

SCHEDULES

SCHEDULE 3

Sections 4(5), 14(6) and 16(2).

SUPERVISION OF DETENTION AND EXAMINATION POWERS

Detention pending removal

- 1 (1) Where a person is detained under paragraph 7 of Schedule 2 to this Act under the authority of an examining officer his detention shall be periodically reviewed in accordance with this paragraph by a review officer and shall not continue unless that officer has authorised it to continue.
- (2) The reviews shall be carried out as follows—
- (a) the first review shall be as soon as practicable after the beginning of the detention; and
 - (b) the subsequent reviews shall be at intervals of not more than twelve hours.
- (3) On any such review the review officer shall authorise the continued detention of the person in question if, and only if, he is satisfied that steps for giving directions for his removal or for removing him in pursuance of the directions are being taken diligently and expeditiously.

Examination without detention

- 2 (1) Where a person has been required by a notice under paragraph 2(4) of Schedule 5 to this Act to submit to further examination but is not detained under paragraph 6 of that Schedule his further examination shall be reviewed by a review officer not later than twelve hours after the beginning of the examination and shall not continue unless that officer has authorised it to continue.
- (2) The review officer shall authorise the examination to continue if, and only if, he is satisfied that the enquiries necessary to complete the examination are being carried out diligently and expeditiously.

Detention for examination or as suspected person

- 3 (1) Where a person is detained under section 14 of this Act or under paragraph 6 of Schedule 5 to this Act his detention shall be periodically reviewed in accordance with this paragraph by a review officer and shall not continue unless—
- (a) that officer has authorised it to continue; or
 - (b) an application has been made to the Secretary of State for an extension of the period of detention under subsection (5) of that section or sub-paragraph (3) of that paragraph.
- (2) The reviews shall be carried out as follows—
- (a) the first review shall be as soon as practicable after the beginning of the detention; and

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- (b) the subsequent reviews shall be at intervals of not more than twelve hours; and no review shall be carried out after such an application as is mentioned in sub-paragraph (1)(b) above has been made.
- (3) Subject to sub-paragraph (4) below, on any such review the review officer shall authorise the continued detention of the person in question if, and only if, he is satisfied—
- (a) that his continued detention is necessary in order to obtain (whether by questioning him or otherwise) or to preserve evidence which—
 - (i) relates to an offence under section 2, 8, 9, 10 or 11 of this Act (in the case of detention under section 14) or under section 8 (in the case of detention under paragraph 6 of Schedule 5);
 - (ii) indicates that he is or has been concerned in the commission, preparation or instigation of acts of terrorism to which section 14 of this Act applies; or
 - (iii) indicates that he is subject to an exclusion order; and
 - (b) that the investigation in connection with which that person is detained is being conducted diligently and expeditiously.
- (4) The review officer may also authorise the continued detention of the person in question—
- (a) pending consideration of the question whether he is subject to an exclusion order;
 - (b) pending consideration by the Secretary of State whether to make an exclusion order against him or to serve him with notice of a decision to make a deportation order under the Immigration Act 1971;
 - (c) pending a decision by the Director of Public Prosecutions or Attorney General or, as the case may be, the Lord Advocate or the Director of Public Prosecutions or Attorney General for Northern Ireland whether proceedings for an offence should be instituted against him; or
 - (d) if he is satisfied as to the matters specified in sub-paragraph (5) below.
- (5) The matters referred to in sub-paragraph (4)(d) above are—
- (a) that the continued detention of the person in question is necessary—
 - (i) pending a decision whether to apply to the Secretary of State for an exclusion order to be made in respect of him or for notice of a decision to make a deportation order under the Immigration Act 1971 to be served on him; or
 - (ii) pending the making of such an application; and
 - (b) that consideration of that question is being undertaken, or preparation of the application is being proceeded with, diligently and expeditiously.

The review officer

- 4 The review officer shall be an officer who has not been directly involved in the matter in connection with which the person in question is detained or examined and—
- (a) in the case of a review carried out within twenty-four hours of the beginning of that person's detention or in the case of a review under paragraph 2 above, shall be an officer of at least the rank of inspector;

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- (b) in the case of any other review, shall be an officer of at least the rank of superintendent.

Postponement of reviews

- 5 (1) A review may be postponed—
- (a) if, having regard to all the circumstances prevailing at the latest time specified in paragraph 1(2), 2(1) or 3(2) above, it is not practicable to carry out the review at that time;
 - (b) without prejudice to the generality of paragraph (a) above—
 - (i) if at that time the person in detention or being examined is being questioned by a police officer or an examining officer and the review officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which the person is being detained or examined; or
 - (ii) if at that time no review officer is readily available.
- (2) If a review is postponed under this paragraph it shall be carried out as soon as practicable after the latest time specified for it under the relevant provision mentioned in sub-paragraph (1)(a) above.
- (3) If a review is carried out after postponement under this paragraph, the fact that it was so carried out shall not affect any requirement of this Schedule as to the time at which any subsequent review is to be carried out.

Representations about detention

- 6 (1) Before determining whether to authorise a person's continued detention the review officer shall give—
- (a) that person (unless he is asleep); or
 - (b) any solicitor representing him who is available at the time of the review, an opportunity to make representations to him about the detention.
- (2) Subject to sub-paragraph (3) below, the person whose detention is under review or his solicitor may make representations under this paragraph either orally or in writing.
- (3) The review officer may refuse to hear oral representations from the person whose detention is under review if he considers that he is unfit to make such representations by reason of his condition or behaviour.

Rights of detained persons

- 7 (1) Where the review officer authorises a person's continued detention and at that time that person has not yet exercised a right conferred on him by section 56 or 58 of the Police and Criminal Evidence Act 1984 (right of arrested person to have someone informed and to have access to legal advice) the review officer shall inform him of that right and, if its exercise is being delayed in accordance with the provisions of the section in question, that it is being so delayed.
- (2) Where a review of a person's detention is carried out under paragraph 1 or 3 above at a time when his exercise of a right conferred by either of those sections is being delayed—

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- (a) the review officer shall consider whether the reason or reasons for which the delay was authorised continue to subsist; and
 - (b) if he is not himself the officer who authorised the delay and is of the opinion that the reason or reasons have ceased to subsist, he shall inform that officer of his opinion.
- (3) In the application of this paragraph to Scotland for the references to sections 56 and 58 of the said Act of 1984 there shall be substituted a reference to section 3A of the Criminal Justice (Scotland) Act 1980.
- (4) In the application of this paragraph to Northern Ireland for the references to sections 56 and 58 of the said Act of 1984 there shall be substituted references to sections 14 and 15 of the Northern Ireland (Emergency Provisions) Act 1987.

Records of review

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- (1) The review officer carrying out a review under this Schedule shall make a written record of the outcome of the review, including, where the continued detention or examination of the person in question is authorised, the grounds for authorisation and, where a review is postponed, the reason for the postponement.
 - (2) The record required by this paragraph shall be made in the presence of the person detained or examined and, where his continued detention or examination is authorised, he shall at that time be told the grounds for the authorisation.
 - (3) Sub-paragraph (2) above shall not apply where the person detained or examined is, at the time when the written record is made—
 - (a) incapable of understanding what is said to him;
 - (b) violent or likely to become violent; or
 - (c) in urgent need of medical attention.
 - (4) Where the review officer informs a detained person of the matters mentioned in sub-paragraph (1) of paragraph 7 above he shall make a written record of the fact that he has done so.
 - (5) The review officer shall also make a written record of his conclusion on the matter which he is required to consider under sub-paragraph (2)(a) of that paragraph, and, if he has taken action in accordance with sub-paragraph (2)(b) of that paragraph, of the fact that he has done so.

Intervention by superior officer

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- Where the review officer is of a rank lower than superintendent and—
- (a) an officer of higher rank than the review officer gives directions relating to the person detained or examined; and
 - (b) the directions are at variance—
 - (i) with any decision made or action taken by the review officer in the performance of a duty imposed on him by this Schedule; or
 - (ii) with any decision or action which would but for the directions have been made or taken by him in the performance of that duty,
 the review officer shall refer the matter at once to an officer of the rank of superintendent or above.