

Status: Point in time view as at 17/01/2018.

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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

Rights: Scotland

- 16 (1) A person detained under Schedule 7 or section 41 at a [F¹place] 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 [F²place] to another, he shall be entitled to exercise the right under sub-paragraph (1) in respect of the [F²place] 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 [F³as mentioned in sub-paragraph (1)] shall be entitled to consult a solicitor at any time, without delay.

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- (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

- F1** 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)
- F2** 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)
- F3** 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)

- C1** 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)

[^{F4}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

- F4** 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)

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- 17 (1) [^{F5}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 [^{F6}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 [^{F7}or 23A];
 - (d) that it will further the operation of [^{F8}Part 2 or 3 of the Proceeds of Crime Act 2002] or the ^{M1}Proceeds of Crime (Northern Ireland) Order 1996 (confiscation of the proceeds of an offence).
- [^{F9}(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
 - (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

- F5** 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)
- F6** 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)
- F7** 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)

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F8 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.

F9 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)

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)

Marginal Citations

M1 [S.I. 1996/1299 \(N.I.9\)](#).

18 (1) Paragraphs 16 ^[F10]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 ^[F11]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 ^{M2}Criminal Procedure (Scotland) Act 1995 shall apply to the person detained as it applies to a person who appears to a constable 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.

^[F12](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

F10 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)

F11 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)

F12 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)

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)

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Marginal Citations

M2 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)

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\(8\)](#)

- 20 (1) Subject to the modifications specified in sub-paragraphs (2) and (3), section 18 of the ^{M3}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.

[^{F13}(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 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.']

[^{F14}(3) Subsections (3) to (5) shall not apply, ^{F15}...

^{F16}(4)]

Textual Amendments

F13 Sch. 8 para. 20(2)-(2B) substituted for Sch. 8 para. 20(2) (14.12.2001) by [2001 c. 24, s. 89\(3\)](#)

F14 Sch. 8 para. 20(3)(4) substituted for Sch. 8 para. 20(3) (14.12.2001) by [2001 c. 24, s. 89\(4\)](#)

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F15 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)

F16 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)

C5 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

M3 1995 c. 46.

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