

SCHEDULES

SCHEDULE 14

Section 149.

BODY SAMPLES – NORTHERN IRELAND

Scope of Schedule

- 1 This Schedule applies—
 - (a) to an offence (whether at common law or under any enactment) specified in paragraph 2 below;
 - (b) to an offence specified in paragraph 3 below;
 - (c) to an offence not mentioned in either of those paragraphs—
 - (i) for which a person of 21 years of age or over and of full capacity (not previously convicted) may be sentenced to imprisonment for a term of five years; and
 - (ii) which is serious for the purposes of this Schedule.
- 2 The offences mentioned in paragraph 1(a) above are—
 - (a) treason;
 - (b) murder;
 - (c) manslaughter;
 - (d) rape;
 - (e) kidnapping;
 - (f) incest with a girl under the age of 14;
 - (g) buggery with—
 - (i) a boy under the age of 16; or
 - (ii) a person who has not consented; and
 - (h) indecent assault which constitutes an act of gross indecency.
- 3 The offences mentioned in paragraph 1(b) above are—
 - (a) causing an explosion likely to endanger life or property contrary to section 2 of the Explosives Substances Act 1883;
 - (b) intercourse with a girl under the age of 14 contrary to section 4 of the Criminal Law Amendment Act 1885;
 - (c) causing death by reckless driving contrary to Article 139(1) of the Road Traffic (Northern Ireland) Order 1981;
 - (d) the following offences against the Firearms (Northern Ireland) Order 1981—
 - (i) possession of firearm with intent to injure contrary to Article 17;
 - (ii) use of firearm or imitation firearm to resist arrest contrary to Article 18(1); and
 - (iii) carrying firearm with criminal intent contrary to Article 19;
 - (e) hostage-taking contrary to section 1 of the Taking of Hostages Act 1982;
 - (f) hi-jacking contrary to section 1 of the Aviation Security Act 1982; and

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- (g) torture contrary to section 134 above.
- 4 (1) Subject to sub-paragraph (2) below, an offence not mentioned in paragraph 2 or 3 above is serious for the purposes of this Schedule only if its commission—
- (a) has led to any of the consequences mentioned in sub-paragraph (3) below; or
 - (b) is intended or is likely to lead to any of those consequences.
- (2) An offence which consists of making a threat is serious for the purposes of this Schedule if carrying out the threat would be likely to lead to any of the consequences specified in sub-paragraph (3) below.
- (3) The consequences mentioned in sub-paragraphs (1) and (2) above are—
- (a) serious harm to the security of the State or to public order;
 - (b) serious interference with the administration of justice or with the investigation of offences or of a particular offence;
 - (c) the death of any person;
 - (d) serious injury to any person;
 - (e) substantial financial gain to any person; and
 - (f) serious financial loss to any person.
- (4) Loss is serious for the purposes of this Schedule if, having regard to all the circumstances, it is serious for the person who suffers it.
- (5) In this paragraph “injury” includes any disease and any impairment of a person’s physical or mental condition.
- 5 A person arrested under section 12(1)(b) of the Prevention of Terrorism (Temporary Provisions) Act 1984 is to be treated for the purposes of this Schedule as having been arrested on suspicion of involvement in an offence to which this Schedule applies and any reference in the following provisions of this Schedule to such an offence includes a reference to being or having been concerned in the commission, preparation or instigation of acts of terrorism to which Part IV of that Act applies.

Interpretation

- 6 (1) In this Schedule—
- “appropriate consent” means—
- (a) in relation to a person who has attained the age of 17 years, the consent of that person;
 - (b) in relation to a person who has not attained that age but has attained the age of 14 years, the consent of that person and his parent or guardian; and
 - (c) in relation to a person who has not attained the age of 14 years, the consent of his parent or guardian;
- “intimate sample” means a sample of blood, semen or any other tissue fluid, urine or pubic hair, or a swab taken from any of a person’s body orifices except his mouth;
- “non-intimate sample” means—
- (a) a sample of hair other than pubic hair;
 - (b) a sample taken from a nail or from under a nail;
 - (c) a sample of saliva;
 - (d) a swab taken from a person’s mouth;

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- (e) a swab taken from any other part of a person's body except a body orifice other than his mouth;
- (f) a footprint or a similar impression of any part of a person's body other than a part of his hand;

“parent or guardian” means in the case of a child or young person in the care of the Department of Health and Social Services for Northern Ireland or a Health and Social Services Board, that Department or Board; and

“the terrorism provisions” means—

- (a) section 12(1) of the Prevention of Terrorism (Temporary Provisions) Act 1984; and
- (b) any provision conferring a power of arrest or detention and contained in an order under section 13 of that Act.

- (2) A person is in police detention for the purposes of this Schedule if—
- (a) he has been taken to a police station after being arrested for an offence; or
 - (b) he is arrested at a police station after attending voluntarily at the station or accompanying a constable to it,
- and is detained there or is detained elsewhere in the charge of a constable, except that a person who is at a court after being charged is not in police detention for those purposes.

Intimate samples

- 7 (1) An intimate sample may be taken from a person in police detention only—
- (a) if a police officer of at least the rank of superintendent authorises it to be taken; and
 - (b) if the appropriate consent is given.
- (2) An officer may only give an authorisation if he has reasonable grounds—
- (a) for suspecting the involvement of the person from whom the sample is to be taken in an offence to which this Schedule applies; and
 - (b) for believing that the sample will tend to confirm or disprove his involvement.
- (3) An officer may give an authorisation under sub-paragraph (1) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.
- (4) The appropriate consent must be given in writing.
- (5) Where—
- (a) an authorisation has been given; and
 - (b) it is proposed that an intimate sample shall be taken in pursuance of the authorisation,
- an officer shall inform the person from whom the sample is to be taken—
- (i) of the giving of the authorisation; and
 - (ii) of the grounds for giving it.
- (6) The duty imposed by sub-paragraph (5)(ii) above includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.
- (7) If an intimate sample is taken from a person—

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- (a) the authorisation by virtue of which it was taken;
 - (b) the grounds for giving the authorisation; and
 - (c) the fact that the appropriate consent was given,
- shall be recorded in writing as soon as is practicable after the sample is taken.
- (8) An intimate sample, other than a sample of urine, may only be taken from a person by a registered medical practitioner.
- (9) Where the appropriate consent to the taking of an intimate sample from a person was refused without good cause, in any proceedings against that person for an offence—
- (a) the court, in determining—
 - (i) whether to commit that person for trial; or
 - (ii) whether there is a case to answer; and
 - (b) the court or jury, in determining whether that person is guilty of the offence charged,
- may draw such inferences from the refusal as appear proper; and the refusal may, on the basis of such inferences, be treated as, or as capable of amounting to, corroboration of any evidence against the person in relation to which the refusal is material.
- (10) Nothing in this paragraph affects Articles 141 to 152 of the Road Traffic (Northern Ireland) Order 1981.

Other Samples

- 8 (1) Except as provided by this paragraph, a non-intimate sample may not be taken from a person without the appropriate consent.
- (2) Consent to the taking of a non-intimate sample must be given in writing.
- (3) A non-intimate sample may be taken from a person without the appropriate consent if—
- (a) he is in police detention or is being held in custody by the police on the authority of a court; and
 - (b) an officer of at least the rank of superintendent authorises it to be taken without the appropriate consent.
- (4) An officer may only give an authorisation under sub-paragraph (3) above if he has reasonable grounds—
- (a) for suspecting the involvement of the person from whom the sample is to be taken in an offence to which this Schedule applies; and
 - (b) for believing that the sample will tend to confirm or disprove his involvement.
- (5) An officer may give an authorisation under sub-paragraph (3) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.
- (6) Where—
- (a) an authorisation has been given; and
 - (b) it is proposed that a non-intimate sample shall be taken in pursuance of the authorisation,
- an officer shall inform the person from whom the sample is to be taken—

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- (i) of the giving of the authorisation; and
 - (ii) of the grounds for giving it.
- (7) The duty imposed by sub-paragraph (6)(ii) above includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.
- (8) If a non-intimate sample is taken from a person by virtue of sub-paragraph (3) above—
- (a) the authorisation by virtue of which it was taken; and
 - (b) the grounds for giving the authorisation,
- shall be recorded in writing as soon as is practicable after the sample is taken.

Destruction of samples

- 9 (1) If—
- (a) a sample is taken from a person in connection with the investigation of an offence; and
 - (b) he is cleared of that offence,
- it must be destroyed as soon as is practicable after the conclusion of the proceedings.
- (2) If—
- (a) a sample is taken from a person in connection with such an investigation; and
 - (b) it is decided that he shall not be prosecuted for the offence and he has not admitted it and been dealt with by way of being cautioned by a constable,
- it must be destroyed as soon as is practicable after that decision is taken.
- (3) If—
- (a) a sample is taken from a person in connection with the investigation of an offence; and
 - (b) that person is not suspected of having committed the offence,
- it must be destroyed as soon as it has fulfilled the purpose for which it was taken.
- (4) Proceedings which are discontinued are to be treated as concluded for the purpose of this paragraph.
- (5) Nothing in this paragraph—
- (a) affects any power conferred by paragraph 18(2) of Schedule 2 to the Immigration Act 1971; or
 - (b) applies to a person arrested or detained under the terrorism provisions.