasonably practicable that he is being detained there.
- (2) The person named must be—
- (a) a friend of the detained person,
  - (b) a relative, or
  - (c) a person who is known to the detained person or who is likely to take an interest in his welfare.
- (3) Where a detained person is transferred from one police station to another, he shall be entitled to exercise the right under this paragraph in respect of the police station to which he is transferred.

#### Modifications etc. (not altering text)

- C6** Sch. 8 paras. 1(6), 2, 6-9, 16-19 applied (with modifications) (11.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\), s. 5\(8\)](#)

- 7 (1) Subject to paragraphs 8 and 9, a person detained under Schedule 7 or section 41 at a police station in England, Wales or Northern Ireland shall be entitled, if he 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 shall be recorded.

#### Modifications etc. (not altering text)

- C7** Sch. 8 paras. 1(6), 2, 6-9, 16-19 applied (with modifications) (11.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\), s. 5\(8\)](#)

- 8 (1) Subject to sub-paragraph (2), an officer of at least the rank of superintendent may authorise a delay—
- (a) in informing the person named by a detained person under paragraph 6;
  - (b) in permitting a detained person to consult a solicitor under paragraph 7.

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- (2) But where a person is detained under section 41 he must be permitted to exercise his rights under paragraphs 6 and 7 before the end of the period mentioned in subsection (3) of that section.
- (3) Subject to sub-paragraph (5), an officer may give an authorisation under sub-paragraph (1) only if he has reasonable grounds for believing—
- (a) in the case of an authorisation under sub-paragraph (1)(a), that informing the named person of the detained person's detention will have any of the consequences specified in sub-paragraph (4), or
  - (b) in the case of an authorisation under sub-paragraph (1)(b), that the exercise of the right under paragraph 7 at the time when the detained person desires to exercise it will have any of the consequences specified in sub-paragraph (4).
- (4) Those consequences are—
- (a) interference with or harm to evidence of a serious arrestable offence,
  - (b) interference with or physical injury to any person,
  - (c) the alerting of persons who are suspected of having committed a serious arrestable offence but who have not been arrested for it,
  - (d) the hindering of the recovery of property obtained as a result of a serious arrestable offence or in respect of which a forfeiture order could be made under section 23,
  - (e) interference with the gathering of information about the commission, preparation or instigation of acts of terrorism,
  - (f) the alerting of a person and thereby making it more difficult to prevent an act of terrorism, and
  - (g) the alerting of a person and thereby making it more difficult to secure a person's apprehension, prosecution or conviction in connection with the commission, preparation or instigation of an act of terrorism.
- (5) An officer may also give an authorisation under sub-paragraph (1) if he has reasonable grounds for believing that—
- (a) the detained person has committed an offence to which Part VI of the <sup>M2</sup>Criminal Justice Act 1988, Part I of the <sup>M3</sup>Proceeds of Crime (Scotland) Act 1995, or the <sup>M4</sup>Proceeds of Crime (Northern Ireland) Order 1996 (confiscation of the proceeds of an offence) applies,
  - (b) the detained person has benefited from the offence within the meaning of that Part or Order, and
  - (c) by informing the named person of the detained person's detention (in the case of an authorisation under sub-paragraph (1)(a)), or by the exercise of the right under paragraph 7 (in the case of an authorisation under sub-paragraph (1) (b)), the recovery of the value of that benefit will be hindered.
- (6) If an authorisation under sub-paragraph (1) is given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.
- (7) Where an authorisation under sub-paragraph (1) is given—
- (a) the detained person shall be told the reason for the delay as soon as is reasonably practicable, and
  - (b) the reason shall be recorded as soon as is reasonably practicable.

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- (8) 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).
- (9) In this paragraph “serious arrestable offence” has the meaning given by section 116 of the <sup>M5</sup>Police and Criminal Evidence Act 1984 (in relation to England and Wales) and by Article 87 of the <sup>M6</sup>Police and Criminal Evidence (Northern Ireland) Order 1989 (in relation to Northern Ireland); but it also includes—
- (a) an offence under any of the provisions mentioned in section 40(1)(a) of this Act, and
  - (b) an attempt or conspiracy to commit an offence under any of the provisions mentioned in section 40(1)(a).

#### Marginal Citations

- M2** 1988 c. 33.  
**M3** 1995 c. 43.  
**M4** S.I. 1996/1299 (N.I. 9).  
**M5** 1984 c. 60.  
**M6** S.I. 1989/1341 (N.I.12).

- 9 (1) A direction under this paragraph may provide that a detained person who wishes to exercise the right under paragraph 7 may consult a solicitor only in the sight and hearing of a qualified officer.
- (2) A direction under this paragraph may be given—
- (a) where the person is detained at a police station in England or Wales, by an officer of at least the rank of Commander or Assistant Chief Constable, or
  - (b) where the person is detained at a police station in Northern Ireland, by an officer of at least the rank of Assistant Chief Constable.
- (3) A direction under this paragraph may be given only if the officer giving it has reasonable grounds for believing that, unless the direction is given, the exercise of the right by the detained person will have any of the consequences specified in paragraph 8(4) or the consequence specified in paragraph 8(5)(c).
- (4) In this paragraph “a qualified officer” means a police officer who—
- (a) is of at least the rank of inspector,
  - (b) is of the uniformed branch of the force of which the officer giving the direction is a member, and
  - (c) in the opinion of the officer giving the direction, has no connection with the detained person’s case.
- (5) A direction under this paragraph shall cease to have effect once the reason for giving it ceases to subsist.

#### Modifications etc. (not altering text)

- C8** Sch. 8 paras. 1(6), 2, 6-9, 16-19 applied (with modifications) (11.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\)](#), s. 5(8)

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- 10 (1) This paragraph applies where a person is detained in England, Wales or Northern Ireland under Schedule 7 or section 41.
- (2) Fingerprints may be taken from the detained person 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 detained person 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 detained person without the appropriate consent only if—
- (a) he 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) he has been convicted of a recordable offence and, where a non-intimate sample is to be taken, he 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 intimate sample may be taken from the detained person only if—
- (a) he is detained at a police station,
  - (b) the appropriate consent is given in writing,
  - (c) a police officer of at least the rank of superintendent authorises the sample to be taken, and
  - (d) subject to paragraph 13(2) and (3), the sample is taken by a constable.
- (6) An officer may give an authorisation under sub-paragraph (4)(a) or (5)(c) only if—
- (a) in the case of a person detained under section 41, the officer reasonably suspects that the person has been involved in an offence under any of the provisions mentioned in section 40(1)(a), and the officer reasonably believes that the fingerprints or sample will tend to confirm or disprove his involvement, or
  - (b) in any case, the officer is satisfied that the taking of the fingerprints or sample from the person is necessary in order to assist in determining whether he falls within section 40(1)(b).
- (7) If an authorisation under sub-paragraph (4)(a) or (5)(c) is given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.
- 11 (1) Before fingerprints or a sample are taken from a person under paragraph 10, he shall be informed—
- (a) that the fingerprints or sample may be used for the purposes of paragraph 14(4), section 63A(1) of the <sup>M7</sup>Police and Criminal Evidence Act 1984 and Article 63A(1) of the <sup>M8</sup>Police and Criminal Evidence (Northern Ireland) Order 1989 (checking of fingerprints and samples), and
  - (b) where the fingerprints or sample are to be taken under paragraph 10(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 person upon an authorisation given under paragraph 10(4)(a) or (5)(c), he shall be informed—

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- (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 he has been involved.
- (3) After fingerprints or a sample are taken under paragraph 10, there shall be recorded as soon as is reasonably practicable any of the following which apply—
- (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 10(4)(a) or (5)(c),
  - (d) the grounds upon which that authorisation has been given, and
  - (e) the fact that the appropriate consent has been given.

#### Marginal Citations

**M7** 1984 c. 60.

**M8** S.I. 1989/1341 (N.I. 12).

- 12 (1) This paragraph applies where—
- (a) two or more non-intimate samples suitable for the same means of analysis have been taken from a person under paragraph 10,
  - (b) those samples have proved insufficient, and
  - (c) the person has been released from detention.
- (2) An intimate sample may be taken from the person if—
- (a) the appropriate consent is given in writing,
  - (b) a police officer of at least the rank of superintendent authorises the sample to be taken, and
  - (c) subject to paragraph 13(2) and (3), the sample is taken by a constable.
- (3) Paragraphs 10(6) and (7) and 11 shall apply in relation to the taking of an intimate sample under this paragraph; and a reference to a person detained under section 41 shall be taken as a reference to a person who was detained under section 41 when the non-intimate samples mentioned in sub-paragraph (1)(a) were taken.
- 13 (1) Where appropriate written consent to the taking of an intimate sample from a person under paragraph 10 or 12 is refused without good cause, in any proceedings against that person for an offence—
- (a) the court, in determining whether to commit him for trial or whether there is a case to answer, may draw such inferences from the refusal as appear proper, and
  - (b) the court or jury, in determining whether that person is guilty of the offence charged, may draw such inferences from the refusal as appear proper.
- (2) An intimate sample other than a sample of urine or a dental impression may be taken under paragraph 10 or 12 only by a registered medical practitioner acting on the authority of a constable.
- (3) An intimate sample which is a dental impression may be taken under paragraph 10 or 12 only by a registered dentist acting on the authority of a constable.



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- (4) Where a sample of hair other than pubic hair is to be taken under paragraph 10 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.
- 14 (1) This paragraph applies to—
- (a) fingerprints or samples taken under paragraph 10 or 12, and
  - (b) information derived from those samples.
- [<sup>F1</sup>(2) The fingerprints and samples may be retained but shall not be used by any person except for the purposes of a terrorist investigation or for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.]
- (3) In particular, a check may not be made against them under—
- (a) section 63A(1) of the <sup>M9</sup>Police and Criminal Evidence Act 1984 (checking of fingerprints and samples), or
  - (b) Article 63A(1) of the <sup>M10</sup>Police and Criminal Evidence (Northern Ireland) Order 1989 (checking of fingerprints and samples),
- except for the purpose of a terrorist investigation [<sup>F2</sup>or for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.].
- (4) The fingerprints, samples or information may be checked, subject to sub-paragraph (2), against—
- (a) other fingerprints or samples taken under paragraph 10 or 12 or information derived from those samples,
  - (b) relevant physical data or samples taken by virtue of paragraph 20,
  - (c) any of the fingerprints, samples and information mentioned in section 63A(1)(a) and (b) of the <sup>M11</sup>Police and Criminal Evidence Act 1984 (checking of fingerprints and samples),
  - (d) any of the fingerprints, samples and information mentioned in Article 63A(1) (a) and (b) of the <sup>M12</sup>Police and Criminal Evidence (Northern Ireland) Order 1989 (checking of fingerprints and samples), and
- [<sup>F3</sup>(4A) In this paragraph—
- (a) a reference to crime includes a reference to any conduct which—
    - (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom); or
    - (ii) 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;
  - and
  - (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) This paragraph (other than sub-paragraph (4)) shall apply to fingerprints or samples taken under section 15(9) of, or paragraph 7(5) of Schedule 5 to, the <sup>M13</sup>Prevention

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of Terrorism (Temporary Provisions) Act 1989 and information derived from those samples as it applies to fingerprints or samples taken under paragraph 10 or 12 and the information derived from those samples.

#### Textual Amendments

- F1** Sch. 8 para. 14(2) substituted (E.W.N.I.) (11.5.2001) by 2001 c. 16, s. 84(2)  
**F2** Words in Sch. 8 para. 14(3) inserted (E.W.N.I.) (11.5.2001) by 2001 c. 16, s. 84(3)  
**F3** Sch. 8 para. 14(4A) inserted (E.W.N.I.) (11.5.2001) by 2001 c. 16, s. 84(4)

#### Marginal Citations

- M9** 1984 c. 60.  
**M10** S.I. 1989/1341 (N.I. 12).  
**M11** 1984 c. 60.  
**M12** S.I. 1989/1341 (N.I. 12).  
**M13** 1989 c. 4.

- 15 (1) In the application of paragraphs 10 to 14 in relation to a person detained in England or Wales the following expressions shall have the meaning given by section 65 of the <sup>M14</sup>Police and Criminal Evidence Act 1984 (Part V definitions)—
- (a) “appropriate consent”,
  - (b) “fingerprints”,
  - (c) “insufficient”,
  - (d) “intimate sample”,
  - (e) “non-intimate sample”,
  - (f) “registered dentist”, and
  - (g) “sufficient”.
- (2) In the application of paragraphs 10 to 14 in relation to a person detained in Northern Ireland the expressions listed in sub-paragraph (1) shall have the meaning given by Article 53 of the <sup>M15</sup>Police and Criminal Evidence (Northern Ireland) Order 1989 (definitions).
- (3) In paragraph 10 “recordable offence” shall have—
- (a) in relation to a person detained in England or Wales, the meaning given by section 118(1) of the <sup>M16</sup>Police and Criminal Evidence Act 1984 (general interpretation), and
  - (b) in relation to a person detained in Northern Ireland, the meaning given by Article 2(2) of the <sup>M17</sup>Police and Criminal Evidence (Northern Ireland) Order 1989 (definitions).

#### Marginal Citations

- M14** 1984 c. 60.  
**M15** S.I. 1989/1341 (N.I. 12).  
**M16** 1984 c. 60.  
**M17** S.I. 1989/1341 (N.I. 12).

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*Rights: Scotland*

- 16 (1) A person detained under Schedule 7 or section 41 at a police station in Scotland shall be entitled to have intimation of his detention and of the place where he is being detained sent without delay to a solicitor and to another person named by him.
- (2) The person named must be—
- (a) a friend of the detained person,
  - (b) a relative, or
  - (c) a person who is known to the detained person or who is likely to take an interest in his welfare.
- (3) Where a detained person is transferred from one police station to another, he shall be entitled to exercise the right under sub-paragraph (1) in respect of the police station to which he is transferred.
- (4) A police officer not below the rank of superintendent may authorise a delay in making intimation where, in his view, the delay is necessary on one of the grounds mentioned in paragraph 17(3) or where paragraph 17(4) applies.
- (5) Where a detained person requests that the intimation be made, there shall be recorded the time when the request is—
- (a) made, and
  - (b) complied with.
- (6) A person detained shall be 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 his view, the delay is necessary on one of the grounds mentioned in paragraph 17(3) or where paragraph 17(4) applies.
- (8) Subject to paragraph 17, the consultation shall be private.
- (9) Where a person is detained under section 41 he must be permitted to exercise his rights under this paragraph before the end of the period mentioned in subsection (3) of that section.

**Modifications etc. (not altering text)**

**C9** Sch. 8 paras. 1(6), 2, 6-9, 16-19 applied (with modifications) (11.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\), s. 5\(8\)](#)

- 17 (1) An officer not below the rank of Assistant Chief Constable may direct that the consultation mentioned in paragraph 16(6) shall be in the presence of a uniformed officer not below the rank of inspector if it appears to the officer giving the direction to be necessary on one of the grounds mentioned in sub-paragraph (3).
- (2) A uniformed officer directed to be present during a consultation shall be an officer who, in the opinion of the officer giving the direction, has no connection with the case.
- (3) The grounds mentioned in paragraph 16(4) and (7) and in sub-paragraph (1) are—
- (a) that it is in the interests of the investigation or prevention of crime;

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- (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 or in respect of which a forfeiture order could be made under section 23;
  - (d) that it will further the operation of Part VI of the <sup>M18</sup>Criminal Justice Act 1988, Part I of the <sup>M19</sup>Proceeds of Crime (Scotland) Act 1995 or the <sup>M20</sup>Proceeds of Crime (Northern Ireland) Order 1996 (confiscation of the proceeds of an offence).
- (4) This sub-paragraph applies where an officer mentioned in paragraph 16(4) or (7) has reasonable grounds for believing that—
- (a) the detained person has committed an offence to which Part VI of the <sup>M21</sup>Criminal Justice Act 1988, Part I of the <sup>M22</sup>Proceeds of Crime (Scotland) Act 1995 or the <sup>M23</sup>Proceeds of Crime (Northern Ireland) Order 1996 (confiscation of the proceeds of an offence) applies,
  - (b) the detained person has benefited from the offence within the meaning of that Part or Order, and
  - (c) by informing the named person of the detained person’s detention (in the case of an authorisation under paragraph 16(4)) or by the exercise of the entitlement under paragraph 16(6) (in the case of an authorisation under paragraph 16(7)) the recovery of the value of that benefit will be hindered.
- (5) Where delay is authorised in the exercising of any of the rights mentioned in paragraph 16(1) and (6)—
- (a) if the authorisation is given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable,
  - (b) the detained person shall be told the reason for the delay as soon as is reasonably practicable, and
  - (c) the reason shall be recorded as soon as is reasonably practicable.

#### Marginal Citations

- M18** 1988 c. 33.  
**M19** 1995 c. 43.  
**M20** S.I. 1996/1299 (N.I.9).  
**M21** 1988 c. 33.  
**M22** 1995 c. 43.  
**M23** S.I. 1996/1299 (N.I.9).

- 18 (1) Paragraphs 16 and 17 shall have effect, in relation to a person detained under section 41 or Schedule 7, 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 a person detained under Schedule 7 or section 41 at a police station in Scotland appears to a constable to be a child—
- (a) the other person named by the person detained in pursuance of paragraph 16(1) shall be that person’s parent, and
  - (b) section 15(4) of the <sup>M24</sup>Criminal Procedure (Scotland) Act 1995 shall apply to the person detained as it applies to a person who appears to a constable

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to be a child who is being detained as mentioned in paragraph (b) of section 15(1) of that Act,  
and in this sub-paragraph “child” and “parent” have the same meaning as in section 15(4) of that Act.

**Modifications etc. (not altering text)**

**C10** Sch. 8 paras. 1(6), 2, 6-9, 16-19 applied (with modifications) (11.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\), s. 5\(8\)](#)

**Marginal Citations**

**M24** 1995 c. 46.

- 19 The Secretary of State shall, by order, make provision to require that—
- (a) except in such circumstances, and
  - (b) subject to such conditions,
- as may be specified in the order, where a person detained has been permitted to consult a solicitor, the solicitor shall be allowed to be present at any interview carried out in connection with a terrorist investigation or for the purposes of Schedule 7.

**Modifications etc. (not altering text)**

**C11** Sch. 8 paras. 1(6), 2, 6-9, 16-19 applied (with modifications) (11.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\), s. 5\(8\)](#)

- 20 (1) Subject to the modifications specified in sub-paragraphs (2) and (3), section 18 of the <sup>M25</sup>Criminal Procedure (Scotland) Act 1995 (procedure for taking certain prints and samples) shall apply to a person detained under Schedule 7 or section 41 at a police station in Scotland as it applies to a person arrested or a person detained under section 14 of that Act.
- (2) For subsection (2) of section 18 there shall be substituted—
- “(2) A constable may take from a detained person or require a detained person to provide relevant physical data only if—
- (a) in the case of a person detained under section 41 of the Terrorism Act 2000, he reasonably suspects that the person has been involved in an offence under any of the provisions mentioned in section 40(1)(a) of that Act and he reasonably believes that the relevant physical data will tend to confirm or disprove his involvement, or
  - (b) in any case, he is satisfied that it is necessary in order to assist in determining whether the person falls within section 40(1)(b) of that Act.”
- (3) Subsections (3) to (5) shall not apply, but any relevant physical data or sample taken in pursuance of section 18 as applied by this paragraph shall be retained only for the purposes of terrorist investigations.

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### Marginal Citations

M25 1995 c. 46.

## PART II

### REVIEW OF DETENTION UNDER SECTION 41

#### *Requirement*

- 21 (1) A person's detention shall be periodically reviewed by a review officer.
- (2) The first review shall be carried out as soon as is reasonably practicable after the time of the person's arrest.
- (3) Subsequent reviews shall, subject to paragraph 22, be carried out at intervals of not more than 12 hours.
- (4) No review of a person's detention shall be carried out after a warrant extending his detention has been issued under Part III.

#### *Postponement*

- 22 (1) A review may be postponed if at the latest time at which it may be carried out in accordance with paragraph 21—
- (a) the detained person is being questioned by a police officer and an officer is satisfied that an interruption of the questioning to carry out the review would prejudice the investigation in connection with which the person is being detained,
  - (b) no review officer is readily available, or
  - (c) it is not practicable for any other reason to carry out the review.
- (2) Where a review is postponed it shall be carried out as soon as is reasonably practicable.
- (3) For the purposes of ascertaining the time within which the next review is to be carried out, a postponed review shall be deemed to have been carried out at the latest time at which it could have been carried out in accordance with paragraph 21.

#### *Grounds for continued detention*

- 23 (1) A review officer may authorise a person's continued detention only if satisfied that it is necessary—
- (a) to obtain relevant evidence whether by questioning him or otherwise,
  - (b) to preserve relevant evidence,
  - (c) pending a decision whether to apply to the Secretary of State for a deportation notice to be served on the detained person,
  - (d) pending the making of an application to the Secretary of State for a deportation notice to be served on the detained person,

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- (e) pending consideration by the Secretary of State whether to serve a deportation notice on the detained person, or
  - (f) pending a decision whether the detained person should be charged with an offence.
- (2) The review officer shall not authorise continued detention by virtue of sub-paragraph (1)(a) or (b) unless he is satisfied that the investigation in connection with which the person is detained is being conducted diligently and expeditiously.
- (3) The review officer shall not authorise continued detention by virtue of sub-paragraph (1)(c) to (f) unless he is satisfied that the process pending the completion of which detention is necessary is being conducted diligently and expeditiously.
- (4) In sub-paragraph (1)(a) and (b) “relevant evidence” means evidence which—
- (a) relates to the commission by the detained person of an offence under any of the provisions mentioned in section 40(1)(a), or
  - (b) indicates that the detained person falls within section 40(1)(b).
- (5) In sub-paragraph (1) “deportation notice” means notice of a decision to make a deportation order under the Immigration Act 1971.

#### *Review officer*

- 24 (1) The review officer shall be an officer who has not been directly involved in the investigation in connection with which the person is detained.
- (2) In the case of a review carried out within the period of 24 hours beginning with the time of arrest, the review officer shall be an officer of at least the rank of inspector.
- (3) In the case of any other review, the review officer shall be an officer of at least the rank of superintendent.
- 25 (1) This paragraph applies where—
- (a) the review officer is of a rank lower than superintendent,
  - (b) an officer of higher rank than the review officer gives directions relating to the detained person, and
  - (c) those directions are at variance with the performance by the review officer of a duty imposed on him under this Schedule.
- (2) The review officer shall refer the matter at once to an officer of at least the rank of superintendent.

#### *Representations*

- 26 (1) Before determining whether to authorise a person’s continued detention, a review officer shall give either of the following persons an opportunity to make representations about the detention—
- (a) the detained person, or
  - (b) a solicitor representing him who is available at the time of the review.
- (2) Representations may be oral or written.
- (3) A review officer may refuse to hear oral representations from the detained person if he considers that he is unfit to make representations because of his condition or behaviour.

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### *Rights*

- 27 (1) Where a review officer authorises continued detention he shall inform the detained person—
- (a) of any of his rights under paragraphs 6 and 7 which he has not yet exercised, and
  - (b) if the exercise of any of his rights under either of those paragraphs is being delayed in accordance with the provisions of paragraph 8, of the fact that it is being so delayed.
- (2) Where a review of a person’s detention is being carried out at a time when his exercise of a right under either of those paragraphs is being delayed—
- (a) the review officer shall consider whether the reason or reasons for which the delay was authorised continue to subsist, and
  - (b) if in his opinion the reason or reasons have ceased to subsist, he shall inform the officer who authorised the delay of his opinion (unless he was that officer).
- (3) In the application of this paragraph to Scotland, for the references to paragraphs 6, 7 and 8 substitute references to paragraph 16.
- (4) The following provisions (requirement to bring an accused person before the court after his arrest) shall not apply to a person detained under section 41—
- (a) section 135(3) of the <sup>M26</sup>Criminal Procedure (Scotland) Act 1995, and
  - (b) Article 8(1) of the <sup>M27</sup>Criminal Justice (Children) (Northern Ireland) Order 1998.
- (5) Section 22(1) of the <sup>M28</sup>Criminal Procedure (Scotland) Act 1995 (interim liberation by officer in charge of police station) shall not apply to a person detained under section 41.

#### **Marginal Citations**

**M26** 1995 c. 46.

**M27** S.I. 1998/1504 (N.I. 9).

**M28** 1995 c. 46.

### *Record*

- 28 (1) A review officer carrying out a review shall make a written record of the outcome of the review and of any of the following which apply—
- (a) the grounds upon which continued detention is authorised,
  - (b) the reason for postponement of the review,
  - (c) the fact that the detained person has been informed as required under paragraph 27(1),
  - (d) the officer’s conclusion on the matter considered under paragraph 27(2)(a),
  - (e) the fact that he has taken action under paragraph 27(2)(b), and
  - (f) the fact that the detained person is being detained by virtue of section 41(5) or (6).
- (2) The review officer shall—
- (a) make the record in the presence of the detained person, and



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- (b) inform him at that time whether the review officer is authorising continued detention, and if he is, of his grounds.
- (3) Sub-paragraph (2) shall not apply where, at the time when the record is made, the detained person is—
  - (a) incapable of understanding what is said to him,
  - (b) violent or likely to become violent, or
  - (c) in urgent need of medical attention.

### PART III

#### EXTENSION OF DETENTION UNDER SECTION 41

##### *Warrants of further detention*

- 29
- (1) A police officer of at least the rank of superintendent may apply to a judicial authority for the issue of a warrant of further detention under this Part.
  - (2) A warrant of further detention—
    - (a) shall authorise the further detention under section 41 of a specified person for a specified period, and
    - (b) shall state the time at which it is issued.
  - (3) The specified period in relation to a person shall end not later than the end of the period of seven days beginning—
    - (a) with the time of his arrest under section 41, or
    - (b) if he was being detained under Schedule 7 when he was arrested under section 41, with the time when his examination under that Schedule began.
  - (4) In this Part “judicial authority” means—
    - (a) in England and Wales, the Senior District Judge (Chief Magistrate) or his deputy, or a District Judge (Magistrates’ Courts) who is designated for the purpose of this Part by the Lord Chancellor,
    - (b) in Scotland, the sheriff, and
    - (c) in Northern Ireland, a county court judge, or a resident magistrate who is designated for the purpose of this Part by the Lord Chancellor.

##### *Time limit*

- 30
- (1) An application for a warrant shall be made—
    - (a) during the period mentioned in section 41(3), or
    - (b) within six hours of the end of that period.
  - (2) The judicial authority hearing an application made by virtue of sub-paragraph (1) shall dismiss the application if he considers that it would have been reasonably practicable to make it during the period mentioned in section 41(3).
  - (3) For the purposes of this Schedule, an application for a warrant is made when written or oral notice of an intention to make the application is given to a judicial authority.

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### *Notice*

- 31 An application for a warrant may not be heard unless the person to whom it relates has been given a notice stating—
- (a) that the application has been made,
  - (b) the time at which the application was made,
  - (c) the time at which it is to be heard, and
  - (d) the grounds upon which further detention is sought.

### *Grounds for extension*

- 32 (1) A judicial authority may issue a warrant of further detention only if satisfied that—
- (a) there are reasonable grounds for believing that the further detention of the person to whom the application relates is necessary to obtain relevant evidence whether by questioning him or otherwise or to preserve relevant evidence, and
  - (b) the investigation in connection with which the person is detained is being conducted diligently and expeditiously.
- (2) In sub-paragraph (1) “relevant evidence” means, in relation to the person to whom the application relates, evidence which—
- (a) relates to his commission of an offence under any of the provisions mentioned in section 40(1)(a), or
  - (b) indicates that he is a person falling within section 40(1)(b).

### *Representation*

- 33 (1) The person to whom an application relates shall—
- (a) be given an opportunity to make oral or written representations to the judicial authority about the application, and
  - (b) subject to sub-paragraph (3), be entitled to be legally represented at the hearing.
- (2) A judicial authority shall adjourn the hearing of an application to enable the person to whom the application relates to obtain legal representation where—
- (a) he is not legally represented,
  - (b) he is entitled to be legally represented, and
  - (c) he wishes to be so represented.
- (3) A judicial authority may exclude any of the following persons from any part of the hearing—
- (a) the person to whom the application relates;
  - (b) anyone representing him.

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### Information

- 34 (1) The officer who has made an application for a warrant may apply to the judicial authority for an order that specified information upon which he intends to rely be withheld from—
- (a) the person to whom the application relates, and
  - (b) anyone representing him.
- (2) Subject to sub-paragraph (3), a judicial authority may make an order under sub-paragraph (1) in relation to specified information only if satisfied that there are reasonable grounds for believing that if the information were disclosed—
- (a) evidence of an offence under any of the provisions mentioned in section 40(1)(a) would be interfered with or harmed,
  - (b) the recovery of property obtained as a result of an offence under any of those provisions would be hindered,
  - (c) the recovery of property in respect of which a forfeiture order could be made under section 23 would be hindered,
  - (d) the apprehension, prosecution or conviction of a person who is suspected of falling within section 40(1)(a) or (b) would be made more difficult as a result of his being alerted,
  - (e) the prevention of an act of terrorism would be made more difficult as a result of a person being alerted,
  - (f) the gathering of information about the commission, preparation or instigation of an act of terrorism would be interfered with, or
  - (g) a person would be interfered with or physically injured.
- (3) A judicial authority may also make an order under sub-paragraph (1) in relation to specified information if satisfied that there are reasonable grounds for believing that—
- (a) the detained person has committed an offence to which Part VI of the <sup>M29</sup>Criminal Justice Act 1988, Part I of the <sup>M30</sup>Proceeds of Crime (Scotland) Act 1995, or the <sup>M31</sup>Proceeds of Crime (Northern Ireland) Order 1996 (confiscation of the proceeds of an offence) applies,
  - (b) the detained person has benefited from the offence within the meaning of that Part or Order, and
  - (c) the recovery of the value of that benefit would be hindered, if the information were disclosed.
- (4) The judicial authority shall direct that the following be excluded from the hearing of the application under this paragraph—
- (a) the person to whom the application for a warrant relates, and
  - (b) anyone representing him.

#### Marginal Citations

**M29** 1988 c. 33.

**M30** 1995 c. 43.

**M31** S.I. 1996/1299 (N.I. 9).

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### *Adjournments*

- 35 (1) A judicial authority may adjourn the hearing of an application for a warrant only if the hearing is adjourned to a date before the expiry of the period mentioned in section 41(3).
- (2) This paragraph shall not apply to an adjournment under paragraph 33(2).

### *Extensions of warrants*

- 36 (1) A police officer of at least the rank of superintendent may apply to a judicial authority for the extension or further extension of the period specified in a warrant of further detention.
- (2) Where the period specified is extended, the warrant shall be endorsed with a note stating the new specified period.
- (3) The specified period shall end not later than the end of the period of seven days beginning—
- (a) with the time of the person's arrest under section 41, or
  - (b) if he was being detained under Schedule 7 when he was arrested under section 41, with the time when his examination under that Schedule began.
- (4) Paragraphs 30(3) and 31 to 34 shall apply to an application under this paragraph as they apply to an application for a warrant of further detention.
- (5) A judicial authority may adjourn the hearing of an application under sub-paragraph (1) only if the hearing is adjourned to a date before the expiry of the period specified in the warrant.
- (6) Sub-paragraph (5) shall not apply to an adjournment under paragraph 33(2).

#### **Modifications etc. (not altering text)**

**C12** S. 36 extended (E.W.) (2.12.2002) by 2002 c. 30, s. 38, **Sch. 4 Pt. 1 para. 14**; S.I. 2002/2750, **art. 2(a)(ii)(d)**

### *Detention - conditions*

- 37 A person detained by virtue of a warrant issued under this Part shall (unless detained in accordance with section 41(5) or (6) or under any other power) be released immediately if the officer having custody of him becomes aware that any of the grounds under paragraph 32(1)(a) and (b) upon which the judicial authority authorised his further detention have ceased to apply.

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**Changes to legislation:**

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