

Status: Point in time view as at 20/12/2023.

Changes to legislation: There are currently no known outstanding effects for the Counter-Terrorism and Border Security Act 2019, PART 2. (See end of Document for details)

SCHEDULES

SCHEDULE 3

BORDER SECURITY

Modifications etc. (not altering text)

- C1** Sch. 3 modified by S.I. 1993/1813, **Sch. 4 para. 7** (as inserted (12.2.2019 for specified purposes; 13.8.2020 in so far as not already in force) by Counter Terrorism and Border Security Act 2019 (c. 3), s. 27(1)(g), Sch. 3 para. 63(1) (with s. 25(9), **Sch. 3 para. 63(2)**); S.I. 2020/792, **reg. 2(g)**)
- C1** Sch. 3 modified (30.9.2020 immediately after the amendments by S.I. 2020/915, art. 5 come into force) by The Channel Tunnel (Arrangements with the Kingdom of the Netherlands) Order 2020 (S.I. 2020/916), arts. 1(3), **6**
- C1** Sch. 3 modified by S.I. 1994/1405, **art. 7** (as amended (coming into force in accordance with art. 1(3) of the amending S.I.) by The Channel Tunnel (International Arrangements and Miscellaneous Provisions) (Amendment) Order 2020 (S.I. 2020/915), arts. 1(3), **11**)

PART 2

DETENTION

Place of detention

- 25 (1) A detainee may be detained at a place designated under paragraph 1(1) of Schedule 8 to the Terrorism Act 2000 as a place where persons may be detained under Schedule 7 to that Act.
- (2) A detainee 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 the detainee's attendance is required for the purpose of—
- (a) the detainee's examination under Part 1 of this Schedule,
 - (b) establishing the detainee's nationality or citizenship, or
 - (c) making arrangements for the detainee's admission to a country or territory outside the United Kingdom.
- (3) Where a detainee is arrested in one part of the United Kingdom and all or part of the detainee's detention takes place in another part, the provisions of this Part of this Schedule which apply to detention in a particular part of the United Kingdom apply in relation to the detainee while detained in that part.
- (4) In this Part of this Schedule—
- (a) references to a police station include references to any place that is designated as mentioned in sub-paragraph (1);
 - (b) “detainee” means a person detained under Part 1 of this Schedule.

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Commencement Information

- I1** Sch. 3 para. 25 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)
I2 Sch. 3 para. 25 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), **reg. 2(g)**

Identification

- 26 (1) An examining officer may take any steps which are reasonably necessary for—
- (a) photographing the detainee,
 - (b) measuring the detainee, or
 - (c) identifying the detainee.
- (2) This paragraph does not confer the power to take—
- (a) fingerprints, non-intimate samples or intimate samples (see instead paragraph 34 below for power to take fingerprints and non-intimate samples), or
 - (b) relevant physical data or samples as mentioned in section 18 of the Criminal Procedure (Scotland) Act 1995 as applied by paragraph 42 below (see instead that paragraph).

Commencement Information

- I3** Sch. 3 para. 26 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)
I4 Sch. 3 para. 26 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), **reg. 2(g)**

Video recording of interviews

- 27 (1) This paragraph applies to any interview by a constable of a detainee that takes place in a police station.
- (2) The video recording (with sound) of interviews to which this paragraph applies must be carried out in accordance with any relevant code of practice under Part 4 of this Schedule.

Commencement Information

- I5** Sch. 3 para. 27 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)
I6 Sch. 3 para. 27 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), **reg. 2(g)**

Status

- 28 A detainee is to be deemed to be in legal custody throughout the period of the detainee's detention.

Commencement Information

- I7** Sch. 3 para. 28 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)
I8 Sch. 3 para. 28 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), **reg. 2(g)**

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Changes to legislation: There are currently no known outstanding effects for the Counter-Terrorism and Border Security Act 2019, PART 2. (See end of Document for details)

Rights: England, Wales and Northern Ireland

- 29 (1) Subject to paragraph 32, a detainee who is detained at a place in England, Wales or Northern Ireland is entitled, if the detainee so requests, to have one named person informed as soon as is reasonably practicable that the detainee is being detained there.
- (2) The person named must be—
- (a) a friend of the detainee,
 - (b) a relative, or
 - (c) a person who is known to the detainee or who is likely to take an interest in the detainee's welfare.
- (3) Where a detainee is transferred from one place to another, the detainee is to be entitled to exercise the right under this paragraph in respect of the place to which the detainee is transferred.
- (4) A detainee must be informed of the right under this paragraph on first being detained.

Commencement Information

I9 Sch. 3 para. 29 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

I10 Sch. 3 para. 29 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), [reg. 2\(g\)](#)

- 30 (1) Subject to paragraphs 32 and 33, a detainee who is detained in England, Wales or Northern Ireland is entitled, if the detainee 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 must be recorded.
- (3) A detainee must be informed of the right under this paragraph on first being detained.

Commencement Information

I11 Sch. 3 para. 30 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

I12 Sch. 3 para. 30 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), [reg. 2\(g\)](#)

- 31 (1) This paragraph applies where a detainee makes a request to consult a solicitor.
- (2) The examining officer may not question the detainee under paragraph 1 or 2 until the detainee 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 conferred by paragraph 8 (search powers where a person is questioned under paragraph 1) may be used when questioning is postponed because of sub-paragraph (2).
- (5) The detainee 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.

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- (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 1 or 2.

Commencement Information

I13 Sch. 3 para. 31 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

I14 Sch. 3 para. 31 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792, reg. 2\(g\)](#)

- 32 (1) A police officer of at least the rank of superintendent may authorise a delay—
- (a) in informing the person named by a detainee under paragraph 29;
 - (b) in permitting a detainee to consult a solicitor under paragraph 30.
- (2) An officer may give an authorisation under sub-paragraph (1) only if the officer has reasonable grounds for believing—
- (a) in the case of an authorisation under sub-paragraph (1)(a), that informing the named person of the detainee's detention will have any of the consequences specified in sub-paragraph (3), or
 - (b) in the case of an authorisation under sub-paragraph (1)(b), that the exercise of the right under paragraph 30 at the time when the detainee desires to exercise it will have any of the consequences specified in sub-paragraph (3).
- (3) Those consequences are—
- (a) interference with or harm to evidence of an indictable offence,
 - (b) interference with or physical injury to any person,
 - (c) the alerting of persons who are suspected of having committed an indictable offence but who have not been arrested for it,
 - (d) the hindering of the recovery of property obtained as a result of an indictable offence, or
 - (e) interference with the gathering of information about the commission, preparation or instigation of acts carried out in connection with a person's engagement in hostile activity.
- (4) If an authorisation under sub-paragraph (1) is given orally, the person giving it must confirm it in writing as soon as is reasonably practicable.
- (5) Where an authorisation under sub-paragraph (1) is given—
- (a) the detainee is to be told the reason for the delay as soon as is reasonably practicable, and
 - (b) the reason is to be recorded as soon as is reasonably practicable.
- (6) 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).

Commencement Information

I15 Sch. 3 para. 32 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

I16 Sch. 3 para. 32 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792, reg. 2\(g\)](#)

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- 33 (1) This paragraph applies where a detainee exercises the right under paragraph 30 to consult a solicitor.
- (2) A police officer of at least the rank of superintendent may 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) A direction under this paragraph may be given only if the officer giving it has reasonable grounds for believing—
- (a) that, unless the direction is given, the exercise of the right by the detainee will have any of the consequences specified in paragraph 32(3), or
 - (b) that the detainee has benefited from the detainee's criminal conduct and that, unless the direction is given, the exercise of the right by the detainee will hinder the recovery of the value of the property constituting the benefit.
- (5) For the purposes of sub-paragraph (4) the question whether a person has benefited from the person's criminal conduct is to be decided in accordance with Part 2 of the Proceeds of Crime Act 2002.

Commencement Information

I17 Sch. 3 para. 33 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

I18 Sch. 3 para. 33 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792, reg. 2\(g\)](#)

Fingerprints and samples: England, Wales and Northern Ireland

- 34 (1) This paragraph applies where a detainee is detained in England, Wales or Northern Ireland.
- (2) Fingerprints may be taken from the detainee 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 detainee 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 detainee without the appropriate consent only if—
- (a) the detainee 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) the detainee has been convicted of a recordable offence and, where a non-intimate sample is to be taken, 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).

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- (5) An officer may give an authorisation under sub-paragraph (4)(a) only if—
- (a) in the case of the taking of fingerprints or samples, condition 1 is met, or
 - (b) in the case of the taking of fingerprints, condition 2 is met.
- (6) Condition 1 is met if the officer is satisfied that it is necessary for the fingerprints or sample to be taken in order to assist in determining whether the detainee is or has been engaged in hostile activity.
- (7) Condition 2 is met if—
- (a) the officer is satisfied that the fingerprints of the detainee will facilitate the ascertainment of the detainee's identity, and
 - (b) the detainee has refused to identify himself or herself or the officer has reasonable grounds for suspecting that the detainee is not who the detainee claims to be.
- (8) In this paragraph references to ascertaining a person's identity include references to showing that the person is not a particular person.
- (9) If an authorisation under sub-paragraph (4)(a) is given orally, the person giving it must confirm it in writing as soon as is reasonably practicable.

Commencement Information

I19 Sch. 3 para. 34 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

I20 Sch. 3 para. 34 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), [reg. 2\(g\)](#)

- 35 (1) Before fingerprints or a sample are taken from a person under paragraph 34, the person must be informed—
- (a) that the fingerprints or sample may be used for the purposes of—
 - (i) a relevant search, as defined by paragraph 43(6),
 - (ii) section 63A(1) of the Police and Criminal Evidence Act 1984, or
 - (iii) Article 63A(1) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)), and
 - (b) where the fingerprints or sample are to be taken under paragraph 34(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 detainee upon an authorisation given under paragraph 34(4)(a), the detainee must 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 the detainee has been involved.
- (3) After fingerprints or a sample are taken under paragraph 34, any of the following which apply must be recorded as soon as reasonably practicable—
- (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 34(4)(a),
 - (d) the grounds upon which that authorisation has been given, and
 - (e) the fact that the appropriate consent has been given.

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- (4) Where a sample of hair is to be taken under paragraph 34, the sample may be taken either by cutting hairs or by plucking hairs with their roots so long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.

Commencement Information

I21 Sch. 3 para. 35 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

I22 Sch. 3 para. 35 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), **reg. 2(g)**

- 36 (1) In the application of paragraphs 26, 34 and 35 in relation to a person detained in England or Wales, the following expressions have the meaning given by section 65 of the Police and Criminal Evidence Act 1984—
- (a) “appropriate consent”,
 - (b) “fingerprints”,
 - (c) “intimate sample”,
 - (d) “non-intimate sample”, and
 - (e) “sufficient”.
- (2) 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 43 of this Schedule.
- (3) In the application of paragraphs 26, 34 and 35 in relation to a person detained in Northern Ireland, the expressions listed in sub-paragraph (1) have the meaning given by Article 53 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).
- (4) In paragraph 34 “recordable offence” has—
- (a) in relation to a detainee in England or Wales, the meaning given by section 118(1) of the Police and Criminal Evidence Act 1984, and
 - (b) in relation to a detainee in Northern Ireland, the meaning given by Article 2(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

Commencement Information

I23 Sch. 3 para. 36 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

I24 Sch. 3 para. 36 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), **reg. 2(g)**

Rights: Scotland

- 37 (1) A detainee who is detained at a place in Scotland is entitled to have intimation of the detention and of the place sent without delay to a solicitor and to another person named by the detainee.
- (2) The person named must be—
- (a) a friend of the detainee,
 - (b) a relative, or

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- (c) a person who is known to the detainee or who is likely to take an interest in the detainee's welfare.
- (3) A detainee who is transferred from one place to another is entitled to exercise the right under sub-paragraph (1) in respect of the place to which the detainee is transferred.
- (4) A police officer not below the rank of superintendent may authorise a delay in making intimation where, in the officer's view, the delay is necessary on one of the grounds mentioned in paragraph 39(4) or where paragraph 39(5) applies.
- (5) Where a detainee requests that the intimation be made, the time when the request—
- (a) is made, and
 - (b) is complied with,
- must be recorded.
- (6) A person detained as mentioned in sub-paragraph (1) is 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 the officer's view, the delay is necessary on one of the grounds mentioned in paragraph 39(4) or where paragraph 39(5) applies.
- (8) The consultation must be held in private.
- (9) A detainee must be informed of the rights under sub-paragraphs (1) and (6) on first being detained.

Commencement Information

I25 Sch. 3 para. 37 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

I26 Sch. 3 para. 37 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), **reg. 2(g)**

- 38 (1) This paragraph applies where a detainee in Scotland requests to consult a solicitor.
- (2) The examining officer may not question the detainee under paragraph 1 or 2 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 (search powers where a person is questioned under paragraph 1) may be used when questioning is postponed because of sub-paragraph (2).
- (5) The detainee 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 1 or 2.

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Commencement Information

I27 Sch. 3 para. 38 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

I28 Sch. 3 para. 38 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), [reg. 2\(g\)](#)

- 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—
 - (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,

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- (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.

Commencement Information

I29 Sch. 3 para. 39 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

I30 Sch. 3 para. 39 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), [reg. 2\(g\)](#)

- 40 (1) Paragraphs 37 to 39 have effect in relation to a detainee 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 the detainee appears to a constable to be a child—
- (a) the other person named by the detainee in pursuance of paragraph 37(1) must be the detainee's parent,
 - (b) intimation is to be made under paragraph 37(1) whether the detainee requests that it be made or not, and
 - (c) section 40 of the Criminal Justice (Scotland) Act 2016 (right of under 18s to have access to other person) applies as if the detainee were a person in police custody for the purposes of that section.
- (3) In relation to a detainee who is detained at a place other than a police station, sub-paragraph (2) applies as if references to a constable included an examining officer.
- (4) For the purposes of sub-paragraph (2)—
- “child” means a person under 16 years of age;
 - “parent” includes guardian and any person who has the care of the child.

Commencement Information

I31 Sch. 3 para. 40 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

I32 Sch. 3 para. 40 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), [reg. 2\(g\)](#)

- 41 (1) Subject to sub-paragraph (2), where a detainee is permitted to consult a solicitor, the solicitor is to be allowed to be present at any interview carried out in connection with an investigation carried out for the purposes of Part 1 of this Schedule.
- (2) A police officer not below the rank of Assistant Chief Constable may direct that the solicitor is not to be allowed to be present at an interview (or part of an interview) if the officer is satisfied that the solicitor's behaviour during the interview would interfere with, or obstruct, the conduct of the interview.

Commencement Information

I33 Sch. 3 para. 41 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

I34 Sch. 3 para. 41 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), [reg. 2\(g\)](#)

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Fingerprints and samples: Scotland

- 42 (1) Subject to the following modification, section 18 of the Criminal Procedure (Scotland) Act 1995 (procedure for taking certain prints and samples) applies to a detainee detained at a police station in Scotland under Part 1 of this Schedule as it applies to a person arrested.
- (2) The modification is that section 18 applies as if—
- (a) for subsection (2) of that section the following were substituted—
- “(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 the officer is satisfied that it is necessary to do so in order to assist in determining whether that person is or has been engaged in hostile activity.
- (2A) A constable may also take fingerprints from a detained person or require the person to provide them if—
- (a) the constable is satisfied that the fingerprints will facilitate the ascertainment of the person's identity; and
- (b) the person has refused to identify himself or herself or the constable has reasonable grounds for suspecting that the person is not who the person claims to be.”;
- (b) subsections (3) to (5) were omitted;
- (c) after subsection (8) there were inserted—
- “(9) In this section—
- (a) references to a “detained person” are references to a person detained under Part 1 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019;
- (b) the reference to engagement in hostile activity is to be read in accordance with paragraph 1 of that Schedule.”

Commencement Information

I35 Sch. 3 para. 42 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

I36 Sch. 3 para. 42 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), [reg. 2\(g\)](#)

Destruction and retention of fingerprints and samples etc: United Kingdom

- 43 (1) This paragraph applies to—
- (a) fingerprints taken under paragraph 34,
- (b) a DNA profile derived from a DNA sample taken under paragraph 34,
- (c) relevant physical data taken or provided by virtue of paragraph 42, and
- (d) a DNA profile derived from a DNA sample taken by virtue of paragraph 42.
- (2) Fingerprints, relevant physical data and DNA profiles to which this paragraph applies (“paragraph 43 material”) must be destroyed if it appears to the responsible chief officer of police that 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.

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- (3) In any other case, paragraph 43 material must be destroyed unless it is retained under a power conferred by paragraph 44, 46 or 47.
- (4) Paragraph 43 material which ceases to be retained under a power mentioned in sub-paragraph (3) may continue to be retained under any other power which applies to it.
- (5) Nothing in this paragraph prevents a relevant search, in relation to paragraph 43 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 34 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) fingerprints or samples taken under paragraph 10 or 12 of Schedule 8 to the Terrorism Act 2000 or a DNA profile derived from a sample taken under one of those paragraphs,
 - (d) any of the relevant physical data, samples or information held by virtue of section 56 of the Criminal Justice (Scotland) Act 2003,
 - (e) material to which section 18 of the Counter-Terrorism Act 2008 applies,
 - (f) 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,
 - [^{F1}(fa) fingerprints or samples taken under paragraph 10 or 12 of Schedule 6 to the National Security Act 2023 or a DNA profile derived from a sample taken under one of those paragraphs,
 - (fb) any of the fingerprints, data or samples obtained under paragraph 1 or 4 of Schedule 12 to that Act, or information derived from such samples,]
 - (g) 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
 - (h) 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 (S.I. 1989/1341 (N.I. 12)) (checking of fingerprints and samples).

Textual Amendments

- F1** Sch. 3 para. 43(6)(fa)(fb) inserted (20.12.2023) by [The National Security Act 2023 \(Consequential Amendments of Primary Legislation\) Regulations 2023 \(S.I. 2023/1386\)](#), reg. 1(2), **Sch. para. 31(2)**

Commencement Information

- I37** Sch. 3 para. 43 in force at Royal Assent for specified purposes, see. [s. 27\(1\)\(g\)\(2\)\(c\)](#)
- I38** Sch. 3 para. 43 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), **reg. 2(g)**

- 44 (1) Paragraph 43 material may be retained indefinitely in the case of a detainee who—
- (a) 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

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- (b) is so convicted before the end of the period within which the material may be retained by virtue of this paragraph.
- (2) In sub-paragraph (1)—
- (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 (1) 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 (1) 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).

Commencement Information

- I39** Sch. 3 para. 44 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)
- I40** Sch. 3 para. 44 in force at 13.8.2020 in so far as not already in force except in relation to N.I. by [S.I. 2020/792](#), **reg. 2(g)**
- I41** Sch. 3 para. 44 in force at 1.6.2021 for N.I. by [S.I. 2021/622](#), **reg. 2(b)**

- 45 (1) For the purposes of paragraph 44, 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

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- (iv) the person has been warned or reprimanded under section 65 of the Crime and Disorder Act 1998 for the offence,
 - (b) in relation to an offence in Scotland punishable by imprisonment, the person has accepted or has been deemed to accept—
 - (i) a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995,
 - (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) in relation to an offence in Scotland punishable by imprisonment, the person 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) in relation to an offence in Scotland punishable by imprisonment, the person has been discharged absolutely by order under section 246(3) of the Criminal Procedure (Scotland) Act 1995.
- (2) Paragraph 44 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 or 101A of the Protection of Freedoms Act 2012.
- (4) For the purposes of paragraph 44—
- (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)).

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- (6) For the purposes of sub-paragraph (4)—
- (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
 - (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).
- (7) For the purposes of paragraph 44 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.
- (8) 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 44 whether the person has been convicted of only one offence.
- (9) Nothing in paragraph 44 prevents the start of a new retention period in relation to paragraph 43 material if a person is detained again under Part 1 of this Schedule when

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an existing retention period (whether or not extended) is still in force in relation to that material.

Commencement Information

- I42** Sch. 3 para. 45 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)
I43 Sch. 3 para. 45 in force at 13.8.2020 in so far as not already in force except in relation to N.I. by [S.I. 2020/792, reg. 2\(g\)](#)
I44 Sch. 3 para. 45 in force at 1.6.2021 for N.I. by [S.I. 2021/622, reg. 2\(b\)](#)

- 46 (1) Paragraph 43 material may be retained for as long as a national security determination made by a chief officer of police has effect in relation to it.
- (2) A national security determination is made if a chief officer of police determines that it is necessary for any paragraph 43 material to be retained for the purposes of national security.
- (3) A national security determination—
- (a) must be made in writing,
 - (b) has effect for a maximum of 5 years beginning with the date on which the determination is made, and
 - (c) may be renewed.
- (4) In this paragraph “chief officer of police” means—
- (a) a chief officer of police of a police force in England and Wales,
 - (b) the chief constable of the Police Service of Scotland, or
 - (c) the Chief Constable of the Police Service of Northern Ireland.

Commencement Information

- I45** Sch. 3 para. 46 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)
I46 Sch. 3 para. 46 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792, reg. 2\(g\)](#)

- 47 (1) This paragraph applies where paragraph 43 material is or includes a person's fingerprints (“the original fingerprints”).
- (2) A constable may make a determination under this paragraph in respect of any further fingerprints taken from, or provided by, the same person (“the further fingerprints”) if conditions 1 and 2 are met.
- (3) Condition 1 is met if the further fingerprints—
- (a) are paragraph 43 material,
 - (b) are taken or provided under or by virtue of—
 - (i) Part 5 of the Police and Criminal Evidence Act 1984,
 - (ii) Article 61 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)),
 - (iii) any provision, power or authority mentioned in section 18G(1) of the Criminal Procedure (Scotland) Act 1995,
 - (iv) paragraph 10 of Schedule 8 to the Terrorism Act 2000, ^{F2} ...
 - (v) paragraph 1 or 4 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011, ^{F3} ...

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- [^{F4}(vi) paragraph 10 of Schedule 6 to the National Security Act 2023, or
(vii) paragraph 1 or 4 of Schedule 12 to that Act, or]
- (c) are material to which section 18 of the Counter-Terrorism Act 2008 applies.
- (4) Condition 2 is met if—
- (a) in a case where the further fingerprints are material to which section 18 of the Counter-Terrorism Act 2008 applies, the original fingerprints and the further fingerprints are held under the law of the same part of the United Kingdom;
- (b) in any other case, the original fingerprints and the further fingerprints were taken from or provided by the person in the same part of the United Kingdom.
- (5) Where a determination under this paragraph is made in respect of the further fingerprints—
- (a) the further fingerprints may be retained for as long as the original fingerprints are retained under any power conferred by paragraph 44 or 46, and
- (b) a requirement under any enactment to destroy the further fingerprints does not apply for as long as their retention is authorised by paragraph (a).
- (6) Sub-paragraph (5)(a) does not prevent the further fingerprints being retained after the original fingerprints fall to be destroyed if the continued retention of the further fingerprints is authorised under any enactment.
- (7) A written record must be made of a determination under this paragraph.

Textual Amendments

- F2** Word in Sch. 3 para. 47(3)(b)(iv) omitted (20.12.2023) by virtue of [The National Security Act 2023 \(Consequential Amendments of Primary Legislation\) Regulations 2023 \(S.I. 2023/1386\)](#), reg. 1(2), [Sch. para. 31\(3\)\(a\)](#)
- F3** Word in Sch. 3 para. 47(3)(b)(v) omitted (20.12.2023) by virtue of [The National Security Act 2023 \(Consequential Amendments of Primary Legislation\) Regulations 2023 \(S.I. 2023/1386\)](#), reg. 1(2), [Sch. para. 31\(3\)\(b\)](#)
- F4** Sch. 3 para. 47(3)(b)(vi)(vii) inserted (20.12.2023) by [The National Security Act 2023 \(Consequential Amendments of Primary Legislation\) Regulations 2023 \(S.I. 2023/1386\)](#), reg. 1(2), [Sch. para. 31\(3\)\(c\)](#)

Commencement Information

- I47** Sch. 3 para. 47 in force at Royal Assent for specified purposes, see. [s. 27\(1\)\(g\)\(2\)\(c\)](#)
- I48** Sch. 3 para. 47 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), [reg. 2\(g\)](#)

- 48 (1) If fingerprints or relevant physical data are required by paragraph 43 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.

Commencement Information

- I49** Sch. 3 para. 48 in force at Royal Assent for specified purposes, see. [s. 27\(1\)\(g\)\(2\)\(c\)](#)
- I50** Sch. 3 para. 48 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), [reg. 2\(g\)](#)

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- 49 (1) This paragraph applies to—
- (a) samples taken under paragraph 34, or
 - (b) samples taken by virtue of paragraph 42.
- (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.
- (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—
- (a) as soon as a DNA profile has been derived from the sample, or
 - (b) 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) 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.
- (7) In this paragraph “a relevant search” has the meaning given by paragraph 43(6).

Commencement Information

I51 Sch. 3 para. 49 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

I52 Sch. 3 para. 49 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792, reg. 2\(g\)](#)

- 50 (1) Any material to which paragraph 43 or 49 applies must not be used other than—
- (a) in the interests of national security,
 - (b) for the purposes of a terrorist investigation, as defined by section 32 of the Terrorism Act 2000,
 - (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 43(6)) may be carried out in relation to material to which paragraph 43 or 49 applies if the responsible chief officer of police considers the search to be desirable.
- (3) Material which is required by paragraph 43 or 49 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 references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime

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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.

Commencement Information

I53 Sch. 3 para. 50 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

I54 Sch. 3 para. 50 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), [reg. 2\(g\)](#)

51 In paragraphs 43 to 50—

“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;

“paragraph 43 material” has the meaning given by paragraph 43(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) 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;
- (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;

[^{F5}and references to a police force are to be read as including the tri-service serious crime unit;]

“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 (S.I. 1989/1341 (N.I. 12));

“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;

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“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 the Police Service of Scotland;

“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;

[^{F6}“tri-service serious crime unit” means the unit described in section 375(1A) of the Armed Forces Act 2006.]

Textual Amendments

- F5** Words in [Sch. 3 para. 51](#) inserted (1.5.2022 for specified purposes, 5.12.2022 in so far as not already in force) by [Armed Forces Act 2021 \(c. 35\), s. 24\(1\)](#), [Sch. 5 para. 50\(a\)](#); [S.I. 2022/471, reg. 2\(e\)](#); [S.I. 2022/1095, reg. 4](#)
- F6** Words in [Sch. 3 para. 51](#) inserted (1.5.2022 for specified purposes, 5.12.2022 in so far as not already in force) by [Armed Forces Act 2021 \(c. 35\), s. 24\(1\)](#), [Sch. 5 para. 50\(b\)](#); [S.I. 2022/471, reg. 2\(e\)](#); [S.I. 2022/1095, reg. 4](#)

Commencement Information

- I55** Sch. 3 para. 51 in force at Royal Assent for specified purposes, see. [s. 27\(1\)\(g\)\(2\)\(c\)](#)
- I56** Sch. 3 para. 51 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792, reg. 2\(g\)](#)

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Changes to legislation:

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