

Status: Point in time view as at 17/01/2018.

Changes to legislation: Terrorism Act 2000, Part I is up to date with all changes known to be in force on or before 23 April 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

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\(7\)\(b\)\(i\)](#))
- C1** 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—
- his examination under that Schedule,
 - establishing his nationality or citizenship, or
 - 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 [F1Schedule] “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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Textual Amendments

- F1** Word in Sch. 8 para. 1(5) substituted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014](#) (c. 12), s. 185(1), **Sch. 9 para. 5(2)** (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)

Modifications etc. (not altering text)

- C1** Sch. 8 para. 1 applied with modifications (N.I.) (1.3.2015) by [The Police \(Northern Ireland\) Act 2000](#) (Designated Places of Detention: Lay Visitors) Order 2015 (S.R. 2015/29), arts. 1, 2
- C2** 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^{F2}....
- (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^{M1}Criminal Procedure (Scotland) Act 1995 as applied by paragraph 20 below.

Textual Amendments

- F2** Words in Sch. 8 para. 2(2)(d) omitted (31.7.2014) by virtue of [Anti-social Behaviour, Crime and Policing Act 2014](#) (c. 12), s. 185(1), **Sch. 9 para. 5(3)** (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)

Modifications etc. (not altering text)

- C3** 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**
- C4** 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.

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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).
- (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.
- 4 (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—

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- (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.

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 ^{F3}place] 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 ^{F3}place] to another, he shall be entitled to exercise the right under this paragraph in respect of the ^{F3}place] to which he is transferred.

Textual Amendments

F3 Word in Sch. 8 para. 6 substituted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014](#) (c. 12), s. 185(1), [Sch. 9 para. 5\(4\)](#) (with ss. 21, 33, 42, 58, 75, 93); [S.I. 2014/1916](#), art. 3(b)

Modifications etc. (not altering text)

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\(8\)](#)

- 7 (1) Subject to paragraphs 8 and 9, a person detained under Schedule 7 or section 41 ^{F4}... 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.

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Textual Amendments

F4 Words in Sch. 7 para. 7(1) omitted (31.7.2014) by virtue of [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 9 para. 5\(5\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)

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)

- [^{F5}7A (1) This paragraph applies where a person detained under Schedule 7 requests to consult a solicitor.
- (2) The examining officer may not question the detained person under paragraph 2 or 3 of Schedule 7 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 of Schedule 7 (search powers where a person is questioned under paragraph 2 of Schedule 7) may be used when questioning is postponed because of sub-paragraph (2).
 - (5) The detained person 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 2 or 3 of Schedule 7.]

Textual Amendments

F5 Sch. 8 para. 7A inserted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 9 para. 5\(6\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)

- 8 (1) Subject to sub-paragraph (2), [^{F6}a police 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.
- (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

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- (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 [^{F7}serious offence] ,
 - (b) interference with or physical injury to any person,
 - (c) the alerting of persons who are suspected of having committed a [^{F7}serious offence] but who have not been arrested for it,
 - (d) the hindering of the recovery of property obtained as a result of a [^{F7}serious offence] or in respect of which a forfeiture order could be made under section 23 [^{F8}or 23A],
 - (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.
- [^{F9}(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 benefited from his criminal conduct, and
 - (b) the recovery of the value of the property constituting the benefit will be hindered by—
 - (i) informing the named person of the detained person’s detention (in the case of an authorisation under sub-paragraph (1)(a)), or
 - (ii) the exercise of the right under paragraph 7 (in the case of an authorisation under sub-paragraph (1)(b)).
- (5A) For the purposes of sub-paragraph (5) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 2 of the Proceeds of Crime Act 2002.]
- (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.
- (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) [^{F10}In this paragraph, references to a “serious offence” are [^{F11}... to an indictable offence, [^{F11}... ; but also include—]
- (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).

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Textual Amendments

- F6** Words in Sch. 8 para. 8(1) substituted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 9 para. 5\(7\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
- F7** Words in Sch. 8 para. 8(4) substituted (1.1.2006 subject to art. 2(2) of the commencing S.I.) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 111, [Sch. 7 para. 48\(1\)\(a\)](#); S.I. 2005/3495, [art. 2\(1\)\(m\)](#)
- F8** Words in Sch. 8 para. 8(4)(d) inserted (18.6.2009) by [Counter-Terrorism Act 2008 \(c. 28\)](#), ss. 39, 100(5), [Sch. 3 para. 6](#) (with s. 101(2)); S.I. 2009/1256, [art. 2\(c\)](#)
- F9** Sch. 8 para. 8(5)(5A) substituted for Sch. 8 para. 8(5) (24.3.2003 subject to certain provisions in the commencing instruments) by [2002 c. 29](#), s. 456, [Sch. 11 para. 39\(2\)](#); S.I. 2003/333, [art. 2](#), [Sch.](#) (as amended by S.I. 2003/531); S.S.I. 2003/210, [art. 2](#), [Sch.](#)
- F10** Words in Sch. 8 para. 8(9) substituted (1.1.2006 subject to art. 2(2) of the commencing S.I.) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 111, [Sch. 7 para. 48\(1\)\(b\)](#); S.I. 2005/3495, [art. 2\(1\)\(m\)](#)
- F11** Words in Sch. 8 para. 8(9) repealed (N.I.) (1.3.2007) by [The Police and Criminal Evidence \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/288 \(N.I. 2\)\)](#), arts. 15, 41, [Sch. 1 para. 35](#), [Sch. 2](#)

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)

- 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—
- where the person is detained^{F12} ... in England or Wales, by [^{F13}a police officer] of at least the rank of Commander or Assistant Chief Constable, or
 - where the person is detained^{F12} ... in Northern Ireland, by [^{F13}a police officer] of at least the rank of Assistant Chief Constable.
- [^{F14}(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
 - that the detained person has benefited from his criminal conduct and that, unless the direction is given, the exercise of the right by the detained person will hinder the recovery of the value of the property constituting the benefit.]
- (4) In this paragraph “a qualified officer” means a police officer who—
- is of at least the rank of inspector,
 - is of the uniformed branch of the force of which the officer giving the direction is a member, and
 - 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.

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Textual Amendments

- F12** Words in Sch. 8 para. 9(2)(a) (b) omitted (31.7.2014) by virtue of [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 9 para. 5\(8\)\(a\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
- F13** Words in Sch. 8 para. 9(2)(a) (b) substituted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 9 para. 5\(8\)\(b\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
- F14** Sch. 8 para. 9(3) substituted (16.2.2009) by [Counter-Terrorism Act 2008 \(c. 28\)](#), [ss. 82\(1\)](#), 100(5) (with s. 101(2)); S.I. 2009/58, [art. 2\(g\)](#)

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\(8\)](#)

- 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 [^{F15}a person detained under section 41, but 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) [^{F16}Subject to sub-paragraph (6A)] 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

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- (b) in any case [^{F17}in which an authorisation under that sub-paragraph may be given], 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).

[^{F18}(6A) An officer may also give an authorisation under sub-paragraph (4)(a) for the taking of fingerprints if—

- (a) he is satisfied that the fingerprints of the detained person will facilitate the ascertainment of that person's identity; and
(b) that person has refused to identify himself or the officer has reasonable grounds for suspecting that that person is not who he claims to be.

(6B) In this paragraph references to ascertaining a person's identity include references to showing that he is not a particular person.]

(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.

Textual Amendments

- F15** Words in Sch. 8 para. 10(5) substituted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 9 para. 6\(2\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
F16 Words in Sch. 8 para. 10(6) inserted (14.12.2001) by [2001 c. 24, s. 89\(2\)](#)
F17 Words in Sch. 8 para. 10(6)(b) inserted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 9 para. 6\(3\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
F18 Sch. 8 para. 10(6A)(6B) inserted (14.12.2001) by [2001 c. 14, s. 89\(2\)](#)

Modifications etc. (not altering text)

- C9** Sch. 8 para. 10(2) extended (N.I.) (8.4.2003) by [Police \(Northern Ireland\) Act 2003 \(c. 6\)](#), ss. 30, 31, [Sch. 2 Pt. 2 para. 15](#)
C10 Sch. 8 para. 10(3) extended (N.I.) (8.4.2003) by [Police \(Northern Ireland\) Act 2003 \(c. 6\)](#), ss. 30, 31, [Sch. 2 Pt. 2 para. 18](#)

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 [^{F19}a relevant search (within the meaning given by paragraph 20A(6)) or for the purposes of] section 63A(1) of the ^{M2}Police and Criminal Evidence Act 1984 and Article 63A(1) of the ^{M3}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—

- (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—

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- (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.

Textual Amendments

F19 Words in Sch. 8 para. 11(1)(a) substituted (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\)](#), s. 120, [Sch. 1 para. 1\(5\)](#) (with s. 97); S.I. 2013/1814, art. 2(j)

Marginal Citations

M2 1984 c. 60.

M3 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.
- (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

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long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.

^{F20}14

Textual Amendments

F20 Sch. 8 para. 14 repealed (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 1 para. 1\(2\), Sch. 10 Pt. 1](#) (with s. 97); S.I. 2013/1814, art. 2(h)

15 (1) In the application of [^{F21}paragraphs 10 to 13] in relation to a person detained in England or Wales the following expressions shall have the meaning given by section 65 of the ^{M4}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”.

[^{F22}(1A) 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 20G of this Schedule.]

(2) In the application of [^{F23}paragraphs 10 to 13] 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 ^{M5}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 ^{M6}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 ^{M7}Police and Criminal Evidence (Northern Ireland) Order 1989 (definitions).

Textual Amendments

F21 Words in Sch. 8 para. 15(1) substituted (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 1 para. 1\(6\)](#) (with s. 97); S.I. 2013/1814, art. 2(j)

F22 Sch. 8 para. 15(1A) inserted (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 1 para. 1\(7\)](#) (with s. 97); S.I. 2013/1814, art. 2(j)

F23 Words in Sch. 8 para. 15(2) substituted (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 1 para. 1\(8\)](#) (with s. 97); S.I. 2013/1814, art. 2(j)

Marginal Citations

M4 1984 c. 60.

M5 S.I. 1989/1341 (N.I. 12).

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- M6** 1984 c. 60.
M7 S.I. 1989/1341 (N.I. 12).

Rights: Scotland

- 16 (1) A person detained under Schedule 7 or section 41 at a [^{F24}place] 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 friend of the detained person,
 - a relative, or
 - 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 [^{F25}place] to another, he shall be entitled to exercise the right under sub-paragraph (1) in respect of the [^{F25}place] 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—
- made, and
 - complied with.
- (6) A person detained [^{F26}as mentioned in sub-paragraph (1)] 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.

Textual Amendments

- F24** Word in Sch. 8 para. 16(1) substituted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), s. 185\(1\), Sch. 9 para. 5\(9\)\(a\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
- F25** Word in Sch. 8 para. 16(3) substituted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), s. 185\(1\), Sch. 9 para. 5\(9\)\(a\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
- F26** Words in Sch. 8 para. 16(6) inserted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), s. 185\(1\), Sch. 9 para. 5\(9\)\(b\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)

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\(8\)](#)

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- [^{F27}16A(1) This paragraph applies where a person detained under Schedule 7 requests to consult a solicitor.
- (2) The examining officer may not question the detained person under paragraph 2 or 3 of Schedule 7 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 of Schedule 7 (search powers where a person is questioned under paragraph 2 of Schedule 7) may be used when questioning is postponed because of sub-paragraph (2).
 - (5) The detained person 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 2 or 3 of Schedule 7.]

Textual Amendments

F27 Sch. 8 para. 16A inserted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 9 para. 5\(10\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)

- 17 (1) [^{F28}A police 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 [^{F29}police] 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;
 - (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 [^{F30}or 23A];
 - (d) that it will further the operation of [^{F31}Part 2 or 3 of the Proceeds of Crime Act 2002] or the ^{M8}Proceeds of Crime (Northern Ireland) Order 1996 (confiscation of the proceeds of an offence).
 - [^{F32}(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 benefited from his criminal conduct, and

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- (b) the recovery of the value of the property constituting the benefit will be hindered by—
 - (i) informing the named person of the detained person’s detention (in the case of an authorisation under paragraph 16(4)), or
 - (ii) the exercise of the entitlement under paragraph 16(6) (in the case of an authorisation under paragraph 16(7)).
- (4A) For the purposes of sub-paragraph (4) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 3 of the Proceeds of Crime Act 2002.]
- (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.

Textual Amendments

- F28** Words in Sch. 8 para. 17(1) substituted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), s. 185\(1\), Sch. 9 para. 5\(11\)\(a\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
- F29** Word in Sch. 8 para. 17(1) inserted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\), s. 185\(1\), Sch. 9 para. 5\(11\)\(b\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
- F30** Words in Sch. 8 para. 17(3)(c) inserted (18.6.2009) by [Counter-Terrorism Act 2008 \(c. 28\), ss. 39, 100\(5\), Sch. 3 para. 6](#) (with s. 101(2)); S.I. 2009/1256, art. 2(c)
- F31** Words in Sch. 8 para. 17(3)(d) substituted (24.3.2003 subject to certain provisions in the commencing instruments) by [2002 c. 29, s. 456, Sch. 11 para. 39\(3\)](#); S.I. 2003/333, art. 2, Sch. (as amended by S.I. 2003/531); S.S.I. 2003/210, art. 2, Sch.
- F32** Sch. 8 para. 17(4)(4A) substituted for Sch. 8 para. 17(4) (24.3.2003 subject to certain provisions in the commencing instruments) by [2002 c. 29, s. 456, Sch. 11 para. 39\(4\)](#); S.I. 2003/333, art. 2, Sch. (as amended by S.I. 2003/531); S.S.I. 2003/210, art. 2, Sch.

Modifications etc. (not altering text)

- C12** 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

- M8** [S.I. 1996/1299 \(N.I.9\)](#).

- 18 (1) Paragraphs 16 [^{F33}to] 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 [^{F34}place] 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 ^{M9}Criminal Procedure (Scotland) Act 1995 shall apply to the person detained as it applies to a person who appears to a constable to be

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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.

[^{F35}(3) In relation to a person detained under Schedule 7 at a place other than a police station—

- (a) sub-paragraph (2), and
- (b) section 15(4) of the Criminal Procedure (Scotland) Act 1995 as applied by that sub-paragraph,

apply as if references to a constable included an examining officer.]

Textual Amendments

- F33** Word in Sch. 8 para. 18(1) substituted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 9 para. 5\(12\)\(a\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
- F34** Word in Sch. 8 para. 18(2) substituted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 9 para. 5\(12\)\(b\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)
- F35** Sch. 8 para. 18(3) inserted (31.7.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), [Sch. 9 para. 5\(12\)\(c\)](#) (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/1916, art. 3(b)

Modifications etc. (not altering text)

- C13** 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

- M9** 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)

- C14** 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 ^{M10}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.

[^{F36}(2) Subject to subsection (2A), a constable may take from a detained person or require a detained person to provide relevant physical data only if—

- (a) 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

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- 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 to do so in order to assist in determining whether the person falls within section 40(1)(b).
- (2A) A constable may also take fingerprints from a detained person or require him to provide them if—
- (a) he is satisfied that the fingerprints of that person will facilitate the ascertainment of that person’s identity; and
- (b) that person has refused to identify himself or the constable has reasonable grounds for suspecting that that person is not who he claims to be.
- (2B) In this section references to ascertaining a person’s identity include references to showing that he is not a particular person.’]

[^{F37}(3) Subsections (3) to (5) shall not apply, ^{F38}...

^{F39}(4)]

Textual Amendments

- F36** Sch. 8 para. 20(2)-(2B) substituted for Sch. 8 para. 20(2) (14.12.2001) by [2001 c. 24, s. 89\(3\)](#)
- F37** Sch. 8 para. 20(3)(4) substituted for Sch. 8 para. 20(3) (14.12.2001) by [2001 c. 24, s. 89\(4\)](#)
- F38** Sch. 8 para. 20(3): words from “but” to the end of the sub-paragraph repealed (31.10.2013) by virtue of [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 1 para. 1\(3\)\(a\), Sch. 10 Pt. 1](#) (with s. 97); S.I. 2013/1814, art. 2(h)
- F39** Sch. 8 para. 20(4) repealed (31.10.2013) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 1 para. 1\(3\)\(b\), Sch. 10 Pt. 1](#) (with s. 97); S.I. 2013/1814, art. 2(h)

Modifications etc. (not altering text)

- C15** Sch. 8 para. 20(1) amendment by 2016 asp 1, Sch. 2 para. 37(b) extended to E.W. N.I. (17.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\), arts. 2\(1\)\(d\), 18](#)

Marginal Citations

- M10** [1995 c. 46.](#)

^{F40}Destruction and retention of fingerprints and samples etc: United Kingdom

Textual Amendments

- F40** Sch. 8 paras. 20A-20J and cross-heading inserted (31.10.2013 for all paras. except para. 20F(1) (which is in force 31.1.2014), and except, for specified purposes, para. 20G) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 1 para. 1\(4\)](#) (with s. 97); S.I. 2013/1814, arts. 2(i), [3\(b\)](#)

- 20A (1) This paragraph applies to—
- (a) fingerprints taken under paragraph 10,
- (b) a DNA profile derived from a DNA sample taken under paragraph 10 or 12,
- (c) relevant physical data taken or provided by virtue of paragraph 20, and
- (d) a DNA profile derived from a DNA sample taken by virtue of paragraph 20.

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- (2) Fingerprints, relevant physical data and DNA profiles to which this paragraph applies (“paragraph 20A material”) must be destroyed if it appears to the responsible chief officer of police that—
 - (a) 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, or
 - (b) the material was taken or provided, or (in the case of a DNA profile) was derived from a sample taken, from a person in connection with that person's arrest under section 41 and the arrest was unlawful or based on mistaken identity.
 - (3) In any other case, paragraph 20A material must be destroyed unless it is retained under any power conferred by paragraphs 20B to 20E.
 - (4) Paragraph 20A material which ceases to be retained under a power mentioned in sub-paragraph (3) may continue to be retained under any other such power which applies to it.
 - (5) Nothing in this paragraph prevents a relevant search, in relation to paragraph 20A 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 10 or 12 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) any of the relevant physical data, samples or information held by virtue of section 56 of the Criminal Justice (Scotland) Act 2003,
 - (d) material to which section 18 of the Counter-Terrorism Act 2008 applies,
 - (e) 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,
 - (f) 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
 - (g) 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 (checking of fingerprints and samples).
- 20B (1) This paragraph applies to paragraph 20A material relating to a person who is detained under section 41.
- (2) In the case of a person who 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 is so convicted before the end of the period within which the material may be retained by virtue of this paragraph, the material may be retained indefinitely.

[In sub-paragraph (2) —

F41(2A)

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- (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 (2) 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 (2) 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 3 years 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 3 years 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).
- (5) The responsible chief officer of police or a specified chief officer of police may apply to a relevant court for an order extending the retention period.
- (6) An application for an order under sub-paragraph (5) must be made within the period of 3 months ending on the last day of the retention period.
- (7) An order under sub-paragraph (5) may extend the retention period by a period which—
- (a) begins with the date on which the material would otherwise be required to be destroyed under this paragraph, and
 - (b) ends with the end of the period of 2 years beginning with that date.
- (8) The following persons may appeal to the relevant appeal court against an order under sub-paragraph (5), or a refusal to make such an order—
- (a) the responsible chief officer of police;
 - (b) a specified chief officer of police;
 - (c) the person from whom the material was taken.
- (9) In Scotland—
- (a) an application for an order under sub-paragraph (5) is to be made by summary application;

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- (b) an appeal against an order under sub-paragraph (5), or a refusal to make such an order, must be made within 21 days of the relevant court's decision, and the relevant appeal court's decision on any such appeal is final.
- (10) In this paragraph—
- “relevant court” means—
- (a) in England and Wales, a District Judge (Magistrates' Courts),
- (b) in Scotland, the sheriff—
- (i) in whose sheriffdom the person to whom the material relates resides,
- (ii) in whose sheriffdom that person is believed by the applicant to be, or
- (iii) to whose sheriffdom that person is believed by the applicant to be intending to come; and
- (c) in Northern Ireland, a district judge (magistrates' court) in Northern Ireland;
- “the relevant appeal court” means—
- (a) in England and Wales, the Crown Court,
- (b) in Scotland, the sheriff principal, and
- (c) in Northern Ireland, the County Court in Northern Ireland;
- “a specified chief officer of police” means—
- (a) in England and Wales and Northern Ireland—
- (i) the chief officer of the police force of the area in which the person from whom the material was taken resides, or
- (ii) a chief officer of police who believes that the person is in, or is intending to come to, the chief officer's police area, and
- (b) [^{F42}the chief constable of the Police Service of Scotland, where—
- (i) the person who provided the material, or from whom it was taken, resides in Scotland, or
- (ii) the chief constable believes that the person is in, or is intending to come to, Scotland.]

Textual Amendments

- F41** Sch. 8 para. 20B(2A) inserted (31.1.2017 for specified purposes, 3.4.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), ss. [71\(2\)](#), [183\(1\)\(5\)\(e\)](#); S.I. 2017/399, reg. 2, Sch. para. 20
- F42** Words in Sch. 8 para. 20B(10) substituted (13.5.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. [185\(1\)](#), [Sch. 11 para. 125\(2\)](#) (with ss. [21](#), [33](#), [42](#), [58](#), [75](#), [93](#)); S.I. 2014/949, art. 3, Sch. para. 23(1)

- 20C (1) This paragraph applies to paragraph 20A material relating to a person who is detained under Schedule 7.
- (2) In the case of a person who 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 is so convicted before the end of the period within which the material may be retained by virtue of this paragraph, the material may be retained indefinitely.

[In sub-paragraph (2) —

Status: Point in time view as at 17/01/2018.

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- ^{F43}(2A) (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 (2) 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 (2) 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).

Textual Amendments

F43 Sch. 8 para. 20C(2A) inserted (31.1.2017 for specified purposes, 3.4.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), ss. 71(3), 183(1)(5)(e); S.I. 2017/399, reg. 2, Sch. para. 20

- 20D (1) For the purposes of paragraphs 20B and 20C, 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) the person, in relation to an offence in Scotland punishable by imprisonment, has accepted or has been deemed to accept—
 - (i) a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995,

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- (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) the person, in relation to an offence in Scotland punishable by imprisonment, 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) the person, in relation to an offence in Scotland punishable by imprisonment, has been discharged absolutely by order under section 246(3) of the Criminal Procedure (Scotland) Act 1995.
 - (2) Paragraphs 20B and 20C 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 of the Protection of Freedoms Act 2012.
 - (4) For the purposes of paragraphs 20B and 20C—
 - (a) a person has no previous convictions if the person has not previously been convicted—
 - (i) in England and Wales or Northern Ireland of a recordable offence, or
 - (ii) in Scotland of an offence which is punishable by imprisonment, and
 - (b) if the person has previously been convicted of a recordable offence in England and Wales or Northern Ireland, the conviction is exempt if it is in respect of a recordable offence, other than a qualifying offence, committed when the person was aged under 18.
 - (5) In sub-paragraph (4), “qualifying offence” has—
 - (a) in relation to a conviction in respect of a recordable offence committed in England and Wales, the meaning given by section 65A of the Police and Criminal Evidence Act 1984, and
 - (b) in relation to a conviction in respect of a recordable offence committed in Northern Ireland, the meaning given by Article 53A of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).
- [For the purposes of sub-paragraph (4)—
- ^{F44}(5A) (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

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- (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).
- (5B) For the purposes of paragraphs 20B and 20C and this paragraph—
 - (a) offence, in relation to any country or territory outside the United Kingdom, includes an act punishable under the law of that country or territory, however it is described;
 - (b) a person has in particular been convicted of an offence under the law of a country or territory outside the United Kingdom if—
 - (i) a court exercising jurisdiction under the law of that country or territory has made in respect of such an offence a finding equivalent to a finding that the person is not guilty by reason of insanity, or
 - (ii) such a court has made in respect of such an offence a finding equivalent to a finding that the person is under a disability and did the act charged against the person in respect of the offence.]
- (6) 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 20B or 20C whether the person has been convicted of only one offence.
- (7) Nothing in paragraph 20B or 20C prevents the start of a new retention period in relation to paragraph 20A material if a person is detained again under section 41 or (as the case may be) Schedule 7 when an existing retention period (whether or not extended) is still in force in relation to that material.

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Textual Amendments

F44 Sch. 8 para. 20D(5A)(5B) inserted (31.1.2017 for specified purposes, 3.4.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), ss. 71(4), 183(1)(5)(e); S.I. 2017/399, reg. 2, Sch. para. 20

- 20E (1) Paragraph 20A material may be retained for as long as a national security determination made by the responsible chief officer of police has effect in relation to it.
- (2) A national security determination is made if the responsible chief officer of police determines that it is necessary for any paragraph 20A material to be retained for the purposes of national security.
- (3) A national security determination—
- must be made in writing,
 - has effect for a maximum of 2 years beginning with the date on which the determination is made, and
 - may be renewed.
- 20F (1) If fingerprints or relevant physical data are required by paragraph 20A 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.
- 20G (1) This paragraph applies to—
- samples taken under paragraph 10 or 12, or
 - samples taken by virtue of paragraph 20.
- (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, or
 - the sample was taken from a person in connection with that person's arrest under section 41 and the arrest was unlawful or based on mistaken identity.
- (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—
- as soon as a DNA profile has been derived from the sample, or
 - 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) The responsible chief officer of police may apply to a relevant court for an order to retain a sample to which this paragraph applies beyond the date on which the sample would otherwise be required to be destroyed by virtue of sub-paragraph (4) or (5) if—
- the sample was taken from a person detained under section 41 in connection with the investigation of a qualifying offence, and
 - the responsible chief officer of police considers that the condition in sub-paragraph (7) is met.

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- (7) The condition is that, having regard to the nature and complexity of other material that is evidence in relation to the offence, the sample is likely to be needed in any proceedings for the offence for the purposes of—
- (a) disclosure to, or use by, a defendant, or
 - (b) responding to any challenge by a defendant in respect of the admissibility of material that is evidence on which the prosecution proposes to rely.
- (8) An application under sub-paragraph (6) must be made before the date on which the sample would otherwise be required to be destroyed by virtue of sub-paragraph (4) or (5).
- (9) If, on an application made by the responsible chief officer of police under sub-paragraph (6), the relevant court is satisfied that the condition in sub-paragraph (7) is met, it may make an order under this sub-paragraph which—
- (a) allows the sample to be retained for a period of 12 months beginning with the date on which the sample would otherwise be required to be destroyed by virtue of sub-paragraph (4) or (5), and
 - (b) may be renewed (on one or more occasions) for a further period of not more than 12 months from the end of the period when the order would otherwise cease to have effect.
- (10) An application for an order under sub-paragraph (9) (other than an application for renewal)—
- (a) may be made without notice of the application having been given to the person from whom the sample was taken, and
 - (b) may be heard and determined in private in the absence of that person.
- (11) In Scotland, an application for an order under sub-paragraph (9) (including an application for renewal) is to be made by summary application.
- (12) A sample retained by virtue of an order under sub-paragraph (9) must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.
- (13) A sample that ceases to be retained by virtue of an order under sub-paragraph (9) must be destroyed.
- (14) 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.
- (15) In this paragraph—
- “ancillary offence”, in relation to an offence for the time being listed in section 41(1) of the Counter-Terrorism Act 2008, means—
- (a) aiding, abetting, counselling or procuring the commission of the offence, or
 - (b) inciting, attempting or conspiring to commit the offence;
- “qualifying offence”—
- (a) in relation to the investigation of an offence committed in England and Wales, has the meaning given by section 65A of the Police and Criminal Evidence Act 1984,

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- (b) in relation to the investigation of an offence committed in Scotland, means a relevant offence, an offence for the time being listed in section 41(1) of the Counter-Terrorism Act 2008 or an ancillary offence to an offence so listed, and
- (c) in relation to the investigation of an offence committed in Northern Ireland, has the meaning given by Article 53A of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

“relevant court” means—

- (a) in England and Wales, a District Judge (Magistrates' Courts),
- (b) in Scotland, the sheriff—
 - (i) in whose sheriffdom the person to whom the sample relates resides,
 - (ii) in whose sheriffdom that person is believed by the responsible chief officer of police to be, or
 - (iii) to whose sheriffdom that person is believed by the responsible chief officer of police to be intending to come; and
- (c) in Northern Ireland, a district judge (magistrates' court) in Northern Ireland;

“relevant offence” has the same meaning as in section 19A of the Criminal Procedure (Scotland) Act 1995;

“a relevant search” has the meaning given by paragraph 20A(6).

- 20H (1) Any material to which paragraph 20A or 20G applies must not be used other than—
- (a) in the interests of national security,
 - (b) for the purposes of a terrorist investigation,
 - (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 20A(6)) may be carried out in relation to material to which paragraph 20A or 20G applies if the responsible chief officer of police considers the search to be desirable.
- (3) Material which is required by paragraph 20A or 20G 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 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

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- (c) 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.

20I ^{F45}(1) [^{F46}Paragraphs 20A to 20H do not apply to material] relating to a person detained under section 41 which is, or may become, disclosable under—

- (a) the Criminal Procedure and Investigations Act 1996, or
(b) a code of practice prepared under section 23 of that Act and in operation by virtue of an order under section 25 of that Act.

[A sample that—

- ^{F47}(2) (a) falls within sub-paragraph (1), and
(b) but for that sub-paragraph would be required to be destroyed under paragraph 20G,

must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.

- (3) A sample that once fell within sub-paragraph (1) but no longer does, and so becomes a sample to which paragraph 20G applies, must be destroyed immediately if the time specified for its destruction under that paragraph has already passed.]

Textual Amendments

- F45** Sch. 8 para. 20I(1): Sch. 8 para. 20I renumbered as Sch. 8 para. 20I(1) (13.5.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), **ss. 146(2)(b)**, 185(1) (with **ss. 21, 33, 42, 58, 75, 93**); S.I. 2014/949, art. 3, Sch. para. 13
- F46** Words in Sch. 8 para. 20I substituted (13.5.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), **ss. 146(2)(a)**, 185(1) (with **ss. 21, 33, 42, 58, 75, 93**); S.I. 2014/949, art. 3, Sch. para. 13
- F47** Sch. 8 para. 20I(2), (3) inserted (13.5.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), **ss. 146(2)(b)**, 185(1) (with **ss. 21, 33, 42, 58, 75, 93**); S.I. 2014/949, art. 3, Sch. para. 13

20J In paragraphs 20A to 20I—

“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 (Part 5 definitions);

“paragraph 20A material” has the meaning given by paragraph 20A(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) [^{F48}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;

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- (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
 - (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;

“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 [^{F49}the Police Service of Scotland] —

- (a) in which the material concerned was taken or provided, 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 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.]

Textual Amendments

- F48** Sch. 8 para. 20J: in definition of “police force” paras. (d)(e) substituted (13.5.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), **Sch. 11 para. 125(3)(a)** (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/949, art. 3, Sch. para. 23(l)
- F49** Words in Sch. 8 para. 20J substituted (13.5.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), s. 185(1), **Sch. 11 para. 125(3)(b)** (with ss. 21, 33, 42, 58, 75, 93); S.I. 2014/949, art. 3, Sch. para. 23(l)

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