
Changes to legislation: There are currently no known outstanding effects for the National Security Act 2023, Paragraph 46. (See end of Document for details)

SCHEDULES

SCHEDULE 6

DETENTION UNDER SECTION 27

PART 7

EMERGENCY POWER WHEN PARLIAMENT DISSOLVED ETC. FOR TEMPORARY EXTENSION OF MAXIMUM PERIOD FOR DETENTION UNDER SECTION 27

- 46 (1) The Secretary of State may make temporary extension regulations if—
- (a) either—
 - (i) Parliament is dissolved, or
 - (ii) Parliament has met after a dissolution but the first King’s Speech of the Parliament has not yet taken place, and
 - (b) the Secretary of State considers that it is necessary by reason of urgency to make such regulations.
- (2) Temporary extension regulations are regulations which provide, in relation to the period of three months beginning with the coming into force of the regulations, for paragraphs 44 and 45 to be read as if—
- (a) in paragraph 44(4)(b)(ii), for “14 days” there were substituted “28 days”, and
 - (b) the other modifications in sub-paragraphs (3) and (4) were made.
- (3) The other modifications of paragraph 44 are—
- (a) the insertion, at the end of sub-paragraph (1), of—

“This is subject to sub-paragraphs (1A) to (1I).”;
 - (b) the insertion, after sub-paragraph (1), of—

“(1A) Sub-paragraph (1B) applies in relation to any proposed application under sub-paragraph (1) for the further extension of the period specified in a warrant of further detention where the grant (otherwise than in accordance with sub-paragraph (6)(b)) of the application would extend the specified period such that it ends at a time that is more than 14 days after the time of the arrest of the person to whom the warrant relates.
- (1B) No person may make such an application—
- (a) in England and Wales, without the consent of the Director of Public Prosecutions,
 - (b) in Scotland, without the consent of the Lord Advocate, and
 - (c) in Northern Ireland, without the consent of the Director of Public Prosecutions for Northern Ireland,

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unless the person making the application is the person whose consent is required.

(1C) The Director of Public Prosecutions must exercise personally any function under [sub-paragraph \(1B\)](#) of giving consent.

(1D) The only exception is if—

- (a) the Director is unavailable, and
- (b) there is another person who is designated in writing by the Director acting personally as the person who is authorised to exercise any such function when the Director is unavailable.

(1E) In that case—

- (a) the other person may exercise the function but must do so personally, and
- (b) the Director acting personally—
 - (i) must review the exercise of the function as soon as practicable, and
 - (ii) may revoke any consent given.

(1F) Where the consent is so revoked after an application has been made or extension granted, the application is to be dismissed or (as the case may be) the extension is to be revoked.

(1G) Sub-paragraphs (1C) to (1F) apply instead of any other provisions which would otherwise have enabled any function of the Director of Public Prosecutions under [sub-paragraph \(1B\)](#) of giving consent to be exercised by a person other than the Director.

(1H) The Director of Public Prosecutions for Northern Ireland must exercise personally any function under [sub-paragraph \(1B\)](#) of giving consent unless the function is exercised personally by the Deputy Director of Public Prosecutions for Northern Ireland by virtue of section 30(4) or (7) of the Justice (Northern Ireland) Act 2002 (powers of Deputy Director to exercise functions of Director).

(1I) Sub-paragraph (1H) applies instead of section 36 of the Act of 2002 (delegation of the functions of the Director of Public Prosecutions for Northern Ireland to persons other than the Deputy Director) in relation to the functions of the Director of Public Prosecutions for Northern Ireland and the Deputy Director of Public Prosecutions for Northern Ireland under, or (as the case may be) by virtue of, [sub-paragraph \(1B\)](#) above of giving consent.”,

- (c) the substitution, for “a judicial authority” in [sub-paragraph \(2\)](#), of “—
 - (a) in the case of an application falling within [sub-paragraph \(2A\)](#), a judicial authority, and
 - (b) in any other case, a senior judge”,
- (d) the insertion, after [sub-paragraph \(2\)](#), of—

“(2A) An application for the extension or further extension of a period falls within this sub-paragraph if—

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- (a) the grant of the application otherwise than in accordance with [sub-paragraph \(6\)\(b\)](#) would extend that period such that it ends at a time that is no more than 14 days after the time of the arrest of the person to whom the warrant relates, and
 - (b) no application has previously been made to a senior judge in respect of that period.”,
 - (e) the insertion, after “judicial authority” in both places in [sub-paragraph \(6\)](#) where it appears, of “or senior judge”,
 - (f) the insertion, after “detention” in [sub-paragraph \(7\)](#), of “but, in relation to an application made by virtue of [sub-paragraph \(2\)\(b\)](#) to a senior judge, as if—
 - (a) references to a judicial authority were references to a senior judge, and
 - (b) references to the judicial authority in question were references to the senior judge in question”,
 - (g) the insertion, after “judicial authority” in [sub-paragraph \(8\)](#), of “or senior judge”, and
 - (h) the insertion, after [sub-paragraph \(9\)](#), of—
 - “(10) In this paragraph and [paragraph 45](#) “senior judge” means a judge of the High Court or of the High Court of Justiciary.”
- (4) The modification of [paragraph 45](#) is the insertion, in [sub-paragraph \(2\)](#), after “judicial authority”, of “or senior judge”.
- (5) Temporary extension regulations apply, except so far as the regulations provide otherwise, to any person who is being detained under [section 27](#) when the regulations come into force (as well as any person who is subsequently detained under that section).
- (6) The Secretary of State may by regulations revoke temporary extension regulations if the Secretary of State considers it appropriate to do so (whether or not the conditions mentioned in [paragraphs \(a\) and \(b\)](#) of [sub-paragraph \(1\)](#) are met).
- (7) [Sub-paragraph \(8\)](#) applies if—
 - (a) any of the following events occurs—
 - (i) the revocation without replacement of temporary extension regulations,
 - (ii) the expiry of the period of three months mentioned in [sub-paragraph \(2\)](#) in relation to such regulations,
 - (iii) the ceasing to have effect of such regulations by virtue of [section 96\(8\) and \(9\)](#), and
 - (b) at that time—
 - (i) a person is being detained by virtue of a further extension under [paragraph 44](#),
 - (ii) the person’s further detention was authorised by virtue of the temporary extension regulations concerned (before the revocation or expiry of those regulations or before those regulations ceased to have effect) for a period ending more than 14 days after the time of the person’s arrest under [section 27](#),
 - (iii) that 14 days has expired, and
 - (iv) the person’s detention is not otherwise authorised by law.

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- (8) The person with custody of the detained person must release the detained person immediately.
- (9) Subject to [sub-paragraphs \(7\) and \(8\)](#), the fact that—
- (a) temporary extension regulations are revoked,
 - (b) the period of three months mentioned in [sub-paragraph \(2\)](#) has expired in relation to such regulations, or
 - (c) such regulations cease to have effect by virtue of section [96\(8\)](#) and [\(9\)](#),
- is without prejudice to anything previously done by virtue of the regulations or to the making of new regulations.

Commencement Information

- I1** Sch. 6 para. 46 not in force at Royal Assent, see 100(1)
- I2** [Sch. 6 para. 46](#) in force at 20.12.2023 by [S.I. 2023/1272](#), [reg. 2\(a\)](#)

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