

SCHEDULES

SCHEDULE 3

BORDER SECURITY

PART 2

DETENTION

Rights: Scotland

- 39 (1) Sub-paragraph (2) applies where a detainee exercises the right under paragraph 37(6) to consult a solicitor.
- (2) A police officer not below the rank of superintendent may, if it appears to the officer to be necessary on one of the grounds mentioned in sub-paragraph (4), direct that the right—
- (a) may not be exercised (or further exercised) by consulting the solicitor who attends for the purpose of the consultation or who would so attend but for the giving of the direction, but
 - (b) may instead be exercised by consulting a different solicitor of the detainee's choosing.
- (3) A direction under this paragraph may be given before or after a detainee's consultation with a solicitor has started (and if given after it has started the right to further consult that solicitor ceases on the giving of the direction).
- (4) The grounds mentioned in paragraph 37(4) and (7) and in sub-paragraph (2) are—
- (a) that it is in the interests of the investigation or prevention of crime;
 - (b) that it is in the interests of the apprehension, prosecution or conviction of offenders;
 - (c) that it will further the recovery of property obtained as a result of the commission of an offence;
 - (d) that it will further the operation of Part 2 or 3 of the Proceeds of Crime Act 2002 or the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)) (confiscation of the proceeds of an offence);
 - (e) that it will further the gathering of information about the commission, preparation or instigation of acts carried out in connection with a person's engagement in hostile activity.
- (5) This sub-paragraph applies where an officer mentioned in paragraph 37(4) or (7) has reasonable grounds for believing that—
- (a) the detainee has benefited from the detainee's criminal conduct, and
 - (b) the recovery of the value of the property constituting the benefit will be hindered by—

Status: This is the original version (as it was originally enacted).

- (i) informing the named person of the detainee’s detention (in the case of an authorisation under paragraph 37(4)), or
 - (ii) the exercise of the entitlement under paragraph 37(6) (in the case of an authorisation under paragraph 37(7)).
- (6) For the purposes of sub-paragraph (5) the question whether a person has benefited from the person’s criminal conduct is to be decided in accordance with Part 3 of the Proceeds of Crime Act 2002.
- (7) Where delay is authorised in the exercising of any of the rights mentioned in paragraph 37(1) and (6)—
 - (a) if the authorisation is given orally, the person giving it must confirm it in writing as soon as is reasonably practicable,
 - (b) the detainee must be told the reason for the delay as soon as is reasonably practicable, and
 - (c) the reason must be recorded as soon as is reasonably practicable.