

# National Security Bill

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[AS AMENDED ON REPORT]

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[AS AMENDED ON REPORT]

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# B I L L

TO

Make provision about threats to national security from espionage, sabotage and persons acting for foreign powers; about the extra-territorial application of Part 2 of the Serious Crime Act 2007; for the registration of certain arrangements with, and activities of, specified persons and foreign principals; about the award of damages in proceedings relating to national security and the payment of damages at risk of being used for the purposes of terrorism; about the availability of legal aid to persons connected with terrorism; to amend the Terrorism Act 2000; and for connected purposes.

**B**E IT ENACTED by the King’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## PART 1

### ESPIONAGE, SABOTAGE AND PERSONS ACTING FOR FOREIGN POWERS

#### *Espionage etc*

#### **1 Obtaining or disclosing protected information**

- (1) A person commits an offence if— 5
- (a) the person—
    - (i) obtains, copies, records or retains protected information, or
    - (ii) discloses or provides access to protected information,
  - (b) the person’s conduct is for a purpose that they know, or having regard to other matters known to them ought reasonably to know, is prejudicial to the safety or interests of the United Kingdom, and 10
  - (c) the foreign power condition is met in relation to the person’s conduct (see section 32).
- (2) In this section “protected information” means any information, document or other article where, for the purpose of protecting the safety or interests of the United Kingdom— 15
- (a) access to the information, document or other article is restricted in any way, or

- (b) it is reasonable to expect that access to the information, document or other article would be restricted in any way.
- (3) Subsection (1) applies whether the person’s conduct takes place in the United Kingdom or elsewhere.
- (4) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for life or a fine (or both). 5
- (5) For the purposes of this section –
- (a) a person retains protected information if the person retains it in their possession or under their control;
- (b) disclosure includes parting with possession. 10

## 2 Obtaining or disclosing trade secrets

- (1) A person commits an offence if –
- (a) the person –
- (i) obtains, copies, records or retains a trade secret, or
- (ii) discloses or provides access to a trade secret, 15
- (b) the person’s conduct is unauthorised,
- (c) the person knows, or having regard to other matters known to them ought reasonably to know, that their conduct is unauthorised, and
- (d) the foreign power condition is met in relation to the person’s conduct (see section 32). 20
- (2) A “trade secret” means any information, document or other article which –
- (a) is not generally known by, or available to, persons with knowledge of or expertise in the field to which it relates,
- (b) has actual or potential industrial, economic or commercial value which would be, or could reasonably be expected to be, adversely affected if it became generally known by, or available to, such persons, and 25
- (c) could reasonably be expected to be subject to measures to prevent it becoming generally known by, or available to, such persons (whether or not it is actually subject to such measures).
- (3) A person’s conduct is unauthorised if the person – 30
- (a) is not entitled to determine whether they may engage in the conduct, and
- (b) does not have consent to engage in the conduct from a person who is so entitled.
- (4) Subsection (1) applies whether the person’s conduct takes place in the United Kingdom or elsewhere (but see subsection (5)). 35
- (5) Conduct within subsection (1) which takes place wholly outside the United Kingdom constitutes an offence only if the trade secret is in the possession or under the control of a UK person.
- (6) A “UK person” means – 40



- (a) a United Kingdom national;
  - (b) an individual who lives in the United Kingdom;
  - (c) a body incorporated under the law of a part of the United Kingdom;
  - (d) an unincorporated association formed under the law of a part of the United Kingdom. 5
- (7) A “United Kingdom national” is an individual who is –
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
  - (b) a person who under the British Nationality Act 1981 is a British subject, or 10
  - (c) a British protected person within the meaning of that Act.
- (8) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 14 years or a fine (or both).
- (9) For the purposes of this section – 15
- (a) a person retains a trade secret if they retain it in their possession or under their control;
  - (b) disclosure includes parting with possession.
- 3 Assisting a foreign intelligence service**
- (1) A person commits an offence if the person – 20
- (a) engages in conduct of any kind, and
  - (b) intends that conduct to materially assist a foreign intelligence service in carrying out UK-related activities.
- (2) A person commits an offence if the person – 25
- (a) engages in conduct that is likely to materially assist a foreign intelligence service in carrying out UK-related activities, and
  - (b) knows, or having regard to other matters known to them ought reasonably to know, that their conduct is likely to materially assist a foreign intelligence service in carrying out UK-related activities.
- (3) Conduct that may be likely to materially assist a foreign intelligence service includes providing, or providing access to, information, goods, services or financial benefits (whether directly or indirectly). 30
- (4) “UK-related activities” means –
- (a) activities taking place in the United Kingdom;
  - (b) activities taking place outside the United Kingdom which are prejudicial to the safety or interests of the United Kingdom. 35
- (5) For the purposes of subsections (1) and (2) it is not necessary to identify a particular foreign intelligence service.

- (6) Subsections (1) and (2) apply to conduct outside the United Kingdom, but apply to conduct taking place wholly outside the United Kingdom only if the person engaging in the conduct –
- (a) is a UK person, or
  - (b) acts for or on behalf of, or holds office under, the Crown, or is in Crown employment (whether or not they engage in the conduct in that capacity). 5
- (7) In proceedings for an offence under this section it is a defence to show that the person engaged in the conduct in question –
- (a) in compliance with a legal obligation under the law of the United Kingdom which is not a legal obligation under private law, 10
  - (b) in the case of a person having functions of a public nature under the law of the United Kingdom, for the purposes of those functions,
  - (c) as a lawyer carrying on a legal activity, or
  - (d) in accordance with, or in relation to UK-related activities carried out in accordance with, an agreement or arrangement to which – 15
    - (i) the United Kingdom was a party, or
    - (ii) any person acting for or on behalf of, or holding office under, the Crown was (in that capacity) a party.
- (8) A person is taken to have shown a matter mentioned in subsection (7) if – 20
- (a) sufficient evidence of the matter is adduced to raise an issue with respect to it, and
  - (b) the contrary is not proved beyond reasonable doubt.
- (9) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 14 years or a fine (or both). 25
- (10) In this section –
- “Crown employment” means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by an enactment; 30
  - “financial benefit” means money or money’s worth;
  - “foreign intelligence service” means any person whose functions include carrying out intelligence activities for or on behalf of a foreign power;
  - the “law of the United Kingdom” includes the law of any part of the United Kingdom; 35
  - “lawyer” has the meaning given by paragraph 6(3) of Schedule 15;
  - “legal activity” has the meaning given by paragraph 6(4) of Schedule 15;
  - “UK person” has the same meaning as in section 2.

*Entering and inspecting places used for defence etc*

**4 Entering etc a prohibited place for a purpose prejudicial to the UK** 40

- (1) A person commits an offence if –

- (a) the person—
    - (i) accesses, enters, inspects, passes over or under, approaches or is in the vicinity of a prohibited place, or
    - (ii) causes an unmanned vehicle or device to access, enter, inspect, pass over or under, approach or be in the vicinity of a prohibited place, and
  - (b) that conduct is for a purpose that the person knows, or having regard to other matters known to them ought reasonably to know, is prejudicial to the safety or interests of the United Kingdom.
- (2) In subsection (1)(a) a reference to inspecting a prohibited place includes—
- (a) taking, or procuring the taking of, photographs, videos or other recordings of the prohibited place;
  - (b) inspecting photographs, videos or other recordings of the prohibited place.
- (3) For the purposes of this section, a person engages in conduct mentioned in subsection (1)(a) if the person does so in person or by electronic or remote means.
- (4) Subsection (1) applies whether the person’s conduct takes place in the United Kingdom or elsewhere.
- (5) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 14 years or a fine (or both).
- (6) In this Part “vehicle” means any form of transport.

## 5 Unauthorised entry etc to a prohibited place

- (1) A person commits an offence if—
- (a) the person—
    - (i) accesses, enters, inspects or passes over or under a prohibited place, or
    - (ii) causes an unmanned vehicle or device to access, enter, inspect or pass over or under a prohibited place,
  - (b) that conduct is unauthorised, and
  - (c) the person knows, or having regard to other matters known to them ought reasonably to know, that their conduct is unauthorised.
- (2) A person’s conduct is unauthorised if the person—
- (a) is not entitled to determine whether they may engage in the conduct, and
  - (b) does not have consent to engage in the conduct from a person so entitled.
- (3) In subsection (1)(a) a reference to inspecting a prohibited place includes taking, or procuring the taking of, photographs, videos or other recordings of the prohibited place.

- (4) For the purposes of this section, a person engages in conduct mentioned in subsection (1)(a) if the person does so in person or by electronic or remote means.
- (5) A person who commits an offence under this section is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the maximum term for summary offences or a fine (or both); 5
  - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both); 10
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).

## 6 Powers of police officers in relation to a prohibited place

- (1) A constable may order— 15
- (a) a person not to engage, or to cease to engage, in conduct mentioned in section 4(1)(a) (whether in person or by electronic or remote means) in relation to a prohibited place;
  - (b) a person who has accessed or entered a prohibited place (whether in person or by electronic or remote means) to leave it immediately; 20
  - (c) a person in an area adjacent to a prohibited place to leave the area immediately;
  - (d) the driver or person in charge of a vehicle or device (whether in person or by electronic or remote means) in a prohibited place, or in an area adjacent to a prohibited place, to move the vehicle or device from the place or area immediately. 25
- (2) A constable may arrange for—
- (a) the removal of a vehicle or device from a prohibited place or an area adjacent to a prohibited place;
  - (b) the movement of a vehicle or device within a prohibited place or an area adjacent to a prohibited place. 30
- (3) A constable may not exercise a power under subsection (1) or (2) unless the constable reasonably believes that exercising the power is necessary to protect the safety or interests of the United Kingdom.
- (4) A person commits an offence if the person fails to comply with an order imposed under subsection (1). 35
- (5) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale (or both).

## 7 Meaning of “prohibited place” 40

- (1) In this Part “prohibited place” means—

- (a) Crown land in the United Kingdom or the Sovereign Base Areas of Akrotiri and Dhekelia which is used –
    - (i) for UK defence purposes;
    - (ii) for extracting any metals, oil or minerals for use for UK defence purposes; 5
    - (iii) for the purposes of the defence of a foreign country or territory;
  - (b) a vehicle –
    - (i) situated in the United Kingdom or the Sovereign Base Areas of Akrotiri and Dhekelia which is used for UK defence purposes or for the purposes of the defence of a foreign country or territory; 10
    - (ii) not so situated which is used for UK defence purposes;
  - (c) any land or building in the United Kingdom or the Sovereign Base Areas of Akrotiri and Dhekelia which is used for the purposes described in subsection (2)(b) or (3)(b) (or both); 15
  - (d) any land or building in the United Kingdom or the Sovereign Base Areas of Akrotiri and Dhekelia which is –
    - (i) owned or controlled by the Security Service, the Secret Intelligence Service or GCHQ, and
    - (ii) used for the functions of the Security Service, the Secret Intelligence Service or GCHQ; 20
  - (e) any land or building or vehicle designated as a prohibited place in regulations made under section 8.
- (2) In subsection (1) use for UK defence purposes means use for the purposes of – 25
- (a) the activities of the armed forces of the Crown,
  - (b) the invention, development, production, operation, storage or disposal of weapons or other equipment or capabilities of those forces and research relating to it,
  - (c) United Kingdom defence policy and strategy and military planning and intelligence, or 30
  - (d) plans and measures for the maintenance of essential supplies and services that are or would be needed by the United Kingdom in time of war.
- (3) In subsection (1) use for the purposes of the defence of a foreign country or territory means use for the purposes of – 35
- (a) the activities of the armed forces of the foreign country or territory, or
  - (b) the invention, development, production, operation, storage or disposal of weapons or other equipment or capabilities of those forces and research relating to it. 40
- (4) In this section –
- “building” includes any part of a building;
  - “Crown land” means any land or building in which there is a Crown interest or a Duchy interest; 45

“Crown interest” means any of the following—

- (a) an interest belonging to His Majesty in right of the Crown or in right of His private estates;
- (b) an interest belonging to a United Kingdom government department or held in trust for His Majesty for the purposes of a United Kingdom government department;

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“Duchy interest” means an interest belonging to His Majesty in right of the Duchy of Lancaster or belonging to the Duchy of Cornwall;

“foreign country or territory” means a country or territory outside the United Kingdom, the Channel Islands, the Isle of Man or the British Overseas Territories;

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“GCHQ” has the meaning given by section 3(3) of the Intelligence Services Act 1994.

- (5) In subsection (4) the reference to His Majesty’s private estates is to be construed in accordance with section 1 of the Crown Private Estates Act 1862.

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## 8 Power to designate additional sites as prohibited places

- (1) The Secretary of State may by regulations designate—

- (a) land or a building situated in the United Kingdom or the Sovereign Base Areas of Akrotiri and Dhekelia, or
  - (b) a vehicle,
- as a prohibited place.

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- (2) The power in subsection (1) may be exercised only if, having regard to the matters mentioned in subsection (3), the Secretary of State reasonably considers it necessary to do so in order to protect the safety or interests of the United Kingdom.

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- (3) Those matters are—

- (a) the purpose for which the land or building or vehicle is used;
- (b) the nature of any information held, stored or processed on the land or in the building or vehicle;
- (c) the nature of any technology, equipment or material located on the land or in the building or vehicle.

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- (4) The power in subsection (1) may be exercised in relation to—

- (a) a description of land or buildings, or
- (b) a description of vehicle,

as well as in relation to particular land or buildings or a particular vehicle.

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- (5) In this section “building” includes any part of a building.

## 9 Power to designate a cordoned area to secure defence aircraft

- (1) A constable may designate an area as a cordoned area.

- (2) A constable may designate an area under subsection (1) only if the constable considers it expedient to do so for the purposes of securing—

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- (a) an aircraft, or a part of an aircraft, used for military purposes, or
    - (b) equipment relating to such an aircraft.
  - (3) If a designation is made orally, the constable making the designation must confirm it in writing as soon as is reasonably practicable.
  - (4) A constable making a designation must, as soon as is reasonably practicable— 5
    - (a) make a written record of the time at which the designation was made, and
    - (b) ensure that a police officer of at least the rank of superintendent is informed.
  - (5) An officer who is informed of a designation in accordance with subsection (4)(b) must— 10
    - (a) confirm the designation or cancel it with effect from such time as the officer may direct, and
    - (b) if the officer cancels the designation, make a written record of the cancellation and the reason for it. 15
  - (6) A constable making a designation must arrange for the demarcation of the cordoned area, so far as is reasonably practicable—
    - (a) by means of tape marked with the word “police”, or
    - (b) in such other manner as the constable considers appropriate.
- 10 Duration of cordon** 20
- (1) A designation under section 9 has effect, subject to subsections (2) to (5), during the period—
    - (a) beginning at the time when it is made, and
    - (b) ending with a date or at a time specified in the designation.
  - (2) The date or time specified under subsection (1)(b) must not be later than the end of the period of 14 days beginning with the day on which the designation is made. 25
  - (3) A constable may extend from time to time the period during which a designation has effect.
  - (4) An extension under subsection (3) must— 30
    - (a) be in writing, and
    - (b) specify the additional period during which the designation is to have effect.
  - (5) An extension under subsection (3) must not provide for a designation to have effect after the end of the period of 28 days beginning with the day on which the designation is made. 35

**11 Powers of police in relation to a cordoned area**

- (1) A constable may order—

- 
- (a) a person not to do any of the following (whether in person or by electronic or remote means) –
- (i) enter, inspect, pass over or under, approach or be in the vicinity of a cordoned area, or
  - (ii) cause an unmanned vehicle or device to enter, inspect, pass over or under, approach or be in the vicinity of a cordoned area; 5
- (b) a person in a cordoned area (whether in person or by electronic or remote means) to leave it immediately;
- (c) a person in an area adjacent to a cordoned area to leave the area immediately; 10
- (d) the driver or person in charge of a vehicle or device (whether in person or by electronic or remote means) in a cordoned area to move the vehicle or device from the area immediately.
- (2) In subsection (1) a reference to inspecting a cordoned area includes taking or procuring the taking of photographs, videos or other recordings. 15
- (3) A constable may arrange for –
- (a) the removal of a vehicle or device from a cordoned area;
  - (b) the movement of a vehicle or device within a cordoned area.
- (4) A person commits an offence if the person fails to comply with an order imposed under subsection (1). 20
- (5) It is a defence for a person charged with an offence under subsection (4) to show that the person had a reasonable excuse for that failure.
- (6) A person is taken to have shown a matter mentioned in subsection (5) if –
- (a) sufficient evidence of the matter is adduced to raise an issue with respect to it, and 25
  - (b) the contrary is not proved beyond reasonable doubt.
- (7) A person who commits an offence under subsection (4) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale (or both). 30
- (8) In this section “cordoned area” means an area designated as a cordoned area under section 9.

### *Sabotage*

## 12 Sabotage

- (1) A person commits an offence if – 35
- (a) the person engages in conduct that results in damage to any asset,
  - (b) the person intends their conduct to result in damage to an asset, or is reckless as to whether their conduct will result in damage to an asset,



- (c) the person’s conduct is for a purpose that they know, or having regard to other matters known to them ought reasonably to know, is prejudicial to the safety or interests of the United Kingdom, and
  - (d) the foreign power condition is met in relation to the person’s conduct (see section 32). 5
- (2) Subsection (1) applies –
  - (a) whether the person’s conduct takes place in the United Kingdom or elsewhere;
  - (b) whether the asset is in the United Kingdom or elsewhere.
- (3) In this section – 10
  - “asset” means an asset of any kind whether tangible or intangible and includes in particular real and personal property, electronic systems and information;
  - “damage” includes any of the following (whether permanent or temporary) – 15
    - (a) destruction;
    - (b) alteration;
    - (c) contamination;
    - (d) interference;
    - (e) loss of or reduction in access or availability; 20
    - (f) loss of or reduction in function, utility or reliability.
- (4) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for life or a fine (or both).

*Foreign interference*

**13 Foreign interference: general** 25

- (1) A person commits an offence if –
  - (a) the person engages in prohibited conduct,
  - (b) the foreign power condition is met in relation to the prohibited conduct, and
  - (c) the person intends the prohibited conduct, or a course of conduct of which it forms part, to have an interference effect. 30
- (2) A person commits an offence if –
  - (a) the person engages in prohibited conduct,
  - (b) the foreign power condition is met in relation to the prohibited conduct, and 35
  - (c) the person is reckless as to whether the prohibited conduct, or a course of conduct of which it forms part, will have an interference effect.
- (3) A person (“P”) commits an offence if –
  - (a) P engages in a course of conduct with one or more other persons,

- 
- (b) the foreign power condition is met in relation to conduct of P which forms part of the course of conduct,
  - (c) P intends the course of conduct to have an interference effect,
  - (d) as part of the course of conduct, a person other than P engages in prohibited conduct, and 5
  - (e) P intends or believes that, as part of the course of conduct, a person other than P will engage in prohibited conduct.
- (4) For the purposes of subsections (1)(c) and (2)(c) a course of conduct includes a course of conduct engaged in by the person alone, or by the person and one or more other persons. 10
  - (5) Subsections (1) and (2) apply whether the person’s conduct takes place in the United Kingdom or elsewhere.
  - (6) Subsection (3) applies whether P’s conduct or the prohibited conduct takes place in the United Kingdom or elsewhere.
  - (7) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 14 years or a fine (or both). 15
  - (8) In this section –
    - “interference effect” has the meaning given by section 14;
    - “prohibited conduct” has the meaning given by section 15. 20

#### 14 Foreign interference: meaning of “interference effect”

- (1) For the purposes of section 13 an “interference effect” means any of the following effects –
  - (a) interfering with the exercise by a particular person of a Convention right in the United Kingdom, 25
  - (b) affecting the exercise by any person of their public functions,
  - (c) interfering with whether, or how, any person makes use of services provided in the exercise of public functions,
  - (d) interfering with whether, or how, any person (other than in the exercise of a public function) participates in relevant political processes or makes political decisions, 30
  - (e) interfering with whether, or how, any person (other than in the exercise of a public function) participates in legal processes under the law of the United Kingdom, or
  - (f) prejudicing the safety or interests of the United Kingdom. 35
- (2) An effect may be an interference effect whether it relates to a specific instance of a matter mentioned in subsection (1), or to the matter in general.
- (3) In subsection (1)(d) “relevant political processes” means –
  - (a) an election or referendum in the United Kingdom;
  - (b) the proceedings of a local authority; 40
  - (c) the proceedings of a UK registered political party;

- (d) the activities of an informal group consisting of or including members of—
- (i) one or both of Houses of Parliament,
  - (ii) the Northern Ireland Assembly,
  - (iii) the Scottish Parliament, or
  - (iv) Senedd Cymru,
- (acting in that capacity). 5
- (4) In subsection (1)(d) “political decisions” means a decision of—
- (a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975), a United Kingdom government department, a Northern Ireland Minister, a Northern Ireland department, the Scottish Ministers or the Welsh Ministers;
  - (b) a local authority.
- 10
- (5) In this section—
- “Convention rights” has the meaning given by section 1 of the Human Rights Act 1998; 15
- the “law of the United Kingdom” includes the law of any part of the United Kingdom;
- “local authority” means—
- (a) in England— 20
    - (i) a county council;
    - (ii) a district council;
    - (iii) a London borough council;
    - (iv) a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009; 25
    - (v) a parish council;
    - (vi) the Council of the Isles of Scilly;
    - (vii) the Common Council of the City of London;
    - (viii) the Sub-Treasurer of the Inner Temple; 30
    - (ix) the Under Treasurer of the Middle Temple;
  - (b) in Wales, a county council, county borough council or community council;
  - (c) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994; 35
  - (d) in Northern Ireland, a district council;
- “Northern Ireland Minister” includes the First Minister, the deputy First Minister and a junior Minister;
- “public functions” means functions of a public nature—
- (a) exercisable in the United Kingdom, or
  - (b) exercisable in a country or territory outside the United Kingdom by a person acting for or on behalf of, or holding office under, the Crown;
- 40

“UK registered political party” means a political party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000;

“Welsh Minister” includes the First Minister, the Counsel General to the Welsh Government and a Deputy Welsh Minister.

## 15 Foreign interference: meaning of “prohibited conduct” 5

- (1) Conduct is prohibited conduct for the purposes of section 13 if—
  - (a) it constitutes an offence, or
  - (b) if it takes place in a country or territory outside the United Kingdom, it would constitute an offence if it took place in any part of the United Kingdom. 10
- (2) Conduct is prohibited conduct for the purposes of section 13 if it involves coercion of any kind, including coercion by—
  - (a) using or threatening to use violence against a person;
  - (b) damaging or destroying, or threatening to damage or destroy, a person’s property; 15
  - (c) damaging or threatening to damage a person’s reputation;
  - (d) causing or threatening to cause financial loss to a person;
  - (e) causing spiritual injury to, or placing undue spiritual pressure on, a person,

(whether or not that person is the person to whom the interference effect relates). 20
- (3) Conduct is prohibited conduct for the purposes of section 13 if it involves making a misrepresentation.
- (4) A “misrepresentation” is a representation—
  - (a) that a reasonable person would consider to be false or misleading in a way material to the interference effect, and 25
  - (b) that the person making the representation knows or intends to be false or misleading in a way material to the interference effect.
- (5) A misrepresentation may be made by making a statement or by any other kind of conduct, and may be express or implied. 30
- (6) A misrepresentation may in particular include—
  - (a) a misrepresentation as to a person’s identity or purpose;
  - (b) presenting information in a way which amounts to a misrepresentation, even if some or all of the information is true.
- (7) In this section “interference effect” has the meaning given by section 14. 35

## 16 Foreign interference in elections

- (1) This section applies where—
  - (a) a person commits a relevant electoral offence on or after the day on which this section comes into force, and

- (b) the foreign power condition is met in relation to the conduct of the person which constitutes the offence (see section 32).
- (2) A “relevant electoral offence” is an offence listed in column 1 of the table in Part 1 of Schedule 1 (“the table”).
- (3) The person is liable on conviction on indictment to imprisonment for a term not exceeding the specified maximum term or a fine (or both). 5
- (4) The specified maximum term is the term specified in column 2 of the table in relation to the relevant electoral offence.
- (5) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsection (1) to have been committed on the first of those days. 10
- (6) Part 2 of Schedule 1 amends provisions relating to relevant electoral offences.

## 17 Foreign interference in elections: duties on political parties

- (1) A UK-registered political party must, within three months of the passing of this Act, publish a policy statement to ensure the identification of donations from a foreign power (whether made directly or through an intermediary), and must keep that policy updated in accordance with guidance issued under subsection (2). 15
- (2) Within three months of the passing of this Act the Secretary of State must publish guidance on the provisions of this section. 20
- (3) A UK-registered political party must provide the Electoral Commission with an annual statement of risk management that identifies how risks relating to donations from a foreign power (whether made directly or through an intermediary) have been managed, and what measures have been put in place by the party to such effect. 25
- (4) In this section, “UK-registered political party” means a political party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000.

### *Obtaining benefits from a foreign intelligence service*

## 18 Obtaining etc material benefits from a foreign intelligence service 30

- (1) A person commits an offence if –
  - (a) the person –
    - (i) obtains, accepts or retains a material benefit which is not an excluded benefit, or
    - (ii) obtains or accepts the provision of such a benefit to another person, 35
  - (b) the benefit is or was provided by or on behalf of a foreign intelligence service, and

- 
- (c) the person knows, or having regard to other matters known to them ought reasonably to know, that the benefit is or was provided by or on behalf of a foreign intelligence service.
- (2) A person commits an offence if –
- (a) the person agrees to accept – 5
- (i) a material benefit which is not an excluded benefit, or
- (ii) the provision of such a benefit to another person,
- (b) the benefit is to be provided by or on behalf of a foreign intelligence service, and
- (c) the person knows, or having regard to other matters known to them ought reasonably to know, that the benefit is to be provided by or on behalf of a foreign intelligence service. 10
- (3) Material benefits may include financial benefits, anything which has the potential to result in a financial benefit, and information.
- (4) A material benefit is an excluded benefit if – 15
- (a) it is provided as reasonable consideration for the provision of goods or services, and
- (b) the provision of those goods or services does not constitute an offence.
- (5) A benefit may be provided by or on behalf of a foreign intelligence service directly or indirectly (for example, it may be provided indirectly through one or more companies). 20
- (6) Subsections (1) and (2) apply to conduct outside the United Kingdom, but apply to conduct taking place wholly outside the United Kingdom only if –
- (a) the material benefit is or was, or is to be, provided in or from the United Kingdom, or 25
- (b) in any case, the person engaging in the conduct –
- (i) is a UK person, or
- (ii) acts for or on behalf of, or holds office under, the Crown, or is in Crown employment (whether or not they engage in the conduct in that capacity). 30
- (7) In proceedings for an offence under subsection (1) by virtue of retaining a benefit, it is a defence to show that the person had a reasonable excuse for retaining the benefit.
- (8) In proceedings for an offence under subsection (1) or (2) it is a defence to show that the person engaged in the conduct in question – 35
- (a) in compliance with a legal obligation under the law of the United Kingdom which is not a legal obligation under private law,
- (b) in the case of a person having functions of a public nature under the law of the United Kingdom, for the purposes of those functions, or
- (c) in accordance with an agreement or arrangement to which – 40
- (i) the United Kingdom was a party, or
- (ii) any person acting for or on behalf of, or holding office under, the Crown was (in that capacity) a party.

- (9) A person is taken to have shown a matter mentioned in subsection (7) or (8) if –
- (a) sufficient evidence of the matter is adduced to raise an issue with respect to it, and
  - (b) the contrary is not proved beyond reasonable doubt. 5
- (10) A person who commits an offence under subsection (1) is liable on conviction on indictment to imprisonment for a term not exceeding 14 years or a fine (or both).
- (11) A person who commits an offence under subsection (2) is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or a fine (or both). 10
- (12) The following terms have the same meaning as in section 3 –
- “Crown employment”;
  - “financial benefit”;
  - “foreign intelligence service”;
  - the “law of the United Kingdom”;
  - “UK person”.
- 15

*Preparatory conduct*

**19 Preparatory conduct**

- (1) A person commits an offence if, with the intention of –
- (a) committing acts to which this section applies, or
  - (b) acts to which this section applies being committed by another person, the person engages in any conduct in preparation for the commission of such acts. 20
- (2) It is immaterial whether the person’s intention relates to, or the person’s conduct is in preparation for, specific acts to which this section applies, or acts to which this section applies in general. 25
- (3) This section applies to –
- (a) acts which constitute an offence under –
- (i) section 1 (obtaining or disclosing protected information); 30
  - (ii) section 2 (obtaining or disclosing trade secrets);
  - (iii) section 4 (entering etc. a prohibited place for a purpose prejudicial to the UK);
  - (iv) section 12 (sabotage);
- (b) acts within subsection (4) in relation to which the foreign power condition is met. 35
- (4) Acts are within this subsection if they –
- (a) involve serious violence against a person in the United Kingdom,
  - (b) endanger the life of a person in the United Kingdom, or

- (c) create a serious risk to the health or safety of the public, or a section of the public, in the United Kingdom.
- (5) Subsection (1) applies whether the person’s conduct takes place in the United Kingdom or elsewhere.
- (6) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for life or a fine (or both). 5

*Acting for foreign power as aggravating factor in sentencing*

## 20 Aggravating factor where foreign power condition met: England and Wales

- (1) The Sentencing Code is amended as follows.
- (2) After section 69 insert – 10
  - “69A Offences where foreign power condition met
    - (1) This section applies where a court is considering the seriousness of an offence that –
      - (a) is committed on or after the day on which section 20 of the National Security Act 2023 comes into force, and 15
      - (b) is not an offence listed in subsection (2).
    - (2) Those offences are –
      - (a) an offence under the National Security Act 2023 or an inchoate offence (see section 398) in relation to any such offence;
      - (b) a relevant electoral offence within the meaning given by section 16 of that Act (foreign interference in elections). 20
    - (3) Where the foreign power condition is met in relation to the conduct that constitutes the offence, the court –
      - (a) must treat that fact as an aggravating factor, and
      - (b) must state in open court that the offence is so aggravated. 25
    - (4) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsection (1) to have been committed on the first of those days.
    - (5) Section 32 of the National Security Act 2023 (meaning of foreign power condition) applies for the purposes of this section as it applies for the purposes of Part 1 of that Act.” 30

## 21 Aggravating factor where foreign power condition met: Northern Ireland

- (1) This section applies where a court in Northern Ireland is considering for the purposes of sentence the seriousness of an offence that – 35
  - (a) is committed on or after the day on which this section comes into force, and
  - (b) is not an offence listed in subsection (2).



- (2) Those offences are –
- (a) an offence under this Act or an ancillary offence in relation to any such offence;
  - (b) a relevant electoral offence (within the meaning given by section 16).
- (3) An “ancillary offence”, in relation to an offence, means any of the following – 5
- (a) aiding, abetting, counselling or procuring the commission of the offence;
  - (b) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to the offence;
  - (c) attempting or conspiring to commit the offence. 10
- (4) For the purposes of this section, an offence committed by a person under Part 2 of the Serious Crime Act 2007 is related to another offence if that other offence is the offence (or one of the offences) which the person intended or believed would be committed.
- (5) Where the foreign power condition is met in relation to the conduct that constitutes the offence, the court – 15
- (a) must treat that fact as an aggravating factor, and
  - (b) must state in open court that the offence is so aggravated.
- (6) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken 20 for the purposes of subsection (1) to have been committed on the first of those days.
- (7) In this section “sentence”, in relation to an offence, includes any order made by a court when dealing with a person in respect of the offence.
- 22 Aggravating factor where foreign power condition met: Scotland** 25
- (1) This section applies where in Scotland, in relation to a relevant offence, it is –
- (a) libelled in an indictment, and
  - (b) proved,
- that the offence has been aggravated by reason of the foreign power condition being met in relation to the conduct that constitutes the offence. 30
- (2) Where this section applies, the court must take the aggravation into account in determining the appropriate sentence.
- (3) Where the sentence imposed by the court in respect of the offence is different from that which the court would have imposed if the offence had not been aggravated by reason of being an offence within subsection (1), the court must state the extent of, and the reasons for, the difference. 35
- (4) Evidence from a single source is sufficient to prove that an offence has been aggravated by reason of the foreign power condition being met in relation to conduct which constitutes the offence. 40

- (5) A “relevant offence” is an offence that—
- (a) is committed on or after the day on which this section comes into force, and
  - (b) is not an offence listed in subsection (6).
- (6) Those offences are— 5
- (a) an offence under this Act or an ancillary offence in relation to any such offence;
  - (b) a relevant electoral offence (within the meaning given by section 16).
- (7) An “ancillary offence”, in relation to an offence, means any of the following— 10
- (a) being art and part in the commission of the offence;
  - (b) inciting a person to commit the offence;
  - (c) attempting or conspiring to commit the offence.
- (8) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsection (5)(a) to have been committed on the first of those days. 15

### 23 Aggravating factor where foreign power condition met: armed forces

In section 238 of the Armed Forces Act 2006 (deciding the seriousness of an offence), at the end insert—

- “(7) In section 69A of the Sentencing Code (seriousness of offence where foreign power condition met)— 20
- (a) the references in that section to a court are to be read as including a court dealing with an offender for a service offence, and
  - (b) the reference in subsection (1)(b) to an offence which is not an offence listed in subsection (2) is to be taken as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is not an offence so listed.” 25

*Powers of investigation etc* 30

### 24 Powers of search etc

Schedule 2 confers powers of entry, search and seizure in relation to—

- (a) certain offences under this Part of this Act, and
- (b) acts or threats within section 34(3)(b) or (c).

### 25 Disclosure orders 35

Schedule 3 makes provision for disclosure orders.

## 26 Customer information orders

Schedule 4 makes provision for customer information orders.

## 27 Account monitoring orders

Schedule 5 makes provision for account monitoring orders.

## 28 Arrest without warrant

5

(1) A constable may arrest without a warrant anyone who the constable reasonably suspects is, or has been, involved in foreign power threat activity.

(2) Schedule 6 makes provision about detention under this section.

(3) Subject to subsections (5) to (8), a person detained under this section must be released (unless detained under any other power) not later than the end of the period of 48 hours beginning with—

10

(a) the time of the person's arrest under this section, or

(b) if the person was being detained under a provision listed in subsection (4) when arrested under this section, with the time when the person was detained under that provision.

15

(4) Those provisions are—

(a) section 24 of the Police and Criminal Evidence Act 1984;

(b) Article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12));

(c) section 41 of, and Schedule 7 to, the Terrorism Act 2000;

20

(d) section 1 of the Criminal Justice (Scotland) Act 2016 (asp 1);

(e) Part 1 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019.

(5) A person arrested under this section must be released if, on a review of the person's detention under Part 5 of Schedule 6, the review officer does not authorise continued detention.

25

This subsection does not apply if the person is detained in accordance with subsection (6) or (7) or under any other power.

(6) Where a police officer intends to make an application for a warrant under paragraph 37 of Schedule 6 (warrant of further detention) to extend the period of a person's detention, the person may be detained pending the making of the application.

30

(7) Where an application has been made—

(a) under paragraph 37 of Schedule 6 for a warrant to extend the period of a person's detention, or

35

(b) under paragraph 44 of that Schedule to further extend the period of a person's detention,

the person may be detained pending the conclusion of proceedings on the application.

- 
- (8) Where an application under paragraph 37 or 44 of Schedule 6 is granted in respect of a person’s detention, the person may be detained, subject to paragraph 45 of that Schedule (conditions for detention), during the period specified in the warrant.
- (9) The refusal of an application in respect of a person’s detention under paragraph 37 or 44 of Schedule 6 does not prevent the person’s continued detention in accordance with this section. 5
- (10) Subsection (11) applies where –
- (a) a person is detained under this section in hospital, or
  - (b) a person detained under this section is removed to hospital because the person needs medical treatment. 10
- (11) Where this subsection applies –
- (a) any time during which the person is being questioned in hospital or (where this subsection applies by virtue of subsection (10)(b)) on the way there or back for the purpose of obtaining relevant evidence is to be included in calculating any period which falls to be calculated for the purposes of this section or Part 6 of Schedule 6, but 15
  - (b) any other time when the person is in hospital or (where this subsection applies by virtue of subsection (10)(b)) on the way there or back is not to be included. 20
- (12) In subsection (11) “relevant evidence” means, in relation to the detained person, evidence which indicates that the detained person is, or has been, involved in foreign power threat activity.
- (13) A person who has the powers of a constable in one part of the United Kingdom may exercise the power under subsection (1) in any part of the United Kingdom. 25
- (14) In this section and Schedule 6 references to involvement in foreign power threat activity do not include involvement in such activity occurring before this section comes into force.
- 29 Use of reasonable force** 30
- (1) A power conferred on a constable by virtue of this Part –
- (a) is additional to powers which the constable has at common law or by virtue of any other enactment, and
  - (b) is not to be taken as affecting those powers.
- (2) A constable may if necessary use reasonable force for the purpose of exercising a power conferred on the constable by virtue of this Part. 35
- 30 Border security**
- In paragraph 12(11) of Schedule 3 to the Counter-Terrorism and Border Security Act 2019 (definition of protected material) –
- (a) in paragraph (a) – 40

- (i) at the end of sub-paragraph (i) insert “or”;
- (ii) omit the “or” at the end of sub-paragraph (ii);
- (iii) omit sub-paragraph (iii);
- (b) in paragraph (b)(ii) omit “or (iii)”;
- (c) in paragraph (c) – 5
  - (i) at the end of sub-paragraph (i) insert “or”;
  - (ii) omit the “or” at the end of sub-paragraph (ii);
  - (iii) omit sub-paragraph (iii).

### 31 Offences under Part 2 of the Serious Crime Act 2007

- (1) Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) is amended as follows. 10

- (2) After section 50 insert –

**“50A Extra-territorial offences: defence for intelligence services and armed forces**

- (1) This section applies where a person is charged with an offence under this Part by reason of a provision of Schedule 4 (extra-territorial jurisdiction). 15
- (2) It is a defence for the person to show that their act was necessary for – 20
  - (a) the proper exercise of a function of an intelligence service, or
  - (b) the proper exercise of a function of the armed forces.
- (3) A person is taken to have shown that their act was so necessary if – 25
  - (a) sufficient evidence of that fact is adduced to raise an issue with respect to it, and
  - (b) the contrary is not proved beyond reasonable doubt.
- (4) The head of each intelligence service must ensure that the service has in place arrangements designed to ensure that acts of a member of the service to which a provision of Schedule 4 applies are necessary for the proper exercise of a function of the service.
- (5) The Defence Council must ensure that the armed forces have in place arrangements designed to ensure that acts of – 30
  - (a) a member of the armed forces, or
  - (b) a civilian subject to service discipline when working in support of a member of the armed forces,to which a provision of Schedule 4 applies are necessary for the proper exercise of a function of the armed forces. 35
- (6) The arrangements which must be in place by virtue of subsection (4) or (5) must be arrangements which the Secretary of State considers to be satisfactory.
- (7) In this section – 40

“armed forces” means His Majesty’s forces (within the meaning of the Armed Forces Act 2006);

“civilian subject to service discipline” has the same meaning as in the Armed Forces Act 2006;

“GCHQ” has the meaning given by section 3(3) of the Intelligence Services Act 1994; 5

“head” means –

(a) in relation to the Security Service, the Director General of the Security Service,

(b) in relation to the Secret Intelligence Service, the Chief of the Secret Intelligence Service, and 10

(c) in relation to GCHQ, the Director of GCHQ;

“intelligence service” means the Security Service, the Secret Intelligence Service or GCHQ.”

(3) For the heading before section 50 substitute “Defences”. 15

*Foreign power condition and foreign power threat activity*

**32 The foreign power condition**

(1) For the purposes of this Part the foreign power condition is met in relation to a person’s conduct if –

(a) the conduct in question, or a course of conduct of which it forms part, is carried out for or on behalf of a foreign power, and 20

(b) the person knows, or having regard to other matters known to them ought reasonably to know, that to be the case.

(2) The conduct in question, or a course of conduct of which it forms part, is in particular to be treated as carried out for or on behalf of a foreign power if – 25

(a) it is instigated by a foreign power,

(b) it is under the direction or control of a foreign power,

(c) it is carried out with financial or other assistance provided by a foreign power for that purpose, or

(d) it is carried out in collaboration with, or with the agreement of, a foreign power. 30

(3) Subsections (1)(a) and (2) may be satisfied by a direct or indirect relationship between the conduct, or the course of conduct, and the foreign power (for example, there may be an indirect relationship through one or more companies). 35

(4) A person’s conduct may form part of a course of conduct engaged in by the person alone, or by the person and one or more other persons.

(5) The foreign power condition is also met in relation to a person’s conduct if the person intends the conduct in question to benefit a foreign power.

- (6) For the purposes of subsection (5) it is not necessary to identify a particular foreign power.
- (7) The foreign power condition may be met in relation to the conduct of a person who holds office in or under, or is an employee or other member of staff of, a foreign power, as it may be met in relation to the conduct of any other person. 5

### 33 Meaning of “foreign power”

- (1) In this Part “foreign power” means –
  - (a) the sovereign or other head of a foreign State in their public capacity,
  - (b) a foreign government, or part of a foreign government, 10
  - (c) an agency or authority of a foreign government, or of part of a foreign government,
  - (d) an authority responsible for administering the affairs of an area within a foreign country or territory, or persons exercising the functions of such an authority, or 15
  - (e) a political party which is a governing political party of a foreign government.
- (2) A political party is a governing political party of a foreign government if persons holding political or official posts in the foreign government or part of the foreign government – 20
  - (a) hold those posts as a result of, or in the course of, their membership of the party, or
  - (b) in exercising the functions of those posts, are subject to the direction or control of, or significantly influenced by, the party.
- (3) Subsection (1)(e) does not include a political party which is – 25
  - (a) a governing political party of the government of the Republic of Ireland, and
  - (b) a party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000.
- (4) In this section – 30
  - “foreign country or territory” means a country or territory outside the United Kingdom, the Channel Islands, the Isle of Man or the British Overseas Territories;
  - “foreign government” means the government of a foreign country or territory; 35
  - a “government” includes persons exercising the functions of a government;
  - “territory” includes the constituent territories of a federal State.

### 34 Foreign power threat activity and involvement in that activity

- (1) In this Part references to foreign power threat activity and to involvement in foreign power threat activity are to one or more of the following – 40

- 
- (a) the commission, preparation or instigation of acts or threats within subsection (3);
  - (b) conduct which facilitates (or is intended to facilitate) conduct falling within paragraph (a);
  - (c) conduct which gives support or assistance to a person (“P”), where the person who engages in the conduct—
    - (i) knows or believes P to be involved in, and
    - (ii) engages in the conduct for the purpose of giving support or assistance to,
 conduct falling within paragraph (a).
- (2) It is immaterial whether the activity within subsection (1) relates to specific acts or threats within subsection (3), or to acts or threats within that subsection in general.
- (3) References to acts or threats within this subsection are to—
- (a) acts which constitute an offence under—
    - (i) section 1 (obtaining or disclosing protected information);
    - (ii) section 2 (obtaining or disclosing trade secrets);
    - (iii) section 3 (assisting a foreign intelligence service);
    - (iv) section 4 (entering etc. a prohibited place for a purpose prejudicial to the UK);
    - (v) section 12 (sabotage);
    - (vi) section 13 (foreign interference: general);
    - (vii) section 18(1) (obtaining material benefits from a foreign intelligence service);
  - (b) acts within subsection (4) in relation to which the foreign power condition is met;
  - (c) threats to carry out acts within subsection (4), where the foreign power condition is met in relation to the threats.
- (4) Acts are within this subsection if they—
- (a) involve serious violence against another person,
  - (b) endanger the life of another person, or
  - (c) create a serious risk to the health or safety of the public or a section of the public.

*Supplementary provision*

**35 Interpretation** 35

- (1) In this Part—
- “conduct” includes omissions and statements;
  - “enactment” includes—
    - (a) an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978);



- (b) an enactment comprised in, or in an instrument made under, a Measure or Act of Senedd Cymru;
  - (c) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;
  - (d) an enactment comprised in, or in an instrument made under, Northern Ireland legislation; 5
  - (e) retained direct EU legislation;
- “foreign power” has the meaning given by section 33;
- “the foreign power condition” has the meaning given by section 32;
- “foreign power threat activity” and “involvement”, in relation to such activity, have the meaning given by section 34; 10
- “information” includes information about tactics, techniques and procedures;
- “the maximum term for summary offences” means –
- (a) in relation to an offence committed before the time when section 281(5) of the Criminal Justice Act 2003 comes into force, 6 months; 15
  - (b) in relation to an offence committed after that time, 51 weeks.
- (2) In this Part references to a part of the United Kingdom are references to –
- (a) England and Wales, 20
  - (b) Scotland, or
  - (c) Northern Ireland.

### 36 Offences by bodies corporate etc

- (1) If an offence under this Part is committed by a body –
- (a) with the consent or connivance of an officer of the body, or 25
  - (b) due to any neglect on the part of such an officer,
- the officer, as well as the body, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) In this section –
- “body” means a body corporate, a partnership or an unincorporated association other than a partnership; 30
- “officer of a body” –
- (a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, 35
  - (b) in relation to a partnership, means a partner or person purporting to act as a partner,
  - (c) in relation to an unincorporated association other than a partnership, means a person who is concerned in the management or control of the body or purports to act in the capacity of a person so concerned. 40

- (3) In subsection (2) “director” includes –
- (a) a person occupying in relation to a body corporate the position of a director (by whatever name called),
  - (b) a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of that body are accustomed to act, and 5
  - (c) a person who has an interest or right in, or in relation to, the body corporate that (whether alone or together with other interests or rights held by the person) enables the person materially to influence the policy of the body corporate. 10
- (4) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body.
- (5) The Secretary of State may by regulations provide for the modification of any provision of this section in its application to a body corporate or unincorporated association formed or recognised under the law of a country or territory outside the United Kingdom. 15

### 37 Offences committed outside the United Kingdom

- (1) Where an offence under this Part may be committed by conduct taking place outside the United Kingdom, it may be so committed – 20
- (a) in the case of conduct by an individual, whatever the nationality of the individual, and
  - (b) in the case of conduct by a person other than an individual, regardless of whether the body corporate or unincorporated association is formed or recognised under the law of a country or territory outside the United Kingdom. 25
- (2) Subsection (1) is subject to sections 3(6) and 18(6) (commission of offences under sections 3 and 18 by conduct outside the United Kingdom).
- (3) Where an offence under this Part is committed outside the United Kingdom – 30
- (a) proceedings for the offence may be taken at any place in the United Kingdom, and
  - (b) the offence may for all incidental purposes be treated as having been committed at any such place.
- (4) In the application of subsection (3) to Scotland, any such proceedings against a person may be taken – 35
- (a) in any sheriff court district in which the person is apprehended or is in custody, or
  - (b) in such sheriff court district as the Lord Advocate may determine.
- (5) “Sheriff court district” is to be read in accordance with the Criminal Procedure (Scotland) Act 1995 (see section 307(1) of that Act). 40

### 38 Consents to prosecutions

- (1) This section applies to offences under this Part, except offences under –
- (a) section 5 (unauthorised entry to a prohibited place);
  - (b) section 6 (prohibited place: failure to comply with order of constable);
  - (c) section 11 (cordoned area: failure to comply with order of constable); 5
  - (d) Schedule 2 (powers of entry, search and seizure);
  - (e) Schedule 3 (disclosure orders);
  - (f) Schedule 4 (customer information orders).
- (2) Proceedings for an offence to which this section applies may be instituted –
- (a) in England and Wales, only with the consent of the Attorney General; 10
  - (b) in Northern Ireland, only with the consent of the Advocate General for Northern Ireland.

### 39 Power to exclude the public from proceedings

- If it is necessary in the interests of national security, a court may exclude the public from – 15
- (a) any part of proceedings for an offence under this Part, or
  - (b) any part of proceedings relating to section 69A of the Sentencing Act 2020 (as inserted by section 20) or to section 21 or 22,
- except for the passing of sentence.

## PART 2 20

### PREVENTION AND INVESTIGATION MEASURES

#### *Imposition of prevention and investigation measures*

### 40 Power to impose prevention and investigation measures

- (1) The Secretary of State may by notice (a “Part 2 notice”) impose specified prevention and investigation measures on an individual if conditions A to E in section 41 are met. 25
- (2) In this Part “prevention and investigation measures” means requirements, restrictions and other provision which may be made in relation to an individual by virtue of Schedule 7.
- (3) In this section and Part 1 of Schedule 7 “specified” means specified in the Part 2 notice. 30
- (4) The Secretary of State must publish factors that the Secretary of State considers are appropriate to take into account when deciding whether to impose restrictions on an individual by virtue of paragraph 2 of Schedule 7 (travel measure). 35

**41 Conditions A to E**

- (1) Condition A is that the Secretary of State reasonably believes that the individual is, or has been, involved in foreign power threat activity.
- (2) Condition B is that some or all of the foreign power threat activity in which the individual is or has been involved is new foreign power threat activity. 5
- (3) Condition C is that the Secretary of State reasonably considers that it is necessary, for purposes connected with protecting the United Kingdom from the risk of acts or threats within section 34(3), for prevention and investigation measures to be imposed on the individual.
- (4) Condition D is that the Secretary of State reasonably considers that it is necessary, for purposes connected with preventing or restricting the individual's involvement in foreign power threat activity, for the prevention and investigation measures specified in the notice to be imposed on the individual. 10
- (5) Condition E is that— 15
- (a) the court gives the Secretary of State permission under section 43, or
  - (b) the Secretary of State reasonably considers that the urgency of the case requires prevention and investigation measures to be imposed without obtaining such permission.
- (6) In relation to prevention and investigation measures under paragraph 1 of Schedule 7 (residence measure), conditions A, B and D (and subsection (7)) apply as if the references to foreign power threat activity were to foreign power threat activity which relates to acts or threats within section 34(3)(b) or (c). 20
- (7) In this section “new foreign power threat activity” means— 25
- (a) if no Part 2 notice relating to the individual has ever been in force, foreign power threat activity occurring at any time;
  - (b) if only one Part 2 notice relating to the individual has ever been in force, foreign power threat activity occurring after that notice came into force; 30
  - (c) if two or more Part 2 notices relating to the individual have been in force, foreign power threat activity occurring after such a notice came into force most recently.
- (8) In this section references to foreign power threat activity, and to an individual's involvement in such activity, include foreign power threat activity, and an individual's involvement in such activity, occurring before section 40 comes into force. 35

*Five year limit on imposition of measures***42 Five year limit for Part 2 notices**

- (1) A Part 2 notice— 40

- (a) comes into force when the notice is served on the individual or, if later, at the time specified for this purpose in the notice, and
  - (b) is in force for the period of one year.
- (2) The Secretary of State may by notice extend a Part 2 notice for a period of one year beginning when the Part 2 notice would otherwise expire. 5
- (3) A Part 2 notice –
  - (a) may be extended under subsection (2) only if conditions A, C and D are met, and
  - (b) may be so extended on up to four occasions.
- (4) This section is subject, in particular, to sections 50 (revocation and revival of Part 2 notices) and 51 (replacement of Part 2 notice that is quashed etc). 10

*Court scrutiny of imposition of measures*

**43 Prior permission of the court**

- (1) This section applies if the Secretary of State –
  - (a) makes the relevant decisions in relation to an individual, and 15
  - (b) makes an application to the court for permission to impose measures on the individual.
- (2) The application must set out a draft of the proposed Part 2 notice.
- (3) The function of the court on the application is –
  - (a) to determine whether the relevant decisions of the Secretary of State are obviously flawed, and 20
  - (b) to determine whether to give permission to impose measures on the individual and (where applicable) whether to exercise the power of direction under subsection (9).
- (4) The court may consider the application – 25
  - (a) in the absence of the individual,
  - (b) without the individual having been notified of the application, and
  - (c) without the individual having been given an opportunity (if the individual was aware of the application) of making any representations to the court. 30
- (5) But that does not limit the matters about which rules of court may be made.
- (6) In determining the application, the court must apply the principles applicable on an application for judicial review.
- (7) In a case where the court determines that a decision of the Secretary of State that condition A, condition B or condition C is met is obviously flawed, the court may not give permission under this section. 35
- (8) In any other case, the court may give permission under this section.

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- (9) If the court determines that the Secretary of State's decision that condition D is met is obviously flawed, the court may (in addition to giving permission under subsection (8)) give directions to the Secretary of State in relation to the measures to be imposed on the individual.
- (10) In this section “relevant decisions” means the decisions that the following conditions are met – 5
- (a) condition A,
  - (b) condition B,
  - (c) condition C, and
  - (d) condition D. 10
- 44 Urgent cases: reference to the court etc**
- Schedule 8 makes provision about references to the court in urgent cases.
- 45 Directions hearing**
- (1) This section applies if the court – 15
- (a) gives permission under section 43 for measures to be imposed on an individual, or
  - (b) confirms under paragraph 4(3) of Schedule 8 (whether or not subject to paragraph 4(2) of that Schedule) a Part 2 notice which imposes measures on an individual.
- (2) The court must, at the hearing where it gives the permission or confirms the notice, give directions for a further hearing (a “directions hearing”) – 20
- (a) which, unless the court otherwise directs (whether in those directions or subsequently), is to be held within the period of 7 days beginning with the relevant day, and
  - (b) which the individual is to have the opportunity to attend. 25
- (3) In a case where this section applies because the court gives permission under section 43, directions given under subsection (2) may not be served on the individual unless the Part 2 notice has been served on that individual.
- (4) At the directions hearing, the court must give directions for a further hearing (a “review hearing”) in relation to the imposition of measures on the individual. 30
- (5) Directions under subsection (4) must provide for the review hearing to be held as soon as reasonably practicable.
- (6) In this section “relevant day” means – 35
- (a) in a case falling within subsection (1)(a), the day on which the Part 2 notice imposing the measures is served on the individual;
  - (b) in a case falling within subsection (1)(b), the day on which the court confirms the Part 2 notice.

#### 46 Review hearing

- (1) On a review hearing held in compliance with directions under section 45(4), the function of the court is to review the decisions of the Secretary of State that the relevant conditions were met and continue to be met.
- (2) In doing so, the court must apply the principles applicable on an application for judicial review. 5
- (3) The court –
  - (a) must discontinue the review hearing if the individual requests the court to do so, and
  - (b) may discontinue the review hearing in any other circumstances. 10
- (4) The court may not discontinue the review hearing in accordance with subsection (3)(b) without giving the Secretary of State and the individual the opportunity to make representations.
- (5) The court has the following powers (and only those powers) on a review hearing – 15
  - (a) power to quash the Part 2 notice;
  - (b) power to quash measures specified in the Part 2 notice;
  - (c) power to give directions to the Secretary of State for, or in relation to –
    - (i) the revocation of the Part 2 notice, or 20
    - (ii) the variation of measures specified in the Part 2 notice.
- (6) If the court does not exercise any of its powers under subsection (5), the court must decide that the Part 2 notice is to continue in force.
- (7) If the court exercises a power under subsection (5)(b) or (c)(ii), the court must decide that the Part 2 notice is to continue in force subject to that exercise of that power. 25
- (8) In this section “relevant conditions” means –
  - (a) condition A,
  - (b) condition B,
  - (c) condition C, and 30
  - (d) condition D.

#### *Consultation requirements*

#### 47 Criminal investigations into foreign power threat activity

- (1) The Secretary of State must consult the chief officer of the appropriate police force about the matter mentioned in subsection (2) before – 35
  - (a) making an application under section 43 for permission to impose measures on an individual, or

- (b) imposing measures on an individual in a case to which section 41(5)(b) applies (urgency of the case requires measures to be imposed without obtaining the permission of the court).
- (2) The matter is whether there is evidence available that could realistically be used for the purposes of prosecuting the individual for an offence— 5
- (a) within section 34(3)(a), or
- (b) relating to acts or threats within section 34(3)(b) or (c).
- (3) The “appropriate police force” means the police force—
- (a) that is investigating the commission of any such offence by the individual, or 10
- (b) by which it appears to the Secretary of State that the commission of any such offence by the individual would fall to be investigated.
- (4) If the Secretary of State serves a Part 2 notice on an individual, the Secretary of State must inform the chief officer of the appropriate police force—
- (a) that the Part 2 notice has been served, and 15
- (b) that the chief officer must act in accordance with the duty under subsection (5).
- (5) After being informed of the matters mentioned in subsection (4), the chief officer must—
- (a) secure that the investigation of the individual's conduct, with a view to a prosecution of the individual for an offence— 20
- (i) within section 34(3)(a), or
- (ii) relating to acts or threats within section 34(3)(b) or (c),  
is kept under review throughout the period the Part 2 notice is in force, and 25
- (b) report to the Secretary of State on the review carried out under paragraph (a).
- (6) The chief officer must consult the relevant prosecuting authority before responding to consultation under subsection (1).
- (7) The chief officer must also, to the extent that the chief officer considers it appropriate to do so, consult the relevant prosecuting authority in carrying out the duty under subsection (5)(a). 30
- (8) The “relevant prosecuting authority” is—
- (a) in the case of offences that would be likely to be prosecuted in England and Wales, the Director of Public Prosecutions; 35
- (b) in the case of offences that would be likely to be prosecuted in Scotland, the Lord Advocate;
- (c) in the case of offences that would be likely to be prosecuted in Northern Ireland, the Director of Public Prosecutions for Northern Ireland. 40
- (9) The duty to consult under subsection (1) or (6) may be satisfied by consultation that took place wholly or partly before the passing of this Act.



(10) In this section—

“chief officer” —

- (a) in relation to a police force maintained for a police area in England and Wales, means the chief officer of police of that force; 5
- (b) in relation to the Police Service of Scotland, means the chief constable of that Service;
- (c) in relation to the Police Service of Northern Ireland, means the Chief Constable of that Service;
- (d) in relation to the National Crime Agency, means the Director General of the National Crime Agency; 10

“police force” means —

- (a) a police force maintained for a police area in England and Wales;
- (b) the Police Service of Scotland; 15
- (c) the Police Service of Northern Ireland;
- (d) the National Crime Agency.

*Review of ongoing necessity*

**48 Review of ongoing necessity**

During the period that a Part 2 notice is in force, the Secretary of State must keep under review whether conditions C and D are met. 20

*Changes concerning Part 2 notices*

**49 Variation of measures**

- (1) The Secretary of State may by notice (a “variation notice”) vary measures specified in a Part 2 notice if— 25
  - (a) the variation consists of the relaxation or removal of measures,
  - (b) the variation is made with the consent of the individual, or
  - (c) the Secretary of State reasonably considers that the variation is necessary for purposes connected with preventing or restricting the individual's involvement in foreign power threat activity. 30
- (2) The Secretary of State may by variation notice vary a relocation measure so as to substitute a different specified residence if the Secretary of State reasonably considers that—
  - (a) the variation is necessary for reasons connected with the efficient and effective use of resources in relation to the individual, and 35
  - (b) the relocation measure (as varied) remains necessary for purposes connected with preventing or restricting the individual's involvement in foreign power threat activity which relates to acts or threats within section 34(3)(b) or (c).

- (3) A “relocation measure” is a measure under paragraph 1(2) of Schedule 7 which requires the individual to reside at a specified residence within paragraph 1(3)(b) of that Schedule (requirement to reside at premises specified by Secretary of State other than individual's own residence).
- (4) The individual to whom a Part 2 notice relates may make an application to the Secretary of State for the variation of measures specified in the notice. 5
- (5) The Secretary of State must consider an application made under subsection (4).
- (6) An application under subsection (4) must be made in writing.
- (7) The Secretary of State may by notice request the provision, within such period of time as the notice may specify, of further information from the individual in connection with an application under subsection (4). 10
- (8) The Secretary of State is not required to consider an application further unless any information requested under subsection (7) is provided in accordance with the notice mentioned in that subsection. 15
- (9) A variation under subsection (1) or (2) takes effect when the variation notice is served or, if later, at the time specified for this purpose in the variation notice.
- (10) The power under subsection (1) or (2) is exercisable whether or not an application has been made under subsection (4). 20
- (11) In a case where a Part 2 notice—  
 (a) has expired as mentioned in section 50(6)(a), or  
 (b) has been revoked,  
 the power under subsection (1) or (2) may (in particular) be exercised in relation to the Part 2 notice before any revival of the Part 2 notice under section 50(6) so as to take effect at the time that the Part 2 notice comes back into force on its revival. 25
- (12) In such a case, the question of whether condition D is met is to be determined for the purposes of section 50(6) by reference to the measures specified in the Part 2 notice as they would be after the exercise of the power under subsection (1) or (2). 30
- (13) Subsection (2) does not limit the power under subsection (1).

## 50 Revocation and revival of Part 2 notices

- (1) The Secretary of State may by notice (a “revocation notice”) revoke a Part 2 notice at any time. 35
- (2) The revocation of a Part 2 notice takes effect when the revocation notice is served or, if different, at the time specified for this purpose in the revocation notice.
- (3) The individual to whom a Part 2 notice relates may make an application to the Secretary of State for the revocation of the Part 2 notice. 40

- (4) The Secretary of State must consider an application made under subsection (3).
- (5) The power under subsection (1) is exercisable whether or not an application has been made under subsection (3).
- (6) The Secretary of State may by notice (a “revival notice”) at any time revive a Part 2 notice which –
  - (a) has expired –
    - (i) without being extended under section 42(2), or
    - (ii) having been extended under section 42(2) on fewer than four occasions, or
  - (b) has been revoked,  
if conditions A, C and D are met.
- (7) The power of revival may be exercised –
  - (a) under subsection (6)(a) or (b) whether or not the Part 2 notice has previously been revoked and revived, and
  - (b) under subsection (6)(b) whether or not the Part 2 notice has been extended under section 42(2) (and regardless of how many times it has been so extended).
- (8) But the power of revival under subsection (6)(b) may not be exercised to revive a Part 2 notice which the Secretary of State was required to revoke by directions given by the court in relevant proceedings.
- (9) A Part 2 notice which is revived –
  - (a) comes back into force when the revival notice is served or, if later, at the time specified for this purpose in the revival notice,
  - (b) is in force –
    - (i) for the period of one year (in a case where the revived notice had expired), or
    - (ii) for the period of time for which the Part 2 notice would have continued in force if it had not been revoked (in a case where the revived notice had been revoked), and
  - (c) is treated as having been extended under section 42(2) on the same number of occasions (if any) as on which the revived notice had been so extended.

## **51 Replacement of a Part 2 notice that is quashed etc**

- (1) This section applies if –
  - (a) a Part 2 notice, the extension of a Part 2 notice, or the revival of a Part 2 notice, is quashed in relevant proceedings, or
  - (b) a Part 2 notice is revoked by the Secretary of State in compliance with directions given by the court in relevant proceedings.
- (2) The replacement Part 2 notice is to be in force for the period of time for which the overturned notice would have continued in force but for the quashing or revocation.

- 
- (3) The replacement Part 2 notice is to be treated as having been extended under section 42(2) on the same number of occasions (if any) as on which the overturned notice had been so extended (including any extension that was quashed).
- (4) Foreign power threat activity is to be treated as new foreign power threat activity in relation to the imposition of measures by the replacement Part 2 notice if it was new foreign power threat activity in relation to the imposition of measures by the overturned notice. 5
- (5) Foreign power threat activity that occurs after the coming into force of the overturned notice does not cease to be new foreign power threat activity by virtue of the coming into force of the replacement Part 2 notice. 10
- (6) Subsections (2) to (5) do not apply to the replacement notice if—
- (a) some or all of the foreign power threat activity occurred after the overturned notice came into force, and
  - (b) the Secretary of State determines that those subsections should not apply to that notice. 15
- (7) In this section—
- “new foreign power threat activity” has the same meaning as in section 41;
  - “overturned notice” means the Part 2 notice to which the quashing or revocation referred to in subsection (1) relates; 20
  - “replacement Part 2 notice” means the first Part 2 notice to impose measures on the individual to whom the overturned notice relates after the quashing or revocation referred to in subsection (1).
- 52 Other provision relating to the quashing of Part 2 notice 25**
- (1) A power in relevant proceedings to quash a Part 2 notice, the extension of a Part 2 notice, the revival of a Part 2 notice, or measures specified in a Part 2 notice, includes—
- (a) in England and Wales or Northern Ireland, power to stay the quashing for a specified time, or pending an appeal or further appeal against the decision to quash; or 30
  - (b) in Scotland, power to determine that the quashing is of no effect for a specified time or pending such an appeal or further appeal.
- (2) A decision in relevant proceedings to quash measures specified in a Part 2 notice, or (except as provided in section 51) a decision in relevant proceedings to quash, or to give directions to the Secretary of State in relation to, a Part 2 notice, the extension of a Part 2 notice, or the revival of a Part 2 notice, does not prevent the Secretary of State— 35
- (a) from exercising any power under this Act to impose measures (whether or not to the same or similar effect as measures to which the decision relates), or 40
  - (b) from relying, in whole or in part, on any matters for the purpose of so exercising such a power (whether or not the matters were relied

on in exercising powers under this Act in relation to measures or the Part 2 notice to which the decision relates).

- (3) Schedule 9 makes provision about appeals against convictions.

*Appeals and court proceedings*

<b>53 Appeals</b>	5
(1) If the Secretary of State extends or revives a Part 2 notice (see section 42(2) or 50(6)) –	
(a) the individual to whom the Part 2 notice relates may appeal to the court against the extension or revival, and	
(b) the function of the court on such an appeal is to review the Secretary of State's decisions that conditions A, C and D were met and continue to be met.	10
(2) If the Secretary of State varies measures specified in a Part 2 notice (and the variation does not consist of the relaxation or removal of measures) without the consent of the individual to whom the Part 2 notice relates –	15
(a) the individual may appeal to the court against the variation, and	
(b) the function of the court on such an appeal is to review the Secretary of State's decisions that the variation was necessary, and continues to be necessary, for purposes connected with preventing or restricting involvement by the individual in foreign power threat activity.	20
(3) If the individual to whom a Part 2 notice relates makes an application to the Secretary of State for the variation of measures specified in the Part 2 notice (see section 49(4)) –	
(a) the individual may appeal to the court against any decision by the Secretary of State on the application, and	25
(b) the function of the court on such an appeal is to review the Secretary of State's decisions that the measures to which the application relates were necessary, and continue to be necessary, for purposes connected with preventing or restricting involvement by the individual in foreign power threat activity.	30
(4) If the individual to whom a Part 2 notice relates makes an application to the Secretary of State for the revocation of the notice (see section 50(3)) –	
(a) the individual may appeal to the court against any decision by the Secretary of State on the application, and	
(b) the function of the court on such an appeal is to review the Secretary of State's decisions that conditions A, C and D were met and continue to be met.	35
(5) If the individual to whom a Part 2 notice relates makes an application to the Secretary of State for permission –	
(a) the individual may appeal to the court against any decision by the Secretary of State on the application (including any decision about conditions to which permission is subject), and	40

- (b) the function of the court on such an appeal is to review the decision.
- (6) In determining the matters mentioned in subsections (1) to (5) the court must apply the principles applicable on an application for judicial review.
- (7) The only powers of the court on an appeal under this section are—
- (a) power to quash the extension or revival of the Part 2 notice; 5
  - (b) power to quash measures specified in the Part 2 notice;
  - (c) power to give directions to the Secretary of State for, or in relation to—
    - (i) the revocation of the Part 2 notice, or
    - (ii) the variation of measures specified in the Part 2 notice; 10
  - (d) power to give directions to the Secretary of State in relation to permission or conditions to which permission is subject.
- (8) If the court does not exercise any of its powers under subsection (7), it must dismiss the appeal.
- (9) In this section “permission” means permission for the purposes of measures specified in a Part 2 notice (see, in particular, paragraph 17 of Schedule 7). 15

#### 54 Jurisdiction in relation to decisions under this Part

- (1) Decisions relating to Part 2 notices are not to be questioned in any legal proceedings other than—
- (a) proceedings in the court, or 20
  - (b) proceedings on appeal from such proceedings.
- (2) The court is the appropriate tribunal for the purposes of section 7 of the Human Rights Act 1998 in relation to proceedings all or any part of which call a decision relating to a Part 2 notice into question.
- (3) In this Part “decision relating to a Part 2 notice” means— 25
- (a) a decision made by the Secretary of State in exercise or performance of any power or duty under any of sections 40 to 52 or under Schedule 7 or Schedule 8;
  - (b) a decision made by the Secretary of State for the purposes of, or in connection with, the exercise or performance of any such power or duty; 30
  - (c) a decision by a constable to give a direction by virtue of paragraph 4 of Schedule 7 (movement directions measure) or paragraph 11(1)(b) of that Schedule (reporting measure);
  - (d) a decision by a polygraph operator to give a direction by virtue of paragraph 12(1)(c) of Schedule 7; 35
  - (e) a decision by a person to give a direction by virtue of paragraph 15(2)(d) of Schedule 7 (monitoring measure).

## 55 Proceedings relating to measures

- (1) No appeal lies from any determination of the court in relevant proceedings, except on a question of law.
- (2) No appeal by any person other than the Secretary of State lies from any determination—
  - (a) on an application for permission under section 43, or
  - (b) on a reference under Schedule 8.
- (3) Schedule 10 makes provision about proceedings relating to measures.

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### *Other safeguards*

## 56 Reports on exercise of powers under this Part

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- (1) The Secretary of State must—
  - (a) prepare a report about the exercise of the powers mentioned in subsection (2) during each period of 3 months beginning with the month in which section 40 comes into force, and
  - (b) lay a copy of each such report before Parliament.
- (2) The powers referred to in subsection (1) are the powers of the Secretary of State under this Part—
  - (a) to impose measures on an individual by a Part 2 notice;
  - (b) to extend a Part 2 notice under section 42(2);
  - (c) to vary a Part 2 notice under section 49;
  - (d) to revoke a Part 2 notice under section 50(1);
  - (e) to revive a Part 2 notice under section 50(6).
- (3) The duty under subsection (1) in relation to the preparation and laying of a report must be carried out as soon as reasonably practicable after the end of the 3 month period to which the report relates.

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### *Enforcement*

## 57 Offence

- (1) An individual commits an offence if—
  - (a) a Part 2 notice is in force in relation to the individual, and
  - (b) the individual contravenes without reasonable excuse any measure specified in the notice.
- (2) Where an individual—
  - (a) is subject to a measure specified under paragraph 2 of Schedule 7 (a “travel measure”), and
  - (b) leaves the United Kingdom or travels outside the United Kingdom, subsection (1)(b) has effect, in relation to that act, with the omission of the words “without reasonable excuse”.

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- (3) If the individual has the permission of the Secretary of State by virtue of Schedule 7 for an act which would, without that permission, contravene a measure specified in the Part 2 notice, the individual contravenes that measure by virtue of that act if the act is not in accordance with the terms of the permission. 5
- (4) An individual who commits an offence under subsection (1) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine (or both);
  - (b) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court or to a fine (or both); 10
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum (or both);
  - (d) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both). 15
- (5) Where an individual commits an offence under subsection (1) by contravening a travel measure, subsection (4)(a) has effect as if “10 years” were substituted for “5 years”. 20
- (6) Where an individual is convicted by or before a court of an offence under subsection (1), it is not open to that court to make in respect of the offence—
- (a) an order under section 80 of the Sentencing Code (conditional discharge),
  - (b) an order under section 227A of the Criminal Procedure (Scotland) Act 1995 (community payback orders), or 25
  - (c) an order under Article 4(1)(b) of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)) (conditional discharge).
- 58 Powers of entry etc**
- Schedule 11 makes provision about powers of entry, search, seizure and retention. 30
- 59 Fingerprints and samples**
- Schedule 12 makes provision about fingerprints and samples.

*Supplementary provisions*

- 60 Notices** 35
- (1) In a case where the Secretary of State serves a Part 2 notice, a revival notice or an extension notice on an individual, the Secretary of State must, by a further notice, give the following information to the individual—
- (a) the period for which the Part 2 notice will be in force,



- (b) the day on which the Part 2 notice comes, or came, into force, and  
(c) the day on which the Part 2 notice will expire,  
and, in the case of a revival or extension notice, “Part 2 notice” means the Part 2 notice which is revived or extended by that notice.
- (2) An individual is not bound by— 5  
(a) a Part 2 notice,  
(b) a revival notice, or  
(c) a variation notice insofar as it gives notice of a variation that is neither a relaxation or removal of measures, nor a variation with the individual's consent, 10  
unless the notice is served personally on the individual.
- (3) An individual is not bound by an extension notice unless the notice is—  
(a) served personally on the individual, and  
(b) so served before the Part 2 notice to which it relates would otherwise expire. 15
- (4) Any of the following notices must be served on the individual to whom the notice relates—  
(a) a revocation notice;  
(b) a variation notice insofar as subsection (2)(c) does not apply to it;  
(c) a confirmation notice. 20
- (5) Any of the following notices may be proved by the production of a document purporting to be certified by the Secretary of State as a true copy of the notice—  
(a) a Part 2 notice;  
(b) an extension notice; 25  
(c) a revocation notice;  
(d) a revival notice;  
(e) a variation notice;  
(f) a confirmation notice.
- (6) But that does not prevent the proof of such a notice in other ways. 30
- (7) In this section—  
“confirmation notice” means a notice given under subsection (1);  
“extension notice” means a notice under section 42(2);  
“revival notice” has the same meaning as in section 50(6);  
“revocation notice” has the same meaning as in section 50(1); 35  
“variation notice” has the same meaning as in section 49(1).

## 61 Contracts

The Secretary of State may enter into such contracts and other arrangements with other persons as the Secretary of State considers appropriate for securing their assistance in connection with any monitoring, by electronic or other 40

means, that the Secretary of State considers needs to be carried out in connection with measures specified in Part 2 notices.

## 62 Legal aid in relation to Part 2 notices

In Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (civil legal services), in Part 1 (services), after paragraph 45A insert – 5

*“Foreign power threat activity prevention and investigation measures*

45B(1) Civil legal services provided to an individual in relation to a notice under section 40(1) of the National Security Act 2023 relating to the individual.

- (2) Sub-paragraph (1) is subject to – 10
- (a) the exclusions in Part 2 of this Schedule, with the exception of paragraph 18 of that Part, and
  - (b) the exclusion in Part 3 of this Schedule.”

## 63 Interpretation etc

(1) In this Part – 15

“act” and “conduct” include omissions and statements;

“condition A”, “condition B”, “condition C”, “condition D” or “condition E” means that condition as set out in section 41;

“court” means –

- (a) in the case of proceedings relating to an individual whose principal place of residence is in Scotland, the Outer House of the Court of Session; 20
- (b) in the case of proceedings relating to an individual whose principal place of residence is in Northern Ireland, the High Court in Northern Ireland; 25
- (c) in any other case, the High Court in England and Wales;

“decision relating to a Part 2 notice” has the meaning given in section 54;

“enactment” includes –

- (a) an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978); 30
- (b) an enactment comprised in, or in an instrument made under, a Measure or Act of Senedd Cymru;
- (c) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament; 35
- (d) an enactment comprised in, or in an instrument made under, Northern Ireland legislation;
- (e) retained direct EU legislation;

“foreign power threat activity” and “involvement” (in relation to such activity) have the same meaning as in Part 1 (see section 34); 40

- “measures” means prevention and investigation measures (which has the meaning given in section 40);
- “notice” means a notice in writing;
- “Part 2 notice” has the meaning given in section 40(1);
- “relevant proceedings” means – 5
- (a) proceedings on an application for permission under section 43;
  - (b) proceedings on a reference under Schedule 8;
  - (c) proceedings on a directions hearing held in accordance with directions under section 45(2);
  - (d) proceedings on a review hearing held in accordance with directions under section 45(4); 10
  - (e) proceedings on an appeal under section 53;
  - (f) proceedings by virtue of section 54(2);
  - (g) proceedings on an application made by virtue of rules of court made under paragraph 6 of Schedule 10 (application for order requiring anonymity); 15
  - (h) any other proceedings for questioning a decision relating to a Part 2 notice (including any claim for damages or other relief arising out of such a decision).
- (2) In a case where – 20
- (a) a Part 2 notice has come into force in relation to an individual, and
  - (b) by virtue of the coming into force of that Part 2 notice, foreign power threat activity which occurred before the coming into force of that notice has ceased to be new foreign power threat activity (within the meaning of section 41(7)) in relation to that individual for the purposes of that section, 25
- the Secretary of State is not prevented from taking account of that activity for the purposes of the continued imposition, or subsequent imposition, of measures on that individual.
- (3) For the purposes of the definition of “new foreign power threat activity” in section 41(7), if a Part 2 notice is revived under section 50(6), a reference to the notice coming into force is a reference to it coming into force by virtue of section 42(1) (and not to it coming back into force by virtue of section 50(9)). 30
- (4) For the purpose of determining what measures may be imposed on an individual, it is immaterial whether the involvement in foreign power threat activity to be prevented or restricted by the measures is connected with matters to which the Secretary of State's belief for the purpose of condition A relates. 35
- This is subject to section 41(6). 40
- (5) A failure by the Secretary of State to consider an application by an individual for –
- (a) the revocation of a Part 2 notice, or
  - (b) the variation of measures specified in a Part 2 notice,

is to be treated as a decision by the Secretary of State not to revoke, or not to vary, the Part 2 notice.

- (6) Subsections (2) to (5) apply for the purposes of this Part.

### PART 3

#### REVIEW OF THE OPERATION OF PARTS 1 AND 2 ETC

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#### 64 Reviews: general

- (1) The Secretary of State must appoint a person (the “independent reviewer”) to review the operation of—
- (a) Part 1, except section 31;
  - (b) Part 2; 10
  - (c) Schedule 3 to the Counter-Terrorism and Border Security Act 2019, except the functions of the Investigatory Powers Commissioner under Part 1 of that Schedule.
- (2) The independent reviewer—
- (a) must carry out a review of the operation of those provisions for each calendar year (an “annual review”), and 15
  - (b) may carry out such other reviews of the operation of any of those provisions as they consider appropriate.
- (3) An annual review must be completed as soon as reasonably practicable after the calendar year to which it relates. 20
- (4) The independent reviewer must, by 31 January in each calendar year, inform the Secretary of State what (if any) reviews under subsection (2)(b) they intend to carry out in that year.
- (5) The independent reviewer must send to the Secretary of State a report on the outcome of each review carried out under this section as soon as reasonably practicable after completion of the review. 25
- (6) On receiving a report under this section, the Secretary of State must lay before Parliament—
- (a) the report (but not any material removed under subsection (7)), and
  - (b) a statement as to whether any material has been removed under that subsection. 30
- (7) The Secretary of State may, after consulting the independent reviewer, remove from the report any material whose publication the Secretary of State thinks would be contrary to the public interest, or prejudicial to—
- (a) national security, 35
  - (b) the prevention or detection of crime,
  - (c) the economic well-being of the United Kingdom, or
  - (d) the continued discharge of the functions of any public authority whose activities include activities that are subject to review by the independent reviewer. 40

- (8) “Public authority” means a public authority within the meaning of section 6 of the Human Rights Act 1998, other than a court or tribunal.
- (9) The Secretary of State may pay to the independent reviewer –
  - (a) expenses incurred in carrying out the functions of the reviewer under this section, and
  - (b) such allowances as the Secretary of State determines.

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**65 Reviews of detention under Part 1**

- (1) An annual review under section 64(2)(a) must in particular consider compliance with the relevant requirements in relation to persons detained under section 28 by virtue of a warrant of further detention under Part 6 of Schedule 6.
- (2) The relevant requirements are requirements imposed –
  - (a) by or under Parts 1 to 5, and paragraph 45, of Schedule 6;
  - (b) by any relevant code of practice under section 66 of the Police and Criminal Evidence Act 1984 or Article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).
- (3) The independent reviewer must ensure that a review is carried out into any case where –
  - (a) a person is detained under section 28 by virtue of a warrant of further detention under Part 6 of Schedule 6, and
  - (b) the period specified in that warrant is further extended under paragraph 44 of that Schedule to a time that is more than 14 days after the person’s arrest under section 28.
- (4) A review under subsection (3) may be carried out by the independent reviewer or by another person.
- (5) The independent reviewer must ensure that a report on the outcome of a review under subsection (3) is sent to the Secretary of State as soon as reasonably practicable after completion of the review.
- (6) Section 64(6) to (8) applies to a report of a review under subsection (3).
- (7) The expenses mentioned in section 64(9) include any expenses incurred by the independent reviewer in ensuring that another person carries out, and reports on, a review under subsection (3).
- (8) “Independent reviewer” has the same meaning as in section 64.

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**PART 4**

## FOREIGN ACTIVITIES AND FOREIGN INFLUENCE REGISTRATION SCHEME

*Activities of specified persons***66 Requirement to register foreign activity arrangements**

- (1) A “foreign activity arrangement” is an agreement or arrangement between a person (“P”) and a specified person pursuant to which the specified person directs P—
- (a) to carry out relevant activities in the United Kingdom, or
  - (b) to arrange for relevant activities to be carried out in the United Kingdom.
- (2) In this section “relevant activities”—
- (a) if regulations under subsection (3) apply in relation to the specified person, has the meaning given by the regulations, and
  - (b) otherwise, means all activities.
- (3) The Secretary of State may by regulations make provision about activities which are relevant activities for the purposes of this section, either in relation to all specified persons or in relation to such specified persons as the regulations may provide.
- (4) Where P makes a foreign activity arrangement, P must register the arrangement with the Secretary of State before the end of the period of 10 days beginning with the day on which P makes the arrangement.
- (5) P commits an offence if P—
- (a) fails to comply with subsection (4), and
  - (b) knows, or having regard to other matters known to them ought reasonably to know, that the arrangement in question is a foreign activity arrangement.

**67 Meaning of “specified person”**

- (1) “Specified person” means—
- (a) a foreign power specified by the Secretary of State in regulations;
  - (b) a person, other than a foreign power, specified by the Secretary of State in regulations.
- (2) The regulations may specify a person other than a foreign power only if—
- (a) the person is not an individual, and
  - (b) the Secretary of State reasonably believes the person is controlled by a foreign power.
- (3) Schedule 13 makes provision about when a person is controlled by a foreign power.

- (4) The Secretary of State may make regulations specifying a foreign power or a person other than a foreign power only if the Secretary of State considers it reasonably necessary to do so to protect the safety or interests of the United Kingdom.
- (5) Regulations specifying a foreign power or a person other than a foreign power may provide for section 66(4) to apply, with modifications specified in the regulations, in relation to a foreign activity arrangement made with the specified person before the regulations come into force. 5
- 68 Offence of carrying out etc relevant activities pursuant to unregistered foreign activity arrangement 10**
- (1) This section applies where a person (“P”) makes a foreign activity arrangement required to be registered under section 66(4).
- (2) P commits an offence if—
- (a) P carries out a relevant activity, or arranges for a relevant activity to be carried out, in the United Kingdom pursuant to the arrangement, 15
  - (b) the arrangement is not registered, and
  - (c) P knows, or having regard to other matters known to them ought reasonably to know, that they are acting pursuant to a foreign activity arrangement.
- (3) A person other than P commits an offence if— 20
- (a) the person carries out a relevant activity, or arranges for a relevant activity to be carried out, in the United Kingdom pursuant to the arrangement,
  - (b) the arrangement is not registered, and
  - (c) the person knows, or having regard to other matters known to them ought reasonably to know, that they are acting pursuant to a foreign activity arrangement. 25
- (4) In proceedings for an offence under subsection (3) it is a defence to show that the person— 30
- (a) took all steps reasonably practicable to determine whether the arrangement was registered, and
  - (b) reasonably believed that the arrangement was registered.
- (5) A person is taken to have shown a matter mentioned in subsection (4) if—
- (a) sufficient evidence of the matter is adduced to raise an issue with respect to it, and 35
  - (b) the contrary is not proved beyond reasonable doubt.
- (6) In this section “relevant activity” has the same meaning as in section 66.

**69 Requirement to register relevant activities of specified persons**

- (1) A specified person who is not a foreign power must not carry out relevant activities in the United Kingdom unless the activities are registered with the Secretary of State by the specified person.
- (2) A person who holds office in or under, or is an employee or other member of staff of, a specified person who is not a foreign power, must not carry out relevant activities in the United Kingdom in that capacity unless the activities are registered with the Secretary of State by the specified person. 5
- (3) A person who holds office in or under, or is an employee or other member of staff of, a specified person who is a foreign power must not carry out relevant activities in the United Kingdom in that capacity if or to the extent that – 10
- (a) the person makes a misrepresentation about their activities or the capacity in which they act (whether generally or to a particular person), and 15
- (b) the activities are not registered with the Secretary of State by the specified person.
- (4) In this section “relevant activities” –
- (a) if regulations under subsection (5) apply in relation to the specified person, has the meaning given by the regulations, and 20
- (b) otherwise, means all activities.
- (5) The Secretary of State may by regulations make provision about activities which are relevant activities for the purposes of this section, either in relation to all specified persons or in relation to such specified persons as the regulations may provide. 25
- (6) A misrepresentation is a representation that a reasonable person would consider to be false or misleading in a material way.
- (7) A misrepresentation may be made by making a statement or by any other kind of conduct (including an omission), and may be express or implied.
- (8) A misrepresentation may in particular include – 30
- (a) a misrepresentation as to the person’s identity or purpose;
- (b) presenting information in a way which amounts to a misrepresentation, even if some or all of the information is true.
- (9) A person who breaches a prohibition in subsection (1) or (2) commits an offence. 35
- (10) A person who breaches a prohibition in subsection (3) commits an offence if the person knows, or having regard to other matters known to them ought reasonably to know, that paragraph (a) of that subsection applies.
- (11) In proceedings for an offence under subsection (9) or (10) it is a defence to show that the person – 40
- (a) took all steps reasonably practicable to determine whether the activities were registered, and



- (b) reasonably believed that the activities were registered.
- (12) A person is taken to have shown a matter mentioned in subsection (11) if—
  - (a) sufficient evidence of the matter is adduced to raise an issue with respect to it, and
  - (b) the contrary is not proved beyond reasonable doubt.

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*Political influence activities of foreign powers*

**70 Requirement to register foreign influence arrangements**

- (1) A “foreign influence arrangement” is an agreement or arrangement between a person (“P”) and a foreign power pursuant to which the foreign power directs P—
  - (a) to carry out political influence activities in the United Kingdom, or
  - (b) to arrange for such activities to be carried out in the United Kingdom.
- (2) Where the foreign power is a specified person, the arrangement is not a foreign influence arrangement to the extent that it relates to political influence activities that are relevant activities for the purposes of section 66.
- (3) Where P makes a foreign influence arrangement, P must register the arrangement with the Secretary of State before the end of the period of 28 days beginning with the day on which P makes the arrangement.
- (4) Subsection (3) applies in relation to a foreign influence arrangement which is made before, and which continues to have effect on, the day on which this section comes into force as if, for the words from “28” to the end, there were substituted “3 months beginning with the day on which this section comes into force.”
- (5) P commits an offence if P—
  - (a) fails to comply with subsection (3), and
  - (b) knows that the arrangement in question is a foreign influence arrangement.

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**71 Meaning of “political influence activity”**

- (1) An activity is a “political influence activity” if—
  - (a) it is within subsection (2), and
  - (b) the purpose, or one of the purposes, for which it is carried out is the purpose of influencing a matter or person within subsection (3).
- (2) The activities within this subsection are—
  - (a) making any communication to a person listed in Schedule 14;
  - (b) making a public communication, except where it is reasonably clear from the communication that it is made by or at the direction of the foreign power;
  - (c) distributing money, goods or services to UK persons.

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- (3) The matters and persons within this subsection are—
- (a) an election or referendum in the United Kingdom,
  - (b) a decision of a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975), a United Kingdom government department, a Northern Ireland Minister or Northern Ireland department, the Scottish Ministers or the Welsh Ministers, 5
  - (c) the proceedings of a UK registered political party, or
  - (d) a Member of either House of Parliament, the Northern Ireland Assembly, the Scottish Parliament or Senedd Cymru (acting in that capacity). 10
- (4) For the purposes of subsection (2)(b) a person makes a public communication if the person—
- (a) publishes or disseminates information, a document or other article, or
  - (b) produces information, a document or other article for publication or dissemination. 15
- (5) In this section—
- “Northern Ireland Minister” includes the First Minister, the deputy First Minister and a junior Minister;
  - “UK person” has the same meaning as in section 2;
  - “UK registered political party” means a political party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000; 20
  - “Welsh minister” includes the First Minister, the Counsel General to the Welsh Government and a Deputy Welsh Minister.
- 72 Offence of carrying out etc political influence activities pursuant to unregistered foreign influence arrangement** 25
- (1) This section applies where a person (“P”) makes a foreign influence arrangement required to be registered under section 70(3).
- (2) P commits an offence if—
- (a) after the end of the registration period P carries out a political influence activity, or arranges for a political influence activity to be carried out, in the United Kingdom pursuant to the arrangement, 30
  - (b) the arrangement is not registered, and
  - (c) P knows, or having regard to other matters known to them ought reasonably to know, that they are acting pursuant to a foreign influence arrangement. 35
- (3) A person other than P commits an offence if—
- (a) after the end of the registration period the person carries out a political influence activity, or arranges for a political influence activity to be carried out, in the United Kingdom pursuant to the arrangement,
  - (b) the arrangement is not registered, and 40

- (c) the person knows, or having regard to other matters known to them ought reasonably to know, that they are acting pursuant to a foreign influence arrangement.
- (4) In this section the “registration period” means the period before the end of which P must register the arrangement (see section 70(3) and (4)). 5
- (5) In proceedings for an offence under subsection (3) it is a defence to show that the person—
  - (a) took all steps reasonably practicable to determine whether the arrangement was registered, and
  - (b) reasonably believed that the arrangement was registered. 10
- (6) A person is taken to have shown a matter mentioned in subsection (5) if—
  - (a) sufficient evidence of the matter is adduced to raise an issue with respect to it, and
  - (b) the contrary is not proved beyond reasonable doubt.
- 73 Requirement to register political influence activities of foreign powers 15**
  - (1) A person who holds office in or under, or is an employee or other member of staff of, a foreign power must not carry out political influence activities in the United Kingdom in that capacity if or to the extent that—
    - (a) the person makes a misrepresentation about their activities or the capacity in which they act (whether generally or to a particular person), and 20
    - (b) the activities are not registered with the Secretary of State by the foreign power.
  - (2) Where the foreign power is a specified person, the prohibition in subsection (1) does not apply to the extent that the political influence activities are relevant activities for the purposes of section 69. 25
  - (3) A misrepresentation is a representation that a reasonable person would consider to be false or misleading in a material way.
  - (4) A misrepresentation may be made by making a statement or by any other kind of conduct (including an omission), and may be express or implied. 30
  - (5) A misrepresentation may in particular include—
    - (a) a misrepresentation as to the person’s identity or purpose;
    - (b) presenting information in a way which amounts to a misrepresentation, even if some or all of the information is true.
  - (6) A person who breaches a prohibition in subsection (1) commits an offence if the person knows, or having regard to other matters known to them ought reasonably to know, that paragraph (a) of that subsection applies. 35
  - (7) In proceedings for an offence under subsection (6) it is a defence to show that the person—
    - (a) took all steps reasonably practicable to determine whether the activities were registered, and 40

- (b) reasonably believed that the activities were registered.
- (8) A person is taken to have shown a matter mentioned in subsection (7) if—
  - (a) sufficient evidence of the matter is adduced to raise an issue with respect to it, and
  - (b) the contrary is not proved beyond reasonable doubt.

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### *Exemptions*

## 74 Exemptions

Schedule 15 makes provision in relation to exemptions.

### *Information*

## 75 Registration information

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- (1) The Secretary of State may by regulations make provision about the information a person is required to provide to the Secretary of State when registering—
  - (a) a foreign activity arrangement under section 66,
  - (b) a relevant activity under section 69,
  - (c) a foreign influence arrangement under section 70, or
  - (d) a political influence activity under section 73.
- (2) Regulations under subsection (1) may, in particular, require the person to provide information about any arrangements made by the person pursuant to the arrangement or activity which is required to be registered.
- (3) Regulations under subsection (1)(c) may, in particular, require the person to provide information about any political influence activities carried out, or arranged to be carried out, during the registration period by any person pursuant to the arrangement which is required to be registered.
- (4) In subsection (3) “registration period” has the same meaning as in section 72.
- (5) Where there is a material change to any information provided to the Secretary of State under this section or section 76 in relation to a registered arrangement or a registered activity, the person who registered the arrangement or activity must inform the Secretary of State of the change before the end of the period of 14 days beginning with the day on which the change takes effect.
- (6) The Secretary of State—
  - (a) may by regulations make provision about the information to be provided to the Secretary of State under subsection (5),
  - (b) may issue guidance about what may or may not constitute a material change.
- (7) The provision which may be made by regulations under this section includes provision about the form in which information is to be provided.

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- (8) A person who fails to comply with subsection (5) commits an offence if, as a result of the failure, the information provided to the Secretary of State in relation to the registered arrangement or registered activity is false, inaccurate or misleading in a material way.

**76 Information notices**

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- (1) The Secretary of State may give an information notice to—
- (a) a person who is a party to a foreign activity arrangement registered under section 66;
  - (b) a person the Secretary of State reasonably believes to be a party to a foreign activity arrangement which is required to be, but is not, registered under that section; 10
  - (c) a person the Secretary of State reasonably believes to be carrying out relevant activities, or arranging for relevant activities to be carried out, in the United Kingdom pursuant to a foreign activity arrangement within paragraph (a) or (b); 15
  - (d) a person who has registered relevant activities under section 69;
  - (e) a person the Secretary of State reasonably believes to be carrying out relevant activities registered under that section;
  - (f) a person the Secretary of State reasonably believes to be carrying out relevant activities in breach of a prohibition in that section. 20
- (2) The Secretary of State may give an information notice to—
- (a) a person who is a party to a foreign influence arrangement registered under section 70;
  - (b) a person the Secretary of State reasonably believes to be a party to a foreign influence arrangement which is required to be, but is not, registered under that section; 25
  - (c) a person the Secretary of State reasonably believes to be carrying out political influence activities, or arranging for political influence activities to be carried out, in the United Kingdom pursuant to a foreign influence arrangement within paragraph (a) or (b); 30
  - (d) a person who has registered political influence activities under section 73;
  - (e) a person the Secretary of State reasonably believes to be carrying out political influence activities registered under that section;
  - (f) a person the Secretary of State reasonably believes to be carrying out political influence activities in breach of a prohibition in that section. 35
- (3) An information notice is a notice requiring the person to whom it is given to supply the information specified in the notice.
- (4) An information notice may only specify information which the Secretary of State considers may be relevant to an arrangement or activity within subsection (1) or (2). 40
- (5) An information notice must—
- (a) specify the form in which the information must be supplied, and

- (b) specify the date by which the information must be supplied.
- (6) Where an information notice has been given to a person, the Secretary of State may cancel it by giving written notice to that effect to the person.
- (7) The Secretary of State may by regulations make provision about –
- (a) the minimum period between the date on which an information notice is given and the date specified under subsection (5)(b); 5
  - (b) other matters which may be specified in an information notice;
  - (c) the cancellation of information notices.
- (8) A person commits an offence if, without reasonable excuse, the person fails to comply with an information notice. 10
- (9) The Secretary of State may not give an information notice to a foreign power.

## 77 Confidential material

- (1) Nothing in this Part is to be taken to require any person to disclose any information that the person is entitled to refuse to disclose in legal proceedings on grounds of legal professional privilege (in Scotland, confidentiality of communications). 15
- (2) Nothing in this Part is to be taken to require any person to disclose confidential journalistic material or to identify or confirm a source of journalistic information.
- (3) In this section – 20
- “confidential journalistic material” has the same meaning as in section 264 of the Investigatory Powers Act 2016;
  - “source of journalistic information” has the same meaning as in section 263 of that Act.

## 78 Offence of providing false information 25

- (1) A person commits an offence if –
- (a) the person provides information to the Secretary of State under section 75 or 76 in connection with a foreign activity arrangement, and
  - (b) the information is false, inaccurate or misleading in a material way.
- (2) A person commits an offence if – 30
- (a) the person provides information to the Secretary of State under section 75 or 76 in connection with a relevant activity which is required to be registered under section 69, and
  - (b) the information is false, inaccurate or misleading in a material way.
- (3) A person commits an offence if – 35
- (a) the person provides information to the Secretary of State under section 75 or 76 in connection with a foreign influence arrangement,
  - (b) the information is false, inaccurate or misleading in a material way, and

- (c) the person knows, or having regard to other matters known to them ought reasonably to know, that the information is false, inaccurate or misleading in a material way.
- (4) A person commits an offence if –
  - (a) the person provides information to the Secretary of State under section 75 or 76 in connection with a political influence activity which is required to be registered under section 73, 5
  - (b) the information is false, inaccurate or misleading in a material way, and
  - (c) the person knows, or having regard to other matters known to them ought reasonably to know, that the information is false, inaccurate or misleading in a material way. 10

## 79 Offence of carrying out activities under arrangements tainted by false information

- (1) A person commits an offence if – 15
  - (a) the person carries out a relevant activity, or arranges for a relevant activity to be carried out, in the United Kingdom pursuant to a foreign activity arrangement required to be registered under section 66(4),
  - (b) information provided to the Secretary of State under section 75 or 76 in connection with the arrangement, whether by the person or by another person, is false, inaccurate or misleading in a material way, and 20
  - (c) the person knows, or having regard to other matters known to them ought reasonably to know, that the facts are as mentioned in paragraph (b). 25
- (2) A person commits an offence if –
  - (a) the person carries out a political influence activity, or arranges for a political influence activity to be carried out in the United Kingdom pursuant to a foreign influence arrangement required to be registered under section 70(4), 30
  - (b) information provided to the Secretary of State under section 75 or 76 in connection with the arrangement, whether by the person or by another person, is false, inaccurate or misleading in a material way, and
  - (c) the person knows, or having regard to other matters known to them ought reasonably to know, that the facts are as mentioned in paragraph (b). 35

## 80 Publication and disclosure of information

- (1) The Secretary of State may by regulations make provision about –
  - (a) publication of information provided to the Secretary of State under section 75 or 76; 40

- (b) the disclosure of information provided to the Secretary of State under either of those sections.
- (2) The power under subsection (1)(a) includes in particular power to make provision about a description of information or material which is not to be published.

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*Offences: penalties etc*

**81 Offences: penalties**

- (1) A person who commits a foreign activity offence is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine (or both); 10
  - (b) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court or to a fine (or both);
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum (or both); 15
  - (d) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both).
- (2) “Foreign activity offence” means— 20
- (a) an offence under section 66(5);
  - (b) an offence under section 68;
  - (c) an offence under section 69(7) or (8);
  - (d) an offence under section 75(8) committed in relation to a foreign activity arrangement registered under section 66 or a relevant activity registered under section 69; 25
  - (e) an offence under section 76(8) committed in relation to an information notice given under section 76(1);
  - (f) an offence under section 78(1) or (2);
  - (g) an offence under section 79(1). 30
- (3) A person who commits a foreign influence offence is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both);
  - (b) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court or to a fine (or both); 35
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum (or both);
  - (d) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both). 40



- (4) “Foreign influence offence” means –
- (a) an offence under section 70(5);
  - (b) an offence under section 72;
  - (c) an offence under section 73(6);
  - (d) an offence under section 75(8) committed in relation to a foreign influence arrangement registered under section 70 or a political influence activity registered under section 73; 5
  - (e) an offence under section 76(8) committed in relation to an information notice given under section 76(2);
  - (f) an offence under section 78(3) or (4); 10
  - (g) an offence under section 79(2).

## 82 Offences: supplementary provision

- (1) Section 36 (offences by body corporate etc) applies in relation to offences under this Part as it applies in relation to offences under Part 1.
- (2) Section 37(1) and (3) to (5) (offences committed outside the United Kingdom) applies in relation to offences under this Part as it applies in relation to offences under Part 1. 15
- (3) If it is necessary in the interests of national security, a court may exclude the public from any part of proceedings for an offence under this Part, except for the passing of sentence. 20

### *Supplementary*

## 83 Annual report

- (1) The Secretary of State must, as soon as is practicable after the end of each relevant period –
  - (a) prepare a report in relation to that period, and 25
  - (b) lay a copy of the report before Parliament.
- (2) The report must provide details of –
  - (a) the total number of arrangements registered with the Secretary of State under section 66 or 70,
  - (b) the number of arrangements registered with the Secretary of State under section 66 or 70 during the relevant period, 30
  - (c) the total number of specified persons and foreign powers who have registered activities with the Secretary of State under section 69 or 73,
  - (d) the number of specified persons and foreign powers who have registered activities with the Secretary of State under section 69 or 73 during the relevant period, 35
  - (e) the number of information notices issued under section 76 during the relevant period,
  - (f) the number of persons charged with an offence under this Part during the relevant period, and 40

- (g) the number of persons convicted of an offence under this Part during the relevant period.
- (3) “Relevant period” means—
- (a) the period of 12 months beginning with the day on which this section comes into force, and 5
- (b) each subsequent period of 12 months.

## 84 Interpretation

- (1) In this Part—
- “foreign activity arrangement” has the meaning given by section 66;
- “foreign influence arrangement” has the meaning given by section 70; 10
- “foreign power” has the same meaning as in Part 1 (see section 33), subject to subsection (2);
- “political influence activity” has the meaning given by section 71;
- “registered activity” means an activity registered with the Secretary of State under section 69 or 73; 15
- “registered arrangement” means an arrangement registered with the Secretary of State under section 66 or 70;
- “specified person” has the meaning given by section 67.
- (2) For the purposes of this Part references in section 33 to a foreign State, or a foreign country or territory, do not include the Republic of Ireland. 20
- (3) For the purposes of this Part references to an “arrangement” do not include an arrangement between a person (“P”) and—
- (a) a person who holds office in or under, or is an employee or other member of staff of, P (acting in that capacity), or
- (b) a person the Secretary of State reasonably considers to be exercising functions on behalf of P as if the person were within paragraph (a). 25

## PART 5

### TERRORISM

#### *Damages in national security proceedings*

## 85 National security proceedings 30

- (1) Sections 86 and 87 apply to proceedings (“national security proceedings”) before a court which—
- (a) are commenced on or after the date this section comes into force,
- (b) are brought against the Crown on any grounds (unless they are brought under section 7(1)(a) of the Human Rights Act 1998), and 35
- (c) relate to national security.
- (2) For the purposes of this section—

- 
- (a) proceedings relate to national security where a party to those proceedings has, at any stage, presented evidence or made submissions to the court relating to national security;
  - (b) the circumstances in which evidence or submissions are to be taken to relate to national security include, in particular, where the evidence or submissions relate to—
    - (i) the use of investigatory powers or surveillance powers under the Regulation of Investigatory Powers Act 2000, or the use of similar powers overseas in the interests of national security;
    - (ii) the activities of the intelligence services in the United Kingdom or overseas, or the activities of similar services overseas;
    - (iii) investigations or other activities in connection with preventing the commission of terrorism offences or other involvement in terrorism-related activity in the United Kingdom or overseas.
- 86 Duty to consider reduction in damages payable by the Crown**
- (1) This section applies where—
    - (a) liability of the Crown to the claimant has been established by the court in national security proceedings,
    - (b) the court is permitted to award damages, payable by the Crown, to the claimant in those proceedings in respect of that liability,
    - (c) the Crown has made an application to the court for consideration of the factors mentioned in subsection (3) (the “national security factors”), and
    - (d) the court has not refused the application.
  - (2) Where this section applies, the court must, in deciding what remedy (if any) to award to the claimant in respect of the liability, consider the national security factors.
  - (3) The national security factors are—
    - (a) whether the claimant has committed wrongdoing that—
      - (i) involves the commission of a terrorism offence or other involvement in terrorism-related activity, and
      - (ii) has a connection with the conduct of the Crown complained of in the proceedings, and
    - (b) if the claimant has committed such wrongdoing—
      - (i) the extent of that wrongdoing and of its connection with the conduct of the Crown, and
      - (ii) the matters mentioned in subsection (4).
  - (4) The matters are whether and to what extent—
    - (a) there was a risk of harm the Crown sought to prevent or limit in carrying out the conduct complained of in the proceedings;
    - (b) there was a limitation on the ability of the Crown to prevent the conduct occurring, including on the basis of—
      - (i) the conduct having occurred overseas, or

- (ii) the conduct having been carried out in conjunction with a third party.
- (5) Where the court would (but for this subsection) award damages to the claimant of a particular amount, the court must decide whether, in light of its consideration of the national security factors, it is appropriate for it to reduce the amount of damages (including to nil). 5
- (6) But the court may not decide to reduce damages it would otherwise award to the claimant under section 8 of the Human Rights Act 1998 (judicial remedies).
- (7) Nothing in this section – 10
  - (a) prevents a court from considering the national security factors of its own motion where this section does not apply;
  - (b) affects any other power the court may have to reduce damages or to refuse to award damages, including by reason of – 15
    - (i) the claimant’s wrongdoing,
    - (ii) the claimant’s failure to mitigate any harm they have suffered, or
    - (iii) the claimant’s contribution to that harm;
  - (c) affects any existing rule of law otherwise limiting the scope of liability of the Crown. 20

## 87 Section 86: supplementary

- (1) An application for consideration of the national security factors may be made at any time before the final disposal of the national security proceedings (or, in Scotland, before final judgment in the proceedings within the meaning given by section 136 of the Courts Reform (Scotland) Act 2014 (asp 18)), including at a time before any liability of the Crown has been established. 25
- (2) The application must –
  - (a) set out how the Crown considers the national security factors to apply, and the Crown’s reasons;
  - (b) set out the extent to which the Crown considers that damages should be reduced in light of the national security factors, and the Crown’s reasons; 30
  - (c) otherwise be made in accordance with rules of court.
- (3) The court may refuse the application if, in the court’s view, consideration of the national security factors would – 35
  - (a) cause unreasonable delay to the national security proceedings, or
  - (b) unreasonably prejudice another party to the proceedings.

## 88 Sections 85 to 87: interpretation

In sections 85 to 87 and this section –

“claimant” means a person claiming a remedy of any kind against the Crown in national security proceedings; 40

- “court” includes a tribunal;
- “intelligence service” means –
- (a) the Security Service;
  - (b) the Secret Intelligence Service;
  - (c) the Government Communications Headquarters; 5
- “involvement in terrorism-related activity” has the same meaning as in the Terrorism Prevention and Investigation Measures Act 2011 (see section 4 of that Act);
- “national security factors” means the factors set out for consideration in section 86(3); 10
- “national security proceedings” has the meaning given by section 85;
- “rules of court” includes tribunal procedure rules;
- “terrorism offence” means any of the following (whenever committed) –
- (a) an offence listed in –
    - (i) Schedule A1 to the Sentencing Code (terrorism offences: England and Wales), or 15
    - (ii) Schedule 1A to the Counter-Terrorism Act 2008 (terrorism offences: Scotland and Northern Ireland);
  - (b) a service offence as respects which the corresponding civil offence is so listed; and for this purpose “service offence” and “corresponding civil offence” have the same meanings as in the Counter-Terrorism Act 2008 (see section 95 of that Act); 20
  - (c) an offence that –
    - (i) was abolished on or before the date this section comes into force, and 25
    - (ii) if committed on or after the date on which it was abolished, would have constituted an offence referred to in paragraph (a) or (b);
  - (d) an offence determined to have a terrorist connection under –
    - (i) section 69 of the Sentencing Code (in the case of an offender sentenced in England and Wales), including as applied by section 238(6) of the Armed Forces Act 2006, 30
    - (ii) section 30 of the Counter-Terrorism Act 2008 (in the case of an offender sentenced in Northern Ireland, or an offender sentenced in England and Wales before the Sentencing Code applied), or 35
    - (iii) section 32 of the Counter-Terrorism Act 2008 (in the case of an offender sentenced for a service offence before the Sentencing Code applied); 40
  - (e) an offence proved to have been aggravated by reason of having a terrorist connection under section 31 of the Counter-Terrorism Act 2008 (in the case of an offender sentenced in Scotland).

*Freezing and forfeiture of damages***89 Damages at risk of being used for the purposes of terrorism**

Schedule 16 makes provision in relation to damages at risk of being used for the purposes of terrorism.

*Legal aid*

5

**90 Legal aid for individuals convicted of terrorism offences**

(1) The Legal Aid, Sentencing and Punishment of Offenders Act 2012 is amended as follows.

(2) In section 9(1) (general cases), at the end insert –

“This is subject to section 9A (limits on access to civil legal services for individuals convicted of terrorism offences).” 10

(3) After section 9 insert –

**“9A Limits on access to civil legal services for individuals convicted of terrorism offences**

(1) Civil legal services described in Part 1 of Schedule 1 other than those in paragraph 12 of Schedule 1 (“general case services”) are only to be available to an individual convicted of a terrorism offence (an “offender”) under this Part if – 15

(a) the Director has made a determination under section 9(1)(b) (a “general case determination”) in relation to the offender (and has not withdrawn the determination), and 20

(b) the Director determines that one or more of Conditions A to G are met.

(2) Condition A is met where the offender was convicted of the terrorism offence before 19 February 2001. 25

(3) Condition B is met where the offender was under the age of 18 on the date they applied for the general case determination (the “application date”).

(4) Condition C is met where the offender was convicted of the terrorism offence more than 30 years before the application date. 30

(5) Condition D is met where the offender was convicted of the terrorism offence –

(a) when they were under the age of 18, and

(b) more than 15 years before the application date.

(6) Condition E is met where the offender applied for the general case determination before – 35

(a) the commencement date, or

- (b) the date on which they were convicted of the terrorism offence.
- (7) Condition F is met where the Director has made (and not withdrawn) an exceptional case determination, within the meaning given by section 10(3), in relation to the offender and the general case services.
- (8) Condition G is met where – 5
- (a) the general case services are those described in paragraph 11, 33, 34 or 35 of Schedule 1 (services in relation to domestic violence and housing), and
- (b) the offender – 10
- (i) was or is a victim of domestic violence occurring after the relevant date, or
- (ii) is at risk of being a victim of domestic violence.
- (9) In subsection (8) – 15
- “domestic violence” has the meaning given in paragraph 12(9) of Schedule 1;
- “relevant date” means the date five years before the application date.
- (10) Regulations may make provision specifying for the purposes of this section when an individual is deemed to have applied for a general case determination. 20
- (11) In this section, “terrorism offence” means any of the following (whenever committed) –
- (a) an offence listed in – 25
- (i) Schedule A1 to the Sentencing Code (terrorism offences: England and Wales), or
- (ii) Schedule 1A to the Counter-Terrorism Act 2008 (terrorism offences: Scotland and Northern Ireland);
- (b) a service offence as respects which the corresponding civil offence is so listed;
- (c) an offence that – 30
- (i) was abolished on or before the commencement date, and
- (ii) if committed on or after the date on which it was abolished, would have constituted an offence referred to in paragraph (a) or (b); 35
- (d) an offence determined to have a terrorist connection under –
- (i) section 69 of the Sentencing Code (in the case of an offender sentenced in England and Wales), including as applied by section 238(6) of the Armed Forces Act 2006, 40
- (ii) section 30 of the Counter-Terrorism Act 2008 (in the case of an offender sentenced in Northern Ireland, or an offender sentenced in England and Wales before the Sentencing Code applied), or

- (iii) section 32 of the Counter-Terrorism Act 2008 (in the case of an offender sentenced for a service offence before the Sentencing Code applied);
- (e) an offence proved to have been aggravated by reason of having a terrorist connection under section 31 of the Counter-Terrorism Act 2008 (in the case of an offender sentenced in Scotland). 5
- (12) Where an offender has been convicted of more than one terrorism offence, “the terrorism offence” in this section means the terrorism offence the offender has most recently been convicted of.
- (13) In this section – 10
- “commencement date” means the date on which section 90 of the National Security Act 2023 comes into force;
- “service offence” and “corresponding civil offence” have the same meanings as in the Counter-Terrorism Act 2008 (see section 95 of that Act). 15
- (14) Nothing in this section affects the Director’s ability to make determinations under section 10 (exceptional cases).”
- (4) In section 12 (determinations) –
- (a) in subsection (2), after “9” insert “, 9A”;
- (b) in subsection (5), after “9” insert “, 9A”. 20

## 91 Legal aid for individuals convicted of terrorism offences: data sharing

In the Legal Aid, Sentencing and Punishment of Offenders Act 2012, after section 9A (as inserted by section 90) insert –

### “9B Information relating to convictions for terrorism offences

- (1) The Director may make an information request to a competent authority. 25
- (2) An information request under this section may be made only for the purpose of identifying –
- (a) whether an individual who has applied for a determination under section 9 has been convicted of a terrorism offence, and 30
- (b) if the individual has been so convicted, details relating to that conviction.
- (3) An information request under this section may in particular request the disclosure of any of the following –
- (a) a relevant individual’s full name and any previous names; 35
- (b) a relevant individual’s address and any previous addresses;
- (c) a relevant individual’s date of birth;
- (d) a relevant individual’s national insurance number;
- (e) a number identifying a relevant individual in a system maintained by a body established in accordance with a 40



- collaboration agreement under section 22A of the Police Act 1996;
- (f) a number identifying a relevant individual in a system maintained by the Secretary of State for the management of offenders; 5
- (g) any convictions of a relevant individual;
- (h) any details relating to those convictions, including the date of conviction and any sentence imposed.
- (4) A competent authority may disclose to the Director information specified in an information request made under this section. 10
- (5) The Director may, for the purposes of deciding whether general case services are to be available to an individual under this Part, process any personal data in respect of a relevant individual disclosed by a competent authority to the Director under this section.
- (6) This section does not authorise the disclosure or processing of information if the disclosure or processing would contravene the data protection legislation (but, in determining whether a disclosure or processing would do so, the powers conferred by this section are to be taken into account). 15
- (7) In this section – 20
- “competent authority” has the same meaning as in section 30 of the Data Protection Act 2018;
- “general case services” and “terrorism offence” have the same meanings as in section 9A;
- “personal data”, “processing” and “the data protection legislation” have the same meanings as in section 3 of the Data Protection Act 2018; 25
- “relevant individual” means –
- (a) an individual who has applied for a determination under section 9, or 30
- (b) an individual who has been convicted of a terrorism offence.”

## 92 Legal aid in relation to terrorism prevention and investigation measures

- (1) In Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (civil legal services), in Part 1 (services), paragraph 45 is amended as follows. 35
- (2) Omit sub-paragraph (2).
- (3) For sub-paragraph (3) substitute –
- “(3) Sub-paragraph (1) is subject to –
- (a) the exclusions in Part 2 of this Schedule, with the exception of paragraph 18 of that Part, and 40
- (b) the exclusion in Part 3 of this Schedule.”

- (4) In sub-paragraph (4) omit the definition of “control order proceedings”.

*Amendments of Terrorism Act 2000*

**93 Amendments of Terrorism Act 2000**

Schedule 17 contains amendments to the Terrorism Act 2000.

**PART 6**

5

GENERAL PROVISIONS

**94 Duty to update the Intelligence and Security Committee of Parliament's memorandum of understanding**

- (1) The Prime Minister must ensure that the memorandum of understanding between the Prime Minister and the Intelligence and Security Committee of Parliament (the “ISC”) under section 2 of the Justice and Security Act 2013 (the “MoU”) is revised to reflect any changes to the intelligence or security activities of His Majesty’s Government as a result of this Act. 10
- (2) Any revisions to the MoU under subsection (1) must be agreed between the Prime Minister and the ISC in accordance with the process set out in section 2 of the Justice and Security Act 2013. 15
- (3) Any engagement between the Prime Minister and the ISC relating to revisions to the MoU under subsection (1) must commence within the 6-month period beginning with the day on which this Act is passed.

**95 Minor and consequential amendments**

20

Schedule 18 makes minor and consequential amendments.

**96 Power to make consequential amendments**

- (1) The Secretary of State may by regulations make provision that is consequential on any provision of this Act.
- (2) The provision that may be made by regulations under subsection (1) includes provision amending primary legislation. 25
- (3) “Primary legislation” means –
- (a) an Act of Parliament,
  - (b) a Measure or Act of Senedd Cymru,
  - (c) an Act of the Scottish Parliament, 30
  - (d) Northern Ireland legislation, or
  - (e) retained direct principal EU legislation,
- whenever passed or made.

## 97 Regulations

- (1) A power to make regulations under any provision of this Act includes power to make—
  - (a) consequential, supplementary, incidental, transitional or saving provision; 5
  - (b) different provision for different purposes or different areas.
- (2) Subsection (1) does not apply to regulations under section 101 or 102.
- (3) Regulations under this Act are to be made by statutory instrument.
- (4) Regulations under this Act are subject to annulment in pursuance of a resolution of either House of Parliament, except— 10
  - (a) regulations under section 101 or 102;
  - (b) regulations to which subsection (6) applies;
  - (c) regulations under paragraph 46 of Schedule 6.
- (5) A statutory instrument containing (whether alone or with other provision) regulations to which subsection (6) applies may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 15
- (6) This subsection applies to—
  - (a) regulations under section 66(3);
  - (b) regulations under section 67 specifying a foreign power, or a person other than a foreign power, who is not specified immediately before the regulations are made; 20
  - (c) regulations under section 69(5);
  - (d) regulations under section 80(1)(a);
  - (e) regulations under section 96 which contain provision within section 96(2); 25
  - (f) regulations under paragraph 3(2)(b) of Schedule 6;
  - (g) regulations under paragraph 4(3) of Schedule 6;
  - (h) regulations under paragraph 15 of Schedule 13;
  - (i) regulations under paragraph 27 of Schedule 14; 30
  - (j) regulations under paragraph 8 of Schedule 15.
- (7) A statutory instrument containing regulations under paragraph 46 of Schedule 6 must be laid before Parliament as soon as practicable after being made.
- (8) Regulations contained in a statutory instrument laid before Parliament under subsection (7) cease to have effect at the end of the period of 20 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament. 35
- (9) In calculating the period of 20 days no account is to be taken of any whole days that fall within a period during which—
  - (a) Parliament is dissolved or prorogued, or 40
  - (b) either House of Parliament is adjourned for more than four days.

- (10) Subsections (8) and (9) do not apply to regulations under paragraph 46 of Schedule 6 which revoke regulations under that paragraph.
- (11) If a draft of a statutory instrument containing regulations under section 66, 67 or 69 would, apart from this subsection, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument. 5

## 98 Crown application

- (1) This Act binds the Crown, subject as follows.
- (2) No contravention by the Crown of a provision of this Act makes the Crown criminally liable. 10
- (3) Subsection (2) does not affect the criminal liability of persons in the service of the Crown.
- (4) An amendment or repeal made by this Act binds the Crown to the same extent as the provision amended or repealed.

## 99 Extent in the United Kingdom 15

- (1) This Act extends to England and Wales, Scotland and Northern Ireland, subject to –
- (a) subsection (2), and
  - (b) section 100.
- (2) An amendment or repeal made by this Act has the same extent in the United Kingdom as the provision to which it relates. 20

## 100 Extent outside the United Kingdom

- (1) Section 23 extends to –
- (a) the Isle of Man, and
  - (b) the British Overseas Territories, except Gibraltar. 25
- (2) His Majesty may by Order in Council provide for any provision of this Act other than section 23 to extend (with or without modifications) to the Sovereign Base Areas of Akrotiri and Dhekelia.
- (3) An Order in Council under subsection (2) may make consequential, supplementary, incidental, transitional or saving provision. 30
- (4) The power under section 384(1) of the Armed Forces Act 2006 may be exercised so as to extend to any of the Channel Islands (with or without modifications) the amendment of section 238 of the Armed Forces Act 2006 made by section 23.
- (5) The power under section 384(2) of the Armed Forces Act 2006 may be exercised so as to modify section 238 of the Armed Forces Act 2006, as 35

amended by section 23, as it extends to the Isle of Man or a British overseas territory other than Gibraltar.

- (6) The power in section 15(3) of the Official Secrets Act 1989 may be exercised so as to extend to any of the Channel Islands, the Isle of Man or a British Overseas Territory any amendment or repeal made by this Act of any provision of that Act. 5
- (7) The power under section 415 of the Sentencing Act 2020 may be exercised so as to extend to any of the Channel Islands or the Isle of Man (with or without modifications) any amendment or repeal made by this Act of any provision of that Act. 10

### **101 Commencement**

- (1) This Act comes into force on such day as the Secretary of State may by regulations appoint, subject to subsection (2).
- (2) Sections 96 to 103 come into force on the day on which this Act is passed.
- (3) A power to make regulations under this section includes power to appoint different days for different purposes or areas. 15

### **102 Transitional and saving provision**

- (1) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.
- (2) A power to make regulations under this section includes power to make different provision for different purposes or areas. 20

### **103 Short title**

This Act may be cited as the National Security Act 2023.

## SCHEDULES

## SCHEDULE 1

Section 16

## FOREIGN INTERFERENCE IN ELECTIONS

## PART 1

## RELEVANT ELECTORAL OFFENCES

5

**Offences under the Electoral Law Act (Northern Ireland) 1962 (c.14 (N.I.))**

<i>An offence under any of these provisions of Schedule 9 to the Electoral Law Act (Northern Ireland) 1962 (c.14 (N.I.))</i>	<i>Maximum term of imprisonment</i>	
Paragraph 1 (bribery)	4 years	
Paragraph 2 (treating)	4 years	10
Paragraph 3 (undue influence)	4 years	
Paragraph 4 (personation)	7 years	
Paragraph 4A (postal and proxy votes)	7 years	
Paragraph 5A (false statements in nomination papers etc)	4 years	
Paragraph 26(2) (tampering with nomination papers etc)	7 years	15

**Offences under the Representation of the People Act 1983**

<i>An offence under any of these provisions of the Representation of the People Act 1983</i>	<i>Maximum term of imprisonment</i>	
Section 60 (personation)	7 years	
Section 62A (postal and proxy votes)	7 years	20
Section 62B (postal and proxy votes: Scottish local government elections)	7 years	
Section 65 (tampering with nomination papers etc)	7 years	
Section 65A (false statements in nomination papers etc)	4 years	
Section 65B (false information in nomination papers etc: Scottish local government elections)	4 years	25
Section 112A (handling of postal voting documents by political campaigners)	7 years	
Section 113 (bribery)	4 years	

<i>An offence under any of these provisions of the Representation of the People Act 1983</i>	<i>Maximum term of imprisonment</i>	
Section 114 (treating)	4 years	
Section 114A (undue influence)	4 years	
Section 115 (undue influence in a local government election in Scotland or Wales)	4 years	5

### **Offences under the Political Parties, Elections and Referendums Act 2000**

<i>An offence under any of these provisions of the Political Parties, Elections and Referendums Act 2000</i>	<i>Maximum term of imprisonment</i>	
Section 54(7) (information about donors)	4 years	10
Section 54A(5) (false declaration about source of donation)	4 years	
Section 54B(3) (false declaration as to residence condition)	4 years	
Section 56(3), (3B) or (4) (failure to return donations)	4 years	
Section 61 (evading restrictions on donations)	4 years	
Section 65(4) (failure to comply with requirements about recording donations)	4 years	15
Section 66(5) (false declaration in donation report)	4 years	
Section 89A (4) or (5) (incurring controlled expenditure in contravention of restriction)	2 years	
Section 148 (general offences)	4 years	20
In Schedule 7 (donations to individuals and members associations) – paragraph 6A(5) (false declaration as to source of donation) paragraph 6B(3) (false declaration as to residence condition)	4 years	
In Schedule 7A (loans to individuals and members associations) – paragraph 4A(5) (false declaration as to residence condition) paragraph 8(9) (facilitating controlled transaction involving unauthorised participant)	4 years	25
In Schedule 11 (donations to recognised third parties) – paragraph 6A(5) (false declaration as to source of donation) paragraph 6B(3) (false declaration as to residence condition)	4 years	30
In Schedule 15 (donations to permitted participants) – paragraph 6A(5) (false declaration as to source of donation) paragraph 6B(3) (false declaration as to residence condition)	4 years	35

**PART 2**

## AMENDMENTS

*Electoral Law Act (Northern Ireland) 1962 (c.14 (N.I.))*

- 1 (1) The Electoral Law Act (Northern Ireland) 1962 (c.14 (N.I.)) is amended as follows. 5
- (2) In section 105 (restrictions on summary prosecution) after subsection (8) insert –
- “(9) A corrupt practice or electoral offence in relation to which section 16 of the National Security Act 2023 (which provides for higher sentences in cases of foreign interference) applies is triable only on indictment.” 10
- (3) In section 106 (prosecution of offences disclosed on election petition) after subsection (1) insert –
- “(1A) The duty in subsection (1) to obey a direction given by an election court does not apply to a direction with respect to the prosecution of a corrupt practice or electoral offence in relation to which the Director has reasonable grounds to believe section 16 of the National Security Act 2023 (which provides for higher sentences in cases of foreign interference) applies.” 15
- (4) In section 108 (penalties for corrupt practices) after subsection (4) insert – 20
- “(5) This section does not apply where section 16 of the National Security Act 2023 (which provides for higher sentences in cases of foreign interference) applies in relation to the corrupt practice.”
- (5) In section 111 (penalties for electoral offences) after subsection (2A) insert –
- “(2B) Subsections (1) to (2A) do not apply where section 16 of the National Security Act 2023 (which provides for higher sentences in cases of foreign interference) applies in relation to the electoral offence.” 25
- (6) In section 112(1H) (incapacities resulting from convictions) after “109” insert “or under section 16 of the National Security Act 2023 (which provides for higher sentences in cases of foreign interference)”. 30
- (7) In section 118 (time limit for prosecutions) after subsection (3) insert –
- “(4) This section does not apply where section 16 of the National Security Act 2023 (which provides for higher sentences in cases of foreign interference) applies in relation to the electoral misdemeanour.”

*Representation of the People Act 1983 (c. 2)*

35

- 2 (1) The Representation of the People Act 1983 is amended as follows.



- (2) In section 65 (offence of tampering with nomination papers etc) after subsection (4) insert—
- “(5) Subsections (3) and (4) do not apply where section 16 of the National Security Act 2023 (which provides for higher sentences in cases of foreign interference) applies in relation to the offence.” 5
- (3) In section 168 (penalties for corrupt practices) after subsection (1) insert—
- “(1A) Subsection (1) does not apply where section 16 of the National Security Act 2023 (which provides for higher sentences in cases of foreign interference) applies in relation to the corrupt practice.”
- (4) In section 176 (time limit for prosecutions) after subsection (1) insert— 10
- “(1A) Subsection (1) does not apply where section 16 of the National Security Act 2023 (which provides for higher sentences in cases of foreign interference) applies in relation to the offence.”

*Political Parties, Elections and Referendums Act 2000 (c. 41)*

- 3 (1) The Political Parties, Elections and Referendums Act 2000 is amended as follows. 15
- (2) In section 150 (punishment of offences) at the end insert—
- “(6) Schedule 20 does not apply where section 16 of the National Security Act 2023 (which provides for higher sentences in cases of foreign interference) applies in relation to the offence.” 20
- (3) In section 147 (civil sanctions)—
- (a) the existing text becomes subsection (1);
- (b) after that subsection insert—
- “(2) Schedule 19C does not apply in relation to the commission of an offence under this Act where section 16 of the National Security Act 2023 (which provides for higher sentences in cases of foreign interference) applies in relation to the offence.” 25

SCHEDULE 2

Section 24

POWERS OF ENTRY, SEARCH AND SEIZURE

**PART 1**

ENGLAND AND WALES AND NORTHERN IRELAND

<i>Introductory</i>	5
<p>1 (1) This Part of this Schedule applies in England and Wales and in Northern Ireland.</p> <p>(2) In this Part of this Schedule “relevant act” means—</p> <p style="padding-left: 2em;">(a) an offence under this Part of this Act, other than an offence under—</p> <p style="padding-left: 4em;">(i) section 5 (unauthorised entry to a prohibited place);</p> <p style="padding-left: 4em;">(ii) section 6 (prohibited place: failure to comply with order of constable);</p> <p style="padding-left: 4em;">(iii) section 11 (cordoned area: failure to comply with order of constable);</p> <p style="padding-left: 4em;">(iv) this Schedule;</p> <p style="padding-left: 4em;">(v) Schedule 3 (disclosure orders);</p> <p style="padding-left: 4em;">(vi) Schedule 4 (customer information orders);</p> <p style="padding-left: 2em;">(b) an act or threat within section 34(3)(b) or (c).</p>	<p>10</p> <p>15</p>
<i>Material other than confidential material: search, seizure and retention</i>	
<p>2 (1) A constable may make an application for the issue of a warrant under this paragraph—</p> <p style="padding-left: 2em;">(a) in England and Wales, to a justice of the peace;</p> <p style="padding-left: 2em;">(b) in Northern Ireland, to a lay magistrate.</p> <p>(2) The justice of the peace or lay magistrate may grant the application if satisfied that—</p> <p style="padding-left: 2em;">(a) conditions 1 and 2 are met, and</p> <p style="padding-left: 2em;">(b) in the case of an application for an all premises warrant, condition 3 is met.</p> <p>(3) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed.</p> <p>(4) Condition 2 is that there are reasonable grounds for suspecting that there is on the relevant premises material which—</p> <p style="padding-left: 2em;">(a) is likely to be evidence that a relevant act has been, or is about to be, committed, and</p> <p style="padding-left: 2em;">(b) does not consist of or include confidential material.</p>	<p>20</p> <p>25</p> <p>30</p> <p>35</p>

- (5) Condition 3 is that it is not reasonably practicable to specify in the application all the premises which the person specified in the application occupies or controls and which might need to be searched.
- (6) A warrant under this paragraph is a warrant authorising any constable—
  - (a) to enter the relevant premises, 5
  - (b) to search the relevant premises and any person found there, and
  - (c) to seize and retain any material found on a search under paragraph (b) which is likely to be evidence that a relevant act has been, or is about to be, committed.
- (7) A warrant under this paragraph does not authorise— 10
  - (a) the seizure and retention of confidential material, or
  - (b) a constable to require a person to remove any clothing in public except for headgear, footwear, an outer coat or jacket and gloves.
- (8) In this paragraph the “relevant premises” are—
  - (a) one or more sets of premises specified in the application (in which case the application is for a “specific premises warrant”), or 15
  - (b) any premises occupied or controlled by a person specified in the application, including such sets of premises as are so specified (in which case the application is for an “all premises warrant”).

*Confidential material: production orders* 20

- 3 (1) A constable may apply to a judge for an order under this paragraph.
- (2) The judge may grant the application if satisfied that conditions 1 to 4 are met.
- (3) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed. 25
- (4) Condition 2 is that there are reasonable grounds for suspecting that a person specified in the application has in their possession, custody or control material which—
  - (a) is likely to be evidence that a relevant act has been, or is about to be, committed, 30
  - (b) consists of or includes confidential material, and
  - (c) does not include items subject to legal privilege.
- (5) Condition 3 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed. 35
- (6) Condition 4 is that there are reasonable grounds for believing that it is in the public interest that the material should be produced or access to it should be given having regard to—
  - (a) the benefit likely to accrue to the investigation if the material is obtained, and 40

- (b) the circumstances under which the person concerned has any of the material in their possession, custody or control.
- (7) An order under this paragraph is an order that the person specified in the application must do any of the following—
- (a) produce to a constable within a specified period for seizure and retention any material which the person has in their possession, custody or control and to which the application relates; 5
- (b) give a constable access to any material of the kind mentioned in paragraph (a) within a specified period;
- (c) state to the best of the person’s knowledge and belief the location of the material to which the application relates if it is not in, and will not come into, the person’s possession, custody or control within the period specified under paragraph (a) or (b). 10
- (8) The specified period is to be the period of 7 days beginning with the date of the order, unless it appears to the judge that a different period would be appropriate in the particular circumstances of the application. 15
- 4 (1) A constable may apply to a judge for an order under this paragraph.
- (2) The judge may grant the application if satisfied that conditions 1 to 5 are met.
- (3) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed. 20
- (4) Condition 2 is that there are reasonable grounds for suspecting that, within the period of 28 days beginning with the date of the order, there is likely to come into existence material which—
- (a) is evidence that a relevant act has been, or is about to be, committed, 25
- (b) consists of or includes confidential material, and
- (c) does not include items subject to legal privilege.
- (5) Condition 3 is that there are reasonable grounds for suspecting that a person specified in the application is likely within that period to have in their possession, custody or control any of the material to which the application relates. 30
- (6) Condition 4 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed. 35
- (7) Condition 5 is that there are reasonable grounds for believing that it is in the public interest that the material should be produced or access to it should be given having regard to—
- (a) the benefit likely to accrue to the investigation if the material is obtained, and 40
- (b) the circumstances under which the person concerned is likely to have any of the material in their possession, custody or control.

- (8) An order under this paragraph is an order that the person specified in the application must do any of the following –
- (a) notify a named constable as soon as reasonably practicable after any material to which the application relates comes into the person’s possession, custody or control; 5
  - (b) produce to a constable within a specified period for seizure and retention any material to which the application relates which comes into the person’s possession, custody or control;
  - (c) give a constable access to any material of the kind mentioned in paragraph (b) within a specified period; 10
  - (d) state to the best of the person’s knowledge and belief the location of the material to which the application relates if it is not in, and will not come into, the person’s possession, custody or control within the period of 28 days beginning with the date of the order.
- (9) The specified period is to be the period of 7 days beginning with the date of the notification required by sub-paragraph (8)(a), unless it appears to the judge that a different period would be appropriate in the particular circumstances of the application. 15

*Production orders: supplementary provision*

- 5 An application for an order under paragraph 3 or 4 may be made without notice to a judge in chambers. 20
- 6 (1) An order under paragraph 3 or 4 –
- (a) does not confer any right to production of, or access to, items subject to legal privilege, and
  - (b) has effect despite any restriction on the disclosure of information imposed by an enactment or otherwise. 25
- (2) Where the material consists of information stored in electronic form –
- (a) an order under paragraph 3(7)(a) or 4(8)(b) has effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, or from which it can readily be produced in a visible and legible form, and 30
  - (b) an order under paragraph 3(7)(b) or 4(8)(c) has effect as an order to give a constable access to the material in a form in which it is visible and legible.
- 7 (1) An order under paragraph 3 or 4 may be made in relation to material in the possession, custody or control of a government department or a Northern Ireland department. 35
- (2) Where an order is made by virtue of sub-paragraph (1) –
- (a) it is to be served as if the proceedings were civil proceedings against the department, and 40

- (b) it may require any officer of the department, whether named in the order or not, who may for the time being have in their possession, custody or control the material concerned, to comply with the order.
- (3) In this paragraph “government department” means an authorised government department for the purposes of the Crown Proceedings Act 1947. 5
- 8 An order under paragraph 3 or 4 has effect as if it were an order of the court.

*Confidential material: search, seizure and retention*

- 9 (1) A constable may apply to a judge for the issue of a warrant under this paragraph. 10
- (2) The judge may grant the application if satisfied that an order made under paragraph 3 or 4 in relation to material on the relevant premises has not been complied with.
- (3) The judge may also grant the application if satisfied that – 15
- (a) conditions 1 to 5 are met, and
- (b) in the case of an application for an all premises warrant, condition 6 is met.
- (4) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed. 20
- (5) Condition 2 is that there are reasonable grounds for suspecting that there is on the relevant premises material which –
- (a) is likely to be evidence that a relevant act has been, or is about to be, committed,
- (b) consists of or includes confidential material, and 25
- (c) does not include items subject to legal privilege.
- (6) Condition 3 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed. 30
- (7) Condition 4 is that there are reasonable grounds for believing that it is in the public interest that the material should be obtained having regard to –
- (a) the benefit likely to accrue to the investigation if the material is obtained, and
- (b) the circumstances under which the person concerned has any of the material in their possession, custody or control. 35
- (8) Condition 5 is that any of the following apply –
- (a) it is not practicable to communicate with any person entitled to produce the material;

- (b) it is not practicable to communicate with any person entitled to grant access to the material;
  - (c) the investigation may be seriously prejudiced unless a constable can secure immediate access to the material.
- (9) Condition 6 is that it is not reasonably practicable to specify in the application all the premises which the person specified in the application occupies or controls and which might need to be searched. 5
- (10) A warrant under this paragraph is a warrant authorising any constable –
  - (a) to enter the relevant premises,
  - (b) to search the relevant premises and any person found there, and 10
  - (c) to seize and retain any material found on a search under paragraph (b) which is likely to be evidence that a relevant act has been, or is about to be, committed.
- (11) A warrant under this paragraph does not authorise –
  - (a) the seizure and retention of items subject to legal privilege, or 15
  - (b) a constable to require a person to remove any clothing in public except for headgear, footwear, an outer coat or jacket and gloves.
- (12) In this paragraph the “relevant premises” are –
  - (a) one or more sets of premises specified in the application (in which case the application is for a “specific premises warrant”), or 20
  - (b) any premises occupied or controlled by a person specified in the application, including such sets of premises as are so specified (in which case the application is for an “all premises warrant”).

### *Explanations*

- 10 (1) A constable may apply to a judge for an order under this paragraph requiring any person specified in the order to provide an explanation of material – 25
  - (a) seized under a warrant under paragraph 2 or 9, or
  - (b) produced or made available to a constable under paragraph 3 or 4.
- (2) An application for an order under this paragraph may be made without notice to a judge in chambers. 30
- (3) An order under this paragraph may not require any person to disclose any information which they would be entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the High Court.
- (4) But a lawyer may be required to provide the name and address of their client. 35
- (5) A statement by a person in response to a requirement imposed by an order under this paragraph –
  - (a) may be made orally or in writing, and

- (b) may be used in evidence against the person only on a prosecution for an offence under paragraph 11.
- (6) An order under this paragraph has effect as if it were an order of the court.
- 11 (1) A person commits an offence if, in purported compliance with an order under paragraph 10, they – 5
- (a) make a statement which they know to be false or misleading in a material particular, or
- (b) recklessly make a statement which is false or misleading in a material particular.
- (2) A person who commits an offence under sub-paragraph (1) is liable – 10
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both),
- (b) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine (or both); 15
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both).

*Urgent cases*

- 12 (1) A police officer of at least the rank of superintendent may by a written order signed by them give to any constable the authority which may be given by – 20
- (a) a warrant under paragraph 2, or
- (b) a warrant under paragraph 9,
- but subject to sub-paragraph (2). 25
- (2) An order under this paragraph giving the authority which may be given by a warrant under paragraph 9 does not authorise a constable to retain confidential journalistic material.
- (3) An officer may not make an order under this paragraph unless the officer – 30
- (a) is satisfied as mentioned in paragraph 2(2) or paragraph 9(2) or (3) (as the case may be), and
- (b) has reasonable grounds for believing that the case is one of great emergency and that immediate action is necessary.
- (4) Where an order is made under this paragraph particulars of the case must be notified as soon as is reasonably practicable to the Secretary of State. 35
- (5) A person who wilfully obstructs a search under this paragraph commits an offence.
- (6) A person who commits an offence under sub-paragraph (5) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale (or both). 40



- 13 (1) This paragraph applies where confidential journalistic material is seized by virtue of an order under paragraph 12 giving the authority which may be given by a warrant under paragraph 9.
- (2) A constable may apply to a judge for the issue of a warrant under this paragraph. 5
- (3) An application under sub-paragraph (2) must be made as soon as reasonably practicable after the material is seized.
- (4) The judge may grant an application under sub-paragraph (2) if satisfied that conditions 1 to 3 are met.
- (5) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed. 10
- (6) Condition 2 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed. 15
- (7) Condition 3 is that there are reasonable grounds for believing that it is in the public interest that the material should be retained having regard to the benefit likely to accrue to the investigation if the material is retained.
- (8) A warrant under this paragraph is a warrant authorising the retention of confidential journalistic material. 20
- (9) A warrant under this paragraph may impose conditions on the retention and use of the material.
- (10) If the judge does not grant an application for the issue of a warrant under this paragraph in relation to any of the material to which the application relates, the judge may direct that the material is— 25
- (a) returned to the person from whom it was seized, or
  - (b) destroyed.
- 14 (1) If a police officer of at least the rank of superintendent has reasonable grounds for believing that the case is one of great emergency the officer may by a written notice signed by them require any person specified in the notice to provide an explanation of any material seized in pursuance of an order under paragraph 12. 30
- (2) Paragraph 10(3) to (5) and paragraph 11 apply to a notice under this paragraph as they apply to an order under paragraph 10.
- (3) A person who fails to comply with a notice under this paragraph commits an offence. 35
- (4) It is a defence for a person charged with an offence under sub-paragraph (3) to show that they had a reasonable excuse for their failure.
- (5) A person is taken to have shown that they had a reasonable excuse for their failure if— 40

- (a) sufficient evidence of that fact is adduced to raise an issue with respect to it, and
  - (b) the contrary is not proved beyond reasonable doubt.
- (6) A person guilty of an offence under sub-paragraph (3) is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the maximum term for summary offences or a fine (or both); 5
  - (b) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both). 10

#### *Application of PACE*

- 15 (1) For the purposes of the provisions mentioned in sub-paragraph (2)—
- (a) an investigation into whether a relevant act has been, or is about to be, committed is to be treated as an investigation into, or in connection with, an offence, and 15
  - (b) material produced in pursuance of an order under paragraph 3 or 4 is to be treated as if it were material seized by a constable.
- (2) The provisions are—
- (a) sections 21 and 22 of the Police and Criminal Evidence Act 1984;
  - (b) Articles 23 and 24 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)), 20
- (seized material: access, copying and retention).

#### *Procedure rules*

- 16 (1) Criminal Procedure Rules may make provision about proceedings in England and Wales relating to a warrant or order under this Part of this Schedule (other than an order under paragraph 12). 25
- (2) Crown Court rules and magistrates’ courts rules may make provision about proceedings in Northern Ireland relating to a warrant or order under this Part of this Schedule (other than an order under paragraph 12).
- (3) The provision which may be made by virtue of this paragraph includes in particular provision about the variation or discharge of an order 30

#### *Interpretation*

- 17 (1) This paragraph applies for the interpretation of this Part of this Schedule.
- (2) “Confidential material” means—
- (a) confidential journalistic material, and 35
  - (b) protected material.
- (3) “Confidential journalistic material” has the same meaning as in the Investigatory Powers Act 2016 (see section 264(6) and (7) of that Act).

- (4) “Protected material” –
- (a) in relation to England and Wales, means –
    - (i) items subject to legal privilege,
    - (ii) material falling within section 11(1)(a) or (b) of the Police and Criminal Evidence Act 1984 (certain personal records, human tissue or tissue fluid held in confidence), or 5
    - (iii) material to which section 14(2) of that Act applies (other material acquired in course of a trade etc that is held in confidence);
  - (b) in relation to Northern Ireland, means – 10
    - (i) items subject to legal privilege;
    - (ii) material falling with Article 13(1)(a) or (b) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (certain personal records, human tissue or tissue fluid held in confidence), or 15
    - (iii) material to which Article 16(2) of that Order applies (other material acquired in the course of a trade etc that is held in confidence).
- (5) “Items subject to legal privilege” –
- (a) in relation to England and Wales, has the meaning given by section 10 of the Police and Criminal Evidence Act 1984; 20
  - (b) in relation to Northern Ireland, has the meaning given by Article 12 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).
- (6) “Judge” – 25
- (a) in relation to England and Wales, means a judge entitled to exercise the jurisdiction of the Crown Court;
  - (b) in relation to Northern Ireland, means a judge of the Crown Court.

## PART 2

### SCOTLAND 30

#### *Introductory*

- 18 (1) This Part of this Schedule applies in Scotland.
- (2) In this Part of this Schedule “relevant act” means –
- (a) an offence under this Part of this Act, other than an offence under –
    - (i) section 5 (unauthorised entry to a prohibited place); 35
    - (ii) section 6 (prohibited place: failure to comply with order of constable);
    - (iii) section 11 (cordoned area: failure to comply with order of constable);
    - (iv) this Schedule; 40

- (v) Schedule 3 (disclosure orders);
- (vi) Schedule 4 (customer information orders);
- (b) an act or threat within section 34(3)(b) or (c).

*Production orders*

- 19 (1) The procurator fiscal may apply to a sheriff for an order under this paragraph. 5
- (2) The sheriff may grant the application if satisfied that conditions 1 to 4 are met.
- (3) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed. 10
- (4) Condition 2 is that there are reasonable grounds for suspecting that a person specified in the application has in their possession, custody or control material which is likely to be evidence that a relevant act has been, or is about to be, committed.
- (5) Condition 3 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed. 15
- (6) Condition 4 is that there are reasonable grounds for believing that it is in the public interest that the material should be produced or access to it should be given having regard to – 20
- (a) the benefit likely to accrue to the investigation if the material is obtained, and
  - (b) the circumstances under which the person concerned has any of the material in their possession, custody or control. 25
- (7) An order under this paragraph is an order that the person specified in the application must do any of the following –
- (a) produce to a constable within a specified period for seizure and retention any material which the person has in their possession, custody or control and to which the application relates; 30
  - (b) give a constable access to any material of the kind mentioned in paragraph (a) within a specified period;
  - (c) state to the best of the person’s knowledge and belief the location of the material to which the application relates if it is not in, and will not come into, the person’s possession, custody or control within the period specified under paragraph (a) or (b). 35
- (8) The specified period is to be the period of 7 days beginning with the date of the order, unless it appears to the sheriff that a different period would be appropriate in the particular circumstances of the application.
- (9) Where the sheriff makes an order under sub-paragraph (7)(b) in relation to material on any premises, they may, on the application of the procurator 40

fiscal, order any person who appears to them to be entitled to grant entry to the premises to allow any constable to enter the premises to obtain access to the material.

- 20 (1) The procurator fiscal may apply to a sheriff for an order under this paragraph. 5
- (2) The sheriff may grant the application if satisfied that conditions 1 to 5 are met.
- (3) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed.
- (4) Condition 2 is that there are reasonable grounds for suspecting that, within the period of 28 days beginning with the date of the order, there is likely to come into existence material which is evidence that a relevant act has been, or is about to be, committed. 10
- (5) Condition 3 is that there are reasonable grounds for suspecting that a person specified in the application is likely within that period to have in their possession, custody or control any of the material to which the application relates. 15
- (6) Condition 4 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed. 20
- (7) Condition 5 is that there are reasonable grounds for believing that it is in the public interest that the material should be produced or access to it should be given having regard to—
- (a) the benefit likely to accrue to the investigation if the material is obtained, and 25
- (b) the circumstances under which the person concerned is likely to have any of the material in their possession, custody or control.
- (8) An order under this paragraph is an order that the person specified in the application must do any of the following— 30
- (a) notify a named constable as soon as reasonably practicable after any material to which the application relates comes into the person’s possession, custody or control;
- (b) produce to a constable within a specified period for seizure and retention any material to which the application relates which comes into the person’s possession, custody or control; 35
- (c) give a constable access to any material of the kind mentioned in paragraph (b) within a specified period;
- (d) state to the best of the person’s knowledge and belief the location of the material to which the application relates if it is not in, and will not come into, the person’s possession, custody or control within the period of 28 days beginning with the date of the order. 40

- (9) The specified period is to be the period of 7 days beginning with the date of the notification required by sub-paragraph (8)(a), unless it appears to the sheriff that a different period would be appropriate in the particular circumstances of the application.
- (10) Where the sheriff makes an order under sub-paragraph (8)(c) in relation to material on any premises, they may, on the application of the procurator fiscal, order any person who appears to them to be entitled to grant entry to the premises to allow any constable to enter the premises to obtain access to the material. 5
- Production orders: supplementary* 10
- 21 An application for an order under paragraph 19 or 20 may be made without notice to a sheriff in chambers.
- 22 (1) An order under paragraph 19 or 20 has effect despite any obligation as to secrecy or other restriction on the disclosure of information imposed by an enactment or otherwise. 15
- (2) Where the material consists of information stored in electronic form—
- (a) an order under paragraph 19(7)(a) or 20(8)(b) has effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, or from which it can readily be produced in a visible and legible form, and 20
- (b) an order under paragraph 19(7)(b) or 20(8)(c) has effect as an order to give a constable access to the material in a form in which it is visible and legible.
- 23 (1) An order under paragraph 19 or 20 may be made in relation to material in the possession, custody or control of a government department. 25
- (2) Where an order is made by virtue of sub-paragraph (1)—
- (a) it is to be served as if the proceedings were civil proceedings against the department, and
- (b) it may require any officer of the department, whether named in the order or not, who may for the time being have in their possession, custody or control the material concerned, to comply with the order. 30
- (3) In this paragraph “government department” means—
- (a) a public department within the meaning of the Crown Suits (Scotland) Act 1857, and
- (b) any part of the Scottish Administration. 35
- 24 (1) Without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995, provision may be made by the High Court of Justiciary by Act of Adjournal as to—
- (a) the recall and variation of orders under paragraph 19 or 20; and
- (b) proceedings relating to such orders. 40

- (2) The following provisions have effect pending the coming into force of an Act of Adjournal under sub-paragraph (1)–
- (a) an order under paragraph 19 or 20 may be recalled or varied by a sheriff on a written application made to the sheriff by any person subject to the order; 5
  - (b) unless the sheriff otherwise directs on grounds of urgency, the applicant must, not less than 48 hours before making the application, send a copy of it and a notice in writing of the time and place where the application is to be made to the procurator fiscal on whose application the order was made. 10

*Search, seizure and retention*

- 25 (1) The procurator fiscal may apply to a sheriff for the issue of a warrant under this paragraph.
- (2) The sheriff may grant the application if satisfied that an order made under paragraph 19 or 20 in relation to material on the relevant premises has not been complied with. 15
- (3) The sheriff may also grant the application if satisfied that–
- (a) conditions 1 to 5 are met, and
  - (b) in the case of an application for an all premises warrant, condition 6 is met. 20
- (4) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed.
- (5) Condition 2 is that there are reasonable grounds for suspecting that there is on the relevant premises material which is likely to be evidence that a relevant act has been, or is about to be, committed. 25
- (6) Condition 3 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed.
- (7) Condition 4 is that there are reasonable grounds for believing that it is in the public interest that the material should be obtained having regard to– 30
- (a) the benefit likely to accrue to the investigation if the material is obtained, and
  - (b) the circumstances under which the person concerned has any of the material in their possession, custody or control. 35
- (8) Condition 5 is that any of the following apply–
- (a) it is not practicable to communicate with any person entitled to produce the material;
  - (b) it is not practicable to communicate with any person entitled to grant access to the material; 40

- (c) the investigation may be seriously prejudiced unless a constable can secure immediate access to the material.
- (9) Condition 6 is that it is not reasonably practicable to specify in the application all the premises which the person specified in the application occupies or controls and which might need to be searched. 5
- (10) A warrant under this paragraph is a warrant authorising any constable –
  - (a) to enter the relevant premises,
  - (b) to search the relevant premises and any person found there, and
  - (c) to seize and retain any material found on a search under paragraph (b) which is likely to be evidence that a relevant act has been, or is about to be, committed. 10
- (11) In this paragraph the “relevant premises” are –
  - (a) one or more sets of premises specified in the application (in which case the application is for a “specific premises warrant”), or
  - (b) any premises occupied or controlled by a person specified in the application, including such sets of premises as are so specified (in which case the application is for an “all premises warrant”). 15

#### *Explanations*

- 26 (1) The procurator fiscal may apply to a sheriff for an order under this paragraph requiring any person specified in the order to provide an explanation of material – 20
  - (a) seized under a warrant under paragraph 25, or
  - (b) produced or made available to a constable under paragraph 19 or 20.
- (2) An application for an order under this paragraph may be made without notice to a sheriff in chambers. 25
- (3) Without prejudice to paragraph 30, an order under this paragraph may require a lawyer to provide the name and address of their client.
- (4) A statement by a person in response to a requirement imposed by an order under this paragraph may only be used in evidence against the person – 30
  - (a) on a prosecution for an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995, or
  - (b) on a prosecution for some other offence where in giving evidence they make a statement inconsistent with it.
- (5) Paragraphs 23 and 24 apply to orders under this paragraph as they apply to orders made under paragraph 19 or 20. 35

#### *Urgent cases*

- 27 (1) A police officer of at least the rank of superintendent may by a written order signed by them give to any constable the authority which may be given by a warrant under paragraph 25 (subject to sub-paragraph (2)). 40



- (2) An order under this paragraph does not authorise a constable to retain confidential journalistic material.
- (3) An officer may not make an order under this paragraph unless the officer –
  - (a) is satisfied as mentioned in paragraph 25(2) or (3), and
  - (b) has reasonable grounds for believing that the case is one of great emergency and that immediate action is necessary. 5
- (4) Where an order is made under this paragraph particulars of the case must be notified as soon as is reasonably practicable to the Secretary of State.
- (5) A person who wilfully obstructs a search under this paragraph commits an offence. 10
- (6) A person who commits an offence under sub-paragraph (5) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale (or both).
- (7) “Confidential journalistic material” has the same meaning as in the Investigatory Powers Act 2016 (see section 264(6) and (7) of that Act). 15
- 28 (1) This paragraph applies where confidential journalistic material is seized by virtue of an order under paragraph 27.
- (2) The procurator fiscal may apply to a sheriff for the issue of a warrant under this paragraph.
- (3) An application under sub-paragraph (2) must be made as soon as reasonably practicable. 20
- (4) The sheriff may grant an application under sub-paragraph (2) if satisfied that conditions 1 to 3 are met.
- (5) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed. 25
- (6) Condition 2 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed.
- (7) Condition 3 is that there are reasonable grounds for believing that it is in the public interest that the material should be retained having regard to the benefit likely to accrue to the investigation if the material is retained. 30
- (8) A warrant under this paragraph is a warrant authorising the retention of confidential journalistic material.
- (9) A warrant under this paragraph may impose conditions on the retention and use of the material. 35
- (10) If the sheriff does not grant an application for the issue of a warrant under this paragraph in relation to any of the material to which the application relates, the sheriff may direct that the material is –
  - (a) returned to the person from whom it was seized, or 40

- (b) destroyed.
- (11) “Confidential journalistic material” has the same meaning as in paragraph 27.
- 29 (1) If a police officer of at least the rank of superintendent has reasonable grounds for believing that the case is one of great emergency the officer may by a written notice signed by them require any person specified in the notice to provide an explanation of any material seized in pursuance of an order under paragraph 27. 5
- (2) Paragraph 26(3) and (4) apply to a notice under this paragraph as they apply to an order under that paragraph. 10
- (3) A person who fails to comply with a notice under this paragraph commits an offence.
- (4) It is a defence for a person charged with an offence under sub-paragraph (3) to show that they had a reasonable excuse for their failure.
- (5) A person is taken to have shown that they had a reasonable excuse for their failure if— 15
- (a) sufficient evidence of that fact is adduced to raise an issue with respect to it, and
- (b) the contrary is not proved beyond reasonable doubt.
- (6) A person guilty of an offence under sub-paragraph (3) is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both). 20

### *Supplementary*

- 30 (1) This Part of this Schedule is without prejudice to any rule of law under which— 25
- (a) communications between a professional legal adviser and their client, or
- (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings,
- are in legal proceedings protected from disclosure on the ground of confidentiality. 30
- (2) For the purpose of exercising any powers conferred on them under this Part of this Schedule a constable may, if necessary, open lockfast places on premises which they are entitled to enter in pursuance of an order under paragraph 19 or 20, a warrant under paragraph 25 or an order under paragraph 27. 35
- (3) A search of a person under this Part of this Schedule may only be carried out by a person of the same sex.

SCHEDULE 3

Section 25

DISCLOSURE ORDERS

**PART 1**

ENGLAND AND WALES AND NORTHERN IRELAND

<i>Introductory</i>	5
1 (1) This Part of this Schedule applies in England and Wales and Northern Ireland.	
(2) “Relevant investigation” means an investigation into the identification of relevant property or its movement or use.	
(3) “Relevant property” means –	10
(a) money or other property which is likely to be used for the purposes of foreign power threat activity, or	
(b) proceeds of involvement in foreign power threat activity.	
(4) The reference to proceeds of involvement in foreign power threat activity includes a reference to any money, other property or benefit in money’s worth, which wholly or partly, and directly or indirectly, represents the proceeds of the involvement (including payments or rewards in connection with the involvement).	15
(5) “Appropriate officer” means –	
(a) a constable, or	20
(b) a National Crime Agency officer.	
<i>Disclosure orders</i>	
2 (1) An appropriate officer may apply to a judge for a disclosure order.	
(2) The application must state that a person or property specified in the application is subject to a relevant investigation and the order is sought for the purposes of the investigation.	25
(3) The judge may grant the application if satisfied that conditions 1 to 3 are met.	
(4) Condition 1 is that there are reasonable grounds for suspecting that the property specified in the application is relevant property.	30
(5) Condition 2 is that there are reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value, whether by itself or with other information, to the investigation.	
(6) Condition 3 is that there are reasonable grounds for believing that it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.	35

- (7) A disclosure order is an order authorising an appropriate officer to give to any person the officer considers has relevant information notice in writing requiring the person to do any or all of the following with respect to any matter relevant to the investigation –
- (a) answer questions, either at a time specified in the notice or at once, at a place so specified; 5
  - (b) provide information specified in the notice, by a time and in a manner so specified;
  - (c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified. 10
- (8) “Relevant information” means information (whether or not contained in a document) which the appropriate officer considers to be relevant to the investigation.
- (9) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced. 15
- (10) An appropriate officer may not make an application under this paragraph unless the officer is a senior officer or is authorised to do so by a senior officer. 20

*Supplementary provision*

- 3 (1) A disclosure order does not confer the right to require a person –
- (a) to answer any question,
  - (b) to provide any information, or
  - (c) to produce any document or other material, 25
- which the person would be entitled to refuse to answer, provide or produce on grounds of legal professional privilege in proceedings in the High Court.
- (2) But a lawyer may be required to provide the name and address of a client.
- (3) A disclosure order does not confer the right to require a person to produce excluded material. 30
- (4) A disclosure order has effect despite any restriction on the disclosure of information imposed by an enactment or otherwise.
- (5) An appropriate officer may take copies of any documents produced in compliance with a requirement to produce them imposed under a disclosure order. 35
- (6) The documents may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the investigation for the purposes of which the order was made.
- (7) But if an appropriate officer has reasonable grounds for believing that –

- (a) the documents may need to be produced for the purposes of any legal proceedings, and
  - (b) they might otherwise be unavailable for those purposes, they may be retained until the proceedings are concluded.
- (8) An appropriate officer may retain documents under sub-paragraph (7) only if the officer is a senior officer or is authorised to do so by a senior officer. 5

#### *Applications*

- 4 An application for a disclosure order may be made without notice to a judge in chambers.

#### *Discharge or variation* 10

- 5 (1) An application to discharge or vary a disclosure order may be made to the Crown Court by –
- (a) the person who applied for the order;
  - (b) any person affected by the order.
- (2) If the application for the disclosure order was made by a constable, an application to discharge or vary the order may be made by a different constable. 15
- (3) If the application for the disclosure order was made by a National Crime Agency officer, an application to discharge or vary the order may be made by a different National Crime Agency officer. 20
- (4) An appropriate officer may not make an application to discharge or vary a disclosure order unless the officer is a senior officer or is authorised to do so by a senior officer.
- (5) The Crown Court may –
- (a) discharge the order; 25
  - (b) vary the order.

#### *Rules of court*

- 6 Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to disclosure orders.

#### *Offences* 30

- 7 (1) A person commits an offence if without reasonable excuse the person fails to comply with a requirement imposed under a disclosure order.
- (2) A person guilty of an offence under sub-paragraph (1) is liable –
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the maximum term for summary offences or a fine (or both); 35

- (b) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).
- (3) A person commits an offence if, in purported compliance with a requirement imposed under a disclosure order, the person— 5
  - (a) makes a statement which the person knows to be false or misleading in a material particular, or
  - (b) recklessly makes a statement which is false or misleading in a material particular.
- (4) A person guilty of an offence under sub-paragraph (3) is liable— 10
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both);
  - (b) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine (or both); 15
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both).

### *Statements*

- 8 (1) A statement made by a person in response to a requirement imposed under a disclosure order may not be used in evidence against that person in criminal proceedings. 20
- (2) Sub-paragraph (1) does not apply on a prosecution for—
  - (a) an offence under paragraph 7(3),
  - (b) an offence under section 5 of the Perjury Act 1911 or Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (false statements), or 25
  - (c) some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in sub-paragraph (1). 30
- (3) A statement may not be used against a person by virtue of sub-paragraph (2)(c) unless—
  - (a) evidence relating to it is adduced, or
  - (b) a question relating to it is asked,
 by or on behalf of the person in the proceedings arising out of the prosecution. 35

### *Interpretation*

- 9 (1) This paragraph applies for the interpretation of this Part of this Schedule.
- (2) “Disclosure order” has the meaning given by paragraph 2.
- (3) “Judge” means— 40

- (a) in relation to England and Wales, a judge entitled to exercise the jurisdiction of the Crown Court;
  - (b) in relation to Northern Ireland, a judge of the Crown Court.
- (4) “Senior officer” means –
- (a) a constable of at least the rank of superintendent; 5
  - (b) the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose.
- (5) “Document” means anything in which information of any description is recorded. 10
- (6) “Excluded material” –
- (a) in relation to England and Wales, has the same meaning as in the Police and Criminal Evidence Act 1984;
  - (b) in relation to Northern Ireland, has the same meaning as in the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)). 15
- (7) The terms defined in paragraph 1 have the meanings given in that paragraph.

## PART 2

### SCOTLAND 20

#### *Introductory*

- 10 (1) This Part of this Schedule applies in Scotland.
- (2) In this Part of this Schedule “relevant investigation” and “relevant property” have the same meaning as in Part 1 of this Schedule.

#### *Disclosure orders* 25

- 11 (1) The Lord Advocate may apply to the High Court of Justiciary for a disclosure order.
- (2) The application must state that a person or property specified in the application is subject to a relevant investigation and the order is sought for the purposes of the investigation. 30
- (3) The court may grant the application if satisfied that conditions 1 to 3 are met.
- (4) Condition 1 is that there are reasonable grounds for suspecting that the property specified in the application is relevant property.
- (5) Condition 2 is that there are reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value, whether by itself or with other information, to the investigation. 35

- 
- (6) Condition 3 is that there are reasonable grounds for believing that it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.
- (7) A disclosure order is an order authorising the Lord Advocate to give to any person the Lord Advocate considers has relevant information notice in writing requiring the person to do any or all of the following with respect to any matter relevant to the investigation— 5
- (a) answer questions, either at a time specified in the notice or at once, at a place so specified;
  - (b) provide information specified in the notice, by a time and in a manner so specified; 10
  - (c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.
- (8) “Relevant information” means information (whether or not contained in a document) which the Lord Advocate considers to be relevant to the investigation. 15
- (9) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced. 20

*Supplementary provision*

- 12 (1) A disclosure order does not confer the right to require a person—
- (a) to answer any question,
  - (b) to provide any information, or
  - (c) to produce any document, 25
- which the person would be entitled to refuse to answer, provide or produce in legal proceedings on grounds of confidentiality of communications.
- (2) A disclosure order has effect despite any obligation as to secrecy or other restriction on the disclosure of information imposed by an enactment or otherwise. 30
- (3) The Lord Advocate may take copies of any documents produced in compliance with a requirement to produce them imposed under a disclosure order.
- (4) The documents may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the investigation for the purposes of which the order was made. 35
- (5) But if the Lord Advocate has reasonable grounds for believing that—
- (a) the documents may need to be produced for the purposes of any legal proceedings, and
  - (b) they might otherwise be unavailable for those purposes, 40
- they may be retained until the proceedings are concluded.



### *Applications*

- 13 An application for a disclosure order may be made without notice to a judge of the High Court of Justiciary.

### *Discharge or variation*

- 14 (1) An application to discharge or vary a disclosure order may be made to the High Court of Justiciary by – 5
- (a) the Lord Advocate;
  - (b) any person affected by the order.
- (2) The High Court of Justiciary may – 10
- (a) discharge the order;
  - (b) vary the order.

### *Rules of court*

- 15 (1) Provision may be made in rules of court as to the discharge and variation of disclosure orders.
- (2) Rules of court are, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995, to be made by act of adjournal. 15

### *Offences*

- 16 (1) A person commits an offence if without reasonable excuse the person fails to comply with a requirement imposed under a disclosure order.
- (2) A person guilty of an offence under sub-paragraph (1) is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both). 20
- (3) A person commits an offence if, in purported compliance with a requirement imposed under a disclosure order, the person – 25
- (a) makes a statement which the person knows to be false or misleading in a material particular, or
  - (b) recklessly makes a statement which is false or misleading in a material particular.
- (4) A person guilty of an offence under sub-paragraph (3) is liable – 30
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both).

*Statements*

- 17 (1) A statement made by a person in response to a requirement imposed under a disclosure order may not be used in evidence against that person in criminal proceedings.
- (2) Sub-paragraph (1) does not apply on a prosecution for – 5
- (a) an offence under paragraph 16(3),
- (b) perjury, or
- (c) some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in sub-paragraph (1). 10
- (3) A statement may not be used against a person by virtue of sub-paragraph (2)(c) unless –
- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked, 15
- by or on behalf of the person in the proceedings arising out of the prosecution.

*Interpretation*

- 18 (1) This paragraph applies for the interpretation of this Part of this Schedule.
- (2) “Disclosure order” has the meaning given by paragraph 11.
- (3) “Document” means anything in which information of any description is recorded. 20

## SCHEDULE 4

Section 26

## CUSTOMER INFORMATION ORDERS

*Customer information orders*

- 1 (1) An appropriate officer may apply to a judge for a customer information order. 25
- (2) The judge may grant the application if satisfied that –
- (a) the order is sought for the purposes of an investigation into foreign power threat activity, and
- (b) the order will enhance the effectiveness of the investigation. 30
- (3) “Appropriate officer” means –
- (a) in relation to England and Wales or Northern Ireland, a constable or a National Crime Agency officer;
- (b) in relation to Scotland, the procurator fiscal.
- (4) The application must state that – 35

- (a) a person specified in the application is subject to an investigation within sub-paragraph (2)(a) and the order is sought for the purposes of the investigation;
  - (b) the order is sought against the financial institution or financial institutions specified in the application. 5
- (5) The application may specify –
  - (a) all financial institutions,
  - (b) a particular description, or particular descriptions, of financial institutions, or
  - (c) a particular financial institution or particular financial institutions. 10
- (6) A customer information order is an order authorising an appropriate officer to give to a financial institution covered by the application notice in writing requiring it to provide any customer information it has relating to the person specified in the application.
- (7) The financial institution must provide the information at or by the time, and in a manner, specified in the notice. 15
- (8) A financial institution is not bound to comply with a requirement imposed by a notice given under a customer information order unless evidence of authority to give the notice is produced.
- (9) An appropriate officer may not make an application under this paragraph unless the officer is a senior officer or is authorised to do so by a senior officer. 20
- (10) Sub-paragraph (9) does not apply in relation to Scotland.

*Supplementary provision*

- 2 A customer information order has effect despite any obligation as to secrecy or other restriction on the disclosure of information imposed by an enactment or otherwise. 25

*Applications*

- 3 An application for a customer information order may be made without notice to a judge in chambers. 30

*Discharge or variation*

- 4 (1) An application to discharge or vary a customer information order may be made to the court by –
  - (a) the person who applied for the order;
  - (b) any person affected by the order. 35
- (2) If the application for the customer information order was made by a constable, an application to discharge or vary the order may be made by a different constable.

- (3) If the application for the customer information order was made by a National Crime Agency officer, an application to discharge or vary the order may be made by a different National Crime Agency officer.
- (4) An appropriate officer may not make an application under this paragraph unless the officer is a senior officer or is authorised to do so by a senior officer. 5
- (5) Sub-paragraph (4) does not apply in relation to Scotland.
- (6) The court may –
  - (a) discharge the order;
  - (b) vary the order. 10

*Rules of court*

- 5 (1) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to customer information orders.
- (2) In Scotland rules of court are, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995, to be made by act of adjournal. 15

*Offences*

- 6 (1) A person commits an offence if without reasonable excuse the person fails to comply with a requirement imposed under a customer information order.
- (2) A person guilty of an offence under sub-paragraph (1) is liable – 20
  - (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the maximum term for summary offences or a fine (or both);
  - (b) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both); 25
  - (c) on summary conviction in Scotland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).

*Statements*

- 7 (1) A statement made by a person in response to a requirement imposed under a customer information order may not be used in evidence against them in criminal proceedings.
- (2) Sub-paragraph (1) does not apply on a prosecution for an offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in sub-paragraph (1). 35
- (3) A statement may not be used against a person by virtue of sub-paragraph (2) unless –

- (a) evidence relating to it is adduced, or
  - (b) a question relating to it is asked,
- by or on behalf of the person in the proceedings arising out of the prosecution.

*Interpretation* 5

- 8 (1) This paragraph applies for the interpretation of this Schedule.
- (2) “Appropriate officer” has the meaning given by paragraph 1(3).
- (3) “The court” means –
- (a) in relation to England and Wales or Northern Ireland, the Crown Court; 10
  - (b) in relation to Scotland, the sheriff.
- (4) “Customer information” –
- (a) in relation to England and Wales or Northern Ireland, has the meaning given by section 364 of the Proceeds of Crime Act 2002;
  - (b) in relation to Scotland, has the meaning given by section 398 of that Act. 15
- (5) “Financial institution” has the same meaning as in Schedule 6 to the Terrorism Act 2000 (see paragraph 6 of that Schedule).
- (6) “Judge” means –
- (a) in relation to England and Wales, a judge entitled to exercise the jurisdiction of the Crown Court; 20
  - (b) in relation to Northern Ireland, a judge of the Crown Court;
  - (c) in relation to Scotland, the sheriff.
- (7) “Senior officer” means –
- (a) a constable of at least the rank of superintendent; 25
  - (b) the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose.

SCHEDULE 5

Section 27

ACCOUNT MONITORING ORDERS 30

*Account monitoring orders*

- 1 (1) An appropriate officer may apply to a judge for an account monitoring order.
- (2) The judge may grant the application if satisfied that –

- (a) the order is sought for the purposes of an investigation into foreign power threat activity, and
  - (b) the order will enhance the effectiveness of the investigation.
- (3) “Appropriate officer” means—
- (a) in relation to England and Wales or Northern Ireland, a constable or a National Crime Agency officer; 5
  - (b) in relation to Scotland, the procurator fiscal.
- (4) The application must state that the order is sought against the financial institution specified in the application in relation to information which—
- (a) relates to an account or accounts held at the institution by the person specified in the application (whether solely or jointly with another), and 10
  - (b) is of the description so specified.
- (5) The application may specify information relating to—
- (a) all accounts held by the person specified in the application at the financial institution so specified, 15
  - (b) a particular description, or particular descriptions, of accounts so held, or
  - (c) a particular account, or particular accounts, so held.
- (6) An account monitoring order is an order that the financial institution specified in the application must— 20
- (a) for the period specified in the order,
  - (b) in the manner so specified,
  - (c) at or by the time or times so specified, and
  - (d) at the place or places so specified, 25
- provide information of the description specified in the application to an appropriate officer.
- (7) The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made.

### *Applications* 30

- 2 An application for an account monitoring order may be made without notice to a judge in chambers.

### *Discharge or variation*

- 3 (1) An application to discharge or vary an account monitoring order may be made to the court by— 35
- (a) the person who applied for the order;
  - (b) any person affected by the order.

- (2) If the application for the account monitoring order was made by a constable, an application to discharge or vary the order may be made by a different constable.
- (3) If the application for the account monitoring order was made by a National Crime Agency officer, an application to discharge or vary the order may be made by a different National Crime Agency officer. 5
- (4) The court may –
  - (a) discharge the order;
  - (b) vary the order.

*Rules of court* 10

- 4 (1) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.
- (2) In Scotland rules of court are, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995, to be made by act of adjournal. 15

*Effect of orders*

- 5 (1) In England and Wales and Northern Ireland, an account monitoring order has effect as if it were an order of the court.
- (2) An account monitoring order has effect in spite of any obligation as to secrecy or other restriction on the disclosure of information imposed by an enactment or otherwise. 20

*Statements*

- 6 (1) A statement made by a person in response to an account monitoring order may not be used in evidence against them in criminal proceedings.
- (2) But sub-paragraph (1) does not apply – 25
  - (a) in the case of proceedings for contempt of court;
  - (b) on a prosecution for an offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in sub-paragraph (1).
- (3) A statement may not be used against a person by virtue of sub-paragraph (2)(b) unless – 30
  - (a) evidence relating to it is adduced, or
  - (b) a question relating to it is asked,by or on behalf of the person in the proceedings arising out of the prosecution. 35

*Interpretation*

- 7 (1) This paragraph applies for the interpretation of this Schedule.

- (2) “Appropriate officer” has the meaning given by paragraph 1(3).
- (3) “The court” means –
- (a) in relation to England and Wales or Northern Ireland, the Crown Court;
  - (b) in relation to Scotland, the sheriff. 5
- (4) “Financial institution” has the same meaning as in Schedule 6 to the Terrorism Act 2000 (see paragraph 6 of that Schedule).
- (5) “Judge” means –
- (a) in relation to England and Wales, a judge entitled to exercise the jurisdiction of the Crown Court; 10
  - (b) in relation to Northern Ireland, a judge of the Crown Court;
  - (c) in relation to Scotland, the sheriff.

## SCHEDULE 6

Section 28

### DETENTION UNDER SECTION 28

#### PART 1

15

#### TREATMENT OF PERSONS DETAINED UNDER SECTION 28

##### *Place of detention*

- 1 (1) The Secretary of State may designate places at which persons may be detained under section 28.
- (2) The power in sub-paragraph (1) may be exercised only in relation to land or a building in the United Kingdom which is owned or controlled by a police force. 20
- (3) In this Schedule a reference to a police station includes a reference to any place which the Secretary of State has designated under sub-paragraph (1) as a place where a person may be detained under section 28. 25
- (4) A constable who arrests a person under section 28 must take the person as soon as is reasonably practicable to the police station which the constable considers the most appropriate.
- (5) Where a person is arrested under section 28 in one part of the United Kingdom and some or all of the person’s detention under that section takes place in another part, the provisions of this Schedule which apply to detention in a particular part of the United Kingdom apply in relation to the person while detained in that part. 30
- (6) In this paragraph –
- “building” includes any part of a building; 35



“police force” has the same meaning as in paragraph 28.

*Identification*

- 2 (1) An authorised person may take any steps which are reasonably necessary for –
- (a) photographing the detained person, 5
  - (b) measuring the detained person, or
  - (c) identifying the detained person.
- (2) In sub-paragraph (1) “authorised person” means any of the following –
- (a) a constable;
  - (b) a prison officer; 10
  - (c) a person authorised by the Secretary of State.
- (3) This paragraph does not confer the power to take –
- (a) fingerprints, non-intimate samples or intimate samples (see instead paragraphs 10 to 14 below), or
  - (b) relevant physical data or samples as mentioned in section 18 of the Criminal Procedure (Scotland) Act 1995, as applied by paragraph 18 below. 15

*Video recording of interviews*

- 3 (1) This paragraph applies to any interview by a constable of a detained person that takes place in a police station.
- (2) The Secretary of State must – 20
- (a) issue a code of practice about the video recording of interviews to which this paragraph applies, and
  - (b) make regulations requiring the video recording of interviews to which this paragraph applies in accordance with any relevant code of practice under paragraph (a). 25
- (3) Regulations under sub-paragraph (2) must state that the video recording is to be with sound.
- (4) A code of practice under this paragraph –
- (a) may make provision in relation to a particular part of the United Kingdom, and 30
  - (b) may make different provision for different parts of the United Kingdom.
- (5) The failure by a constable to observe a provision of a code does not of itself make the constable liable to criminal or civil proceedings.
- (6) A code – 35
- (a) is admissible in evidence in criminal and civil proceedings, and
  - (b) is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

- (7) The Secretary of State may revise a code and issue the revised code.
- 4 (1) Before issuing a code of practice under paragraph 3, the Secretary of State must –
- (a) publish a draft code,
  - (b) consider any representations made about the draft, and 5
  - (c) if the Secretary of State thinks it appropriate, modify the draft in the light of any such representations.
- (2) The Secretary of State must lay a draft of the code before Parliament.
- (3) After the code has been laid before Parliament the Secretary of State may bring it into operation by regulations. 10
- (4) Sub-paragraphs (1) to (3) apply to the issue of a revised code as they apply to the first issue of the code.

*Status*

- 5 A detained person is to be treated as being in legal custody throughout the period of the person's detention. 15

**PART 2****RIGHTS OF PERSONS DETAINED UNDER SECTION 28: ENGLAND, WALES AND NORTHERN IRELAND***Right to have named person informed of detention*

- 6 (1) Subject to paragraph 9, a person detained under section 28 at a place in England, Wales or Northern Ireland is entitled, if the person so requests, to have one named person informed as soon as is reasonably practicable that the person is being detained there. 20
- (2) The person named must be –
- (a) a friend of the detained person, 25
  - (b) a relative of the detained person, or
  - (c) a person who is known to the detained person or who is likely to take an interest in the detained person's welfare.
- (3) A detained person must be informed of the right under this paragraph on first being detained. 30
- (4) Where a detained person is transferred from one place to another, the person is entitled to exercise the right under this paragraph in respect of the place to which the person is transferred.

*Right to consult a solicitor*

- 7 (1) Subject to paragraph 9, a person detained under section 28 in England, Wales or Northern Ireland is entitled, if the person so requests, to consult a solicitor as soon as is reasonably practicable, privately and at any time. 35

- (2) Where a request is made under sub-paragraph (1), a record must be made of the request and the time at which it was made.
- (3) A detained person must be informed of the right under this paragraph on first being detained.
- 8 (1) Where a person exercises the right under paragraph 7 to consult a solicitor, a police officer of at least the rank of superintendent may direct that – 5
- (a) the person may not consult the solicitor who attends for the purpose of the consultation, or who would so attend but for the giving of the direction, but
- (b) the person may consult a different solicitor of the person’s choosing. 10
- (2) A direction under this paragraph may be given before or after a person’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).
- (3) An officer may give a direction under this paragraph only if the officer has reasonable grounds for believing that – 15
- (a) unless the direction is given, the person’s consultation with the solicitor will have any of the consequences specified in sub-paragraph (4), or
- (b) the person has benefited from their criminal conduct and that, unless the direction is given, the person’s consultation with the solicitor will hinder the recovery of the value of the property constituting the benefit. 20
- (4) Those consequences are –
- (a) interference with or harm to evidence of an indictable offence, 25
- (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, 30
- (e) interference with the gathering of information about a person’s involvement in foreign power threat activity,
- (f) making it more difficult, by the alerting of a person, to prevent foreign power threat activity, and
- (g) making it more difficult, by the alerting of a person, to secure a person’s apprehension, prosecution or conviction in connection with the person’s involvement in foreign power threat activity. 35
- (5) For the purposes of sub-paragraph (3)(b), the question whether a person has benefited from their criminal conduct is to be decided in accordance with Part 2 or 4 of the Proceeds of Crime Act 2002. 40

*Delay in exercise of rights*

- 9 (1) A police officer of at least the rank of superintendent may authorise a delay –
- (a) in informing the person named by a detained person under paragraph 6; 5
  - (b) in permitting a detained person to consult a solicitor under paragraph 7.
- (2) But the detained person must be permitted to exercise the rights under paragraphs 6 and 7 before the end of the period mentioned in section 28(3).
- (3) An officer may authorise a delay under sub-paragraph (1) only if the officer has reasonable grounds for believing – 10
- (a) in the case of an authorisation under sub-paragraph (1)(a), that informing the named person of the detained person’s detention will have any of the consequences specified in paragraph 8(4), or
  - (b) in the case of an authorisation under sub-paragraph (1)(b), that the exercise of the right under paragraph 7 at the time when the detained person desires to exercise it will have any of the consequences specified in paragraph 8(4). 15
- (4) An officer may also authorise a delay under sub-paragraph (1) if the officer has reasonable grounds for believing that – 20
- (a) the detained person has benefited from their 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 detained person’s detention (in the case of an authorisation under sub-paragraph (1)(a)), or 25
    - (ii) the detained person’s consultation with a solicitor (in the case of an authorisation under sub-paragraph (1)(b)).
- (5) For the purposes of sub-paragraph (4), whether the detained person has benefited from their criminal conduct is to be decided in accordance with Part 2 or 4 of the Proceeds of Crime Act 2002. 30
- (6) Where an officer authorises a delay under sub-paragraph (1) orally, the officer must confirm it in writing as soon as is reasonably practicable.
- (7) Where an officer authorises a delay under sub-paragraph (1) – 35
- (a) the detained person must be told the reason for the delay as soon as is reasonably practicable, and
  - (b) the reason must be recorded as soon as is reasonably practicable.
- (8) Where the reason for authorising delay no longer applies, there may be no further delay in permitting the exercise of the right in the absence of a further authorisation under sub-paragraph (1). 40

*Taking of intimate and non-intimate samples*

- 10 (1) This paragraph applies where a person is detained under section 28 in England, Wales or Northern Ireland.
- (2) Fingerprints may be taken from the detained person only if they are taken by a constable— 5
- (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 detained person only if it is taken by a constable— 10
- (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 detained person without the appropriate consent only if— 15
- (a) the person 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 (but see sub-paragraphs (6) and (7)), or
  - (b) the person has been convicted of a recordable offence and, where a non-intimate sample is to be taken, the person 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). 20
- (5) An intimate sample may be taken from the detained person only if— 25
- (a) the person is detained at a police station,
  - (b) the appropriate consent is given in writing,
  - (c) a police officer of at least the rank of superintendent authorises the sample to be taken (but see sub-paragraph (6)), and
  - (d) subject to paragraph 13(2) and (3), the sample is taken by a constable.
- (6) An officer may give an authorisation under sub-paragraph (4)(a) or (5)(c) only if— 30
- (a) the officer reasonably suspects that the detained person has been involved in foreign power threat activity, and
  - (b) the officer reasonably believes that the fingerprints or sample will tend to confirm or disprove the person’s involvement.
- (7) An officer may also give an authorisation under sub-paragraph (4)(a) for the taking of fingerprints if— 35
- (a) the officer is satisfied that the detained person’s fingerprints will help determine the person’s identity, and
  - (b) the person has refused to identify themselves or the officer has reasonable grounds for suspecting that the person is not who they claim to be. 40

- (8) In this paragraph references to determining a person's identity include showing that the detained person is not a particular person.
- (9) If an authorisation under sub-paragraph (4)(a) or (5)(c) is given orally, the person giving it must confirm it in writing as soon as is reasonably practicable. 5
- 11 (1) Before fingerprints or a sample are taken from a detained person under paragraph 10, the person must be informed –
- (a) that the fingerprints or sample may be used for the purposes of –
    - (i) a relevant search (within the meaning given by paragraph 19(6)), 10
    - (ii) section 63A(1) of the Police and Criminal Evidence Act 1984 (checking of fingerprints and samples), or
    - (iii) Article 63A(1) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (checking of fingerprints and samples), and 15
  - (b) where the fingerprints or sample are to be taken under paragraph 10(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 person on an authorisation given under paragraph 10(4)(a) or (5)(c), the person must be informed – 20
- (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 the person is suspected of having been involved.
- (3) After fingerprints or a sample are taken under paragraph 10, any of the following which apply must be recorded as soon as reasonably practicable – 25
- (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 10(4)(a) or (5)(c), 30
  - (d) the grounds on which that authorisation has been given, and
  - (e) the fact that the appropriate consent has been given.
- 12 (1) This paragraph applies where –
- (a) two or more non-intimate samples suitable for the same means of analysis have been taken from a detained person under paragraph 10, 35
  - (b) those samples have proved insufficient, and
  - (c) the person has been released from detention.
- (2) An intimate sample may be taken from the person if –
- (a) the appropriate consent is given in writing, 40
  - (b) a police officer of at least the rank of superintendent authorises the sample to be taken, and

- (c) subject to paragraph 13(2) and (3), the sample is taken by a constable.
- (3) Paragraphs 10(6) and (9) and 11 apply in relation to the taking of an intimate sample under this paragraph as if references to a detained person are references to a person who was detained under section 28 when the non-intimate samples mentioned in sub-paragraph (1)(a) were taken. 5
- 13 (1) Where appropriate written consent to the taking of an intimate sample from a person under paragraph 10 or 12 is refused without good cause, in any proceedings against that person for an offence –
- (a) the court, in determining whether to commit the person for trial or whether there is a case to answer, may draw such inferences from the refusal as appear proper, and 10
- (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. 15
- (2) An intimate sample other than a sample of urine or a dental impression may be taken under paragraph 10 or 12 only by a registered medical practitioner acting on the authority of a constable.
- (3) An intimate sample which is a dental impression may be taken under paragraph 10 or 12 only by a registered dentist acting on the authority of a constable. 20
- (4) Where a sample of hair other than pubic hair is to be taken under paragraph 10, 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. 25
- 14 (1) In the application of paragraphs 10 to 13 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”, 30
- (c) “insufficient”,
- (d) “intimate sample”,
- (e) “non-intimate sample”,
- (f) “registered dentist”, and
- (g) “sufficient”. 35
- (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 25 of this Schedule.
- (3) In the application of paragraphs 10 to 13 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)). 40

- (4) In paragraph 10 “recordable offence” –
- (a) in relation to a person detained in England or Wales, has the meaning given by section 118(1) of the Police and Criminal Evidence Act 1984, and
  - (b) in relation to a person detained in Northern Ireland, has the meaning given by Article 2(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

### PART 3

#### RIGHTS OF PERSONS DETAINED UNDER SECTION 28: SCOTLAND

- 15 (1) A person detained under section 28 at a place in Scotland is entitled to have intimation of the person’s detention and of the place where the person is being detained sent without delay to a solicitor and to another person named by the detained person. 10
- (2) The person named must be –
- (a) a friend of the detained person, 15
  - (b) a relative of the detained person, or
  - (c) a person who is known to the detained person or who is likely to take an interest in the detained person’s welfare.
- (3) Where a detained person is transferred from one place to another, the person is entitled to exercise the right under sub-paragraph (1) in respect of the place to which the person is transferred. 20
- (4) A police officer of at least 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 16(3) or where paragraph 16(4) applies. 25
- (5) Where a detained person requests that the intimation be made, a record must be made of the time at which the request was made and complied with.
- (6) A person who is detained as mentioned in sub-paragraph (1) is entitled to consult a solicitor at any time, without delay. 30
- (7) A police officer of at least 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 16(3) or where paragraph 16(4) applies.
- (8) The consultation is to be private. 35
- (9) A detained person must be permitted to exercise the rights under this paragraph before the end of the period mentioned in section 28(3).
- (10) A detained person must be informed of the rights under sub-paragraphs (1) and (6) on first being detained.



- 16 (1) Where a person exercises the right under paragraph 15(6) to consult a solicitor, a police officer of at least the rank of superintendent may, if it appears to the officer to be necessary on one of the grounds mentioned in sub-paragraph (3), direct that –
- (a) the person may not consult the solicitor who attends for the purpose of the consultation, or who would so attend but for the giving of the direction, but 5
  - (b) the person may consult a different solicitor of the person’s choosing.
- (2) A direction under this paragraph may be given before or after a detained person’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). 10
- (3) The grounds mentioned in paragraph 15(4) and (7) and in sub-paragraph (1) are –
- (a) that it is in the interests of the investigation or prevention of crime; 15
  - (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 an indictable offence;
  - (d) that it will further the operation of Part 2, 3 or 4 of the Proceeds of Crime Act 2002 (confiscation of the proceeds of an offence). 20
- (4) This sub-paragraph applies where an officer mentioned in paragraph 15(4) or (7) has reasonable grounds for believing that –
- (a) the detained person has benefited from their criminal conduct, and
  - (b) the recovery of the value of the property constituting the benefit will be hindered by – 25
    - (i) informing the named person of the detained person’s detention (in the case of an authorisation under paragraph 15(4)), or
    - (ii) the exercise of the entitlement under paragraph 15(6) (in the case of an authorisation under paragraph 15(7)). 30
- (5) For the purposes of sub-paragraph (4), whether the detained person has benefited from their criminal conduct is to be decided in accordance with Part 3 of the Proceeds of Crime Act 2002.
- (6) Where delay is authorised in the exercising of any of the rights mentioned in paragraph 15(1) and (6) – 35
- (a) if the authorisation is given orally, the person giving it must confirm it in writing as soon as is reasonably practicable,
  - (b) the detained person must be told the reason for the delay as soon as is reasonably practicable, and 40
  - (c) the reason must be recorded as soon as is reasonably practicable.
- 17 (1) Paragraphs 15 and 16 have effect, in relation to a person detained under section 28, 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 a person who is detained under section 28 at a place in Scotland appears to a constable to be a child –
- (a) the other person named by the person detained in pursuance of paragraph 15(1) must be that person’s parent, 5
  - (b) intimation is to be made under paragraph 15(1) whether the detained person 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 detained person were a person in police custody for the purposes of that section. 10
- (3) 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 mentioned in sub-paragraph (2). 15
- 18 (1) Subject to the modifications specified in sub-paragraphs (2) and (3), section 18 of the Criminal Procedure (Scotland) Act 1995 (procedure for taking certain prints and samples) applies to a person detained under section 28 at a police station in Scotland as it applies to a person arrested.
- (2) For subsection (2) of section 18 substitute – 20
- “(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 –
- (a) the constable reasonably suspects that the person has been involved in foreign power threat activity, and 25
  - (b) the constable reasonably believes that the relevant physical data will tend to confirm or disprove the person’s involvement.
- (2A) A constable may also take fingerprints from a detained person or require the person to provide them if – 30
- (a) the constable is satisfied that the person’s fingerprints will help determine their identity, and
  - (b) the person has refused to identify themselves or the constable has reasonable grounds for suspecting that the person is not who they claim to be. 35
- (2B) In this section references to determining a person’s identity include references to showing that a detained person is not a particular person.”
- (3) Subsections (3) to (5) of section 18 do not apply.

#### PART 4

##### DEALING WITH FINGERPRINTS AND SAMPLES ETC: UNITED KINGDOM

###### *Retention of fingerprints and samples etc: general*

- 19 (1) This paragraph applies to—
- (a) fingerprints taken under paragraph 10, 5
  - (b) a DNA profile derived from a DNA sample taken under paragraph 10 or 12,
  - (c) relevant physical data taken or provided by virtue of paragraph 18, and
  - (d) a DNA profile derived from a DNA sample taken or provided by virtue of paragraph 18. 10
- (2) Fingerprints, relevant physical data and DNA profiles to which this paragraph applies (“paragraph 19 material”) must be destroyed if it appears to the responsible chief officer of police that—
- (a) the material, or, in the case of a DNA profile, the sample from which the DNA profile was derived, was taken or required to be provided unlawfully, or 15
  - (b) the material was taken or provided, or, in the case of a DNA profile, was derived from a sample taken, from a person in connection with that person’s arrest under section 28 and the arrest was unlawful or based on mistaken identity. 20
- (3) In any other case, paragraph 19 material must be destroyed unless it is retained under any power conferred by paragraphs 20 or 22.
- (4) Where the retention of paragraph 19 material ceases to be allowed under paragraph 20 or 22, the material may continue to be retained under any other such power which applies to it. 25
- (5) Nothing in this paragraph prevents a relevant search, in relation to paragraph 19 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. 30
- (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 10 or 12, or a DNA profile derived from such a sample,
  - (b) other fingerprints and samples taken under paragraph 1 of Schedule 12, or a DNA profile derived from such a sample, 35
  - (c) any of the fingerprints, samples and information mentioned in section 63A(1)(a) and (b) of the Police and Criminal Evidence Act 1984,

- (d) 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)),
  - (e) any of the relevant physical data, samples or information mentioned in section 19C(1) of the Criminal Procedure (Scotland) Act 1995, 5
  - (f) any of the fingerprints, data or samples obtained under or by virtue of paragraphs 10 or 12 of Schedule 8 to the Terrorism Act 2000, or information derived from such samples,
  - (g) any of the relevant physical data, samples or information held by virtue of section 56 of the Criminal Justice (Scotland) Act 2003, 10
  - (h) material to which section 18 of the Counter-Terrorism Act 2008 applies,
  - (i) 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, 15
  - (j) any of the fingerprints, data or samples obtained under or by virtue of paragraph 34 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019, or information derived from such samples.
- 20 (1) This paragraph applies to paragraph 19 material relating to a person who is detained under section 28. 20
- (2) Paragraph 19 material may be retained indefinitely if—
- (a) the person has previously been convicted—
    - (i) of a recordable offence (other than a single exempt conviction), or
    - (ii) in Scotland, of an offence which is punishable by imprisonment, or 25
  - (b) the person is so convicted before the end of the period within which the material may be retained by virtue of this paragraph.
- (3) In sub-paragraph (2)—
- (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— 30
    - (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, 35
 (and, in the application of sub-paragraph (2) 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 40

- of sub-paragraph (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted).
- (4) Paragraph 19 material may be retained until the end of the retention period specified in sub-paragraph (5) if— 5
- (a) the person has no previous convictions, or
  - (b) the person has only one exempt conviction.
- (5) The retention period is—
- (a) in the case of fingerprints or relevant physical data, the period of 3 years beginning with the date on which the fingerprints or relevant physical data were taken or provided, and 10
  - (b) in the case of a DNA profile, the period of 3 years 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). 15
- (6) The responsible chief officer of police or a specified chief officer of police may apply to a relevant court for an order extending the retention period.
- (7) An application for an order under sub-paragraph (6) must be made within the period of 3 months ending with the last day of the retention period. 20
- (8) An order under sub-paragraph (6) may extend the retention period by a period which—
- (a) begins with the date on which the material would otherwise be required to be destroyed under this paragraph, and
  - (b) ends with the end of the period of 2 years beginning with that date. 25
- (9) The following persons may appeal to the relevant appeal court against an order under sub-paragraph (6) or a refusal to make such an order—
- (a) the responsible chief officer of police;
  - (b) a specified chief officer of police;
  - (c) the person from whom the material was taken. 30
- (10) In Scotland—
- (a) an application for an order under sub-paragraph (6) is to be made by summary application;
  - (b) an appeal against an order under sub-paragraph (6), or a refusal to make such an order, must be made within 21 days of the relevant court’s decision, and the relevant appeal court’s decision on any such appeal is final. 35
- (11) Nothing in this paragraph prevents the start of a new retention period in relation to paragraph 19 material if a person is detained again under section 28 when an existing retention period (whether or not extended) is still in force in relation to that material. 40
- (12) In this paragraph—

“relevant court” means –

- (a) in England and Wales, a District Judge (Magistrates’ Courts),
- (b) in Scotland, the sheriff –
  - (i) in whose sheriffdom the person to whom the material relates resides, 5
  - (ii) in whose sheriffdom that person is believed by the applicant to be, or
  - (iii) to whose sheriffdom that person is believed by the applicant to be intending to come, and
- (c) in Northern Ireland, a district judge (magistrates’ court) in Northern Ireland; 10

the “relevant appeal court” means –

- (a) in England and Wales, the Crown Court,
- (b) in Scotland, the Sheriff Appeal Court, and
- (c) in Northern Ireland, the County Court; 15

a “specified chief officer of police” means –

- (a) in England and Wales –
  - (i) the chief officer of the police force of the area in which the person from whom the material was taken resides, or 20
  - (ii) a chief officer of police who believes that the person is in, or is intending to come to, the chief officer’s police area, and
- (b) the chief constable of the Police Service of Scotland, where –
  - (i) the person who provided the material, or from whom it was taken, resides in Scotland, or 25
  - (ii) the chief constable believes that the person is in, or is intending to come to, Scotland, and
- (c) the Chief Constable of the Police Service of Northern Ireland, where –
  - (i) the person from whom the material was taken resides in Northern Ireland, or 30
  - (ii) the chief constable believes that the person is in, or is intending to come to, Northern Ireland.

21 (1) For the purposes of paragraph 20, a person is to be treated as having been convicted of an offence if – 35

- (a) in relation to a recordable offence in England and Wales or Northern Ireland –
  - (i) the person has been given a caution or youth caution in respect of the offence which, at the time of the caution, the person has admitted, 40
  - (ii) the person has been found not guilty of the offence by reason of insanity, or

- (iii) the person has been found to be under a disability and to have done the act charged in respect of the offence,
  - (b) the person, in relation to an offence in Scotland punishable by imprisonment, has accepted or has been deemed to accept—
    - (i) a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995, 5
    - (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) the person, in relation to an offence in Scotland punishable by imprisonment, 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, 10
  - (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, 15
  - (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— 20
    - (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) the person, in relation to an offence in Scotland punishable by imprisonment, has been discharged absolutely by order under section 246(3) of the Criminal Procedure (Scotland) Act 1995. 25
- (2) Paragraph 20 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 or the Rehabilitation of Offenders (Northern Ireland) Order 1978 (S.I. 1978/1908 (N.I. 27)). 30
- (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 20—
  - (a) a person has no previous convictions if the person has not previously been convicted— 35
    - (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 40
  - (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 under 18 years of age.

- (5) In sub-paragraph (4) “qualifying offence” –
- (a) in relation to a conviction in respect of a recordable offence committed in England and Wales, has 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, has the meaning given by Article 53A of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).
- (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 20 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 20 whether the person has been convicted of only one offence.

*Retention of material covered by a national security determination*

- 22 (1) Paragraph 19 material may be retained for as long as a national security determination made by a chief officer of police has effect in relation to the material.
- (2) A national security determination is made if a chief officer of police determines that it is necessary for any paragraph 19 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,
  - (c) the Chief Constable of the Police Service of Northern Ireland,
  - (d) the Chief Constable of the Ministry of Defence Police,
  - (e) the Chief Constable of the British Transport Police Force, or
  - (f) the Director General of the National Crime Agency.

*Fingerprints and relevant physical data: further provision*

- 23 (1) This paragraph applies where paragraph 19 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 19 material, 5
  - (b) are taken or provided under or by virtue of –
    - (i) paragraph 1 or 4 of Schedule 12,
    - (ii) Part 5 of the Police and Criminal Evidence Act 1984,
    - (iii) Article 61 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)), 10
    - (iv) any provision, power or authority mentioned in section 18G(1) of the Criminal Procedure (Scotland) Act 1995,
    - (v) paragraph 10 of Schedule 8 to the Terrorism Act 2000,
    - (vi) paragraph 1 or 4 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011, or 15
    - (vii) paragraph 34 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019, or
  - (c) are material to which section 18 of the Counter-Terrorism Act 2008 applies.
- (4) Condition 2 is met if – 20
- (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. 25
- (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 20 or 22, and 30
  - (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). 35
- (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) Any determination under this paragraph must be recorded in writing.
- 24 (1) If fingerprints or relevant physical data are required by paragraph 19 to be destroyed, any copies of the fingerprints or relevant physical data held by a police force must also be destroyed. 40

- (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.

*Samples: further provision*

- 25 (1) This paragraph applies to— 5
- (a) samples taken under paragraph 10 or 12, or
  - (b) samples taken or provided by virtue of paragraph 18.
- (2) Samples to which this paragraph applies must be destroyed if it appears to the responsible chief officer of police that— 10
- (a) the sample was taken or required to be provided unlawfully, or
  - (b) the sample was taken from, or provided by, a person in connection with that person’s arrest under section 28 and the arrest was unlawful or based on mistaken identity.
- (3) Subject to this, the rule in sub-paragraph (4) or (as the case may be) (5) applies. 15
- (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. 20
- (6) The responsible chief officer of police may apply to a relevant court for an order to retain a sample to which this paragraph applies beyond the date on which the sample would otherwise be required to be destroyed by virtue of sub-paragraph (4) or (5) if— 25
- (a) the sample was taken from a detained person in connection with the investigation of a qualifying offence, and
  - (b) the responsible chief officer of police considers that the condition in sub-paragraph (7) is met. 30
- (7) The condition is that, having regard to the nature and complexity of other material that is evidence in relation to the offence, the sample is likely to be needed in any proceedings for the offence for the purposes of—
- (a) disclosure to, or use by, a defendant, or
  - (b) responding to any challenge by a defendant in respect of the admissibility of material that is evidence on which the prosecution proposes to rely. 35
- (8) An application under sub-paragraph (6) must be made before the date on which the sample would otherwise be required to be destroyed by virtue of sub-paragraph (4) or (5). 40

- (9) If, on an application made by the responsible chief officer of police under sub-paragraph (6), the relevant court is satisfied that the condition in sub-paragraph (7) is met, it may make an order under this sub-paragraph which—
- (a) allows the sample to be retained for a period of 12 months beginning with the date on which the sample would otherwise be required to be destroyed by virtue of sub-paragraph (4) or (5), and 5
  - (b) may be renewed (on one or more occasions) for a further period of not more than 12 months from the end of the period when the order would otherwise cease to have effect. 10
- (10) An application for an order under sub-paragraph (9) (other than an application for renewal)—
- (a) may be made without notice of the application having been given to the person from whom the sample was taken, and
  - (b) may be heard and determined in private in the absence of that person. 15
- (11) In Scotland, an application for an order under sub-paragraph (9) (including an application for renewal) is to be made by summary application.
- (12) A sample retained by virtue of an order under sub-paragraph (9) must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken. 20
- (13) A sample must be destroyed if retention of the sample by virtue of an order under sub-paragraph (9) ceases to be allowed.
- (14) 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. 25
- (15) In this paragraph—
- “ancillary offence”, in relation to an offence, means any of the following— 30
    - (a) being art and part in the commission of the offence;
    - (b) inciting a person to commit the offence;
    - (c) attempting or conspiring to commit the offence;
  - “qualifying offence”—
    - (a) in relation to the investigation of an offence committed in England and Wales, has the meaning given by section 65A of the Police and Criminal Evidence Act 1984, 35
    - (b) in relation to the investigation of an offence committed in Scotland, means a relevant offence, an offence listed in section 34(3)(a), or an ancillary offence in relation to such an offence, and 40
    - (c) in relation to the investigation of an offence committed in Northern Ireland, has the meaning given by Article 53A of

the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12));

“relevant court” means –

- (a) in England and Wales, a District Judge (Magistrates’ Courts),
- (b) in Scotland, the sheriff –
  - (i) in whose sheriffdom the person to whom the sample relates resides,
  - (ii) in whose sheriffdom that person is believed by the responsible chief officer of police to be, or
  - (iii) to whose sheriffdom that person is believed by the responsible chief officer of police to be intending to come, and
- (c) in Northern Ireland, a district judge (magistrates’ court) in Northern Ireland;

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“relevant offence” has the same meaning as in section 19A of the Criminal Procedure (Scotland) Act 1995;

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“relevant search” has the meaning given by paragraph 19(6).

*Restrictions on use of retained material*

26 (1) Any material to which paragraph 19 or 25 applies must not be used other than –

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- (a) in the interests of national security,
- (b) for the purposes of investigating foreign power threat activity,
- (c) for the purposes of a terrorist investigation (within the meaning of the Terrorism Act 2000),
- (d) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or
- (e) for purposes related to the identification of a deceased person or of the person to whom the material relates.

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(2) Subject to sub-paragraph (1), a relevant search (within the meaning given by paragraph 19(6)) may be carried out in relation to material to which paragraph 19 or 25 applies if the responsible chief officer of police considers the search to be desirable.

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(3) Material which is required by paragraph 19 or 25 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.

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(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 reference to crime includes a reference to any conduct which –

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- (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom), or
  - (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences, and 5
  - (c) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom. 10
  - (5) Sub-paragraphs (1), (2) and (4) do not form part of the law of Scotland (but see instead section 19C of the Criminal Procedure (Scotland) Act 1995 (use of samples etc) (as amended by Schedule 18).
- Material disclosable in connection with a criminal investigation* 15
- 27 (1) Paragraphs 19 to 26 do not apply to material relating to a detained person which is, or may become, disclosable under –
    - (a) the Criminal Procedure and Investigations Act 1996, or
    - (b) a code of practice prepared under section 23 of that Act and in operation by virtue of an order under section 25 of that Act. 20
  - (2) A sample that –
    - (a) falls within sub-paragraph (1), and
    - (b) but for that sub-paragraph would be required to be destroyed under paragraph 25,
 must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken. 25
  - (3) A sample that once fell within sub-paragraph (1) but no longer does, and so becomes a sample to which paragraph 25 applies, must be destroyed immediately if the time specified for its destruction under that paragraph has already passed. 30

### *Interpretation*

- 28 (1) In paragraphs 19 to 27 –
  - “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; 35
  - “fingerprints” has the meaning given by section 65(1) of the Police and Criminal Evidence Act 1984 or, in Northern Ireland, Article 53(1) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12));
  - “paragraph 19 material” has the meaning given by paragraph 19(2); 40
  - “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; 5
  - (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 National Crime Agency; 10
  - (j) the British Transport Police Force;
- “recordable offence” –
- (a) in relation to a conviction in England and Wales, has the meaning given by section 118(1) of the Police and Criminal Evidence Act 1984, and 15
  - (b) in relation to a conviction in Northern Ireland, has 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; 20
- “responsible chief officer of police” means –
- (a) in relation to fingerprints or samples taken by a constable of the Ministry of Defence Police, or a DNA profile derived from a sample so taken, the Chief Constable of the Ministry of Defence Police; 25
  - (b) in relation to fingerprints or samples taken by a constable of the British Transport Police Force, or a DNA profile derived from a sample so taken, the Chief Constable of the British Transport Police Force; 30
  - (c) in relation to fingerprints or samples taken by a constable who is a National Crime Agency officer, or a DNA profile derived from a sample so taken, the Director General of the National Crime Agency;
  - (d) otherwise – 35
    - (i) 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 relevant police area;
    - (ii) in relation to relevant physical data or samples taken or provided in Scotland, or a DNA profile derived from a sample so taken, the chief constable of the Police Service of Scotland; 40

- (iii) 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.
- (2) In the definition of “responsible chief officer of police” in sub-paragraph (1), in paragraph (d)(i), “relevant police area” means 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.

## PART 5

### REVIEW OF DETENTION UNDER SECTION 28

#### *Requirement*

- 29 (1) A person’s detention must be periodically reviewed by a review officer.
- (2) The first review must be carried out as soon as is reasonably practicable after the time of the person’s arrest.
- (3) Subsequent reviews must be carried out at intervals of not more than 12 hours.  
This is subject to paragraph 30.
- (4) A person’s detention may not be reviewed after a warrant has been issued under Part 6 of this Schedule extending the detention period.

#### *Postponement*

- 30 (1) A review may be postponed if, at the latest time at which it may be carried out in accordance with paragraph 29 –
  - (a) the detained person is being questioned by a constable and the review officer is satisfied that an interruption of the questioning to carry out the review would prejudice the investigation in connection with which the person is being detained,
  - (b) no review officer is readily available, or
  - (c) it is not practicable for any other reason to carry out the review.
- (2) Where a review is postponed it must be carried out as soon as is reasonably practicable.
- (3) For the purposes of ascertaining the time within which the next review is to be carried out, a postponed review is to be treated as if it were carried out at the latest time at which it could have been carried out in accordance with paragraph 29.



*Grounds for continued detention*

- 31 (1) A review officer may authorise a person’s continued detention only if satisfied that it is necessary –
- (a) to obtain relevant evidence, whether by questioning the person or otherwise, 5
  - (b) to preserve relevant evidence,
  - (c) pending the result of an examination or analysis of any relevant evidence,
  - (d) pending the result of any examination or analysis which is being carried out, or which is to be carried out, with a view to obtaining relevant evidence, 10
  - (e) pending a decision whether to apply to the Secretary of State for a deportation notice to be served on the person,
  - (f) pending the making of an application to the Secretary of State for a deportation notice to be served on the person, 15
  - (g) pending consideration by the Secretary of State of whether to serve a deportation notice on the person, or
  - (h) pending a decision as to whether the person should be charged with an offence.
- (2) The review officer may not authorise continued detention by virtue of sub-paragraph (1)(a) to (d) unless satisfied that the investigation in connection with which the person is detained is being conducted diligently and expeditiously. 20
- (3) The review officer may not authorise continued detention by virtue of sub-paragraph (1)(e) to (h) unless satisfied that the process pending the completion of which detention is necessary is being conducted diligently and expeditiously. 25
- (4) In this paragraph “relevant evidence” means evidence which relates to the detained person’s involvement in foreign power threat activity.
- (5) In sub-paragraph (1) “deportation notice” means notice of a decision to make a deportation order under the Immigration Act 1971. 30

*Review officer*

- 32 (1) The review officer must be an officer who has not been directly involved in the investigation in connection with which the person is detained.
- (2) In the case of a review carried out within the period of 24 hours beginning with the time of arrest, the review officer must be an officer of at least the rank of inspector. 35
- (3) In the case of any other review, the review officer must be an officer of at least the rank of superintendent.
- 33 (1) This paragraph applies where – 40
- (a) the review officer is of a rank lower than superintendent,

- (b) an officer of higher rank than the review officer gives directions relating to the detained person, and
  - (c) those directions are at variance with the performance by the review officer of a duty imposed on the review officer under this Schedule.
- (2) The review officer must refer the matter at once to an officer of at least the rank of superintendent. 5

### *Representations*

- 34 (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— 10
- (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 person is unfit to make representations because of the person’s condition or behaviour. 15

### *Rights*

- 35 (1) A review officer who authorises continued detention must inform the detained person— 20
- (a) of any rights under paragraphs 6 and 7 which the person has not yet exercised, and
  - (b) of any delay to the exercise of any of the person’s rights which has been authorised in accordance with paragraph 9.
- (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, the review officer must— 25
- (a) consider whether the reason or reasons for which the delay was authorised continue to apply, and
  - (b) if, in the review officer’s opinion, the reason or reasons have ceased to apply, inform the officer who authorised the delay of that opinion (unless the delay was authorised by the review officer). 30
- (3) In the application of this paragraph to Scotland, for the references to paragraphs 6, 7 and 9 substitute references to paragraph 15.
- (4) Article 8(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) (requirement to bring an accused person before the court after arrest) does not apply in relation to a detained person. 35

*Record*

- 36 (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 grounds upon which continued detention is authorised, 5
  - (b) the reason for postponing the review,
  - (c) the fact that the detained person has been informed as required under paragraph 35(1),
  - (d) the officer’s conclusion on the matter considered under paragraph 35(2)(a),
  - (e) the fact that the officer has taken action under paragraph 35(2)(b), and 10
  - (f) the fact that the detained person is being detained by virtue of section 28(6) or (7).
- (2) The review officer must –
- (a) make the record in the presence of the detained person, and 15
  - (b) inform the detained person at that time whether the review officer is authorising continued detention, and if so, of the grounds for such authorisation.
- (3) Sub-paragraph (2) does not apply where, at the time when the record is made, the detained person is – 20
- (a) incapable of understanding what is said to them,
  - (b) violent or likely to become violent, or
  - (c) in urgent need of medical attention.

**PART 6**

EXTENSION OF DETENTION UNDER SECTION 28 25

*Warrants of further detention*

- 37 (1) Each of the following –
- (a) in England and Wales, a Crown Prosecutor,
  - (b) in Scotland, the Lord Advocate or a procurator fiscal,
  - (c) in Northern Ireland, the Director of Public Prosecutions for Northern Ireland, 30
  - (d) in any part of the United Kingdom, a police officer of at least the rank of superintendent,
- may apply to a judicial authority for the issue of a warrant of further detention in relation to a person. 35
- (2) A warrant of further detention is a warrant –
- (a) authorising the further detention under section 28 of a person for the specified period, and
  - (b) stating the time at which it is issued.

- (3) Subject to sub-paragraph (4) and paragraph 44, the specified period in relation to a person is the period of 7 days beginning with the time of the person’s arrest under section 28.
- (4) A judicial authority may issue a warrant of further detention in relation to a person which specifies a shorter period as the period for which the person’s further detention is authorised if – 5
- (a) the application for the warrant is an application for a warrant specifying a shorter period, or
  - (b) the judicial authority is satisfied that there are circumstances that would make it inappropriate for the specified period to be as long as the period of 7 days mentioned in sub-paragraph (3). 10
- (5) In this Part “judicial authority” means – 15
- (a) in England and Wales, a District Judge (Magistrates’ Courts) who is designated for the purpose of this Part by the Lord Chief Justice of England and Wales,
  - (b) in Scotland, a sheriff, and
  - (c) in Northern Ireland, a district judge (magistrates’ courts) in Northern Ireland who is designated for the purpose of this Part by the Lord Chief Justice of Northern Ireland.
- (6) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise the functions under sub-paragraph (5)(a). 20
- (7) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise the functions under sub-paragraph (5)(c) – 25
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).

*Time limit*

- 38 (1) An application for a warrant must be made – 30
- (a) during the period mentioned in section 28(3), or
  - (b) within 6 hours of the end of that period.
- (2) The judicial authority hearing an application made by virtue of sub-paragraph (1)(b) must dismiss the application if it considers that it would have been reasonably practicable to make it during the period mentioned in section 28(3). 35
- (3) For the purposes of this Schedule, an application for a warrant is made when written or oral notice of an intention to make the application is given to a judicial authority.

*Notice*

- 39 An application for a warrant of further detention may not be heard unless the person to whom it relates has been given a notice stating –
- (a) that the application has been made,
  - (b) the time at which the application was made, 5
  - (c) the time at which it is to be heard, and
  - (d) the grounds upon which further detention is sought.

*Grounds for extension*

- 40 (1) A judicial authority may issue a warrant of further detention only if satisfied that – 10
- (a) there are reasonable grounds for believing that the further detention of the person to whom the application relates is necessary as mentioned in sub-paragraph (2), and
  - (b) the investigation in connection with which the person is detained is being conducted diligently and expeditiously. 15
- (2) The further detention of a person is necessary as mentioned in this sub-paragraph if it is necessary –
- (a) to obtain relevant evidence whether by questioning the person or otherwise,
  - (b) to preserve relevant evidence, 20
  - (c) pending the result of an examination or analysis of any relevant evidence, or
  - (d) pending the examination or analysis of anything which is being carried out, or is to be carried out, with a view to obtaining relevant evidence. 25
- (3) In this paragraph “relevant evidence” means, in relation to the person to whom the application relates, evidence which relates to the person’s involvement in foreign power threat activity.

*Representation*

- 41 (1) The person to whom an application relates – 30
- (a) must be given an opportunity to make oral or written representations to the judicial authority about the application, and
  - (b) subject to sub-paragraph (3), is entitled to be legally represented at the hearing.
- (2) A judicial authority must adjourn the hearing of an application to enable the person to whom the application relates to obtain legal representation where – 35
- (a) the person is not legally represented,
  - (b) the person is entitled to be legally represented, and
  - (c) the person wishes to be so represented. 40

- (3) A judicial authority may exclude any of the following persons from any part of the hearing—
- (a) the person to whom the application relates;
  - (b) anyone representing that person.
- (4) A judicial authority may, after giving an opportunity for representations to be made by or on behalf of the applicant and the person to whom the application relates, direct—
- (a) that the hearing of the application must be conducted, and
  - (b) that all representations by or on behalf of a person for the purposes of the hearing must be made,
- by such means (whether a live television link or other means) falling within sub-paragraph (5) as may be specified in the direction and not in the presence (apart from by those means) of the applicant, of the person to whom the application relates or of any legal representative of that person.
- (5) A means of conducting the hearing and of making representations falls within this sub-paragraph if it allows the person to whom the application relates and any legal representative of that person (without being present at the hearing and to the extent that they are not excluded from it under sub-paragraph (3))—
- (a) to see and hear the judicial authority and the making of representations to it by other persons, and
  - (b) to be seen and heard by the judicial authority.
- (6) If the person to whom the application relates wishes to make representations about whether a direction should be given under sub-paragraph (4), the person must do so by using the facilities that will be used if the judicial authority decides to give a direction under that sub-paragraph.
- (7) Sub-paragraph (2) applies to the hearing of representations about whether a direction should be given under sub-paragraph (4) in the case of any application as it applies to a hearing of the application.
- (8) A judicial authority may not give a direction under sub-paragraph (4) unless—
- (a) it has been notified by the Secretary of State that facilities are available at the place where the person to whom the application relates is held for the judicial authority to conduct a hearing by means falling within sub-paragraph (5), and
  - (b) that notification has not been withdrawn.
- (9) If in a case where it has power to do so a judicial authority decides not to give a direction under sub-paragraph (4), it shall state its reasons for not giving it.

*Information*

- 42 (1) A person who has made an application for a warrant may apply to the judicial authority for an order that specified information upon which the person intends to rely be withheld from—
- (a) the person to whom the application relates, and 5
  - (b) anyone representing the person.
- (2) Subject to sub-paragraph (3), a judicial authority may make an order under sub-paragraph (1) in relation to specified information only if satisfied that there are reasonable grounds for believing that if the information were disclosed— 10
- (a) evidence of an offence under any of the provisions mentioned in section 28(3)(a) would be interfered with or harmed,
  - (b) evidence of an offence under section 19 would be interfered with or harmed,
  - (c) the recovery of property obtained as a result of an offence under any of those provisions would be hindered, 15
  - (d) the apprehension, prosecution or conviction of a person who is suspected of being involved in foreign power threat activity would be made more difficult as a result of the person being alerted,
  - (e) the prevention of foreign power threat activity would be made more difficult as a result of a person being alerted, 20
  - (f) the gathering of information about the commission, preparation or instigation of foreign power threat activity would be interfered with, or
  - (g) a person would be interfered with or physically injured. 25
- (3) A judicial authority may also make an order under sub-paragraph (1) in relation to specified information if satisfied that there are reasonable grounds for believing that—
- (a) the detained person has benefited from their criminal conduct, and
  - (b) the recovery of the value of the property constituting the benefit would be hindered if the information were disclosed. 30
- (4) For the purposes of sub-paragraph (3) the question whether a person has benefited from their criminal conduct is to be decided in accordance with Part 2, 3 or 4 of the Proceeds of Crime Act 2002.
- (5) The judicial authority may direct that the following be excluded from the hearing of the application under this paragraph— 35
- (a) the person to whom the application for a warrant relates, and
  - (b) anyone representing that person.

### *Adjournments*

- 43 (1) A judicial authority may adjourn the hearing of an application for a warrant only if the hearing is adjourned to a date before the expiry of the period mentioned in section 28(3).
- (2) This paragraph does not apply to an adjournment under paragraph 41(2). 5

### *Extensions of warrants*

- 44 (1) Each of the following –
- (a) in England and Wales, a Crown Prosecutor,
  - (b) in Scotland, the Lord Advocate or a procurator fiscal,
  - (c) in Northern Ireland, the Director of Public Prosecutions for Northern Ireland, 10
  - (d) in any part of the United Kingdom, a police officer of at least the rank of superintendent,
- may apply for the extension or further extension of the period specified in a warrant of further detention. 15
- (2) The person to whom an application under sub-paragraph (1) may be made is a judicial authority.
- (3) Where the period specified is extended, the warrant must be endorsed with a note stating the new specified period.
- (4) Subject to sub-paragraph (6), the period by which the specified period is extended or further extended is the period which – 20
- (a) begins with the time specified in sub-paragraph (5), and
  - (b) ends with whichever is the earlier of – 25
    - (i) the end of the period of 7 days beginning with that time, and
    - (ii) the end of the period of 14 days beginning with the time of the arrest of the person to which the warrant relates.
- (5) The time referred to in sub-paragraph (4)(a) is – 30
- (a) in the case of a warrant specifying a period which has not previously been extended under this paragraph, the end of the period specified in the warrant, and
  - (b) in any other case, the end of the period for which the period specified in the warrant was last extended under this paragraph.
- (6) A judicial authority may extend or further extend the period specified in a warrant by a shorter period than is required by sub-paragraph (4) if – 35
- (a) the application for the extension is an application for an extension by a period that is shorter than is so required, or
  - (b) the judicial authority is satisfied that there are circumstances that would make it inappropriate for the period of the extension to be as long as the period so required. 40



- (7) Paragraphs 38(3) and 39 to 42 apply to an application under this paragraph as they apply to an application for a warrant of further detention.
- (8) A judicial authority may adjourn the hearing of an application under sub-paragraph (1) only if the hearing is adjourned to a date before the expiry of the period specified in the warrant. 5
- (9) Sub-paragraph (8) does not apply to an adjournment under paragraph 41(2).

*Detention - conditions*

- 45 (1) This paragraph applies where –
- (a) a person is detained by virtue of a warrant issued under this Part of this Schedule, and 10
- (b) the detention is not authorised by virtue of section 28(6) or (7) or otherwise apart from the warrant.
- (2) If, at any time, it appears to the police officer or other person in charge of the detained person’s case (“the officer in charge”) that any of the matters mentioned in paragraph 40(1)(a) and (b) on which the judicial authority last authorised the person’s further detention no longer apply, the officer in charge must – 15
- (a) if the officer in charge has custody of the detained person, release the person immediately, and 20
- (b) if the officer in charge does not, immediately inform the person who does have custody of the detained person that those matters no longer apply in the detained person’s case.
- (3) A person with custody of the detained person who is informed in accordance with this paragraph that those matters no longer apply must release the detained person immediately. 25

**PART 7**

## EMERGENCY POWER WHEN PARLIAMENT DISSOLVED ETC. FOR TEMPORARY EXTENSION OF MAXIMUM PERIOD FOR DETENTION UNDER SECTION 28

- 46 (1) The Secretary of State may make temporary extension regulations if – 30
- (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. 35
- (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 – 5  
 ““This is subject to sub-paragraphs (1A) to (1I).””,
- (b) the insertion, after sub-paragraph (1), of –
- Sub-paragraph (1B) applies in relation to any proposed  
 “(1A) application under sub-paragraph (1) for the further 10  
 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. 15
- (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 20
- (c) in Northern Ireland, without the consent of the  
 Director of Public Prosecutions for Northern  
 Ireland,
- unless the person making the application is the person  
 whose consent is required. 25
- (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 30
- (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 – 35
- (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 40
- (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. 5
- (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). 10 15
- (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.”, 20
- (c) the substitution, for “a judicial authority” in sub-paragraph (2), of “– 25
- (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 – 30
- An application for the extension or further extension of a
- “(2A) period falls within this sub-paragraph if –
- (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 35
- (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”, 40

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- (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 5
  - (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
- “(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”. 15
- (5) Temporary extension regulations apply, except so far as the regulations provide otherwise, to any person who is being detained under section 28 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). 20
- (7) Sub-paragraph (8) applies if – 25
- (a) any of the following events occurs – 25
    - (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 97(8) and (9), and 30
  - (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 28, 35 40
    - (iii) that 14 days has expired, and
    - (iv) the person’s detention is not otherwise authorised by law.

- (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 97(8) and (9),is without prejudice to anything previously done by virtue of the regulations or to the making of new regulations.

## SCHEDULE 7

Section 40

### PREVENTION AND INVESTIGATION MEASURES

#### PART 1

#### MEASURES

#### *Residence measure* 15

- 1 (1) The Secretary of State may impose restrictions on the individual in relation to the residence in which the individual resides.
- (2) The Secretary of State may, in particular, impose any of the following –
  - (a) a requirement to reside at a specified residence;
  - (b) a requirement to give notice to the Secretary of State of the identity of any other individuals who reside (or will reside) at the specified residence;
  - (c) a requirement, applicable between such hours as are specified, to remain at, or within, the specified residence.
- (3) The specified residence must be –
  - (a) premises that are the individual’s own residence, or
  - (b) other premises situated in an agreed locality or in some other locality in the United Kingdom that the Secretary of State considers to be appropriate.
- (4) If there are premises that are the individual’s own residence at the time when the notice imposing restrictions under this paragraph is served on the individual, premises more than 200 miles from those premises may be specified under sub-paragraph (3)(b) only if they are in an agreed locality.
- (5) An “agreed locality” is a locality in the United Kingdom which is agreed by the Secretary of State and the individual.

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- (6) The specified residence (if it is not the individual’s own residence) may be a residence provided by or on behalf of the Secretary of State.
- (7) If the specified residence is provided to the individual by or on behalf of the Secretary of State, the Secretary of State may require the individual to comply with any specified terms of occupancy of that residence (which may be specified by reference to a lease or other document). 5
- (8) A requirement of the kind mentioned in sub-paragraph (2)(c) must include provision to enable the individual to apply for the permission of the Secretary of State to be away from the specified residence, for the whole or part of any applicable period, on one or more occasions. 10
- (9) The Secretary of State may grant such permission subject to either or both of the following conditions –
- (a) the condition that the individual remains at other agreed premises between such hours as the Secretary of State may require;
- (b) the condition that the individual complies with such other restrictions in relation to the individual's movements whilst away from the specified residence as are so required. 15
- (10) “Agreed premises” are premises in the United Kingdom which are agreed by the Secretary of State and the individual.
- (11) Sub-paragraph (9) is not to be read as limiting – 20
- (a) the generality of sub-paragraph (7) of paragraph 17 (power to impose conditions when granting permission), or
- (b) the power to impose further conditions under that sub-paragraph in connection with permission granted by virtue of sub-paragraph (8) of this paragraph. 25
- (12) In sub-paragraph (8) “applicable period” means a period for which the individual is required to remain at the specified residence by virtue of a requirement of the kind mentioned in sub-paragraph (2)(c).

*Travel measure*

- 2 (1) The Secretary of State may impose restrictions on the individual leaving a specified area or travelling outside that area. 30
- (2) The specified area must be –
- (a) the United Kingdom, or
- (b) any area within the United Kingdom that includes the place where the individual will be living. 35
- (3) The Secretary of State may, in particular, impose any of the following requirements –
- (a) a requirement not to leave the specified area without the permission of the Secretary of State;
- (b) a requirement to give notice to the Secretary of State before leaving that area; 40

- (c) a requirement not to possess or otherwise control, or seek to obtain, any travel document without the permission of the Secretary of State;
  - (d) a requirement to surrender any travel document that is in the possession or control of the individual. 5
- (4) “Travel document” means –
  - (a) the individual's passport, or
  - (b) any ticket or other document that permits the individual to make a journey by any means –
    - (i) from the specified area to a place outside that area, or 10
    - (ii) between places outside the specified area.
- (5) “Passport” means any of the following –
  - (a) a United Kingdom passport (within the meaning of the Immigration Act 1971);
  - (b) a passport issued by or on behalf of the authorities of a country or territory outside the United Kingdom, or by or on behalf of an international organisation; 15
  - (c) a document that can be used (in some or all circumstances) instead of a passport.

*Exclusion measure* 20

- 3 (1) The Secretary of State may impose restrictions on the individual entering –
  - (a) a specified area or place, or
  - (b) a place or area of a specified description.But the Secretary of State may not impose restrictions on the individual entering the United Kingdom. 25
- (2) The Secretary of State may, in particular, impose any of the following requirements in respect of a specified area or place or a specified description of an area or place –
  - (a) a requirement not to enter without the permission of the Secretary of State; 30
  - (b) a requirement to give notice to the Secretary of State before entering;
  - (c) a requirement not to enter unless other specified conditions are met.

*Movement directions measure*

- 4 (1) The Secretary of State may impose a requirement for the individual to comply with directions given by a constable in respect of the individual's movements (which may, in particular, include a restriction on movements). 35
- (2) A constable may give such directions only for the purpose of securing compliance –
  - (a) with other specified measures, or

- (b) with a condition imposed under this Act requiring the individual to be escorted by a constable.
- (3) Directions may not remain in effect for a period that is any longer than the constable giving the directions considers necessary for the purpose mentioned in sub-paragraph (2); but that period may not in any event be a period of more than 24 hours. 5

*Financial services measure*

- 5 (1) The Secretary of State may impose restrictions on the individual's use of, or access to, such descriptions of financial services as are specified.
- (2) The Secretary of State may, in particular, impose any of the following requirements— 10
- (a) a requirement not to hold any accounts, without the permission of the Secretary of State, other than the nominated account (see sub-paragraph (3));
- (b) a requirement to close, or to cease to have an interest in, accounts; 15
- (c) a requirement to comply with specified conditions in relation to the holding of any account (including the nominated account) or any other use of financial services;
- (d) a requirement not to possess, or otherwise control, cash over a total specified value without the permission of the Secretary of State. 20
- (3) The Secretary of State must allow the individual to hold (at least) one account (the “nominated account”) if—
- (a) the individual gives notice to the Secretary of State of the holding of the nominated account, and
- (b) the account is held with a bank. 25
- (4) In sub-paragraph (3) “bank” means an institution which is incorporated in, or formed under the law of, any part of the United Kingdom and which has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits (within the meaning of section 22 of that Act, taken with Schedule 2 to that Act and any order under section 22 of that Act). 30
- (5) The reference in sub-paragraph (2)(d) to possessing or otherwise controlling cash does not include any cash that is held in an account with a person providing financial services (in accordance with any requirements imposed under this paragraph). 35
- (6) In sub-paragraph (2)(d) “cash” means—
- (a) coins and notes in any currency,
- (b) postal orders,
- (c) cheques of any kind, including travellers' cheques,
- (d) bankers' drafts, 40
- (e) bearer bonds and bearer shares, and



- (f) such other kinds of monetary instrument as may be specified.
- (7) A reference in this paragraph to the individual holding an account is a reference to an account held with a person providing financial services –
  - (a) that is in the individual’s name or is held for the individual’s benefit (whether held solely in the individual’s name or jointly with one or more other persons); or 5
  - (b) in respect of which the individual has power of attorney or can otherwise exercise control.
- (8) In this paragraph “financial services” means any service of a financial nature, including (but not limited to) banking and other financial services consisting of – 10
  - (a) accepting deposits and other repayable funds;
  - (b) lending (including consumer credit and mortgage credit);
  - (c) payment and money transmission services (including credit, charge and debit cards). 15

*Property measure*

- 6 (1) The Secretary of State may impose either or both of the following –
  - (a) restrictions on the individual in relation to the transfer of property to, or by, the individual, or
  - (b) requirements on the individual in relation to the disclosure of property. 20
- (2) The Secretary of State may, in particular, impose any of the following requirements –
  - (a) a requirement not to transfer money or other property to a person or place outside the United Kingdom without the permission of the Secretary of State; 25
  - (b) a requirement to give notice to the Secretary of State before transferring money or other property to a person or place outside the United Kingdom;
  - (c) a requirement to comply with any specified conditions in relation to the transfer of property to, or by, the individual; 30
  - (d) a requirement to disclose to the Secretary of State such details as may be specified of any property that falls within sub-paragraph (3).
- (3) Property falls within this sub-paragraph if it is property of a specified description – 35
  - (a) in which the individual has an interest of any kind, or
  - (b) over which, or in relation to which, the individual may exercise any right (including a right of use or a right to grant access).
- (4) A reference in this paragraph to the transfer of property includes a reference to the arrangement of such a transfer. 40

- (5) In this paragraph “property” includes rights over, or in relation to, property (including rights of use and rights to grant access); and a reference to the transfer of property includes a reference to the acquisition or disposal of such rights.

*Weapons and explosives measure*

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- 7 (1) The Secretary of State may impose on the individual—
- (a) a prohibition on possessing offensive weapons, imitation firearms or explosives;
  - (b) a prohibition on making an application for a firearm certificate or a shot gun certificate. 10
- (2) In sub-paragraph (1)(a)—
- “offensive weapon” means an article made or adapted for use for causing injury to the person, or intended by the person in possession of it for such use (by that person or another);
  - “imitation firearm” has the same meaning as in the Firearms Act 1968 or (in relation to Northern Ireland) the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3)); 15
  - “explosive” means anything that is—
    - (a) an explosive within the meaning of the Explosives Act 1875, or
    - (b) an explosive substance within the meaning of the Explosive Substances Act 1883. 20
- (3) For the purposes of sub-paragraph (1)(b)—
- (a) an application for a firearm certificate is an application under section 26A of the Firearms Act 1968 or Article 4 of the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3)); 25
  - (b) an application for a shot gun certificate is an application under section 26B of the Firearms Act 1968.

*Electronic communication device measure*

- 8 (1) The Secretary of State may impose either or both of the following— 30
- (a) restrictions on the individual’s possession or use of electronic communication devices;
  - (b) requirements on the individual in relation to the possession or use of electronic communication devices by other persons in the individual’s residence. 35
- (2) The Secretary of State may, in particular, impose—
- (a) a requirement not to possess or use any devices without the permission of the Secretary of State (subject to sub-paragraph (3));
  - (b) a requirement that a device may only be possessed or used subject to specified conditions. 40

- (3) The Secretary of State must allow the individual to possess and use (at least) one of each of the following descriptions of device (subject to any conditions on such use as may be specified under sub-paragraph (2)(b)) –
- (a) a telephone operated by connection to a fixed line;
  - (b) a computer that provides access to the internet by connection to a fixed line (including any apparatus necessary for that purpose);
  - (c) a mobile telephone that does not provide access to the internet.
- (4) The conditions specified under sub-paragraph (2)(b) may, in particular, include conditions in relation to –
- (a) the type or make of a device (which may require the individual to use a device that is supplied or modified by the Secretary of State);
  - (b) the manner in which, or the times at which, a device is used;
  - (c) the monitoring of such use;
  - (d) the granting to a specified description of person of access to the individual's premises for the purpose of the inspection or modification of a device;
  - (e) the surrendering to a specified description of person of a device on a temporary basis for the purpose of its inspection or modification at another place;
  - (f) the disclosure to the Secretary of State of such details as may be specified of any electronic communication device possessed or used by the individual or any other person in the individual's residence.
- (5) An “electronic communication device” means any of the following –
- (a) a device that is capable of storing, transmitting or receiving images, sounds or information by electronic means;
  - (b) a component part of such a device;
  - (c) an article designed or adapted for use with such a device (including any disc, memory stick, film or other separate article on which images, sound or information may be recorded).
- (6) The devices within sub-paragraph (5)(a) include (but are not limited to) –
- (a) computers,
  - (b) telephones (whether mobile telephones or telephones operated by connection to a fixed line),
  - (c) equipment (not within paragraph (a) or (b)) designed or adapted, or capable of being adapted, for the purpose of connecting to the internet, and
  - (d) equipment designed or adapted, or capable of being adapted, for the purposes of sending or receiving facsimile transmissions.

*Association measure*

- 9 (1) The Secretary of State may impose restrictions on the individual's association or communication with other persons.

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- (2) The Secretary of State may, in particular, impose any of the following requirements—
- (a) a requirement not to associate or communicate with specified persons, or specified descriptions of persons, without the permission of the Secretary of State; 5
  - (b) a requirement to give notice to the Secretary of State before associating or communicating with other persons (whether at all or in specified circumstances);
  - (c) a requirement to comply with any other specified conditions in connection with associating or communicating with other persons. 10
- (3) An individual associates or communicates with another person if the individual associates or communicates with that person by any means (and for this purpose it is immaterial whether the association or communication is carried out by the individual in person or by or through another individual or means). 15

*Work or studies measure*

- 10 (1) The Secretary of State may impose restrictions on the individual in relation to the individual’s work or studies.
- (2) The Secretary of State may, in particular, impose any of the following requirements— 20
- (a) a requirement not to carry out without the permission of the Secretary of State—
    - (i) specified work or work of a specified description, or
    - (ii) specified studies or studies of a specified description;
  - (b) a requirement to give notice to the Secretary of State before carrying out any work or studies; 25
  - (c) a requirement to comply with any other specified conditions in connection with any work or studies.
- (3) In this paragraph—
- “studies” includes any course of education or training; 30
  - “work” includes any business or occupation (whether paid or unpaid).

*Reporting measure*

- 11 (1) The Secretary of State may impose a requirement for the individual—
- (a) to report to such a police station, at such times and in such manner, as the Secretary of State may by notice require, and 35
  - (b) to comply with any directions given by a constable in relation to such reporting.
- (2) Such a notice may, in particular, provide that a requirement to report to a police station is not to apply if conditions specified in the notice are met.

*Polygraph measure*

- 12 (1) The Secretary of State may impose a requirement for the individual –
- (a) to participate in polygraph sessions conducted with a view to –
    - (i) monitoring the individual’s compliance with other specified measures; 5
    - (ii) assessing whether any variation of the specified measures is necessary for purposes connected with preventing or restricting the individual’s involvement in foreign power threat activity,
  - (b) to participate in those polygraph sessions at such times as may be specified in instructions given by the Secretary of State, and 10
  - (c) while participating in a polygraph session, to comply with instructions given to the individual by the polygraph operator.
- (2) The Secretary of State may by regulations make provision relating to the conduct of polygraph sessions, which may include in particular – 15
- (a) provision requiring polygraph operators to be persons who satisfy such requirements as to qualifications, experience and other matters as are specified in the regulations;
  - (b) provision about the keeping of records of polygraph sessions;
  - (c) provision about the preparation of reports on the results of polygraph sessions. 20
- (3) The measurement and recording of the physiological reactions of an individual while being questioned in the course of a polygraph examination must be done by means of equipment of a type approved by the Secretary of State. 25
- (4) The following may not be used in evidence against the individual in any proceedings for an offence –
- (a) any statement made by the individual while participating in a polygraph session;
  - (b) any physiological reaction of the individual while being questioned in the course of a polygraph examination. 30
- (5) In this paragraph –
- “polygraph examination” means a procedure in which –
    - (a) the polygraph operator questions the individual,
    - (b) the questions and the individual’s answers are recorded, and 35
    - (c) physiological reactions of the individual while being questioned are measured and recorded;
  - “polygraph operator” means the person conducting a polygraph session; 40
  - “polygraph session” means a session during which the polygraph operator –

- (a) conducts one or more polygraph examinations of the individual, and
- (b) interviews the individual in preparation for, or otherwise in connection with, any such examination.

*Appointments measure*

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- 13 (1) The Secretary of State may impose a requirement for the individual –
- (a) to attend appointments with specified persons or persons of specified descriptions, and
  - (b) to comply with any reasonable directions given by the Secretary of State that relate to matters about which the individual is required to attend an appointment. 10
- (2) A requirement under sub-paragraph (1)(a) is a requirement to attend appointments –
- (a) at specified times and places, or
  - (b) at times and places notified to the individual by persons referred to in that sub-paragraph. 15

*Photography measure*

- 14 The Secretary of State may impose a requirement for the individual to allow photographs to be taken of the individual at such locations and at such times as the Secretary of State may by notice require. 20

*Monitoring measure*

- 15 (1) The Secretary of State may impose requirements for the individual to co-operate with specified arrangements for enabling the individual's movements, communications or other activities to be monitored by electronic or other means. 25
- (2) The Secretary of State may, in particular, impose any of the following requirements for co-operation with the specified arrangements –
- (a) a requirement to submit to procedures required by the arrangements;
  - (b) a requirement to wear or otherwise use apparatus approved by or in accordance with the arrangements; 30
  - (c) a requirement to maintain such apparatus in a specified manner;
  - (d) a requirement to comply with directions given by persons carrying out functions for the purposes of the arrangements.
- (3) Directions under sub-paragraph (2)(d) may include directions requiring the individual to grant access to the individual's residence for the purpose of the inspection or modification of any apparatus used or maintained under the arrangements. 35

*Provision of residence information measure*

- 16 (1) The Secretary of State may impose a requirement for the individual to disclose to the Secretary of State –
- (a) the address of the individual’s residence;
  - (b) if the individual resides at multiple occupancy premises, such details as may be specified concerning where, in the premises, the individual’s residence is located; 5
  - (c) such details as may be specified in relation to any change (or anticipated change) in the matters referred to in paragraphs (a) and (b). 10
- (2) The Secretary of State may impose a requirement for the individual to comply with any other specified conditions in connection with the disclosure of information within sub-paragraph (1).
- (3) “Multiple occupancy premises” are premises at which two or more individuals who are not members of the same household reside. 15

**PART 2**

PERMISSION AND NOTICES

*Permission*

- 17 (1) Any application by an individual for permission must be made in writing.
- (2) The Secretary of State may by notice specify – 20
- (a) the information to be supplied on an application, and
  - (b) the time by which the application is to be made.
- (3) A notice under sub-paragraph (2) may make different provision for different measures.
- (4) The Secretary of State may by notice request the provision, within such period of time as the notice may specify, of further information from the individual in connection with an application received under sub-paragraph (1). 25
- (5) The Secretary of State is not required to consider an application further unless any information requested under sub-paragraph (4) is provided in accordance with the notice mentioned in that sub-paragraph. 30
- (6) Permission on an application is granted by the Secretary of State giving notice to the individual.
- (7) Permission may be granted subject to such conditions as the Secretary of State may by notice specify. 35
- (8) In this paragraph “permission” means permission in connection with a requirement or restriction imposed under Part 1 of this Schedule.

*Notices*

- 18 (1) This paragraph applies for the purposes of any notice given by the individual to the Secretary of State in connection with measures imposed under Part 1 of this Schedule (“a Schedule 7 notice”).
- (2) The Secretary of State may by notice specify – 5
- (a) the information to be supplied in a Schedule 7 notice, and
- (b) the time by which a Schedule 7 notice is to be given.
- (3) A notice under sub-paragraph (2) may make different provision for different measures.
- (4) The Secretary of State may by notice request the provision, within such period of time as the notice may specify, of further information from the individual in connection with a Schedule 7 notice received from the individual. 10
- (5) A requirement on the individual to give a Schedule 7 notice is not complied with unless and until the individual has received notice from the Secretary of State – 15
- (a) that the Schedule 7 notice has been received, and
- (b) that no (or no further) information is required under sub-paragraph (4) in relation to the Schedule 7 notice.

*Power of Secretary of State to vary or revoke notices* 20

- 19 The Secretary of State may vary or revoke a notice given by the Secretary of State under this Schedule.

## SCHEDULE 8

Section 44

## URGENT CASES: REFERENCE TO THE COURT ETC

*Application* 25

- 1 This Schedule applies if the Secretary of State –
- (a) makes the relevant decisions in relation to an individual, and
- (b) imposes measures on the individual.

*Statement of urgency*

- 2 The Part 2 notice must include a statement that the Secretary of State reasonably considers that the urgency of the case requires measures to be imposed without obtaining the permission of the court under section 43. 30



*Reference to court*

- 3 (1) Immediately after serving the Part 2 notice, the Secretary of State must refer to the court the imposition of the measures on the individual.
- (2) The function of the court on the reference is to consider whether the relevant decisions of the Secretary of State were obviously flawed. 5
- (3) The court’s consideration of the reference must begin within the period of 7 days beginning with the day on which the Part 2 notice is served on the individual.
- (4) The court may consider the reference – 10
  - (a) in the absence of the individual,
  - (b) without the individual having been notified of the reference, and
  - (c) without the individual having been given an opportunity (if the individual was aware of the reference) of making any representations to the court.
- (5) But that does not limit the matters about which rules of court may be made. 15

*Decision by court*

- 4 (1) In a case where the court determines that a decision of the Secretary of State that condition A, condition B or condition C is met is obviously flawed, the court must quash the Part 2 notice.
- (2) In a case where the court determines that a decision of the Secretary of State that condition D is met is obviously flawed, the court must quash those of the measures which it determines that decision relates to. 20
- (3) If sub-paragraph (1) does not apply, the court must confirm the Part 2 notice (subject to any quashing of measures under sub-paragraph (2)).
- (4) If the court determines that the Secretary of State’s decision that the urgency condition is met is obviously flawed, the court must make a declaration of that determination (whether it quashes or confirms the Part 2 notice under the preceding provisions of this paragraph). 25

*Procedures on reference*

- 5 (1) In determining a reference under paragraph 3, the court must apply the principles applicable on an application for judicial review. 30
- (2) The court must ensure that the individual is notified of the court's decision on a reference under paragraph 3.

*Interpretation*

- 6 (1) References in this Schedule to the urgency condition being met are references to condition E being met by virtue of section 41(5)(b) (urgency of the case requires measures to be imposed without obtaining the permission of the court). 35

- (2) In this Schedule “relevant decisions” means the decisions that the following conditions are met –
- (a) condition A;
  - (b) condition B;
  - (c) condition C;
  - (d) condition D;
  - (e) the urgency condition.

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## SCHEDULE 9

Section 52

## APPEALS AGAINST CONVICTIONS

- 1 An individual who has been convicted of an offence under section 57(1) may appeal against the conviction if –
- (a) a Part 2 notice, the extension of a Part 2 notice, or the revival of a Part 2 notice is quashed, or measures specified in a Part 2 notice are quashed, and
  - (b) the individual could not have been convicted had the quashing occurred before the proceedings for the offence were brought.
- 2 An appeal under this Schedule is to be made –
- (a) in the case of a conviction on indictment in England and Wales or Northern Ireland, to the Court of Appeal,
  - (b) in the case of a conviction on indictment in Scotland, to the High Court of Justiciary,
  - (c) in the case of a summary conviction in England and Wales, to the Crown Court,
  - (d) in the case of a summary conviction in Scotland, to the Sheriff Appeal Court, or
  - (e) in the case of a summary conviction in Northern Ireland, to the county court.
- 3 (1) The right of appeal under this Schedule does not arise until there is no further possibility of an appeal against –
- (a) the decision to quash the notice, extension, revival or measures, or
  - (b) any decision on an appeal made against that decision.
- (2) In determining whether there is no further possibility of an appeal against a decision of the kind mentioned in sub-paragraph (1), any power to extend the time for giving notice of application for leave to appeal, or for applying for leave to appeal, must be ignored.
- 4 (1) On an appeal under this Schedule to any court, that court must allow the appeal and quash the conviction.

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- (2) An appeal under this Schedule to the Court of Appeal against a conviction on indictment in England and Wales or Northern Ireland –
- (a) may be brought irrespective of whether the appellant has previously appealed against the conviction,
  - (b) may not be brought after the end of the period of 28 days beginning with the day on which the right of appeal arises by virtue of paragraph 3, and 5
  - (c) is to be treated as an appeal under section 1 of the Criminal Appeal Act 1968 or, in Northern Ireland, under section 1 of the Criminal Appeal (Northern Ireland) Act 1980, but does not require leave in either case. 10
- (3) An appeal under this Schedule to the High Court of Justiciary against a conviction on indictment in Scotland –
- (a) may be brought irrespective of whether the appellant has previously appealed against the conviction, 15
  - (b) may not be brought after the end of the period of 28 days beginning with the day on which the right of appeal arises by virtue of paragraph 3, and
  - (c) is to be treated as an appeal under section 106 of the Criminal Procedure (Scotland) Act 1995 for which leave has been granted. 20
- (4) An appeal under this Schedule to the Crown Court against a summary conviction in England and Wales –
- (a) may be brought irrespective of whether the appellant pleaded guilty,
  - (b) may be brought irrespective of whether the appellant has previously appealed against the conviction or made an application in respect of the conviction under section 111 of the Magistrates' Courts Act 1980 (case stated); 25
  - (c) may not be brought after the end of the period of 21 days beginning with the day on which the right of appeal arises by virtue of paragraph 3, and 30
  - (d) is to be treated as an appeal under section 108(1)(b) of the Magistrates' Courts Act 1980.
- (5) An appeal under this Schedule to the Sheriff Appeal Court against a summary conviction in Scotland –
- (a) may be brought irrespective of whether the appellant pleaded guilty, 35
  - (b) may be brought irrespective of whether the appellant has previously appealed against the conviction,
  - (c) may not be brought after the end of the period of two weeks beginning with the day on which the right of appeal arises by virtue of paragraph 3, 40
  - (d) is to be by note of appeal, which shall state the ground of appeal,
  - (e) is to be treated as an appeal for which leave has been granted under Part 10 of the Criminal Procedure (Scotland) Act 1995, and

- (f) must be in accordance with such procedure as the High Court of Justiciary may, by Act of Adjournal, determine.
- (6) An appeal under this Schedule to the county court against a summary conviction in Northern Ireland –
- (a) may be brought irrespective of whether the appellant pleaded guilty, 5
  - (b) may be brought irrespective of whether the appellant has previously appealed against the conviction or made an application in respect of the conviction under Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (case stated),
  - (c) may not be brought after the end of the period of 21 days beginning with the day on which the right of appeal arises by virtue of paragraph 3, and 10
  - (d) is to be treated as an appeal under Article 140(1)(b) of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)). 15

## SCHEDULE 10

Section 55

## PROCEEDINGS RELATING TO PREVENTION AND INVESTIGATION MEASURES

*Introductory*

- 1 In this Schedule –
- “appeal proceedings” means proceedings in the Court of Appeal or the Inner House of the Court of Session on an appeal relating to relevant proceedings; 20
  - “the relevant court” means –
    - (a) in relation to relevant proceedings, the court;
    - (b) in relation to appeal proceedings, the Court of Appeal or the Inner House of the Court of Session; 25
  - “rules of court” means rules for regulating the practice and procedure to be followed in the court, the Court of Appeal or the Inner House of the Court of Session.

*Rules of court: general provision* 30

- 2 (1) A person making rules of court relating to relevant proceedings or appeal proceedings must have regard to the need to secure the following –
- (a) that the decisions that are the subject of the proceedings are properly reviewed, and
  - (b) that disclosures of information are not made where they would be contrary to the public interest. 35
- (2) Rules of court relating to relevant proceedings or appeal proceedings may make provision –

- (a) about the mode of proof and about evidence in the proceedings;
  - (b) enabling or requiring the proceedings to be determined without a hearing;
  - (c) about legal representation in the proceedings;
  - (d) enabling the proceedings to take place without full particulars of the reasons for the decisions to which the proceedings relate being given to a party to the proceedings (or to any legal representative of that party); 5
  - (e) enabling the relevant court to conduct proceedings in the absence of any person, including a party to the proceedings (or any legal representative of that party); 10
  - (f) about the functions of a person appointed as a special advocate (see paragraph 10);
  - (g) enabling the court to give a party to the proceedings a summary of evidence taken in the party's absence. 15
- (3) In this paragraph—
- (a) references to a party to the proceedings do not include the Secretary of State;
  - (b) references to a party's legal representative do not include a person appointed as a special advocate. 20
- (4) Nothing in this paragraph is to be read as restricting the power to make rules of court or the matters to be taken into account when doing so.

*Rules of court: disclosure*

- 3 (1) Rules of court relating to relevant proceedings or appeal proceedings must secure that the Secretary of State is required to disclose— 25
- (a) material on which the Secretary of State relies,
  - (b) material which adversely affects the Secretary of State's case, and
  - (c) material which supports the case of another party to the proceedings.
- (2) This paragraph is subject to paragraph 4.
- 4 (1) Rules of court relating to relevant proceedings or appeal proceedings must secure— 30
- (a) that the Secretary of State has the opportunity to make an application to the relevant court for permission not to disclose material otherwise than to the relevant court and any person appointed as a special advocate; 35
  - (b) that such an application is always considered in the absence of every party to the proceedings (and every party's legal representative);
  - (c) that the relevant court is required to give permission for material not to be disclosed if it considers that the disclosure of the material would be contrary to the public interest; 40
  - (d) that, if permission is given by the relevant court not to disclose material, it must consider requiring the Secretary of State to provide

- a summary of the material to every party to the proceedings (and every party’s legal representative);
- (e) that the relevant court is required to ensure that such a summary does not contain material the disclosure of which would be contrary to the public interest. 5
- (2) Rules of court relating to relevant proceedings or appeal proceedings must secure that provision to the effect mentioned in sub-paragraph (3) applies in cases where the Secretary of State –
- (a) does not receive the permission of the relevant court to withhold material, but elects not to disclose it, or 10
- (b) is required to provide a party to the proceedings with a summary of material that is withheld, but elects not to provide the summary.
- (3) The relevant court must be authorised –
- (a) if it considers that the material or anything that is required to be summarised might adversely affect the Secretary of State’s case or support the case of a party to the proceedings, to direct that the Secretary of State – 15
- (i) is not to rely on such points in the Secretary of State’s case, or
- (ii) is to make such concessions or take such other steps as the court may specify, or 20
- (b) in any other case, to ensure that the Secretary of State does not rely on the material or (as the case may be) on that which is required to be summarised.
- (4) In this paragraph – 25
- (a) references to a party to the proceedings do not include the Secretary of State;
- (b) references to a party’s legal representative do not include a person appointed as a special advocate.
- Article 6 rights* 30
- 5 (1) Nothing in paragraphs 2 to 4, or in rules of court made under any of those paragraphs, is to be read as requiring the relevant court to act in a manner inconsistent with Article 6 of the Human Rights Convention.
- (2) The “Human Rights Convention” means the Convention within the meaning of the Human Rights Act 1998 (see section 21(1) of that Act). 35

*Rules of court: anonymity*

- 6 (1) Rules of court relating to relevant proceedings or appeal proceedings may make provision for –
- (a) the making by the Secretary of State or the relevant individual of an application to the court for an order requiring anonymity for that individual, and 40

- (b) the making by the court, on such an application, of an order requiring such anonymity,  
and the provision made by the rules may allow the application and the order to be made irrespective of whether any other relevant proceedings have been begun in the court. 5
- (2) Rules of court may provide for the Court of Appeal or the Inner House of the Court of Session to make an order in connection with any appeal proceedings requiring anonymity for the relevant individual.
- (3) In sub-paragraphs (1) and (2) the references, in relation to a court, to an order requiring anonymity for the relevant individual are references to an order by that court which imposes such prohibition or restriction as it thinks fit on the disclosure – 10
- (a) by such persons as the court specifies or describes, or  
(b) by persons generally,  
of the identity of the relevant individual or of any information that would tend to identify the relevant individual. 15
- (4) In this paragraph “relevant individual” means an individual on whom the Secretary of State is proposing to impose, or has imposed, measures.

*Initial exercise of rule-making powers by Lord Chancellor*

- 7 (1) The first time that rules of court are made in exercise of the powers conferred by this Schedule in relation to proceedings in England and Wales or in Northern Ireland, the rules may be made by the Lord Chancellor instead of by the person who would otherwise make them. 20
- (2) Before making rules of court under sub-paragraph (1), the Lord Chancellor must consult – 25
- (a) in relation to rules applicable to proceedings in England and Wales, the Lord Chief Justice of England and Wales;  
(b) in relation to rules applicable to proceedings in Northern Ireland, the Lord Chief Justice of Northern Ireland.
- (3) But the Lord Chancellor is not required to undertake any other consultation before making the rules. 30
- (4) A requirement to consult under sub-paragraph (2) may be satisfied by consultation that took place wholly or partly before this Schedule comes into force.
- (5) Rules of court made by the Lord Chancellor under sub-paragraph (1) – 35
- (a) must be laid before Parliament, and  
(b) if not approved by a resolution of each House before the end of 40 days beginning with the day on which they were made, cease to have effect at the end of that period.

- (6) In determining that period of 40 days no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (7) If rules cease to have effect in accordance with sub-paragraph (5) –
- (a) that does not affect anything done in previous reliance on the rules, and
  - (b) sub-paragraph (1) applies again as if the rules had not been made.
- (8) The following provisions do not apply to rules of court made by the Lord Chancellor under this paragraph –
- (a) section 3(6) of the Civil Procedure Act 1997 (Parliamentary procedure for civil procedure rules);
  - (b) section 56(1), (2) and (4) of the Judicature (Northern Ireland) Act 1978 (statutory rules procedure).
- (9) Until the coming into force of section 85 of the Courts Act 2003, the reference in sub-paragraph (8)(a) to section 3(6) of the Civil Procedure Act 1997 is to be read as a reference to section 3(2) of that Act.

#### *Use of advisers*

- 8 (1) In any relevant proceedings or appeal proceedings the relevant court may if it thinks fit –
- (a) call in aid one or more advisers appointed for the purposes of this paragraph by the Lord Chancellor, and
  - (b) hear and dispose of the proceedings with the assistance of the adviser or advisers.
- (2) The Lord Chancellor may appoint advisers for the purposes of this paragraph only with the approval of –
- (a) the Lord President of the Court of Session, in relation to an adviser who may be called in aid wholly or mainly in Scotland;
  - (b) the Lord Chief Justice of Northern Ireland, in relation to an adviser who may be called in aid wholly or mainly in Northern Ireland;
  - (c) the Lord Chief Justice of England and Wales, in any other case.
- (3) Rules of court may regulate the use of advisers in proceedings who are called in aid under sub-paragraph (1).
- (4) The Lord Chancellor may pay such remuneration, expenses and allowances to advisers appointed for the purposes of this paragraph as the Lord Chancellor may determine.
- 9 (1) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise the function under paragraph 8(2)(a).
- (2) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise the function under paragraph 8(2)(b) –



- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).
- (3) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise the function under paragraph 8(2)(c). 5

*Appointment of special advocate*

- 10 (1) The appropriate law officer may appoint a person to represent the interests of a party in any relevant proceedings or appeal proceedings from which the party (and any legal representative of the party) is excluded. 10
- (2) A person appointed under sub-paragraph (1) is referred to in this Schedule as appointed as a “special advocate”.
- (3) The “appropriate law officer” is—
- (a) in relation to proceedings in England and Wales, the Attorney General; 15
  - (b) in relation to proceedings in Scotland, the Advocate General for Scotland;
  - (c) in relation to proceedings in Northern Ireland, the Advocate General for Northern Ireland.
- (4) A person appointed as a special advocate is not responsible to the party to the proceedings whose interests the person is appointed to represent. 20
- (5) A person may be appointed as a special advocate only if—
- (a) in the case of an appointment by the Attorney General, the person has a general qualification for the purposes of section 71 of the Courts and Legal Services Act 1990; 25
  - (b) in the case of an appointment by the Advocate General for Scotland, the person is an advocate or a solicitor who has rights of audience in the Court of Session or the High Court of Justiciary by virtue of section 25A of the Solicitors (Scotland) Act 1980;
  - (c) in the case of an appointment by the Advocate General for Northern Ireland, the person is a member of the Bar of Northern Ireland. 30

SCHEDULE 11

Section 58

POWERS OF ENTRY, SEARCH, SEIZURE AND RETENTION

*Introductory*

- 1 This Schedule confers powers of entry, search, seizure and retention on constables in connection with the imposition of measures on individuals. 35
- 2 A power conferred on a constable by virtue of this Schedule—

- (a) is additional to powers which the constable has at common law or by virtue of any other enactment, and
  - (b) is not to be taken as affecting those powers.
- 3 A constable may detain an individual for the purpose of carrying out a search of that individual under a power conferred by virtue of this Schedule. 5
- 4 A constable may use reasonable force, if necessary, for the purpose of exercising a power conferred on the constable by virtue of this Schedule.

*Entry and search for purposes of serving a Part 2 notice*

- 5 (1) For the purpose of serving a relevant notice on an individual, a constable may – 10
- (a) enter any premises where the constable has reasonable grounds for believing the individual to be, and
  - (b) search those premises for that individual.
- (2) A “relevant notice” means –
- (a) a Part 2 notice; 15
  - (b) a notice under section 42(2) extending a Part 2 notice;
  - (c) a notice under section 49(1) varying a Part 2 notice as mentioned in paragraph (c) of that subsection; or
  - (d) a notice under section 50(6) reviving a Part 2 notice.

*Search of individual or premises at time of serving a Part 2 notice* 20

- 6 (1) This paragraph applies if a Part 2 notice is being, or has just been, served on an individual.
- (2) A constable may (without a warrant) –
- (a) search the individual for the purpose mentioned in sub-paragraph (3); 25
  - (b) enter and search, for that purpose, any premises mentioned in sub-paragraph (4).
- (3) The purpose is that of ascertaining whether there is anything on the individual, or (as the case may be) in the premises, that contravenes measures specified in the Part 2 notice. 30
- (4) The premises referred to in sub-paragraph (2)(b) are –
- (a) the individual’s place of residence;
  - (b) other premises to which the individual has power to grant access.
- (5) A constable may seize anything that the constable finds in the course of a search carried out under a power conferred by this paragraph – 35
- (a) for the purpose of ascertaining whether measures specified in the Part 2 notice are being or are about to be contravened by the individual;

- (b) for the purpose of securing compliance by the individual with measures specified in the Part 2 notice;
- (c) if the constable has reasonable grounds for suspecting that—
  - (i) the thing is or contains evidence in relation to an offence, and
  - (ii) it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

5

*Search of premises on suspicion of absconding*

- 7 (1) This paragraph applies if a constable reasonably suspects that an individual in respect of whom a Part 2 notice is in force has absconded. 10
- (2) The constable may (without a warrant) enter and search any premises mentioned in sub-paragraph (3)—
- (a) for the purposes of determining whether the individual has absconded;
  - (b) if it appears that the individual has absconded, for anything that may assist in the pursuit and arrest of the individual. 15
- (3) The premises referred to in sub-paragraph (2) are—
- (a) the individual's place of residence;
  - (b) other premises to which the individual has power to grant access;
  - (c) any premises to which the individual had power to grant access and with which there is reason to believe that the individual is or was recently connected. 20
- (4) A constable may seize anything that the constable finds in the course of a search carried out under a power conferred by this paragraph—
- (a) if the constable reasonably believes that the thing will assist in the pursuit or arrest of the individual; 25
  - (b) if the constable has reasonable grounds for suspecting that—
    - (i) the thing is or contains evidence in relation to an offence, and
    - (ii) it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed. 30

*Search for compliance purposes*

- 8 (1) A constable may apply for the issue of a warrant under this paragraph for the purpose of determining whether an individual in respect of whom a Part 2 notice is in force is complying with measures specified in the notice. 35
- (2) A warrant under this paragraph may authorise a constable to do either or both of the following—
- (a) to search the individual;
  - (b) to enter and search the individual's place of residence or any other premises that are specified in the warrant. 40

- (3) An application for a warrant under this paragraph must be made to the appropriate judicial authority.
- (4) The appropriate judicial authority may, on such an application, grant the warrant only if satisfied that the warrant is necessary for the purpose mentioned in sub-paragraph (1). 5
- (5) A constable may seize anything that the constable finds in the course of a search carried out under a power conferred by a warrant issued under this paragraph –
- (a) for the purpose of ascertaining whether any measure specified in the Part 2 notice has been, is being, or is about to be, contravened by the individual; 10
  - (b) for the purpose of securing compliance by the individual with measures specified in the Part 2 notice;
  - (c) if the constable has reasonable grounds for suspecting that –
    - (i) the thing is or contains evidence in relation to an offence, and 15
    - (ii) it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.
- (6) In this paragraph “appropriate judicial authority”, in relation to a warrant, means – 20
- (a) a justice of the peace, if the application for the warrant is made in England or Wales;
  - (b) a sheriff, if the application is made in Scotland;
  - (c) a lay magistrate, if the application is made in Northern Ireland.
- 9 (1) This paragraph applies in relation to a warrant issued in England, Wales or Northern Ireland under paragraph 8 so far as it authorises a constable to search an individual. 25
- (2) In relation to warrants issued under that paragraph so far as authorising the entry and search of premises, see –
- (a) sections 15 and 16 of the Police and Criminal Evidence Act 1984, in relation to warrants issued in England and Wales; 30
  - (b) Articles 17 and 18 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)), in relation to warrants issued in Northern Ireland.
- (3) The constable applying for the warrant must – 35
- (a) state the ground on which the application is made, and
  - (b) identify, so far as practicable, the articles to be sought.
- (4) The application for the warrant is to be made without notice and –
- (a) if made in England or Wales, supported by an information in writing; 40
  - (b) if made in Northern Ireland, supported by a complaint in writing and substantiated on oath.

- (5) The constable must answer on oath any questions that the appropriate judicial authority (within the meaning of paragraph 8) hearing the application may ask of the constable.
- (6) If the warrant is issued it authorises a search of the individual on one occasion only. 5
- (7) The warrant must –
  - (a) specify the name of the constable applying for it, the date on which it is issued and the fact that it is issued under paragraph 8, and
  - (b) identify, so far as practicable, the articles to be sought.
- (8) Two copies must be made of the warrant and clearly certified as copies. 10
- (9) The warrant may be executed by any constable.
- (10) The search under the warrant must be carried out within 28 days of its issue.
- (11) The search must be carried out at a reasonable hour unless it appears to the constable executing the warrant that the purposes of the search may be frustrated if carried out then. 15
- (12) The constable seeking to execute the warrant must, before carrying out the search –
  - (a) identify himself or herself to the individual,
  - (b) if not in uniform, produce documentary evidence that he or she is a constable to the individual, 20
  - (c) produce the warrant to the individual, and
  - (d) supply the individual with a copy of the warrant (which, in Northern Ireland, must be a certified copy).
- (13) The constable executing the warrant must make an endorsement on it stating – 25
  - (a) whether anything sought was found in the course of the search, and
  - (b) whether anything was seized.
- (14) When the warrant has been executed it must be returned to the designated officer. 30
- (15) The designated officer must retain a warrant returned under sub-paragraph (14) for a period of 12 months from the time of its return and, if requested during that period, allow the individual to inspect it.
- (16) The “designated officer” is – 35
  - (a) in relation to a warrant issued in England and Wales, the designated officer for the local justice area in which the justice of the peace who issued the warrant was acting when it was issued;
  - (b) in relation to a warrant issued in Northern Ireland, the clerk of petty sessions. 40

*Search of individual for public safety purposes*

- 10 (1) A constable may (without a warrant) search an individual in respect of whom a Part 2 notice is in force for the purpose of ascertaining whether the individual is in possession of anything that could be used to threaten or harm any person. 5
- (2) The power of a constable to search the individual under this paragraph may be exercised –
- (a) following entry onto premises by virtue of this Part, or
  - (b) at any other time when the constable is in the presence of the individual. 10
- (3) A constable may seize anything that the constable finds in the course of a search carried out under a power conferred by this paragraph –
- (a) if the constable has reasonable grounds for suspecting that the thing may be used to threaten or harm any person;
  - (b) if the constable has reasonable grounds for suspecting that – 15
    - (i) the thing is or contains evidence in relation to an offence, and
    - (ii) it is necessary to seize it to prevent it being concealed, lost, damaged, altered or destroyed.

*Power to retain items* 20

- 11 (1) Anything that is seized under a power conferred by virtue of this Schedule may be –
- (a) subjected to tests;
  - (b) retained for as long as is necessary in all the circumstances.
- (2) In particular (and regardless of the ground on which the thing was seized) – 25
- (a) if a constable has reasonable grounds for believing that the thing is or contains evidence in relation to an offence, it may be retained –
    - (i) for use as evidence at a trial for an offence, or
    - (ii) for forensic examination or for investigation in connection with an offence, and 30
  - (b) if a constable has reasonable grounds for believing that the thing has been obtained in consequence of the commission of an offence, it may be retained in order to establish its lawful owner.
- (3) Nothing may be retained for either of the purposes mentioned in sub-paragraph (2)(a) if a photograph or copy would be sufficient for that purpose. 35
- (4) Nothing in this paragraph or in paragraph 12 affects any power of a court to make an order under section 1 of the Police (Property) Act 1897.
- 12 (1) This paragraph applies if –

- (a) a device is surrendered by virtue of a condition of the kind mentioned in paragraph 8(4)(e) of Schedule 7 (surrendering of electronic communication devices for inspection or modification purposes), and
  - (b) a constable has reasonable grounds for believing that the device is or contains evidence in relation to an offence. 5
- (2) The device may be seized and retained for as long as is necessary in all the circumstances.
- (3) In particular –
- (a) the thing may be retained – 10
    - (i) for use as evidence at a trial for an offence, or
    - (ii) for forensic examination or for investigation in connection with an offence, and
  - (b) if a constable has reasonable grounds for believing that the device has been obtained in consequence of the commission of an offence, it may be retained in order to establish its lawful owner. 15
- (4) Nothing may be retained for either of the purposes mentioned in sub-paragraph (3)(a) if a photograph or copy would be sufficient for that purpose.

## SCHEDULE 12

Section 59 20

### FINGERPRINTS AND SAMPLES

#### *Taking of fingerprints and samples: England, Wales and Northern Ireland*

- 1 (1) This paragraph applies at any time when a Part 2 notice is in force in respect of an individual in England, Wales or Northern Ireland.
- (2) A constable may take fingerprints or a non-intimate sample from the individual – 25
- (a) with the consent of the individual given in writing, or
  - (b) without that consent.
- (3) A constable may use reasonable force, if necessary, for the purpose of exercising the power under sub-paragraph (2)(b). 30
- (4) Before any fingerprints or a non-intimate sample are taken the individual must be informed –
- (a) of the reason for taking the fingerprints or sample,
  - (b) of the fact that the fingerprints or sample are taken under the power conferred by this paragraph, and 35
  - (c) that the fingerprints or sample may be the subject of a relevant search.

- (5) The matters mentioned in sub-paragraph (4) must be recorded as soon as practicable after the fingerprints or non-intimate sample are taken.
- (6) The information mentioned in sub-paragraph (4) must be given by –
- (a) the constable taking the fingerprints or non-intimate sample, or
  - (b) if the fingerprints or non-intimate sample are taken at a police station (see paragraph 3), any other officer. 5
- (7) Where a sample of hair other than pubic hair is to be taken under this paragraph, 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. 10
- 2 (1) A constable may exercise the power under paragraph 1 to take fingerprints or a non-intimate sample from an individual only if at the time when the power is to be exercised –
- (a) in the case of fingerprints, the condition in sub-paragraph (2) is met;
  - (b) in the case of a sample, the condition in sub-paragraph (3) is met. 15
- (2) The condition in the case of fingerprints is that –
- (a) the individual has not had fingerprints taken under paragraph 1 on a previous occasion after the time at which the present Part 2 notice came into force, or
  - (b) fingerprints were so taken on a previous occasion after that time but – 20
    - (i) the fingerprints taken do not constitute a complete set of the individual's fingerprints, or
    - (ii) some or all of the fingerprints taken are not of sufficient quality to allow satisfactory analysis, comparison or matching. 25
- (3) The condition in the case of a non-intimate sample is that –
- (a) the individual has not had a sample of the same type and from the same part of the body taken under paragraph 1 on a previous occasion after the time at which the present Part 2 notice came into force, or 30
  - (b) a sample was so taken on a previous occasion after that time but it proved insufficient.
- (4) In this paragraph “the present Part 2 notice” means the Part 2 notice in force at the time when it is proposed to exercise the power to take the fingerprints or sample. 35
- 3 (1) A constable may –
- (a) require an individual to attend a police station for the purposes of taking fingerprints or a non-intimate sample from the individual under paragraph 1, and 40
  - (b) arrest without warrant an individual who fails to comply with such a requirement.



- (2) A requirement under sub-paragraph (1)(a) –
  - (a) must give the individual a period of at least 7 days within which the individual must attend the police station (subject to sub-paragraph (4)), and
  - (b) may direct the individual to attend at a specified time of day or between specified times of day. 5
- (3) In specifying a period or time or times of day for the purposes of sub-paragraph (2), the constable must consider whether the fingerprints or non-intimate sample could reasonably be taken at a time when the individual is for any other reason required to attend the police station (including, in particular, under measures imposed on the individual by virtue of paragraph 11 of Schedule 7). 10
- (4) In giving a requirement under this paragraph a constable may specify a period of shorter than 7 days if –
  - (a) there is an urgent need for the fingerprints or sample for the purposes of the investigation of an offence, and 15
  - (b) the shorter period is authorised by an officer of at least the rank of inspector.
- (5) Where an authorisation is given under sub-paragraph (4)(b) –
  - (a) the fact of the authorisation, and 20
  - (b) the reasons for giving it,must be recorded as soon as practicable after it has been given.
- (6) If the constable who gives a requirement to an individual under this paragraph and the individual agree, it may be varied so as to specify any period within which, or date or time at which, the individual must attend; but a variation does not have effect unless confirmed by the constable in writing. 25

*Taking of relevant physical data and samples: Scotland*

- 4 (1) This paragraph applies at any time when a Part 2 notice is in force in respect of an individual in Scotland. 30
- (2) A constable may –
  - (a) take from the individual, or require the individual to provide, any relevant physical data;
  - (b) with the authority of an officer of a rank no lower than inspector, take from the individual any sample mentioned in paragraph (a), (b) or (c) of subsection (6) of section 18 of the Criminal Procedure (Scotland) Act 1995 (prints, samples etc in criminal investigations) by the means specified in that paragraph in relation to the sample; 35
  - (c) take, or direct a police custody and security officer to take, from the individual a sample mentioned in subsection (6A) of that section by the means specified in that subsection. 40
- (3) A constable may –

- (a) require the individual to attend a police station for the purposes mentioned in sub-paragraph (2), and
  - (b) arrest without warrant an individual who fails to comply with such a requirement.
- (4) A requirement under sub-paragraph (3)(a) – 5
- (a) must give the individual at least 7 days’ notice of the date on which the individual is required to attend the police station, and
  - (b) may direct the individual to attend at a specified time of day or between specified times of day.
- (5) In specifying a date or time or times of day for the purposes of sub-paragraph (4), the constable must consider whether the relevant physical data or sample could reasonably be taken at a time when the individual is for any other reason required to attend the police station (including, in particular, under measures imposed on the individual by virtue of paragraph 11 of Schedule 7). 10  
15
- (6) A constable may use reasonable force, if necessary, in –
- (a) taking any relevant physical data under sub-paragraph (2)(a),
  - (b) securing compliance with a requirement imposed by the constable under that sub-paragraph, or
  - (c) taking any sample under sub-paragraph (2)(b). 20
- (7) A constable may, with the authority of an officer of a rank no lower than inspector, use reasonable force, if necessary, in taking any sample under sub-paragraph (2)(c).
- (8) In this paragraph “police custody and security officer” has the same meaning as in Part 1 of the Police and Fire Reform (Scotland) Act 2012 (see section 99 of that Act). 25

*Checking of fingerprints, samples etc*

- 5 Any fingerprints, data or samples obtained under paragraph 1 or 4, or information derived from such samples, may be checked against –
- (a) other such fingerprints, data or samples or any information derived from such a sample; 30
  - (b) any fingerprints or samples taken under paragraph 10 or 12 of Schedule 6 or any information derived from such a sample;
  - (c) any fingerprints, samples or information mentioned in section 63A(1)(a) or (b) of the Police and Criminal Evidence Act 1984; 35
  - (d) any fingerprints, samples or 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));
  - (e) any fingerprints or samples taken under paragraph 10 or 12 of Schedule 8 to the Terrorism Act 2000 or any information derived from such a sample; 40

- (f) any of the relevant physical data, samples or information mentioned in section 19C(1) of the Criminal Procedure (Scotland) Act 1995;
- (g) any of the relevant physical data, samples or information held by virtue of section 56 of the Criminal Justice (Scotland) Act 2003;
- (h) material to which section 18 of the Counter-Terrorism Act 2008 applies; 5
- (i) 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 a sample;
- (j) any fingerprints or samples taken under paragraph 34 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019 or any information derived from such a sample. 10

*Requirement to destroy material*

- 6 (1) This paragraph applies to—
- (a) fingerprints taken under paragraph 1, 15
  - (b) a DNA profile derived from a DNA sample taken under that paragraph,
  - (c) relevant physical data taken or provided under paragraph 4,
  - (d) a DNA profile derived from a DNA sample taken under that paragraph. 20
- (2) Fingerprints, relevant physical data and DNA profiles to which this paragraph applies (“paragraph 6 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. 25
- (3) In any other case, paragraph 6 material must be destroyed unless it is retained under a power conferred by paragraph 8, 9, or 11.
- (4) Paragraph 6 material that ceases to be retained under a power mentioned in sub-paragraph (3) may continue to be retained under any other such power that applies to it. 30
- (5) Nothing in this paragraph prevents a relevant search from being carried out, in relation to paragraph 6 material, 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 (1) If fingerprints or relevant physical data are required by paragraph 6 to be destroyed, any copies of the fingerprints or data held by a police force must also be destroyed. 35
- (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 individual to whom the DNA profile relates. 40

*Retention of paragraph 6 material*

- 8 (1) This paragraph applies to paragraph 6 material taken from, or provided by, an individual who has no previous convictions or (in the case of England and Wales or Northern Ireland) only one exempt conviction.
- (2) The material may be retained until the end of the period of 6 months beginning with the date on which the Part 2 notice that was in force when the material was taken ceases to be in force (subject to sub-paragraphs (3) and (4)). 5
- (3) If, before the end of that period, the Part 2 notice is quashed by the court under this Part, the material may be retained only until there is no possibility of an appeal against— 10
- (a) the decision to quash the notice, or
- (b) any decision made on an appeal against that decision.
- (4) If, after a Part 2 notice is quashed or otherwise ceases to be in force, measures are imposed on the individual (whether by the revival of a Part 2 notice or the imposition of a new Part 2 notice)— 15
- (a) within the period for which material in relation to the individual is retained by virtue of sub-paragraph (2), or
- (b) within, or immediately after the end of, the period for which such material is retained by virtue of sub-paragraph (3), 20
- sub-paragraphs (2) and (3) apply again for the purposes of the retention of that material (taking references to the Part 2 notice as references to the revived or new Part 2 notice).
- (5) In determining whether there is no further possibility of an appeal against a decision of the kind mentioned in sub-paragraph (3), any power to extend the time for giving notice of application for leave to appeal, or for applying for leave to appeal, must be ignored. 25
- 9 (1) This paragraph applies to paragraph 6 material taken from, or provided by, an individual—
- (a) who has been convicted of a recordable offence (other than a single exempt conviction) or of an offence in Scotland which is punishable by imprisonment, or 30
- (b) who is so convicted before the end of the period within which the material may be retained by virtue of paragraph 8.
- (2) The material may be retained indefinitely. 35
- 10 (1) For the purposes of paragraphs 8 and 9 an individual 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 individual has been given a caution or youth caution in respect of the offence which, at the time of the caution, the individual has admitted, 40

- (ii) the individual has been found not guilty of the offence by reason of insanity, or
    - (iii) the individual has been found to be under a disability and to have done the act charged in respect of the offence,
  - (b) the individual, in relation to an offence in Scotland punishable by imprisonment, 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) the individual, in relation to an offence in Scotland punishable by imprisonment, has been acquitted on account of the individual'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 individual 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 individual, 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 individual is liable to pay by virtue of section 131(5) of that Act, or
  - (f) the individual, in relation to an offence in Scotland punishable by imprisonment, has been discharged absolutely by order under section 246(3) of the Criminal Procedure (Scotland) Act 1995.
- (2) Paragraphs 8, 9 and this paragraph, so far as they relate to individuals convicted of an offence, have effect despite anything in the Rehabilitation of Offenders Act 1974 or the Rehabilitation of Offenders (Northern Ireland) Order 1978 (S.I. 1978/1908 (N.I. 27)).
- (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 paragraphs 8 and 9—
  - (a) an individual has no previous convictions if the individual 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 individual 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 individual was aged under 18.

- (5) In sub-paragraph (4) “qualifying offence” –
- (a) in relation to a conviction in respect of a recordable offence committed in England and Wales, has the meaning given by section 65A of the Police and Criminal Evidence Act 1984, and 5
  - (b) in relation to a conviction in respect of a recordable offence committed in Northern Ireland, has the meaning given by Article 53A of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)). 10
- (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 15
    - (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); 20
  - (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 25
    - (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); 30
  - (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 35
    - (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 40

- Northern Ireland if done there (whether or not it constituted such an offence when the person was convicted).
- (7) For the purposes of paragraph 8, 9 or 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; 5
  - (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 10
    - (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. 15
- (8) If an individual 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 8 or 9 whether the individual has been convicted of one offence. 20
- 11 (1) Paragraph 6 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 6 material to be retained for the purposes of national security. 25
- (3) A national security determination—
- (a) must be 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. 30
- (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,
  - (c) the Chief Constable of the Police Service of Northern Ireland,
  - (d) the Chief Constable of the Ministry of Defence Police, 35
  - (e) the Chief Constable of the British Transport Police Force, or
  - (f) the Director General of the National Crime Agency.
- 12 (1) This paragraph applies where paragraph 6 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. 40

- (3) Condition 1 is met if the further fingerprints –
- (a) are paragraph 6 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)), 5
    - (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,
    - (v) paragraph 34 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019, or 10
    - (vi) paragraph 10 of Schedule 6, or
  - (c) are material to which section 18 of the Counter-Terrorism Act 2008 applies.
- (4) Condition 2 is met if – 15
- (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. 20
- (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 8, 9 or 11, and 25
  - (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). 30
- (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.
- (8) In this paragraph references to a part of the United Kingdom are references to – 35
- (a) England and Wales,
  - (b) Scotland, or
  - (c) Northern Ireland.

*Requirement to destroy samples*

40

- 13 (1) This paragraph applies to –



- (a) non-intimate samples taken under paragraph 1, or
  - (b) samples taken under paragraph 4(2)(b) or (c).
- (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. 5
- (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. 10
- (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. 15

*Use of retained material*

- 14 (1) Any material to which paragraph 6 or 13 applies must not be used other than— 20
- (a) in the interests of national security,
  - (b) for the purposes of investigating foreign power threat activity,
  - (c) for the purposes of a terrorist investigation (within the meaning of the Terrorism Act 2000), 25
  - (d) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or
  - (e) for purposes related to the identification of a deceased person or of the person to whom the material relates.
- (2) Material which is required by paragraph 6 or 13 to be destroyed must not at any time after it is required to be destroyed be used— 30
- (a) in evidence against the individual to whom the material relates, or
  - (b) for the purposes of the investigation of any offence.
- (3) 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, 35
  - (b) the reference to crime includes a reference to any conduct which—
- (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom), or 40

- (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences, and
- (c) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom. 5

*Interpretation*

- 15 (1) In this Schedule – 10
- “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 or, in Northern Ireland, Article 53(1) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)); 15
  - “non-intimate sample” has the meaning given by section 65(1) of the Police and Criminal Evidence Act 1984 or, in Northern Ireland, Article 53(1) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)); 20
  - “paragraph 6 material” has the meaning given by paragraph 6(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); 25
    - (c) the City of London police force;
    - (d) the Police Service of Scotland;
    - (e) the Police Service of Northern Ireland;
    - (f) the Police Service of Northern Ireland Reserve; 30
    - (g) the Ministry of Defence Police;
    - (h) the National Crime Agency;
    - (i) the British Transport Police Force;
  - “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 35
    - (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)); 40
  - “relevant physical data” has the meaning given by section 18(7A) of the Criminal Procedure (Scotland) Act 1995;

“relevant search” means a search carried out for the purpose of checking any fingerprints, samples, data or information against any of the fingerprints, samples, data or information mentioned in paragraph 5(a) to (k);

“responsible chief officer of police” means –

(a) in relation to fingerprints or samples taken by a constable of the Ministry of Defence Police, or a DNA profile derived from a sample so taken, the Chief Constable of the Ministry of Defence Police;

(b) in relation to fingerprints or samples taken by a constable of the British Transport Police Force, or a DNA profile derived from a sample so taken, the Chief Constable of the British Transport Police Force;

(c) in relation to fingerprints or samples taken by a constable who is a National Crime Agency officer, or a DNA profile derived from a sample so taken, the Director General of the National Crime Agency;

(d) otherwise –

(i) 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 relevant police area;

(ii) in relation to relevant physical data or samples taken or provided in Scotland, or a DNA profile derived from a sample so taken, the chief constable of the Police Service of Scotland;

(iii) 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;

“sufficient” and “insufficient”, in relation to a sample, have the same meaning as in Part 5 of the Police and Criminal Evidence Act 1984 (see section 65(1) and (2) of that Act) or, in Northern Ireland, Part 6 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)) (see Article 53(1) and (3) of that Order).

(2) In the definition of “responsible chief officer of police” in sub-paragraph (1), in paragraph (d)(i), “relevant police area” means 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.

SCHEDULE 13

Section 67

CONTROL OF A PERSON BY A FOREIGN POWER

**PART 1**

CONDITIONS FOR CONTROL

- |   |   |    |
|---|---|----|
| 1 | (1) A person is controlled by a foreign power if one or more of the following conditions are met.   | 5  |
|   | (2) Condition 1 is that the foreign power has the right to direct or control, or actually directs or controls, the person’s activities (in whole or in part).   |    |
|   | (3) Condition 2 is that the foreign power holds, directly or indirectly, more than 25% of the shares in the person.   | 10 |
|   | (4) Condition 3 is that the foreign power holds, directly or indirectly, more than 25% of the voting rights in the person.  |    |
|   | (5) Condition 4 is that the foreign power holds the right, directly or indirectly, to appoint or remove an officer of the person.   |    |
|   | (6) Condition 5 is that –   | 15 |
|   | (a) the trustees of a trust, or the members of a partnership, unincorporated association or other entity, that is not a legal person under the law by which it is governed meet one or more of conditions 1 to 4 (in their capacity as such) in relation to the person, and | 20 |
|   | (b) the foreign power has the right to direct or control, or actually directs or controls, the activities of that trust or entity (in whole or in part).  |    |
| 2 | In this Schedule “officer” –  |    |
|   | (a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity;   | 25 |
|   | (b) in relation to a partnership, means a partner or person purporting to act as a partner;   | 30 |
|   | (c) in relation to an unincorporated association other than a partnership, means a person who is concerned in the management or control of the association or purports to act in the capacity of a person so concerned.   |    |

## PART 2

### INTERPRETATION OF PART 1

#### *Interpretation*

- 3 This Part makes provision about the interpretation of Part 1 of this Schedule.

#### *Joint interests*

5

- 4 If a foreign power holds a share or right jointly with another person (whether or not a foreign power), each of those persons is to be taken to hold that share or right.

#### *Joint arrangements*

- 5 (1) If shares or rights held by a foreign power and shares or rights held by another person (whether or not a foreign power) are the subject of a joint arrangement between those persons, each of those persons is to be taken to hold the combined shares or rights of both persons. 10
- (2) A “joint arrangement” is an arrangement between the holders of shares (or rights) that they will exercise all or substantially all the rights conferred by their respective shares (or rights) jointly in a way that is pre-determined by the arrangement. 15
- (3) For the meaning of “arrangement”, see paragraph 12.

#### *Calculating shareholdings*

- 6 (1) In relation to a person that has a share capital, a reference to holding more than 25% of the shares in that person is to holding shares comprised in the issued share capital of that person of a nominal value exceeding (in aggregate) 25% of that share capital. 20
- (2) In relation to a person that does not have a share capital –
- (a) a reference to holding shares in that person is to holding a right to share in the capital or, as the case may be, profits of that person; 25
- (b) a reference to holding more than 25% of the shares in that person is to holding a right or rights to share in more than 25% of the capital or, as the case may be, profits of that person.

#### *Voting rights*

30

- 7 (1) A reference to the voting rights in a person is to the rights conferred on shareholders in respect of their shares (or, in the case of a person not having a share capital, on members) to vote at general meetings of the person on all or substantially all matters.
- (2) In relation to a person that does not have general meetings at which matters are decided by the exercise of voting rights – 35

- (a) a reference to exercising voting rights in the person is to be read as a reference to exercising rights in relation to the person that are equivalent to those of a person entitled to exercise voting rights in a company;
  - (b) a reference to exercising more than 25% of the voting rights in the person is to be read as a reference to exercising the rights under the constitution of the person to block changes to the overall policy of the person or to the terms of its constitution. 5
- 8 In applying this Schedule, the voting rights in a person are to be reduced by any rights held by that person. 10

*Shares or rights held “indirectly”*

- 9 (1) A foreign power holds a share “indirectly” if the foreign power has a majority stake in a person and that person –
- (a) holds the share in question, or
  - (b) is part of a chain of persons – 15
    - (i) each of which (other than the last) has a majority stake in the person immediately below it in the chain, and
    - (ii) the last of which holds the share.
- (2) A foreign power holds a right “indirectly” if the foreign power has a majority stake in a person and that person – 20
- (a) holds that right, or
  - (b) is part of a chain of persons – 25
    - (i) each of which (other than the last) has a majority stake in the person immediately below it in the chain, and
    - (ii) the last of which holds that right.
- (3) For the purposes of sub-paragraphs (1) and (2), a foreign power has a “majority stake” in a person if –
- (a) the foreign power holds a majority of the voting rights in the person,
  - (b) the foreign power is a member of the person and has the right to appoint or remove an officer of the person, 30
  - (c) the foreign power is a member of the person and controls alone, or pursuant to an agreement with other shareholders or members, a majority of the voting rights in the person, or
  - (d) the foreign power has the right to exercise, or actually exercises, dominant influence or control over the person. 35

*Shares held by nominees*

- 10 A share held by a person as a nominee for another is to be treated as held by the other (and not by the nominee).

*Rights treated as held by person who controls their exercise*

- 11 (1) Where a person controls a right, the right is to be treated as held by that person (and not by the person who in fact holds the right, unless that person also controls it).
- (2) A person “controls” a right if, by virtue of any arrangement between that person and others, the right is exercisable only – 5
- (a) by that person,
  - (b) in accordance with that person’s directions or instructions, or
  - (c) with that person’s consent or concurrence.
- 12 (1) For the purposes of this Schedule, “arrangement” includes – 10
- (a) any scheme, agreement or understanding, whether or not it is legally enforceable, and
  - (b) any convention, custom or practice of any kind.
- (2) But something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, the time it has been in existence or otherwise). 15

*Rights exercisable only in certain circumstances etc*

- 13 (1) Rights that are exercisable only in certain circumstances are to be taken into account only –
- (a) where the circumstances have arisen, and for so long as they continue to obtain, or 20
  - (b) when the circumstances are within the control of the person having the rights.
- (2) But rights that are exercisable by an administrator or by creditors while a person is in relevant insolvency proceedings are not to be taken into account even while the person is in those proceedings. 25
- (3) “Relevant insolvency proceedings” means –
- (a) administration within the meaning of the Insolvency Act 1986,
  - (b) administration within the meaning of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or 30
  - (c) proceedings under the insolvency law of another country or territory during which a person’s assets and affairs are subject to the control or supervision of a third party or creditor.
- (4) Rights that are normally exercisable but are temporarily incapable of exercise are to continue to be taken into account. 35

*Rights attached to shares held by way of security*

- 14 Rights attached to shares held by way of security provided by a person are to be treated for the purposes of this Schedule as held by that person –

- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with that person's instructions, and
- (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in that person's interests. 5

### PART 3

#### POWER TO AMEND THRESHOLDS ETC 10

- 15 (1) The Secretary of State may by regulations amend this Schedule for a permitted purpose.
- (2) The permitted purposes are—
- (a) to replace any or all references in this Schedule to a percentage figure with references to some other (larger or smaller) percentage figure; 15
  - (b) to change or supplement Part 1 of this Schedule so as to include circumstances (for example, circumstances involving more complex structures) that give a foreign power a level of control over a person broadly similar to the level of control given by the conditions in paragraph 1; 20
  - (c) in consequence of any provision made by virtue of paragraph (b), to change or supplement Part 2 of this Schedule so that circumstances specified in that Part in which a person is to be regarded as holding an interest in another person correspond to any of the conditions in paragraph 1, or would do so but for the extent of the interest. 25

## SCHEDULE 14

Section 71

### PUBLIC OFFICIALS

- Ministers* 30
- 1 A Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975).
  - 2 A Northern Ireland Minister (within the meaning of section 71).
  - 3 A Scottish Minister.
  - 4 A Welsh Minister (within the meaning of section 71). 35



*MPs etc*

- |   |   |   |
|---|---|---|
| 5 | A member of either House of Parliament.   |   |
| 6 | A member of the Northern Ireland Assembly.  |   |
| 7 | A member of the Scottish Parliament.  |   |
| 8 | A member of Senedd Cymru.   | 5 |
| 9 | An employee or other member of staff of a person within any of paragraphs 5 to 8. |   |

*Local government*

- |    |  |    |
|----|--|----|
| 10 | The Mayor of London.   |    |
| 11 | A mayor for the area of a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009. | 10 |

*Political parties*

- |    |   |    |
|----|---|----|
| 12 | An officer, trustee or agent of a UK registered political party (within the meaning of section 71). | 15 |
| 13 | A member of such a political party who exercises executive functions on behalf of the party.        |    |

*Election candidates*

- |    |   |    |
|----|---|----|
| 14 | A candidate at an election for a relevant elective office (within the meaning of section 37 of the Elections Act 2022). | 20 |
| 15 | A candidate at an election for a relevant Scottish elective office (within the meaning of that section).                |    |

*Civil servants*

- |    |  |    |
|----|--|----|
| 16 | (1) A member of –  |    |
|    | (a) the Senior Civil Service;  | 25 |
|    | (b) the Northern Ireland Senior Civil Service;   |    |
|    | (c) the Senior Management Structure of His Majesty’s Diplomatic Service.   |    |
|    | (2) A person who serves the government in a position in the civil service of the State and whose appointment to that position meets the requirements applicable to that position set out in section 15(1) of the Constitutional Reform and Governance Act 2010 (special advisers). | 30 |
|    | (3) A person appointed to a position in the Northern Ireland Civil Service by a Northern Ireland Minister (within the meaning of section 71) and whose appointment to that position meets the conditions set out in section 1(3)   | 35 |

and (4) of the Civil Service (Special Advisers) Act (Northern Ireland) 2013 (c. 8 (N.I.)) (special advisers).

*Military personnel*

- 17 (1) An officer subject to service law who is of or above the rank of commodore, brigadier or air commodore. 5
- (2) In sub-paragraph (1), “subject to service law” has the same meaning as in the Armed Forces Act 2006 (see section 374 of that Act).

*Police*

- 18 The chief constable or deputy chief constable of a police force maintained under section 2 of the Police Act 1996. 10
- 19 A police and crime commissioner.
- 20 A person of one of the following ranks of the metropolitan police force –  
(a) Commissioner of Police of the Metropolis;  
(b) Deputy Commissioner of Police of the Metropolis;  
(c) Assistant Commissioner of Police of the Metropolis; 15  
(d) Deputy Assistant Commissioner of Police of the Metropolis.
- 21 The Commissioner of Police for the City of London or an Assistant Commissioner of Police for the City of London.
- 22 The chief constable or deputy chief constable of the Police Service of Northern Ireland. 20
- 23 The chief constable or a deputy chief constable of the Police Service of Scotland.
- 24 The chief constable or a deputy chief constable of the Ministry of Defence Police.
- 25 The chief constable or deputy chief constable of the British Transport Police Force. 25
- 26 The chief constable or deputy chief constable of the Civil Nuclear Constabulary.

*Persons exercising public functions*

- 27 (1) A person exercising public functions who is specified by the Secretary of State in regulations. 30
- (2) “Public functions” means functions of a public nature –  
(a) exercisable in the United Kingdom, or  
(b) exercisable in a country or territory outside the United Kingdom by a person acting for or on behalf of, or holding office under, the Crown. 35

SCHEDULE 15

Section 74

EXEMPTIONS

*UK arrangements and agreements*

- 1 (1) Sections 66(4) and 70(3) (requirements to register foreign activity arrangements and foreign influence arrangements) do not apply to foreign activity arrangements or foreign influence arrangements that are UK arrangements. 5
- (2) The following provisions do not apply to activities carried out in accordance with a UK arrangement—
  - (a) section 69(1) to (3) (specified persons etc must not carry out unregistered activities); 10
  - (b) section 73(1) (foreign powers etc must not carry out unregistered political influence activities).
- (3) A “UK arrangement” is an arrangement or agreement to which—
  - (a) the United Kingdom is a party, or 15
  - (b) any person acting for or on behalf of, or holding office under, the Crown is (in that capacity) a party.

*Foreign powers*

- 2 The following provisions do not apply to a foreign power—
  - (a) section 66(4) (requirement to register foreign activity arrangements); 20
  - (b) section 68(2) or (3) (offence of carrying out activities under unregistered foreign activity arrangement);
  - (c) section 70(3) (requirement to register foreign influence arrangements);
  - (d) section 72(2) or (3) (offence of carrying out activities under unregistered foreign influence arrangement); 25
  - (e) section 79(1) and (2) (offences of carrying out activities tainted by false information).

*Diplomatic missions etc*

- 3 (1) Section 66(4) (requirement to register foreign activity arrangements) does not apply to the extent that the foreign activity arrangement relates to the provision of goods or services which are reasonably necessary to support the efficient functioning of—
  - (a) a diplomatic mission, 30
  - (b) a consular post, or
  - (c) the permanent mission to a UK-based international organisation of a country which is a member of the organisation, 35(for example, the provision of catering or maintenance services).

- (2) Sections 66(4) and 70(3) (requirements to register foreign activity arrangements and foreign influence arrangements) do not apply where P (within the meaning of those sections) –
- (a) is a member of the family of a principal person forming part of the principal person’s household, and 5
  - (b) makes the arrangement pursuant to an activity carried out by the principal person in that capacity.
- (3) “Principal person” means a person who is a member of staff of –
- (a) a diplomatic mission,
  - (b) a consular post, or 10
  - (c) the permanent mission to a UK-based international organisation of a country which is a member of the organisation.
- (4) The members of the family of a principal person forming part of the principal person’s household include a person who is living with the principal person as their partner in an enduring family relationship. 15
- (5) “Member of staff” –
- (a) in the case of a diplomatic mission, means a member of the mission within the meaning given by Article 1 of the Vienna Convention on Diplomatic Relations (set out in Schedule 1 to the Diplomatic Privileges Act 1964); 20
  - (b) in the case of a consular post, means a member of the consular post within the meaning given by Article 1 of the Vienna Convention on Consular Relations (set out in Schedule 1 to the Consular Relations Act 1968).
- (6) In this paragraph – 25
- “consular post” has the meaning given by Article 1 of the Vienna Convention on Consular Relations (set out in Schedule 1 to the Consular Relations Act 1968);
  - “diplomatic mission” is to be read in accordance with the Vienna Convention on Diplomatic Relations done at Vienna on 18 April 1961; 30
  - “UK-based international organisation” means an international organisation which has its headquarters in the United Kingdom and on which privileges and immunities have been conferred under section 1 of the International Organisations Act 1968. 35

#### *Recognised news publishers*

- 4 (1) The following provisions do not apply to a recognised news publisher –
- (a) section 70(3) (requirement to register foreign influence arrangements);
  - (b) section 72(2) or (3) (offence of carrying out activities under unregistered foreign influence arrangement); 40
  - (c) section 79(2) (offence of carrying out political influence activities tainted by false information).

- 
- (2) The following provisions do not apply to a person who is not a recognised news publisher, where the foreign influence arrangement in question is a news-related foreign influence arrangement –
- (a) section 70(3) (requirement to register foreign influence arrangements);
  - (b) section 72(2) or (3) (offence of carrying out activities under unregistered foreign influence arrangement);
  - (c) section 79(2) (offence of carrying out political influence activities tainted by false information).
- (3) A news-related foreign influence arrangement is a foreign influence arrangement made between a person and a foreign power who is a recognised news publisher where the purpose, or one of the purposes, of the arrangement is the publication of news-related material.
- (4) In this paragraph “news-related material”, “publish”, and “recognised news publisher” have the meaning given by paragraph 5.
- 5 (1) In paragraph 4, “recognised news publisher” means any of the following entities –
- (a) the British Broadcasting Corporation,
  - (b) Sianel Pedwar Cymru,
  - (c) the holder of a licence under the Broadcasting Act 1990 or 1996 who publishes news-related material in connection with the broadcasting activities authorised under the licence, and
  - (d) any other entity which –
    - (i) meets all of the conditions in sub-paragraph (2),
    - (ii) is not an excluded entity (see sub-paragraph (3)), and
    - (iii) is not a sanctioned entity (see sub-paragraph (4)).
- (2) The conditions referred to in sub-paragraph (1)(d)(i) are that the entity –
- (a) has as its principal purpose the publication of news-related material, and such material –
    - (i) is created by different persons, and
    - (ii) is subject to editorial control,
  - (b) publishes such material in the course of a business (whether or not carried on with a view to profit),
  - (c) is subject to a standards code,
  - (d) has policies and procedures for handling and resolving complaints,
  - (e) has a registered office or other business address,
  - (f) is the person with legal responsibility for material published by it in the United Kingdom, and
  - (g) publishes –
    - (i) the entity’s name, the address mentioned in paragraph (e) and the entity’s registered number (if any), and
    - (ii) the name and address of any person who controls the entity (including, where such a person is an entity, the address of

that person’s registered or principal office and that person’s registered number (if any)).

- (3) An “excluded entity” is an entity –
- (a) which is a proscribed organisation under the Terrorism Act 2000 (see section 3 of that Act), or 5
  - (b) the purpose of which is to support a proscribed organisation under that Act.
- (4) A “sanctioned entity” is an entity which –
- (a) is designated by name under a power contained in regulations under section 1 of the Sanctions and Anti-Money Laundering Act 2018 that authorises the Secretary of State or the Treasury to designate persons for the purposes of the regulations or of any provisions of the regulations, or 10
  - (b) is a designated person under any provision included in such regulations by virtue of section 13 of that Act (persons named by or under UN Security Council Resolutions). 15
- (5) For the purposes of sub-paragraph (2) –
- (a) news-related material is “subject to editorial control” if there is a person (whether or not the publisher of the material) who has editorial or equivalent responsibility for the material, including responsibility for how it is presented and the decision to publish it; 20
  - (b) “control” has the same meaning as it has in the Broadcasting Act 1990 by virtue of section 202 of that Act.
- (6) In this paragraph – 25
- “news-related material” means material consisting of –
    - (a) news or information about current affairs,
    - (b) opinion about matters relating to the news or current affairs, or
    - (c) gossip about celebrities, other public figures or other persons in the news; 30
  - “publish” means publish by any means (including by broadcasting), and references to a publisher and publication are to be construed accordingly;
  - “standards code” means – 35
    - (a) a code of standards that regulates the conduct of publishers, that is published by an independent regulator, or
    - (b) a code of standards that regulates the conduct of the entity in question, that is published by the entity itself.

#### *Legal activities*

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- 6 (1) Sections 66(4) and 70(3) (requirements to register foreign activity arrangements and foreign influence arrangements) do not apply in relation

to a foreign activity arrangement or a foreign influence arrangement to the extent that the arrangement relates to the carrying on of a legal activity by a lawyer.

- (2) The following provisions do not apply to the carrying on of a legal activity by a lawyer— 5
- (a) section 69(1) to (3) (specified persons etc must not carry out unregistered activities);
  - (b) section 73(1) (foreign powers etc must not carry out unregistered political influence activities).
- (3) “Lawyer” means— 10
- (a) a person who for the purposes of the Legal Services Act 2007 is an authorised person in relation to an activity that constitutes a reserved legal activity (within the meaning of that Act),
  - (b) a solicitor or barrister in Northern Ireland,
  - (c) a solicitor or advocate in Scotland, or 15
  - (d) a person who is a member, and entitled to practise as such, of a legal profession regulated in a jurisdiction outside the United Kingdom.
- (4) “Legal activity” means—
- (a) in England and Wales, a legal activity within the meaning of section 12 of the Legal Services Act 2007, 20
  - (b) in Northern Ireland, a legal activity within the meaning of that section, but reading the reference to an activity which is a reserved legal activity as a reference to an activity corresponding to a reserved legal activity, 25
  - (c) in Scotland, the provision of legal services within the meaning of section 3 of the Legal Services (Scotland) Act 2010 (asp 16), or
  - (d) acting as an arbitrator or mediator.

*Employees etc*

- 7 (1) Where an exemption is conferred on a person (“P”) by this Schedule, the following are also exempt (subject to sub-paragraph (2))— 30
- (a) a person who holds office in or under, or is an employee or other member of staff of, P (acting in that capacity), or
  - (b) a person the Secretary of State reasonably considers to be exercising functions on behalf of P as if the person were within paragraph (a). 35
- (2) Where P is a foreign power, the exemption does not apply to persons within sub-paragraph (1)(a) if or to the extent that the person makes a misrepresentation about their activities or the capacity in which they act (whether generally or to a particular person).
- (3) A misrepresentation is a representation that a reasonable person would consider to be false or misleading in a material way. 40

- (4) A misrepresentation may be made by making a statement or by any other kind of conduct (including an omission), and may be express or implied.
- (5) A misrepresentation may in particular include—
- (a) a misrepresentation as to the person’s identity or purpose;
  - (b) presenting information in a way which amounts to a misrepresentation, even if some or all of the information is true. 5

*Power to provide for further exemptions*

- 8 The Secretary of State may by regulations make provision for further cases to which any provision of this Part does not apply.

SCHEDULE 16

Section 89 10

DAMAGES AT RISK OF BEING USED FOR THE PURPOSES OF TERRORISM

*Freezing orders*

- 1 (1) This Schedule applies in relation to civil proceedings where the claimant claims damages in those proceedings.
- (2) The court seised of those proceedings may, on the application of a Minister of the Crown, make a freezing order under this paragraph. 15
- (3) A freezing order, in relation to an order made by the court awarding damages in favour of the claimant, is an order that all or part of the damages awarded—
- (a) are to be paid into court, and 20
  - (b) are to remain in court until the end of the initial freezing period.
- (4) A court may not make a freezing order unless satisfied that, if damages are paid to the claimant, there is a real risk that those damages will be used for the purposes of terrorism.
- (5) An application for a freezing order may be made at any time until there is no further possibility of an appeal on which the order awarding damages in favour of the claimant may be varied or quashed. 25
- (6) Any power to extend the time for giving notice of application for leave to appeal, or for applying for leave to appeal, must be ignored for the purposes of sub-paragraph (5). 30
- (7) Where the court makes an order awarding damages in favour of the claimant, the court may suspend the effect of that order until it decides the application for a freezing order.
- (8) In this paragraph—
- “civil proceedings” means any proceedings other than proceedings in a criminal cause or matter or family proceedings; 35



“family proceedings” –

- (a) in relation to England and Wales, has the meaning given by section 75(3) of the Courts Act 2003;
- (b) in relation to Northern Ireland, has the meaning given by Article 12(5) of the Family Law (Northern Ireland) Order 1993 (S.I. 1993/1576 (N.I. 6));
- (c) in relation to Scotland, has the meaning given by section 135 of the Courts Reform (Scotland) Act 2014 and includes proceedings under the Children (Scotland) Act 1995 and the Children’s Hearings (Scotland) Act 2011 (asp 1);

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“the initial freezing period” is the period of 2 years beginning with the day on which the freezing order is made.

*Extension of freezing order*

- 2 (1) This paragraph applies where a court has made a freezing order under paragraph 1.
- (2) The court may, on the application of a Minister of the Crown, make an extension order under this paragraph.
- (3) An extension order is an order that all or part of the damages paid into court pursuant to a freezing order are to remain in court until the end of the period of 4 years beginning with the day on which the freezing order was made (“the extended freezing period”).
- (4) A court may not make an extension order unless satisfied that, if the damages to which the extension order relates are paid to the claimant at the end of the initial freezing period (or, if later, when the court decides the application), there is a real risk that those damages will be used for the purposes of terrorism.
- (5) An application for an extension order must be made before the end of the initial freezing period.
- (6) Sub-paragraph (7) applies where –
  - (a) an application is made under this paragraph, and
  - (b) the court has not decided the application before the end of the initial freezing period.
- (7) The damages to which the application relates are to remain in court until the court decides the application.

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*Forfeiture*

- 3 (1) This paragraph applies where a court has made an extension order under paragraph 2.
- (2) The court may, on the application of a Minister of the Crown, order that all or part of the damages in court by virtue of the extension order are to be forfeited (a “forfeiture order”).

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- (3) The court may not make a forfeiture order unless satisfied that, if the damages to which the forfeiture order relates are paid to the claimant at the end of the extended freezing period (or, if later, when the court decides the application), there is a real risk that those damages will be used for the purposes of terrorism. 5
- (4) Damages forfeited pursuant to a forfeiture order, and any accrued interest on those damages, are to be paid into the Consolidated Fund when there is no further possibility of an appeal on which the forfeiture order may be varied or quashed.
- (5) Any power to extend the time for giving notice of application for leave to appeal, or for applying for leave to appeal, must be ignored for the purposes of sub-paragraph (4). 10
- (6) An application for a forfeiture order must be made before the end of the extended freezing period.
- (7) Sub-paragraph (8) applies where – 15
- (a) an application is made under this paragraph, and
- (b) the court has not decided the application before the end of the extended freezing period.
- (8) The damages to which the application relates are to remain in court until the court decides the application. 20

### *Interpretation*

- 4 In this Schedule –
- “the claimant” means the claimant in proceedings mentioned in paragraph 1(1);
- “the extended freezing period” has the meaning given by paragraph 2(3); 25
- “extension order” has the meaning given by paragraph 2(3);
- “freezing order” has the meaning given by paragraph 1(3);
- “the initial freezing period” has the meaning given by paragraph 1(8);
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 and also includes the Commissioners for His Majesty’s Revenue and Customs; 30
- “terrorism” has the same meaning as in the Terrorism Act 2000.
- 5 (1) In the application of this Schedule to Northern Ireland, a reference to a claimant is to be read as a reference to a plaintiff. 35
- (2) In the application of this Schedule to Scotland, a reference to a claimant is to be read as a reference to a pursuer or, as the case may be, a plaintiff.

SCHEDULE 17

Section 93

AMENDMENTS OF TERRORISM ACT 2000

- 1 (1) Section 41 to the Terrorism Act 2000 (arrest without warrant) is amended as follows.
- (2) In subsection (3)(b) – 5
  - (a) for the words from “Schedule 7” to “2019,” substitute “a provision listed in subsection (3A)”;
  - (b) for “examination under that Schedule” substitute “detention under that provision”.
- (3) After subsection (3) insert – 10

“(3A) Those provisions are –

  - (a) section 24 of the Police and Criminal Evidence Act 1984;
  - (b) Article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12));
  - (c) Schedule 7; 15
  - (d) section 1 of the Criminal Justice (Scotland) Act 2016 (asp 1);
  - (e) Part 1 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019;
  - (f) section 28 of the National Security Act 2023.”
- (4) After subsection (8) insert – 20

“(8ZA) Subsection (8A) applies where –

  - (a) a person is detained under this section in hospital, or
  - (b) a person detained under this section is removed to hospital because the person needs medical treatment.”
- (5) In subsection (8A) – 25
  - (a) for the words before paragraph (a) substitute “Where this subsection applies”;
  - (b) in paragraph (a) after “hospital or” insert “(where this subsection applies by virtue of subsection (8ZA)(b))”;
  - (c) in paragraph (b) after “hospital or” insert “(where this subsection 30 applies by virtue of subsection (8ZA)(b))”.
- 2 (1) Schedule 5 to the Terrorism Act 2000 (terrorist investigations) is amended as follows.
- (2) In paragraph 3 (power to search premises within cordoned area) – 35
  - (a) in sub-paragraph (1) for the words from “Subject” to “superintendent” substitute “A constable”;
  - (b) in sub-paragraph (2) for the words from “who” to “paragraph” substitute “may exercise the power in sub-paragraph (1) only”.

- (3) In paragraph 15 (search and seizure in urgent cases: England, Wales and Northern Ireland) –
- (a) at the end of sub-paragraph (1) insert “(subject to sub-paragraph (1A))”;
- (b) after sub-paragraph (1) insert – 5
- An order under this paragraph giving the authority which
- “(1A) may be given by a search warrant under paragraph 11 does not authorise a constable to retain confidential journalistic material.
- (1B) “Confidential journalistic material” means material which 10  
is excluded material by virtue of section 11(1)(c) of the Police and Criminal Evidence Act 1984.”
- (4) After paragraph 15 insert –
- “15A(1) This paragraph applies where confidential journalistic material 15  
is seized by virtue of an order under paragraph 15 giving the authority which may be given by a search warrant under paragraph 11.
- (2) A constable may apply to a Circuit judge for the issue of a warrant under this paragraph.
- (3) An application under sub-paragraph (2) must be made as soon 20  
as reasonably practicable after the material is seized.
- (4) The judge may grant an application under sub-paragraph (2) if satisfied that conditions 1 to 3 are met.
- (5) Condition 1 is that the warrant is sought for the purposes of a 25  
terrorist investigation.
- (6) Condition 2 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to a terrorist investigation.
- (7) Condition 3 is that there are reasonable grounds for believing 30  
that it is in the public interest that the material should be retained having regard to the benefit likely to accrue to the terrorist investigation if the material is retained.
- (8) A warrant under this paragraph is a warrant authorising the retention of confidential journalistic material.
- (9) A warrant under this paragraph may impose conditions on the 35  
retention and use of the material.
- (10) If the judge does not grant an application for the issue of a warrant under this paragraph in relation to any of the material to which the application relates, the judge may direct that the material is – 40
- (a) returned to the person from whom it was seized, or

- (b) destroyed.
- (11) “Confidential journalistic material” has the same meaning as in paragraph 15.”
- (5) In paragraph 18 (application to Northern Ireland) before paragraph (f) insert – 5
- “(ea) the reference in paragraph 15(1B) to section 11(1)(c) of the Police and Criminal Evidence Act 1984 is to be taken as a reference to Article 13(1)(c) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12));”.
- (6) In paragraph 31 (search and seizure in urgent cases: Scotland) – 10
- (a) at the end of sub-paragraph (1) insert “(subject to sub-paragraph (1A)).”;
- (b) after sub-paragraph (1) insert –
- “(1A) An order under this paragraph does not authorise a constable to retain confidential journalistic material. 15
- (1B) “Confidential journalistic material” has the same meaning as in the Investigatory Powers Act 2016 (see section 264(6) and (7) of that Act).”
- (7) After paragraph 31 insert – 20
- “31A(1) This paragraph applies where confidential journalistic material is seized by virtue of an order under paragraph 31.
- (2) The procurator fiscal may apply to a sheriff for the issue of a warrant under this paragraph.
- (3) An application under sub-paragraph (2) must be made as soon as reasonably practicable. 25
- (4) The sheriff may grant an application under sub-paragraph (2) if satisfied that conditions 1 to 3 are met.
- (5) Condition 1 is that the warrant is sought for the purposes of a terrorist investigation. 30
- (6) Condition 2 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to a terrorist investigation.
- (7) Condition 3 is that there are reasonable grounds for believing that it is in the public interest that the material should be retained having regard to the benefit likely to accrue to the terrorist investigation if the material is retained. 35
- (8) A warrant under this paragraph is a warrant authorising the retention of confidential journalistic material.

- (9) A warrant under this paragraph may impose conditions on the retention and use of the material.
- (10) If the sheriff does not grant an application for the issue of a warrant under this paragraph in relation to any of the material to which the application relates, the sheriff may direct that the material is – 5
- (a) returned to the person from whom it was seized, or
  - (b) destroyed.
- (11) “Confidential journalistic material” has the same meaning as in paragraph 31.” 10

## SCHEDULE 18

Section 95

## MINOR AND CONSEQUENTIAL AMENDMENTS

*Official Secrets Act 1911 (c. 28)*

- 1 The Official Secrets Act 1911 is repealed.

*Official Secrets Act 1920 (c. 75)*

- 2 The Official Secrets Act 1920 is repealed.

*Official Secrets Act 1939 (c. 121)*

- 3 The Official Secrets Act 1939 is repealed.

*Police and Criminal Evidence Act 1984 (c. 60)*

- 4 (1) The Police and Criminal Evidence Act 1984 is amended as follows. 20
- (2) In section 56 (right to have someone informed when arrested), in subsection (10), after “the terrorism provisions” insert “or under section 28 of the National Security Act 2023,”.
  - (3) In section 58 (right to consult a solicitor), in subsection (12), after “the terrorism provisions” insert “or under section 28 of the National Security Act 2023,”. 25
  - (4) In section 61 (fingerprinting), in subsection (9)(b), after “the terrorism provisions” insert “or under section 28 of the National Security Act 2023,”.
  - (5) In section 63F (retention of fingerprints and DNA profiles for persons arrested for or charged with a qualifying offence) – 30
    - (a) in subsections (5)(a) and (5A)(a), after “terrorism-related qualifying offence” insert “or a national security-related qualifying offence”;

- (b) in subsection (11), in the appropriate place insert—
- ““national security-related qualifying offence” means—
- (a) an offence under section 19 of the National Security Act 2023 or for the time being listed in section 34(3)(a) of that Act, or
  - (b) an ancillary offence, as defined in section 65A(5), relating to an offence for the time being listed in section 34(3)(a) of that Act.”
- (6) In section 63U (exclusions for certain regimes), after subsection (4A) insert—
- “(4B) Sections 63D to 63T do not apply to material to which—
- (a) Part 4 of Schedule 6 to the National Security Act 2023 applies, or
  - (b) paragraph 6 of Schedule 12 to that Act applies.”
- (7) In section 65A(2) (meaning of “qualifying offence”), after paragraph (u) insert—
- “(v) an offence under section 19 of the National Security Act 2023 or for the time being listed in section 34(3)(a) of that Act.”

*Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))*

- 5 (1) The Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) is amended as follows.
- (2) In Article 53A (meaning of “qualifying offence”), after paragraph (2)(v) insert—
- “(w) an offence under section 19 of the National Security Act 2023 or for the time being listed in section 34(3)(a) of that Act.”
- (3) In Article 57 (right to have someone informed when arrested), in paragraph (10), after “the terrorism provisions” insert “or under section 28 of the National Security Act 2023,”.
- (4) In Article 59 (right to consult a solicitor), in paragraph (12), after “the terrorism provisions” insert “or under section 28 of the National Security Act 2023,”.
- (5) In Article 61 (fingerprinting), in paragraph (9)(b), after “the terrorism provisions” insert “or under section 28 of the National Security Act 2023,”.
- (6) In Article 62 (intimate samples), after paragraph (12) insert—
- “(12A) Nothing in this Article applies to a person arrested or detained under section 28 of the National Security Act 2023; and paragraph (1A) does not apply where the non-intimate samples mentioned in that paragraph were taken under paragraph 10 of Schedule 6 to that Act.”

- (7) In Article 63 (other samples), in paragraph (11), after “the terrorism provisions” insert “or under section 28 of the National Security Act 2023”.
- (8) In Article 63R (as inserted by Schedule 2 to the Criminal Justice Act (Northern Ireland) 2013), after paragraph (4A) (as inserted by Schedule 4 to the Counter-Terrorism and Border Security Act 2019) insert – 5
- “(4B) Articles 63B to 63Q do not apply to material to which –
- (a) Part 4 of Schedule 6 to the National Security Act 2023 applies, or
- (b) paragraph 6 of Schedule 12 to that Act applies.”
- (9) In Article 64 (destruction of fingerprints and samples), in paragraph (8)(b), after “the terrorism provisions” insert “or under section 28 of the National Security Act 2023”. 10

*Official Secrets Act 1989 (c. 6)*

- 6 (1) The Official Secrets Act 1989 is amended as follows.
- (2) In section 5(6) (offence of disclosing information obtained by espionage) for “section 1 of the Official Secrets Act 1911” substitute “any of sections 1 to 4 of the National Security Act 2023”. 15
- (3) In section 11 (arrest, search and trial) –
- (a) for subsections (3) and (3A) substitute –
- “(3) Schedule 2 to the National Security Act 2023 (powers of entry, search and seizure) applies in relation to a relevant offence as it applies in relation to a relevant act (within the meaning given by paragraphs 1 and 18 of that Schedule).”; 20
- (b) for subsection (4) substitute –
- “(4) If it is necessary in the interests of national security, a court may exclude the public from any part of proceedings for a relevant offence, except the passing of sentence.”; 25
- (c) after subsection (4) insert –
- “(4A) In this section a “relevant offence” means an offence under any provision of this Act other than section 8(1), (4) or (5).” 30

*Criminal Procedure (Scotland) Act 1995 (c.46)*

- 7 (1) Section 19C of the Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In subsection (1)(a) and (b), after “2019” insert “or paragraph 18 of Schedule 6 to the National Security Act 2023”. 35
- (3) In subsection (2) –
- (a) in paragraph (c) omit “or”;



- (b) after that paragraph insert—
  - “(ca) for the purposes of investigating foreign power threat activity, or”.
- (4) In subsection (6)—
  - (a) in paragraph (c) omit “and”; 5
  - (b) after that paragraph insert—
    - “(ca) “foreign power threat activity” has the meaning given by section 34 of the National Security Act 2023, and”.

*Protection of Freedoms Act 2012 (c.9)*

- 8 (1) Section 20 of the Protection of Freedoms Act 2012 (appointment and functions of Commissioner) is amended as follows. 10
- (2) In subsection (2)(a), after sub-paragraph (iva) insert—
  - “(ivb) paragraph 22 of Schedule 6 to the National Security Act 2023,
  - (ivc) paragraph 11 of Schedule 12 to that Act,”. 15
- (3) In subsection (6), after paragraph (e) insert—
  - “(f) the retention and use in accordance with Part 4 of Schedule 6 to the National Security Act 2023 of—
    - (i) any material to which paragraph 19 or 25 of that Schedule applies (fingerprints, relevant physical data, DNA profiles and samples), and 20
    - (ii) any copies of any material to which paragraph 19 of that Schedule applies (fingerprints, relevant physical data and DNA profiles),
  - (g) the retention and use in accordance with paragraphs 5 to 15 of Schedule 12 to the National Security Act 2023 of—
    - (i) any material to which paragraph 6 or 13 of that Schedule applies (fingerprints, relevant physical data, DNA profiles and samples), and
    - (ii) any copies of any material to which paragraph 6 of that Schedule applies (fingerprints, relevant physical data and DNA profiles).” 25 30

*Modern Slavery Act 2015 (c. 30)*

- 9 In Schedule 4 to the Modern Slavery Act 2015 (offences to which defence in section 45 does not apply), after paragraph 36B insert— 35
  - “National Security Act 2023
  - 36C An offence under any of the following provisions of the National Security Act 2023—

section 1 (obtaining or disclosing protected information);  
 section 2 (obtaining or disclosing trade secrets);  
 section 3 (assisting a foreign intelligence service);  
 section 4 (entering a prohibited place for a purpose  
 prejudicial to the UK); 5  
 section 12 (sabotage);  
 section 13 (foreign interference: general);  
 section 18 (obtaining material benefits from a foreign  
 intelligence service);  
 section 19 (preparatory conduct).” 10

*Investigatory Powers Act 2016 (c. 25)*

- 10 (1) Schedule 3 to the Investigatory Powers Act 2016 (exceptions to the exclusion of certain matters from legal proceedings) is amended as follows.
- (2) After paragraph 8 insert –
- “Proceedings under Part 2 of the National Security Act 2023 15
- 8A (1) Section 56(1) does not apply in relation to –
- (a) any proceedings which are relevant proceedings within the meaning of Part 2 of the National Security Act 2023 (see section 63(1) of that Act), or
- (b) any proceedings arising out of any proceedings within paragraph (a). 20
- (2) But sub-paragraph (1) does not permit the disclosure of anything to –
- (a) any person, other than the Secretary of State, who is or was a party to the proceedings, or 25
- (b) any person who –
- (i) represents such a person for the purposes of the proceedings, and
- (ii) does so otherwise than by virtue of an appointment as a special advocate under Schedule 10 to the National Security Act 2023.” 30
- (3) In paragraph 20(2) (proceedings for certain offences) –
- (a) after paragraph (h) insert –
- “(ha) an offence under section 1 or 3 of the National Security Act 2023 relating to any information, document or other article which, or an offence under section 12 of that Act relating to any asset which – 35
- (i) incorporates, or relates to, the content of any intercepted communication or any secondary data obtained from a communication, or 40

- (ii) tends to suggest that any interception-related conduct has or may have occurred or may be going to occur;
  - (hb) an offence under section 19 of the National Security Act 2023 in relation to an offence falling within paragraph (ha);” 5
- (b) in paragraph (i), for “(h)” substitute “(ha)”.

*Counter-Terrorism and Border Security Act 2019 (c. 3)*

- 11 In paragraph 62 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019 (review of Schedule 3 by Investigatory Powers Commissioner) omit— 10
  - (a) sub-paragraphs (1) to (5);
  - (b) sub-paragraphs (7) and (8).

# National Security Bill

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[AS AMENDED ON REPORT]

A

## B I L L

TO

Make provision about threats to national security from espionage, sabotage and persons acting for foreign powers; about the extra-territorial application of Part 2 of the Serious Crime Act 2007; for the registration of certain arrangements with, and activities of, specified persons and foreign principals; about the award of damages in proceedings relating to national security and the payment of damages at risk of being used for the purposes of terrorism; about the availability of legal aid to persons connected with terrorism; to amend the Terrorism Act 2000; and for connected purposes.

*Brought from the Commons on 17th November 2022*

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