

SCHEDULES

SCHEDULE 9

Section 148

PORT AND BORDER CONTROLS

Examining officers

- 1 (1) Schedule 7 to the Terrorism Act 2000 is amended as follows.
- (2) In paragraph 1(1)(b), after “officer” there is inserted “who is designated for the purpose of this Schedule by the Secretary of State”.
- (3) After paragraph 1 there is inserted—

“Examining officers etc

- 1A (1) The Secretary of State must under paragraph 6 of Schedule 14 issue a code of practice about—
 - (a) training to be undertaken by constables, immigration officers and customs officers who are to act as examining officers or exercise other functions under this Schedule, and
 - (b) the procedure for making designations under paragraph 1(1)(b) and (c).
- (2) In particular, the code must make provision for consultation with the relevant chief officer of police before designations are made under paragraph 1(1)(b) or (c).
- (3) “Relevant chief officer of police” means—
 - (a) in England and Wales, the chief officer of police for the police area in which the persons designated would act as examining officers,
 - (b) in Scotland, the Chief Constable of the Police Service of Scotland, and
 - (c) in Northern Ireland, the Chief Constable of the Police Service of Northern Ireland.”

Time limits on examination without detention and on detention

- 2 (1) Schedule 7 to the Terrorism Act 2000 is amended as follows.
- (2) Paragraph 6(4) is repealed.
- (3) After paragraph 6 there is inserted—
 - “6A (1) This paragraph applies where a person is questioned under paragraph 2 or 3.

Status: This is the original version (as it was originally enacted).

- (2) After the end of the 1 hour period, the person may not be questioned under either of those paragraphs unless the person is detained under paragraph 6.
- (3) If the person is detained under paragraph 6 the person must be released not later than the end of the 6 hour period (unless detained under another power).
- (4) In this paragraph—
 - “the 1 hour period” is the period of 1 hour beginning with the time the person is first questioned under paragraph 2 or 3;
 - “the 6 hour period” is the period of 6 hours beginning with that time.”

Powers to search persons

3 In paragraph 8 of Schedule 7 to the Terrorism Act 2000, after sub-paragraph (3) there is inserted—

- “(4) An intimate search of a person may not be carried out under this paragraph.
- (5) A strip search of a person may not be carried out under this paragraph unless—
 - (a) the person is detained under paragraph 6,
 - (b) the examining officer has reasonable grounds to suspect that the person is concealing something which may be evidence that the person falls within section 40(1)(b), and
 - (c) the search is authorised by a senior officer who has not been directly involved in questioning the person.
- (6) “Senior officer” means—
 - (a) where the examining officer is a constable, a constable of a higher rank than the examining officer,
 - (b) where the examining officer is an immigration officer, an immigration officer of a higher grade than the examining officer, and
 - (c) where the examining officer is a customs officer, a customs officer of a higher grade than the examining officer.
- (7) In this paragraph—
 - “intimate search” means a search which consists of a physical examination of a person’s body orifices other than the mouth;
 - “strip search” means a search which is not an intimate search but involves the removal of an article of clothing which—
 - (a) is being worn wholly or partly on the trunk, and
 - (b) is being so worn either next to the skin or next to an article of underwear.”

Power to make and retain copies

4 In Schedule 7 to the Terrorism Act 2000, after paragraph 11 there is inserted—

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

“Power to make and retain copies

- 11A (1) This paragraph applies where the examining officer is a constable.
- (2) The examining officer may copy anything which—
- (a) is given to the examining officer in accordance with paragraph 5,
 - (b) is searched or found on a search under paragraph 8, or
 - (c) is examined under paragraph 9.
- (3) The copy may be retained—
- (a) for so long as is necessary for the purpose of determining whether a person falls within section 40(1)(b),
 - (b) while the examining officer believes that it may be needed for use as evidence in criminal proceedings, or
 - (c) while the examining officer believes that it may be needed in connection with a decision by the Secretary of State whether to make a deportation order under the Immigration Act 1971.”

Right of person detained under Schedule 7 to have someone informed and to consult a solicitor

- 5 (1) Schedule 8 to the Terrorism Act 2000 is amended as follows.
- (2) In paragraph 1(5) (definition of examining officer) for “paragraph” there is substituted “Schedule”.
- (3) In paragraph 2(2)(d), the words “(within the meaning of that Schedule)” are omitted.
- (4) In paragraph 6, for “police station”, in each place, there is substituted “place”.
- (5) In paragraph 7(1) the words “at a police station” are omitted.
- (6) After paragraph 7 there is inserted—
- “7A (1) This paragraph applies where a person detained under Schedule 7 requests to consult a solicitor.
- (2) The examining officer may not question the detained person under paragraph 2 or 3 of Schedule 7 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 of Schedule 7 (search powers where a person is questioned under paragraph 2 of Schedule 7) may be used when questioning is postponed because of sub-paragraph (2).
- (5) The detained person 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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Status: This is the original version (as it was originally enacted).

- (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 2 or 3 of Schedule 7.”
- (7) In paragraph 8(1), for “an officer” there is substituted “a police officer”.
- (8) In paragraph 9(2)(a) and (b)—
- (a) the words “at a police station” are omitted;
 - (b) for “an officer” there is substituted “a police officer”.
- (9) In paragraph 16—
- (a) in sub-paragraphs (1) and (3), in each place, for “police station” there is substituted “place”;
 - (b) in sub-paragraph (6), after “detained” there is inserted “as mentioned in sub-paragraph (1)”.
- (10) After paragraph 16 there is inserted—
- “16A (1) This paragraph applies where a person detained under Schedule 7 requests to consult a solicitor.
- (2) The examining officer may not question the detained person under paragraph 2 or 3 of Schedule 7 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 of Schedule 7 (search powers where a person is questioned under paragraph 2 of Schedule 7) may be used when questioning is postponed because of sub-paragraph (2).
- (5) The detained person 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 2 or 3 of Schedule 7.”
- (11) In paragraph 17(1)—
- (a) for “An officer” there is substituted “A police officer”;
 - (b) after “uniformed” there is inserted “police”.
- (12) In paragraph 18—
- (a) in sub-paragraph (1), for “and” there is substituted “to”;
 - (b) in sub-paragraph (2), for “police station” there is substituted “place”;
 - (c) after sub-paragraph (2) there is inserted—

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- “(3) In relation to a person detained under Schedule 7 at a place other than a police station—
- (a) sub-paragraph (2), and
 - (b) section 15(4) of the Criminal Procedure (Scotland) Act 1995 as applied by that sub-paragraph,
- apply as if references to a constable included an examining officer.”

Biometrics

- 6 (1) Paragraph 10 of Schedule 8 to the Terrorism Act 2000 is amended as follows.
- (2) In sub-paragraph (5), for “the detained person only” there is substituted “a person detained under section 41, but only”.
- (3) In sub-paragraph (6)(b), after “in any case” there is inserted “in which an authorisation under that sub-paragraph may be given”.

Review of detention under Schedule 7

- 7 (1) The Terrorism Act 2000 is amended as follows.
- (2) In paragraph 6(3) of Schedule 7 (provisions of Schedule 8 applying to detention under Schedule 7)—
- (a) for “Part I” there is substituted “Parts 1 and 1A”;
 - (b) after “treatment” there is inserted “and review of detention”.
- (3) In Schedule 8, after Part 1 there is inserted—

“PART 1A

REVIEW OF DETENTION UNDER SCHEDULE 7

20K General requirements

- (1) A person’s detention under Schedule 7 must be periodically reviewed by a review officer.
- (2) The first review must be carried out before the end of the period of one hour beginning with the person’s detention under that Schedule.
- (3) Subsequent reviews must be carried out at intervals of not more than two hours.
- (4) The review officer may authorise a person’s continued detention under Schedule 7 only if satisfied that it is necessary for the purposes of exercising a power under paragraph 2 or 3 of that Schedule.
- (5) If on a review under this paragraph the review officer does not authorise a person’s continued detention, the person must be released (unless detained under another power).

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

- (6) In this Part of this Schedule “review officer” means a senior officer who has not been directly involved in questioning the detained person under paragraph 2 or 3 of Schedule 7.
- (7) “Senior officer” means—
- (a) where the examining officer is a constable, a constable of a higher rank than the examining officer,
 - (b) where the examining officer is an immigration officer, an immigration officer of a higher grade than the examining officer, and
 - (c) where the examining officer is a customs officer, a customs officer of a higher grade than the examining officer.
- (8) The Secretary of State must under paragraph 6 of Schedule 14 issue a code of practice about reviews under this Part of this Schedule.
- (9) The code of practice must include provision about training to be undertaken by persons who are to act as review officers.

20L Representations

- (1) Before determining whether to authorise a person’s continued detention, a review officer must give either of the following persons an opportunity to make representations about the detention—
- (a) the detained person, or
 - (b) a solicitor representing the detained person who is available at the time of the review.
- (2) Representations may be oral or written.
- (3) A review officer may refuse to hear oral representations from the detained person if the officer considers that the detained person is unfit to make representations because of the detained person’s condition or behaviour.

20M Rights

- (1) Where a review officer authorises continued detention the officer must inform the detained person—
- (a) of any of the detained person’s rights under paragraphs 6 and 7 which have not yet been exercised, and
 - (b) if the exercise of any of those rights is being delayed in accordance with the provisions of paragraph 8, of the fact that it is being delayed.
- (2) Where a review of a person’s detention is being carried out at a time when the person’s exercise of a right under paragraph 6 or 7 is being delayed—
- (a) the review officer must consider whether the reason or reasons for which the delay was authorised continue to subsist, and
 - (b) if in the review officer’s opinion the reason or reasons have ceased to subsist, the review officer must inform the officer who authorised the delay of that opinion (unless the review officer was that officer).
- (3) In the application of this paragraph to Scotland, for the references to paragraphs 6, 7 and 8 substitute references to paragraph 16.

20N Record

- (1) A review officer carrying out a review must make a written record of the outcome of the review and of any of the following which apply—
 - (a) the fact that the officer is satisfied that continued detention is necessary for the purposes of exercising a power under paragraph 2 or 3 of Schedule 7,
 - (b) the fact that the detained person has been informed as required under paragraph 20M(1),
 - (c) the officer’s conclusion on the matter considered under paragraph 20M(2)(a), and
 - (d) the fact that the officer has taken action under paragraph 20M(2)(b).
- (2) The review officer must inform the detained person whether the officer is authorising continued detention, and if so that the officer is satisfied that continued detention is necessary for the purposes of exercising a power under paragraph 2 or 3 of Schedule 7.
- (3) Sub-paragraph (2) does not apply where the detained person is—
 - (a) incapable of understanding what is said,
 - (b) violent or likely to become violent, or
 - (c) in urgent need of medical attention.”

Codes of practice

- 8 (1) Schedule 14 to the Terrorism Act 2000 (exercise of powers—codes of practice etc) is amended as follows.
 - (2) In paragraph 1, after ““officer” means” there is inserted “(subject to paragraph 6A)”.
 - (3) After paragraph 6 there is inserted—

“6A In paragraphs 5 and 6, “officer” includes a constable, immigration officer or customs officer who—

 - (a) has functions under Schedule 7, or
 - (b) has functions under Schedule 8 in relation to a person detained under Schedule 7,

otherwise than as an examining officer.”