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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 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—
- shall authorise the further detention under section 41 of a specified person for a specified period, and
 - 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—
- with the time of his arrest under section 41, or
 - 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—
- 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,
 - in Scotland, the sheriff, and
 - in Northern Ireland, a county court judge, or a resident magistrate who is designated for the purpose of this Part by the Lord Chancellor.

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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) (b) 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.

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.

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- (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.
- [^{F1}(4) A judicial authority may, after giving an opportunity for representations to be made by or on behalf of the applicant and the person to whom the application relates, direct—
- (a) that the hearing of the application must be conducted, and
 - (b) that all representations by or on behalf of a person for the purposes of the hearing must be made,
- by such means (whether a live television link or other means) falling within sub-paragraph (5) as may be specified in the direction and not in the presence (apart from by those means) of the applicant, of the person to whom the application relates or of any legal representative of that person.
- (5) A means of conducting the hearing and of making representations falls within this sub-paragraph if it allows the person to whom the application relates and any legal representative of his (without being present at the hearing and to the extent that they are not excluded from it under sub-paragraph (3))—
- (a) to see and hear the judicial authority and the making of representations to it by other persons; and
 - (b) to be seen and heard by the judicial authority.
- (6) If the person to whom the application relates wishes to make representations about whether a direction should be given under sub-paragraph (4), he must do so by using the facilities that will be used if the judicial authority decides to give a direction under that sub-paragraph.
- (7) Sub-paragraph (2) applies to the hearing of representations about whether a direction should be given under sub-paragraph (4) in the case of any application as it applies to a hearing of the application.
- (8) A judicial authority shall not give a direction under sub-paragraph (4) unless—
- (a) it has been notified by the Secretary of State that facilities are available at the place where the person to whom the application relates is held for the judicial authority to conduct a hearing by means falling within sub-paragraph (5); and
 - (b) that notification has not been withdrawn.
- (9) If in a case where it has power to do so a judicial authority decides not to give a direction under sub-paragraph (4), it shall state its reasons for not giving it.]

Textual Amendments

F1 Sch. 8 paras. 33(4)-(9) inserted (E.W.N.I.) (1.8.2001) by 2001 c. 16, s. 75; S.I. 2001/2223, art. 3(d)

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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.
- [^{F2}(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 benefited from his criminal conduct, and
 - (b) the recovery of the value of the property constituting the benefit would be hindered if the information were disclosed.
- (3A) For the purposes of sub-paragraph (3) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 2 or 3 of the Proceeds of Crime Act 2002.]
- (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.

Textual Amendments

- F2** Sch. 8 para. 34(3)(3A) substituted for Sch. 8 para. 34(3) (24.3.2003 subject to certain provisions in the commencing instruments) by 2002 c. 29, s. 456, Sch. 11 para. 39(5); S.I. 2003/333, art. 2, Sch. (as amended by S.I. 2003/531); S.S.I. 2003/210, art. 2, Sch.

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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)

- C1 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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