



Home Office

# Examining Officers and Review Officers under Schedule 3 to the Counter-Terrorism and Border Security Act 2018

Code of Practice

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## **Code of Practice**

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Border Security Act 2018

# Contents

1. Introduction.....	5
General.....	5
Training and use of the powers.....	7
Police officers.....	7
Immigration and customs officers.....	8
Use of the power in emergencies.....	9
2. Identifying persons for examination.....	10
Who can be examined?.....	10
Where Schedule 3 powers can be exercised.....	11
3. Examination of Persons.....	15
Commencing an examination.....	15
Conducting an examination.....	15
Duties under examination.....	17
Rights under examination.....	18
Welfare considerations during examination.....	18
Production of information.....	19
Searches.....	20
Retention of an article.....	22
Retention under paragraphs 11(2)(d) and (e) – non-urgent conditions....	23
Retention of an article under paragraph 11(2)(d) or (e) – urgency condition.....	26
Making copies of an article.....	30
Treatment of confidential material.....	31
Retention of copies that consist of or include confidential material under paragraph 14(3)(d) or (e) – non urgent conditions.....	33
Retention of copies that consist of or include confidential material under paragraph 14(3)(d) or (e) – urgency condition.....	36
Records of examinations.....	40
4. Detention.....	41

When can a person be detained under Schedule 3? .....	41
Duties of the person being examined when under detention .....	43
Rights of the person being examined when under detention .....	43
Right to access a solicitor in private.....	44
Other rights under detention .....	47
Access to healthcare and the examination period .....	48
Children and other vulnerable people.....	49
Strip Search.....	50
Reviews of Detention .....	52
Establishing the identity of a detainee .....	55
Non-intimate samples and fingerprints.....	55
Recording of interviews of persons detained under Schedule 3.....	57
5. Video recording with sound of interviews of persons detained under Schedule 3 at a police station.....	58
General.....	58
Interviews to be recorded with sound .....	59
Recording and sealing of master recordings .....	60
The Interview.....	61
Commencement of interviews.....	61
Interviews with the deaf or with those who do not understand English .	62
Objections and complaints by the person .....	62
Changing the recording media.....	62
Taking a break during the interview .....	63
Failure of recording equipment.....	63
Removing used recording media from recording equipment.....	64
Conclusion of interview.....	64
After the interview .....	64
Media Security.....	65
General .....	65

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Breaking master recording seal for criminal proceedings.....	65
Breaking master recording seal: other cases .....	65
Documentation .....	66
Recording of interviews by Secure Digital Network .....	67
Commencement of interview .....	67
Taking a break during interview .....	67
Failure of recording equipment .....	68
Conclusion of interview.....	68
After the interview.....	69
Security of secure digital network interview records.....	69
6. Examination of goods.....	70
What goods can be examined? .....	70
Where Schedule 3 powers can be exercised in relation to goods .....	70
Selection Criteria.....	71
Examination .....	72
Conducting an examination .....	72
Treatment of confidential material.....	72
Records of examinations .....	73
ANNEX A Notice of Detention under Schedule 3 to the Counter-Terrorism and Border Security Act 2018.....	74
Your duties .....	74
ANNEX B .....	78
ACCREDITATION OF EXAMINING OFFICERS.....	78
Requirement for Code of Practice .....	78
Requirement for training and accreditation.....	78
Training and accreditation standards.....	78
Training and accreditation for an examining officer.....	79
Accreditation of immigration and customs officers as examining officers.....	79
Designation of immigration and customs officers as examining officers.	80

Two year cycle of accreditation .....	80
Assessment of ongoing competence .....	80
ACCREDITATION OF REVIEW OFFICERS .....	80
Requirement for Code of Practice .....	80
Requirement for training and accreditation.....	80
Training and accreditation standards.....	81
Training and accreditation for a review officer.....	81
Accreditation of police officers as review officers .....	81
Two year cycle of accreditation .....	81
Assessment of ongoing competence .....	82

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# 1. Introduction

## General

1. Schedule 3 to the Counter-Terrorism and Border Security Act 2018 (“Schedule 3”), allows an examining officer to stop, question, search and detain a person at a port or the border area for the purpose of determining whether the person appears to be a person who is, or has been, engaged in hostile activity. It also allows for the examination of goods for the purpose of determining whether they have been used in connection with a person’s engagement in hostile activity.

2. This code of practice is issued under paragraph 49 of Schedule 3. It applies to: (i) training to be undertaken by constables, immigration officers and customs officers who are to act as examining officers or exercise other functions under Schedule 3; (ii) the exercise by such persons of functions conferred on them by virtue of Schedule 3; (iii) the video recording (with sound) of interviews by constables of persons detained under Part 1 of Schedule 3 at a police station; and, (iv) reviews under Part 3 of Schedule 3.

3. The term “examining officer”<sup>1</sup> for the purpose of this code has the same meaning as in paragraph 57(3) of Schedule 3 i.e. a constable, or an immigration officer or customs officer designated for the purpose of Schedule 7 to the Terrorism Act 2000 by the Secretary of State (and, in the case of a customs officer, the Commissioners of Her Majesty’s Revenue and Customs), such officer having been accredited as having successfully completed training in the use of the Schedule 3 powers. The code only applies to police officers and designated immigration or customs officers when they are exercising their functions as examining officers under Schedule 3 and not in any other circumstances, for example where they may be questioning a person under the Police and Criminal Evidence Act 1984, Immigration Act 1971 or the Customs and Excise Management Act 1979.

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<sup>1</sup> For further information please see Annex B.

4. This code contains provisions concerning reviews of detention under Schedule 3 (see Section 4). Those provisions require that the “review officer”<sup>2</sup> must carry out a periodic review where a person has been detained under Schedule 3. “Review officer” means an officer, at least one rank higher to the examining officer, who has not been directly involved in questioning the detained person. In all cases (except for emergencies), review officers must have been accredited as having successfully completed training in the exercise of review officer functions in relation to Schedule 3 detention.

5. The powers contained in Schedule 3 to which this code relates must be used fairly and responsibly in accordance with the prescribed procedures and with respect for the people to whom the powers have been applied. Where this code directs that an examining officer must undertake a duty or obligation in the exercise of their powers under Schedule 3, the officer will abide by that direction as far as reasonably practicable.

6. When using Schedule 3 powers, the Equality Act 2010 prohibits officers from unlawfully discriminating against, harassing or victimising any person on the grounds of the protected characteristics of age, disability, gender reassignment, race (including colour, nationality, ethnic or national origin), religion or belief, sex and sexual orientation, marriage and civil partnership, and pregnancy and maternity when using their powers.

7. Under section 149 of the Equality Act 2010, public authorities have a duty to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity between people who share a protected characteristic and people who do not share it, and to take steps to foster good relations between those persons. Examining officers must be aware of the potential disruption to travel that examination may give rise to, and should seek to minimise such disruption wherever possible.

8. The code must be available at all police stations for consultation by the police and members of the public. It must also be available at police offices at ports or in the border area where the

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<sup>2</sup> For further information please see Annex B.

powers are, or are likely to be used. The code must form part of the published departmental instructions/guidance for immigration officers and customs officers. The code should also be accessible to members of the public on the websites of the relevant agencies, including the police, the Home Office, the National Police Chiefs' Council (NPCC), Police Scotland and the Police Service of Northern Ireland (or their successors).

**9.** An examining officer must exercise the powers conferred by Schedule 3 in accordance with this code of practice. The code is admissible in evidence in civil and criminal proceedings and will be taken into account by a court or tribunal in any case where it is considered relevant.

## Training and use of the powers

### Police officers

**10.** The powers contained in Schedule 3 may only be used by police officers who have been accredited by their Chief Officer<sup>3</sup> as having met a national standard<sup>4</sup> in the use of the powers. While awaiting accreditation, an unaccredited police officer must not use Schedule 3 powers unless they are supervised by an accredited examining officer. Chief Officers must reassess whether an officer should retain his or her accreditation on a biennial basis so that a high level of expertise is maintained.

**11.** In order to act as review officers (i.e. those officers who will review whether it is necessary to continue a person's detention under Schedule 3) police officers must have been assessed by their Chief Officer as having successfully undertaken training in the exercise of the Schedule 3 powers (including the review functions) to a national standard. Police officers who have been accredited as being able to exercise review officer functions must be reassessed on a biennial basis.

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<sup>3</sup> References in this code to "Chief Officer" are to a chief constable of a police force in England and Wales, the Chief Constable of Police Scotland, the Chief Constable of the Police Service of Northern Ireland and the Commissioners of the Metropolitan Police and City of London Police.

<sup>4</sup> Further details of the training that an examining (or reviewing officer) is expected to undertake, as agreed by the National Police Chiefs' Council, Police Scotland and Police Service of Northern Ireland (or their successors) can be found at Annex B.

## Immigration and customs officers

**12.** An immigration or customs officer must only exercise functions under Schedule 3 exceptionally, and only if the officer has been designated by the Secretary of State (and, in the case of customs officers, by the Commissioners of Her Majesty's Revenue and Customs) as an examining officer for the purposes of Schedule 7 to the Terrorism Act 2000.

**13.** Immigration and customs officers must have undertaken training in the use of the Schedule 3 powers and have been accredited by the Director General (DG) of Border Force after they have met the required standard. The DG of Border Force must reassess whether an immigration or customs officer should retain their accredited status on a biennial basis.

**14.** The accredited immigration or customs officer must only exercise Schedule 3 powers when one or both of the following apply:

- A police officer is not readily available; and/or
- If specifically requested to do so by a police officer of the rank of sergeant or above.

**15.** In all cases where an immigration or customs officer exercises any examining officer powers under Schedule 3<sup>5</sup>, the authority of a chief immigration officer (in the case of an immigration officer), or a higher officer (in the case of a customs officer) or above must be obtained before exercising the power, if it is reasonably practicable to obtain that authority. Where it is not reasonably practicable to obtain prior authority, the chief immigration officer or the higher customs officer or above must be notified of the exercise of the power as soon as possible after it has begun.

**16.** In order to act as review officers, immigration and customs officers must have been assessed by the DG of Border Force or the Commissioner of Her Majesty's Revenue and Customs as having successfully undertaken training in the exercise of the Schedule 3

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<sup>5</sup> Unless an examining officer has authorised a person to carry out on the officer's behalf a search or examination under any of paragraphs 7 to 9 of Schedule 3, and that person is an immigration or customs officer. See paragraph 10 of Schedule 3.

powers and functions to a national standard. Immigration and customs officers who have been accredited as being able to exercise Schedule 3 review officer functions must be reassessed on a biennial basis.

### Use of the power in emergencies

17. The powers may also be used by any constable who has not been accredited where a police officer of at least the rank of Commander or Assistant Chief Constable<sup>6</sup> believes that this is necessary due to an exceptional urgent operational need. The constable may be given temporary permission to act as an examining officer for the duration of the emergency, whether or not they are awaiting accreditation. In such circumstances, officers must receive a briefing<sup>7</sup> on the powers prior to deployment and their exercise of the powers must be supervised by an accredited examining officer. This can be done remotely. ‘Urgent operational need’ might arise during a period where there is a heightened threat from hostile activity. For example, where there is credible intelligence to indicate that the activity of a hostile actor would result in the death or significant injury of persons within the United Kingdom or where such an incident has already taken place. A heightened period of threat may mean that accredited police officers are otherwise occupied, and the relevant Chief Officer may need to deploy non-accredited police officers as examining officers. Additionally, the relevant Chief Officer should document the reasons for deploying non-accredited police officers.

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6 Officers of the National Police Chiefs’ Council, Police Scotland and Police Service of Northern Ireland (or their successors).

7 A template for emergency briefing is owned by the National Police Chiefs’ Council (or their successors).

## 2. Identifying persons for examination

### Who can be examined?

**18.** The examining officer may only stop and question a person for the purpose of determining whether that person appears to be a person who is, or has been, engaged in “hostile activity” as defined in paragraph 1 of Schedule 3. An examining officer may stop and question a person whether or not there are grounds for suspecting that the person is or has been engaged in hostile activity.

**19.** The examination powers are additional to the powers of arrest available to police officers under separate legislation and must not be used for any other purpose.<sup>8</sup> Examining officers must make every reasonable effort to exercise the power in such a way as to minimise causing embarrassment or offence to a person who is being questioned. All persons being stopped and questioned by examining officers must be treated in a respectful and courteous manner.

**20.** Schedule 3 powers must be exercised in a manner which is proportionate to the legitimate aim and which does not unlawfully discriminate against anyone on the grounds of age, race (including colour, nationality, ethnic or national origin), religion or belief, gender or sexual orientation. Examining officers must take particular care to ensure that “protected characteristics”<sup>9</sup> (whether separately or together) are only to be used as criteria for selection if present in association with considerations that relate to the threat of hostile activity.

**21.** If a person is stopped and questioned, this may inconvenience their ongoing travel arrangements. Where appropriate the examining officers will try to assist with seeking advice from transport operators on options for alternative travel arrangements. An examining officer, however, will not be able to guarantee or book alternative travel for that person.

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<sup>8</sup> Detention powers under Schedule 3 and reasons for detaining a person are explained in Section 4.

<sup>9</sup> Protected characteristics as defined in the Equalities Act 2010 and set out in paragraph 6 of this code of Practice.

## Where Schedule 3 powers can be exercised

22. The power to examine someone under Schedule 3 may be exercised in respect of a person only if either of the following conditions is met:

- The person is on a ship, aircraft or international train, which has arrived at any place in Great Britain or Northern Ireland (whether from within or outside Great Britain or Northern Ireland); see paragraph 1(3) of Schedule 3;<sup>10</sup>
- The person is at a port or in the border area (in Northern Ireland) and the examining officer believes that the person's presence is connected with the person's entry into, or departure from, Great Britain or Northern Ireland, or the person's travel by air within Great Britain or within Northern Ireland; see paragraph 1(2) of Schedule 3.

Belief must be justifiable, and much will depend on the individual circumstances. For example, the following factors, if present in a particular case, may support a belief for the purposes of paragraph 1(2) of Schedule 3:

- The presence of the person in a controlled arrivals or departure area or common departure lounge at a port. Presence in such areas alone, however, may not be sufficient to form a reasonable basis for a belief without other indicators suggesting the person's presence is connected with their travel; and/or
- Where the person is waiting to be, is being, or has been checked in for a flight or ferry to or from Great Britain or Northern Ireland.

The examples given above are not intended as an exhaustive list.

## Selection Criteria

23. Although the selection of a person for examination is not conditional upon the examining officer having grounds to suspect

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<sup>10</sup> The Channel Tunnel (International Arrangements) Order 1993, as amended by Schedule 3, provides that examining officers can exercise Schedule 3 powers in a railway station or other place where persons embark or disembark, or goods are loaded or unloaded, on or from a through train or shuttle train and in the tunnel system.

that person of being engaged in hostile activity, the decision to select a person for examination must not be arbitrary. An examining officer's decision to select a person for examination must be informed by the threat from hostile activity to the United Kingdom and its interests posed by foreign States and hostile actors acting for, on behalf of, or otherwise in the interests of, those States, whether active in or outside the United Kingdom.

**24.** It is only appropriate for race, ethnic background, religion and/or other “protected characteristics” (whether separately or together) to be used as criteria for selection if present in association with considerations that relate to the threat from hostile activity. Considerations that relate to the threat of hostile activity, include factors such as, but not exclusively:

- Known and suspected sources of hostile activity;
- Persons, organisations or groups whose current or past involvement in hostile activity, or threats of it, is known or suspected;
- Any information on the origins and/or location of hostile actors;
- Possible current, emerging and future hostile activity;
- The means of travel (and documentation) that a group or persons involved in hostile activity could use;
- Patterns of travel through specific ports or in the wider vicinity that may be linked to hostile activity, or appear unusual for the intended destination; and/or
- Observation of a person's behaviour.

## **Screening a person**

**25.** In order to inform a decision on whether to select a person for examination under Schedule 3, an officer (who need not be the officer who might later conduct any examination) may find it helpful to approach a person and carry out some basic screening.

**26.** The use of screening for the purpose of deciding whether to select a person for a Schedule 3 examination is not conducted under Schedule 3, and does not constitute an examination. Law

Enforcement officers may ask questions and request to see documents to achieve a legitimate Law Enforcement purpose in the ordinary course of their duties.

27. There is no obligation on any person to answer screening questions and the person will not commit an offence by not answering screening questions or otherwise engaging with officers in this process. There is also no requirement for officers to make a record of a screening interaction unless the person is subsequently selected for a Schedule 3 examination.

28. Screening, for the purpose of deciding whether to select a person for a Schedule 3 examination, includes, but is not limited to:

- Asking questions to establish identity, provenance and destination of a person;
- Asking questions to establish the method of travel and purpose of travel of a person;
- Scrutiny of a person's travel document<sup>11</sup>;
- A comparison of the holder against the image contained in the document;
- Requesting additional documents from the person relevant to screening;
- Checking personal information against records **where there is no significant additional delay.**

29. Screening of persons should only take a few minutes. If it appears that this period will take significantly longer, the examining officer must conclude the screening process and either commence a Schedule 3 examination or notify the person that they have no further questions.

30. If screening is conducted by an immigration or customs officer who is not a designated and accredited examining officer, or a

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<sup>11</sup> Additional powers are available under Schedule 8 to the Anti-Social Behaviour, Crime and Policing Act 2014 (ASBCP) for a constable to require, search for, take possession of and inspect all travel documents in a person's possession in order to establish the validity of those documents. These powers should only be used for the purpose of confirming the validity of travel documents. While this may inform a Schedule 3 screening decision, it should not be used solely for this purpose.

police officer who is not an accredited examining officer, and they consider that an examination under Schedule 3 is appropriate, they must notify an examining officer of this at the earliest opportunity.

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## 3. Examination of Persons

### Commencing an examination

**31.** The examining officer must not exercise powers under Schedule 3 with respect to any person, unless that person has been notified that an examination has commenced. In particular, where a person has first been asked screening questions, it must be made clear to the person that the screening process has ceased and they are now being examined under Schedule 3.

**32.** In notifying the person of their selection for examination under Schedule 3, an examining officer may direct the person to a nearby place for this purpose.

**33.** At the start of the examination the examining officer must explain to the person, verbally or in writing, that they are being examined under Schedule 3 to the Counter-Terrorism and Border Security Act 2018 and that the officer has the power to detain that person for the purpose of conducting the examination (see paragraph 120 of this code for the types of reasons that might cause an officer to decide to detain a person).

### Conducting an examination

**34.** The examining officer must explain to the person their role and that Schedule 3 is part of hostile activity policing at the port/UK border, but that this does not mean that they are suspected of being involved in hostile activity. The purpose for the examination is to determine whether or not they appear to be a person who is, or has been, engaged in hostile activity. If requested, the examining officer must provide sufficient information, such as an identification number and location, to the person or his or her representative to enable the officer to be identified in the event of any query or complaint.

**35.** The examining officer will explain how the examination will be conducted and must offer a Schedule 3 Public Information Leaflet.<sup>12</sup> The Public Information Leaflet is available in multiple languages, and outlines the purpose and provisions of Schedule 3,

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<sup>12</sup> The Public Information Leaflet is owned by the National Police Chiefs' Council (or their successors).

duties under Schedule 3, key points of the Code of Practice including a person's rights and relevant contact details (including those needed to provide feedback or make a complaint).

**36.** Where Schedule 3 powers are exercised regularly, the duties and rights of a person subject to examination must be displayed prominently, alongside an explanation of the powers, in a place where the person will be able to read them. If the examining officer doubts the person's ability to understand English, every reasonable effort should be made to communicate the relevant information where practicable using someone who can act as an interpreter (see paragraphs 49-50 of this code).

**37.** An examining officer must cease an examination and inform the person being examined accordingly when the examining officer is satisfied that sufficient information has been obtained to allow a determination to be made as to whether the person appears to be a person who is, or has been, engaged in hostile activity, or where the officer has concluded that further examination would not assist in making such a determination.

**38.** It is important to note that the examining officer does not need to administer a caution to a person being examined under Schedule 3. Questioning that does require a caution (e.g. where a person is being questioned in relation to suspected involvement in an offence) should be dealt with outside of the Schedule 3 examination process.

**39.** Where an officer decides it is necessary to examine a person for longer than an hour, then questioning under paragraphs 1 and 2 of Schedule 3 must cease at the hour point, unless the person has been detained under paragraph 4 of Schedule 3. Any period of examination, including detention, must not exceed six hours from the commencement of the examination.

**40.** If after (or during the course of) examining a person under paragraph 1 or 2 of Schedule 3, the examining officer decides to examine the person under Schedule 7 to the 2000 Act for counter-terrorism purposes, the officer must explain to the person that they are no longer being examined under Schedule 3 and are being examined under Schedule 7 (at which point the officer must adhere

to the Schedule 7 Code of Practice). In such circumstances, the time spent in examination under paragraph 1 or 2 of Schedule 3 is to be included in calculating the 6 hour period with respect to any subsequent examination that takes place under paragraph 2 or 3 of Schedule 7.

**41.** The reverse is true where an examining officer decides after (or during the course of) examining a person under Schedule 7 to examine the person under Schedule 3. In such circumstances, the time spent in examination under paragraph 2 or 3 of Schedule 7 is to be included in calculating the 6 hour period with respect to any subsequent examination that takes place under paragraph 1 or 2 of Schedule 3. Examination under either Schedule 3 or Schedule 7, or a combination of both, must not exceed a period of 6 hours.

## **Duties under examination**

**42.** The examining officer must inform the person being examined that Schedule 3 places them under a duty to give the officer any information in his or her possession which the officer requests for the purposes of the examination (see paragraph 3 of Schedule 3). The examining officer may, if appropriate, inform the person that wilfully failing to comply with a duty imposed under Schedule 3, or wilfully obstructing, or seeking to frustrate, a search or examination under Schedule 3, is a criminal offence under paragraph 16 of Schedule 3.

**43.** The examining officer may also, if appropriate, explain that any answer or information that the person provides orally in response to a question asked during the examination cannot be used as evidence in criminal proceedings. The examining officer should then explain that this will not be the case where the person is prosecuted for wilfully failing to comply with a duty imposed under or by virtue of Part 1 of Schedule 3; for obstructing or seeking to frustrate, a search or examination under Schedule 3; or where they are prosecuted for perjury. The examining officer should also explain that it will be possible for oral answers given in response to questions put to the person in a Schedule 3 examination to be used as evidence in a situation where the person has been prosecuted for an offence other than those already mentioned where, in giving evidence, they make a statement that is inconsistent with that oral answer or

information given. In such a situation, the person's statement can only be used where they or their legal counsel first adduces it as evidence, or asks a question relating to it, in their defence.

### **Rights under examination**

**44.** A person who is being examined at a port, but not detained, is not entitled to consult a solicitor. Should the person request to do so, the examining officer may grant this at his or her discretion, but where reasonably practicable a consultation should be allowed. When consultation is allowed, it should be allowed to be conducted before the examination and in private. Any consultation will not be at public expense. Requests for consultation, the response, and if applicable, the reason for refusal must be recorded in writing.

**45.** A person who is being examined at a port, but not detained, is not entitled to have a named person informed of their examination and whereabouts. Should the person request to inform a named person, the examining officer may grant that request at his or her discretion, but where reasonably practicable, the request should be granted. The named person should be a friend, relative or a person known to them who is likely to take an interest in their welfare. Where the request is granted, the named person should be informed as soon as reasonably practicable. If the named person cannot be contacted, further attempts may be made at the examining officer's discretion. A request to have a named person informed of a person's examination and their whereabouts; the response, and if applicable, the reason for refusal must be recorded in writing.

### **Welfare considerations during examination**

**46.** An examining officer should bear in mind that the person being examined, while they may not be obviously vulnerable (for which see from paragraph 143), may be unaware of the Schedule 3 powers, may be distressed by references to hostile activity, may be from a different country or may be a non-English speaker. Examinations should be conducted in a manner which minimises the potential for a person to become unnecessarily alarmed or distressed by the encounter.

**47.** If the person being examined is travelling with any other person who may be vulnerable (including children) and there is no

other responsible adult present, the examining officer must make suitable arrangements to ensure the wellbeing of the vulnerable person. The examining officer should inform the person being examined of these arrangements before continuing with the examination.

**48.** The examining officer must consider the person's welfare and make arrangements to ensure that they have the opportunity to have refreshments and breaks at regular intervals. Access to a healthcare professional should be provided if necessary, as determined by the examining officer. Where reasonably practicable, provision should be made to allow for the practice of religious observance, where this will not jeopardise the purpose of the examination.

**49.** If the examining officer is unable to communicate effectively with the person being examined either because the person has a hearing or speech impediment or because they do not understand English, then the examining officer must make all reasonable effort to obtain the assistance of another person who is able to communicate effectively with the person being examined. For example, Border Force interpreters can be used to communicate effectively with a person.

**50.** A police officer, immigration officer, customs officer or Border Force interpreter must never be used as an interpreter to facilitate communication between the person being examined and a solicitor. Where communication with a solicitor is necessary then an interpreter must be provided at public expense and all reasonable steps must be taken to make the person being examined understand that interpretation and translation will be provided at public expense.

**51.** If it is not possible to obtain the assistance of someone who can act as an interpreter, the examining officer must not interview the person. However, the examining officer may continue to use other Schedule 3 powers (for example, the search power under paragraph 8 of Schedule 3).

## **Production of information**

**52.** Where the examining officer chooses to request information or documents (including a passport or other document used to

establish identity) under paragraph 3 of Schedule 3, he or she must specify the kind of information or document which must be produced. Information requested by an examining officer under paragraph 3(a) may include passwords to electronic devices. The examining officer should give the person concerned a reasonable opportunity within the period of examination to produce the information or documents requested.

**53.** People travelling to or from Great Britain or Northern Ireland from another place in the Common Travel Area, or by air or ship within Great Britain or by air or ship within Northern Ireland (whether from within or outside Great Britain or Northern Ireland) may not be carrying a passport. In such a case, an examining officer may request the person to provide any other document which has been used to establish their identity. Production of information, documents or evidence of identity under paragraph 3 of Schedule 3 is separate from the power of search contained in paragraphs 7, 8 and 9 of Schedule 3.

**54.** An examining officer may use electronic equipment in order to examine persons and property.

## Searches

**55.** Under paragraph 8 of Schedule 3, an examining officer may search a person questioned under paragraph 1 and anything they have with them for the purpose of determining whether the person appears to be a person who is, or has been, engaged in hostile activity. This includes baggage or any other personal items, whether found on the person or on a ship, aircraft or international train service, or where the examining officer reasonably believes that thing has been or is about to be on a ship, aircraft or international train service.<sup>13</sup> An examining officer may, under paragraph 10 of Schedule 3, authorise another person to carry out a search on their behalf.

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<sup>13</sup> Examining officers are also permitted to: search anything belonging to the person which is, has been, or is about to be, on a ship or aircraft; search an aircraft for anything belonging to the person; and search a vehicle which is, or which the officer reasonably believes has been, or is about to be, on a ship or an aircraft. Where an officer questions a person in the border area in Northern Ireland he may also search a vehicle, anything in or on a vehicle, and anything which he reasonably believes has been, or is about to be, in or on a vehicle.

**56.** Every reasonable effort must be made to minimise potential embarrassment or offence that may be caused to a person being searched. A baggage search need not be carried out by a person of the same sex, but where that is requested or where an objection is raised to the search being conducted by a person of the opposite sex, the search should be conducted by a person of the same sex where that is reasonably practicable. If it is not reasonably practicable, the examining officer should record the objection, but may proceed with the search. A search of a person under paragraph 8 of Schedule 3 must only be carried out by a person of the same sex.

**57.** The power to search anything which the person has with them includes the power to search electronic devices, such as mobile phones. Searching such a device may result in information being accessed which is stored other than on the device itself. However, the power to search does not include the power to use information obtained from such a device (or information requested under paragraph 5(a)) to access information using a device that is not the subject of a search under paragraph 8 (for example, the officer may access emails using an application on the phone being searched, but may not obtain the email username and password and log onto the email account from another computer). Nor can the power to search electronic devices be used to intercept communications in the course of their transmission, within the meaning in the Investigatory Powers Act 2016, other than where the obtaining of stored communications is authorised by section 6(1)(c)(ii) of that Act.

**58.** An examining officer may only search a person or anything they have with them to determine whether the person appears to be someone who is or has been engaged in hostile activity. A search must be limited to what is necessary for that purpose. This does not, however, preclude a search being carried out under other powers if appropriate, for example, where the examining officer is a constable and has other powers by virtue of common law or other statute.

**59.** An examining officer may use reasonable force for the purpose of exercising a search power under Schedule 3. Reasonable force may be used to conduct a search where that is necessary and proportionate. Where an examining officer exercises powers of search under Schedule 3 there is no requirement for any notice of

search to be provided regarding the search of a person, property, or vehicles.

**60.** When a search of a person is carried out the examining officer must, if not uniformed, show a warrant card or similar evidence of his or her authority, but need not give his or her name.

**61.** If requested, the examining officer must provide sufficient information to the person or his or her representative, such as an identification number and location, which would enable the officer to be identified in the event of any query or complaint.

### **Retention of an article**

**62.** An examining officer may retain any article (including electronic devices) which is given to the officer in accordance with paragraph 3(d) of Schedule 3, which is searched or found during a search under paragraph 8, or which is examined under paragraph 9. The officer may retain the article:

**a** For the purpose of examination, for a period not exceeding 7 days beginning with the day on which the retention commences;

**b** While the officer believes that it may be needed for use as evidence in criminal proceedings;

**c** While the officer believes that it may be needed in connection with a decision of the Secretary of State whether to make a deportation order under the Immigration Act 1971;

**d** While the officer believes that the article could be used in connection with the carrying out of a hostile act; or

**e** While the officer believes it necessary to do so for the purpose of preventing death or significant injury.

**63.** The article may be retained for as long as the examining officer believes it is needed for these purposes (although not beyond 7 days if the article is retained only under paragraph 11(2)(a))<sup>14</sup>. If the examining officer retains any article beyond the conclusion of the

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<sup>14</sup> It is important to note that where an examining officer has retained an article under 11(2)(b) or (e), the examining officer is permitted to examine that article in order to fulfil the purpose of the retention.

examination of that person, he/she must inform the person of the power under which their property is being retained. In such circumstances, the examining officer should ask the person how they would prefer to be contacted regarding the status or return of their property.<sup>15</sup>

**64.** Where the examining officer has retained an article under one power and then subsequently decides to retain the article under a different power, the person from whom the article was taken must be informed of the retention under the different power in writing. If the subsequent retention power is either that of paragraph 11(2)(d) or (e) and meets the urgency condition, the examining officer should also attempt to contact the person by phone to inform them of the urgent retention process and the written notice.

#### Retention under paragraphs 11(2)(d) and (e) – non-urgent conditions

**65.** Where an article has been retained under paragraph 11(2)(d) or (e), it is the role of the Investigatory Powers Commissioner (the Commissioner)<sup>16</sup> to decide whether to authorise the retention or use of the article, or to direct the return or destruction of the article. After considering any representations made by the affected parties, the decision will depend on whether it appears to the Commissioner that there are reasonable grounds to believe that the article has been or could be used in connection with the carrying out of a hostile act, or that returning the article to the person from whom it was taken could result in a risk of death or significant injury to any person. The Commissioner will then direct that the article can be returned to the person from whom it was taken (in the absence of another power to retain it); or that it can be retained by the examining officer and used, or that it should be destroyed.

**66.** Once an article has been retained under 11(2)(d) or (e), it must not be further examined until the Commissioner has made a

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<sup>15</sup> Where an article has been retained under paragraph 11(2)(d) or (e), the requirements to invite representations from, or to provide information to, the person from whom an article was taken applies only so far as it is reasonably practicable to do so. For example, the examining officer cannot be expected to fulfil this obligation if the person has provided false or incorrect details.

<sup>16</sup> In practice, these functions may be delegated to a Judicial Commissioner. Section 227(8) of the Investigatory Powers Act 2016 provides that the Commissioner may, to such extent as the Commissioner may decide, delegate the exercise of functions of the Commissioner to any other Judicial Commissioner.

decision. It is the examining officer's responsibility to notify the Commissioner as soon as reasonably practicable so that a decision can be taken. In being notified, the Commissioner must be provided general details of the examination, including a case reference number, date and time of the stop, name and contact address (email or home address) of the person examined, identifier for the examining officer and power under which the article was retained. Where the investigating police force is different to the force to which the examining officer belongs, the Commissioner must also be provided with details on which force to invite to make representations regarding retention of the article.

**67.** When an examining officer retains an article for the purposes of 11(2)(d) or (e), the examining officer must provide a notice to the person from whom the article was taken to inform them of the role of the Commissioner in relation to the article. The notice must explain that the person is invited to make representations about how the Commissioner should proceed with the article, including contact details and associated timescales. The notice must explain that representations may be made by all other affected parties, including the Chief Officer of the relevant police force and the Secretary of State (in this case, the Home Secretary). The notice must also explain that there is no obligation on any affected party or the Commissioner to provide information relating to any representations that have been submitted to other affected parties.

**68.** Where the examining officer has retained an article under one power and then subsequently decides to retain the article under 11(2)(d) or (e), the person from whom the article was taken must be informed of the retention under the different power in writing, which must include the notice.

**69.** All representations to the Commissioner must be made in writing, which may include email. The Commissioner will begin to consider the article on receipt of representations from the three affected parties (unless an affected party has made it clear in their submission that they intend to submit further supporting evidence in due course), but no later than four weeks beginning on the day that the examining officer notified the Commissioner of the retention of the article.

**70.** When representations are provided that retention is necessary, they should explain clearly the reasons for believing that the article has been or could be used in connection with the carrying out of a hostile act, or for believing the article's retention is necessary to prevent death or significant injury.

**71.** It is not the responsibility of the examining officer to communicate a decision of the Commissioner to the affected parties. Once the Commissioner has made a decision on how to proceed with the article, the Commissioner will inform all affected parties whether or not a direction to destroy the article has been given, or authorisation to retain and use the article has been granted. The Commissioner will inform all affected parties, in writing, within two weeks of the date that a decision has been made.

**72.** Paragraph 13(2) of Schedule 3 provides the opportunity for an affected party to appeal where a Judicial Commissioner, other than the Commissioner, exercises a function in relation to an article. In these circumstances, the affected party may ask the Commissioner to decide whether to approve the way in which the function was exercised. This must be explained in the notice provided to the examinee where an article has been retained under 11(2)(d) or (e), but it is the responsibility of the Commissioner's office, when communicating the outcome to all affected parties, to indicate whether it was the decision of a Judicial Commissioner.

**73.** In communicating the decision of a Judicial Commissioner to the affected parties in relation to an article retained under 11(2)(d) or (e), the Commissioner's office will inform each party that no action will be taken until two weeks have expired, beginning on the day of the decision. If the Commissioner has not notified all affected parties that an appeal has been received before the expiry of the two week period, the decision will be final and the associated action in relation to the article will be taken forward. Where the Commissioner notifies all affected parties within the two week period that an appeal has been received, no action will be taken in relation to the article pending notification from the Commissioner to all affected parties of the result of the appeal. The decision at the conclusion of any appeal will be final and the associated action will be taken forward upon notification of the outcome.

**74.** The examining officer must comply with the decision and any associated direction of the Commissioner as soon as reasonably practicable, but only once the appeal period has expired (where the decision has been made by a Judicial Commissioner) and no further communication from the Commissioner has been received, or that having been notified of an appeal, the Commissioner confirms the outcome. A decision or direction of the Commissioner does not preclude the examining officer from further retaining the article under paragraph 11(2)(b) or (c). Where the examining officer retains the article under a different power, the person must be informed of the power under which the article continues to be retained.

#### Retention of an article under paragraph 11(2)(d) or (e) – urgency condition

**75.** Where the examining officer decides to retain an article solely under paragraphs 11(2)(d) or (e) and considers that the urgency condition is met in relation to the article, the examining officer may apply to a senior officer for authorisation to retain and use the article prior to seeking authorisation from the Commissioner. In such circumstances, it is the role of the Commissioner to decide first whether to approve the decision to retain and use the article under the urgency condition and second whether to authorise the retention or use of the article, or to direct the return or destruction of the article. The urgent provisions under paragraphs 13A, 13B and 13C of Schedule 3 can only be used if:

- a** There is an urgent need for the article to be examined or otherwise used for the purpose of preventing;
  - i** the carrying out of a hostile act, or
  - ii** death or significant injury,or for the purpose of mitigating the risk of any such act, death or injury occurring, and
- b** The time it would take for the requirements of the standard authorisation process (i.e. the authorisation process under paragraphs 12 and 13) to be complied with in relation to the article would not enable such use to take place with sufficient urgency.

**76.** The examining officer must take no further action in relation to the article unless authorised to do so by a senior officer, no lower than a superintendent, who is not directly involved in the exercise of any power under this Part of this Schedule to take the article or to question a person from whom the article was taken. The senior officer may grant an authorisation for the retention and use of the article if satisfied that there are reasonable grounds for considering that the urgency condition is met in relation to the article. An authorisation must be recorded and may be granted subject to whatever conditions the senior officer thinks appropriate. If the senior officer does not agree to give authorisation, then the article must be returned to the person from whom it was taken, unless the examining officer retains the article under a different power or seeks a non-urgent authorisation under paragraph 12 and 13.

**77.** Where that authorisation has been given, it is the examining officer's responsibility to notify the Commissioner and each affected party as soon as reasonably practicable and in any event within 24 hours after the grant of the authorisation. In being notified, the Commissioner must be provided general details of the examination, including a case reference number, date and time of the stop, name and contact address (email or home address) of the person examined, identifier for the examining officer and power under which the article was retained. The notification must also detail the conditions on which the authorisation was granted and the name and identifier of the senior officer who gave the authorisation. Where the investigating police force is different to the force to which the examining officer belongs, the Commissioner must also be provided with details on which force to invite to make representations regarding retention of the article.

**78.** In being notified, the person from whom the article was taken must be provided with a notice to inform them of the role of the Commissioner in relation to the article. The notice must explain that the person is invited to make representations about how the Commissioner should proceed with the article, including contact details and associated timescales. The notice must explain that representations may be made by all other affected parties, including the Chief Officer of the relevant police force and the Secretary of State. The notice must also explain that there is no obligation on any

affected party or the Commissioner to provide information relating to any representations that have been submitted to other affected parties.

**79.** Where the examining officer initially retains an article under one power but subsequently retains the article under paragraph 11(2)(d) or (e) and the urgency condition is met, the person from whom the article was taken must be informed of the retention under the new power in writing, which must include the notice. The examining officer should also attempt to contact the person by phone to inform them of this notice.

**80.** All representations to the Commissioner must be made in writing, which may include email. Any representations should be made no later than the end of two working days beginning with the first working day after the day on which the authorisation is granted. The Commissioner is required to have regard to any representations received within the two working-day period before making a decision. A decision to approve the authorisation or cancel the authorisation must be made after the end of the time for making representations and before the end of the period of three working days beginning with the first working day after the day on which the authorisation is granted.

**81.** When representations are provided that retention is necessary, they should explain clearly the reasons for believing that the urgency condition is met in relation to the article. In doing so, the Chief Officer should explain the reasons for believing that there is an urgent need to use the article and why the standard retention process would not enable such use to take place with sufficient urgency.

**82.** It is not the responsibility of the examining officer to communicate a decision of the Commissioner to the affected parties. Once the Commissioner has made a decision on whether to approve, amend, or cancel the authorisation, the Commissioner will inform all affected parties whether or not a direction to destroy the article has been given, or authorisation to retain and use the article has been granted. The Commissioner will inform all affected parties, in writing, within three working days of the decision.

**83.** If the decision of the Commissioner is to cancel the authorisation, any further use of the article by virtue of the authorisation must stop as soon as possible. The Commissioner may also direct that the article:

**a** Is destroyed, or

**b** Is returned to the person from whom it was taken, and

The Commissioner may further direct that all reasonable steps must be taken to secure that any information derived from the article is destroyed.

**84.** Paragraph 13C(10) provides an opportunity for an affected party to appeal where a Judicial Commissioner, other than the Commissioner, exercises a function in relation to an article. In these circumstances, the affected party may ask the Commissioner to decide whether to approve the way in which the function was exercised. This must be explained in the notice provided to the examinee where an article has been retained under paragraph 11(2)(d) or (e) and the urgency condition is met. It is, however, the responsibility of the Commissioner's office, when communicating the outcome to all affected parties, to indicate whether it was the decision of a Judicial Commissioner.

**85.** In communicating the decision of a Judicial Commissioner to the affected parties in relation to an article retained under the urgency condition, the Commissioner's office will inform each party that the decision will not take effect until three working days have expired, beginning on the day of the decision. If the Commissioner has not notified all affected parties that an appeal has been received before the expiry of the three day period, the decision will be final and the associated action in relation to the article will be taken forward. Where the Commissioner notifies all affected parties within the three day period that an appeal has been received, the decision will not take effect pending notification from the Commissioner to all affected parties of the result of the appeal. The decision at the conclusion of any appeal will be final and the associated action will be taken forward upon notification of the outcome.

**86.** The examining officer must comply with the decision and any associated direction of the Commissioner as soon as reasonably

practicable, but only once the appeal period has expired (where the decision has been made by a Judicial Commissioner) and no further communication from the Commissioner has been received, or that having been notified of an appeal, the Commissioner confirms the outcome. A decision or direction of the Commissioner does not preclude the examining officer from further retaining the article under paragraph 11(2)(b) or (c). Where the examining officer retains the article under a new power, the person must be informed of the power under which the article continues to be retained.

### **Making copies of an article**

**87.** The examining officer may copy any article obtained under paragraph 3; searched or found on a search under paragraph 8; or anything examined under paragraph 9, and this includes making copies of electronic data. The copies may be retained:

- a** For so long as it is necessary for the purpose of determining whether a person is or has been engaged in hostile activity;
- b** While the examining officer believes that it may be needed for use as evidence in criminal proceedings;
- c** While the officer believes that a copy may be needed in connection with a decision by the Secretary of State whether to make a deportation order under the Immigration Act 1971;
- d** While the officer believes it is necessary to retain a copy
  - i** in the interests of national security;
  - ii** in the interests of the economic well-being of the United Kingdom;
  - iii** for the purpose of preventing or detecting an act of serious crime;
- e** While the officer believes it is necessary to retain a copy to prevent death or significant injury.

**88.** Copies of information obtained during an examination must be managed in compliance with the requirements of Management of Police Information guidance, General Data Protection Regulation provisions and the Data Protection Act 2018.

## **Treatment of confidential material**

**89.** If during the process of examining an article it becomes apparent to the examining officer that there are reasonable grounds for believing that the article consists of or includes items that are confidential material<sup>17</sup>, the examining officer must cease examining and not copy these items unless he or she believes there are grounds to retain it under either paragraph 11(2)(d) or (e)(see from paragraph 92 for what may thereafter happen in respect of such material under Schedule 3). The officer may, however, continue to examine and copy any other items within the article that they do not reasonably believe to be confidential.

**90.** In most cases it will be necessary for the examining officer to first examine material in order for him/her to come to a view as to whether they have reasonable grounds for believing that a specific item is confidential material. An examinee claiming that their belongings are confidential material will not, in itself, prohibit the examining officer from examining the material. An examining officer should take reasonable steps to review the credentials of an examinee to verify any such claim when considering whether there are

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<sup>17</sup> As defined in paragraph 12(10) of Schedule 3, “confidential material” means (a) confidential journalistic material, within the meaning of the Investigatory Powers Act 2016 (see section 264(6) and (7) of that Act), and (b) protected material.

“Protected Material”

- a) in relation to England and Wales, means (i) items subject to legal privilege, within the meaning of the Police and Criminal Evidence Act 1984 (see section 10 of that Act), (ii) material falling within section 11(1)(a) or (b) of that Act (certain personal records, human tissues or tissue fluid held in confidence), or (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 Scotland, means (i) items in respect of which a claim to confidentiality of communications could be maintained in legal proceedings, or (ii) other material of a kind mentioned in paragraph (a)(ii) or (iii) of this sub-paragraph;
- c) in relation to Northern Ireland, means (i) items subject to legal privilege, within the meaning of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)) (see Article 12 of that Order), (ii) material falling with Article 13(1)(a) or (b) of that Order (certain personal records, human tissue or tissue fluid held in confidence), or (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).

reasonable grounds to believe that a specific item is confidential material.

**91.** The existence of confidential material on an article does not preclude the examining officer from retaining the article under paragraph 11. When an article that consists of or includes confidential material has been retained under paragraphs 11(2)(a)-(c), a process must be undertaken to separate confidential material from other material in the course of examining the article for its retained purpose. Once separated, however, confidential material may only be retained under paragraphs 11(2)(d) or (e), or a power other than Schedule 3.

**92.** Where an article has been retained under paragraphs 11(2)(d) or (e), an examining officer may only continue to retain and use it if authorised to do so by the Commissioner. In such circumstances, the Commissioner will only authorise the continued retention and use of the article where it appears that there are reasonable grounds to believe that the article has been or could be used in connection with the carrying out of a hostile act or that returning the article to the person from whom it was taken could result in a risk of death or significant injury to any person. Where the article consists of or includes confidential material, the Commissioner must be satisfied that arrangements are in place that are sufficient for ensuring that the material is retained securely and that any confidential material will be used only so far as necessary and proportionate for a relevant purpose – for example, in the interests of national security or the economic well-being of the United Kingdom; for the purpose of preventing or detecting serious crime; or for the purpose of preventing death or significant injury.

**93.** Where an article has been retained under paragraphs 11(2)(d) or (e) and the urgency condition has been met, a senior officer may authorise the retention and use of the article prior to the Commissioner's authorisation. Where the article consists of or includes confidential material, the senior officer must be satisfied that arrangements are in place that are sufficient for ensuring that the material is retained securely, and the material will be used only so far as necessary and proportionate for the purpose of the preventing the carrying out of a hostile act, or death or significant injury, or for the

purpose of mitigating the risk of any such act, death or injury occurring.

### Retention of copies that consist of or include confidential material under paragraph 14(3)(d) or (e) – non urgent conditions

**94.** Where a copy of an article that consists of or includes confidential material has been retained under paragraph 14(3)(d) or (e), it is the role of the Commissioner to decide whether to authorise the retention or use of the copy or direct that the copy is destroyed. After considering any representations made by the affected parties, the decision will depend on whether it appears to the Commissioner that there are reasonable grounds to believe that it is necessary to retain the copy in the interests of national security or the economic well-being of the United Kingdom; for the purpose of preventing or detecting an act of serious crime; or for the purpose of preventing death or significant injury. The Commissioner will then direct that the copy can be retained by the examining officer and used, or that it should be destroyed.

**95.** The Commissioner must also be satisfied that arrangements are in place that are sufficient for ensuring that the material is retained securely and will be used only so far as necessary and proportionate for a relevant purpose – for example, in the interests of national security or the economic well-being of the United Kingdom; for the purpose of preventing or detecting serious crime; or for the purpose of preventing death or significant injury.

**96.** Once a copy that consists of or includes confidential material has been retained under 14(3)(d) or (e), it must not be used until the Commissioner authorises its use. It is the examining officer's responsibility to notify the Commissioner as soon as reasonably practicable so that a decision can be taken. In being notified, the Commissioner must be provided general details of the examination, including a case reference number, date and time of the stop, name and contact address (email or home address) of the person examined, identifier for the examining officer and power under which the copy was retained. Where the investigating police force is different to the force to which the examining officer belongs, the Commissioner

must also be provided with details on which force to invite to make representations regarding retention of the copy.

**97.** When an examining officer retains a copy that consists of or includes confidential material for the purposes of 14(3)(d) or (e), the examining officer must provide a notice to the person from whom the copy was taken to inform them of the role of the Commissioner in relation to the copy. The notice must explain that the person is invited to make representations about how the Commissioner should proceed with the copy, including contact details and associated timescales. The notice must explain that representations may be made by all other affected parties, including the Chief Officer of the relevant police force and the Secretary of State. The notice must also explain that there is no obligation on any affected party or the Commissioner to provide information relating to any representations that have been submitted to other affected parties.

**98.** Where the examining officer has retained a copy that consists of or includes confidential material under one power and then subsequently decides to retain the copy of confidential items under 14(3)(d) or (e), the person from whom the copy was taken must be informed of the retention under the 14(3)(d) or (e) power in writing, which must include the notice.

**99.** All representations to the Commissioner must be made in writing, which may include email. The Commissioner will begin to consider the copy on receipt of representations from the three affected parties (unless an affected party has made it clear in their submission that they intend to submit further supporting evidence in due course), but no later than four weeks beginning on the day that the examining officer notified the Commissioner of the retention of the copy.

**100.** When representations are provided that retention is necessary, they should explain clearly the reasons for believing that retention of the copy is necessary in the interests of national security or the economic well-being of the United Kingdom; for the purpose of preventing or detecting an act of serious crime; or to prevent death or significant injury.

**101.** It is not the responsibility of the examining officer to communicate a decision of the Commissioner to the affected parties. Once the Commissioner has made a decision on how to proceed with the copy, the Commissioner will inform all affected parties whether or not authorisation to retain and use the copy has been granted. The Commissioner will inform all affected parties, in writing, within two weeks of the date that a decision has been made.

**102.** Paragraph 15(10) of Schedule 3 provides an opportunity for an affected party to appeal where a Judicial Commissioner, other than the Commissioner, exercises a function in relation to a copy that consists of or includes confidential material. In these circumstances, the affected party may ask the Commissioner to decide whether to approve the way in which the function was exercised. This must be explained in the notice provided to the examinee where a copy that consists of or includes confidential material has been retained under 14(3)(d) or (e), but it is the responsibility of the Commissioner's office, when communicating the outcome to all affected parties, to indicate whether it was the decision of a Judicial Commissioner.

**103.** In communicating the decision of a Judicial Commissioner to the affected parties in relation to a copy that consists of or includes confidential material retained under 14(3)(d) or (e), the Commissioner's office will inform each party that no action will be taken until two weeks have expired, beginning on the day of the decision. If the Commissioner has not notified all affected parties that an appeal has been received before the expiry of the two week period, the decision will be final and the associated action in relation to the copy will be taken forward. Where the Commissioner notifies all affected parties within the two week period that an appeal has been received, no action will be taken in relation to the copy pending notification from the Commissioner to all affected parties of the result of the appeal. The decision at the conclusion of any appeal will be final and the associated action will be taken forward upon notification of the outcome.

**104.** The examining officer must comply with the decision and any associated direction of the Commissioner as soon as reasonably practicable, but only once the appeal period has expired (where the decision has been made by a Judicial Commissioner) and no further

communication from the Commissioner has been received, or that having been notified of an appeal, the Commissioner confirms the outcome. Where the Commissioner directs the destruction of the copy, the person must be informed that no confidential material is being retained under paragraphs 14(3)(d) or (e). A decision or direction of the Commissioner does not preclude the examining officer from further retaining the copy under paragraph 14(3)(b) or (c).

### Retention of copies that consist of or include confidential material under paragraph 14(3)(d) or (e) – urgency condition

**105.** Where the examining officer retains a copy of an article that consists of or includes confidential material under paragraph 14(3)(d) or (e) and considers that the urgency condition is met in relation to the copy, the examining officer may apply to a senior officer for authorisation to retain and use the copy prior to seeking authorisation from the Commissioner. In such circumstances, it is the role of the Commissioner to decide first whether to approve the decision to retain and use the copy under the urgency condition and second whether to authorise the retention or use of the copy, or to direct that the copy is destroyed. The urgent provisions under paragraphs 15B, 15C and 15D of Schedule 3 can be used if:

- a** There is an urgent need for the copy to be examined or otherwise used for the purpose of preventing;
  - i** the carrying out of a hostile act, or
  - ii** death or significant injury,or for the purpose of mitigating the risk of any such act, death or injury occurring, and
- b** The time it would take for the requirements of the standard authorisation process (i.e. the authorisation process under paragraph 15) to be complied with in relation to the copy would not enable such use to take place with sufficient urgency.

**106.** The examining officer must take no further action in relation to the copy unless authorised to do so by a senior officer, no lower than a superintendent, who is not directly involved in the exercise of

any power under this Part of this Schedule to make the copy or to question a person from whom the article was taken from which the copy was made. The senior officer may grant an authorisation for the retention and use of the copy if satisfied that there are reasonable grounds for considering that the urgency condition is met in relation to the copy. An authorisation must be recorded and may be granted subject to whatever conditions the senior officer thinks appropriate. If the senior officer does not agree to give authorisation, then the copy must be destroyed as soon as reasonably practicable, unless the examining officer decides to retain the copy under a different power or seek a non-urgent authorisation under paragraph 15.

**107.** Where that authorisation has been given, it is the examining officer's responsibility to notify the Commissioner and each affected party as soon as reasonably practicable and in any event within 24 hours after the grant of the authorisation. In being notified, the Commissioner must be provided general details of the examination, including a case reference number, date and time of the stop, name and contact address (email or home address) of the person examined, identifier for the examining officer and power under which the copy was retained. The notification must also detail the conditions on which the authorisation was granted and the name and identifier of the senior officer who gave the authorisation. Where the investigating police force is different to the force to which the examining officer belongs, the Commissioner must also be provided with details on which force to invite to make representations regarding retention of the copy.

**108.** In being notified, the person from whom the copy of the article was taken must be provided with a notice to inform them of the role of the Commissioner in relation to the copy. The notice must explain that the person is invited to make representations about how the Commissioner should proceed with the copy, including contact details and associated timescales. The notice must explain that representations may be made by all other affected parties, including the Chief Officer of the relevant police force and the Secretary of State. The notice must also explain that there is no obligation on any affected party or the Commissioner to provide information relating to any representations that have been submitted to other affected parties.

**109.** Where the examining officer initially retains a copy which consists of or includes confidential material under one power but subsequently retains the copy under paragraph 14(3)(d) or (e) and the urgency condition is met, the person from whom the article was taken must be informed of the retention under the new power in writing, which must include the notice. The examining officer should also attempt to contact the person by phone to inform them of this notice.

**110.** All representations to the Commissioner must be made in writing, which may include email. Any representations should be made no later than the end of two working days beginning with the first working day after the day on which the authorisation is granted. The Commissioner is required to have regard to any representations received within the two working-day period before making a decision. A decision to approve the authorisation or cancel the authorisation must be made after the end of the time for making representations and before the end of the period of three working days beginning with the first working day after the day on which the authorisation is granted.

**111.** When representations are provided that retention is necessary, they should explain clearly the reasons for believing that the urgency condition is met in relation to the copy. In doing so, the Chief Officer should explain the reasons for believing that there is an urgent need to use the copy and why the standard retention process would not enable such use to take place with sufficient urgency.

**112.** It is not the responsibility of the examining officer to communicate a decision of the Commissioner to the affected parties. Once the Commissioner has made a decision on whether to approve, amend or cancel the authorisation, the Commissioner will inform all affected parties whether or not authorisation to retain and use the copy has been granted. The Commissioner will inform all affected parties, in writing, within three working days of the decision.

**113.** If the decision of the Commissioner is to cancel the authorisation, any further use of the copy by virtue of the authorisation must stop as soon as possible. The Commissioner may also direct that:

- a The copy is destroyed, and
- b All reasonable steps are taken to secure that any information derived from the copy is also destroyed.

**114.** Paragraph 15D(10) of Schedule 3 provides an opportunity for an affected party to appeal where a Judicial Commissioner, other than the Commissioner, exercises a function in relation to a copy which consists of or includes confidential material. In these circumstances, the affected party may ask the Commissioner to decide whether to approve the way in which the function was exercised. This must be explained in the notice provided to the examinee where a copy which consist of or includes confidential material has been retained under paragraph 14(3)(d) or (e) and the urgency condition is met. It is, however, the responsibility of the Commissioner's office, when communicating the outcome to all affected parties, to indicate whether it was the decision of a Judicial Commissioner.

**115.** In communicating the decision of a Judicial Commissioner to the affected parties in relation to a copy retained under the urgency condition, the Commissioner's office will inform each party that the decision will not take effect until three working days have expired, beginning on the day of the decision. If the Commissioner has not notified all affected parties that an appeal has been received before the expiry of the three day period, the decision will be final and the associated action in relation to the copy will be taken forward. Where the Commissioner notifies all affected parties within the three day period that an appeal has been received, the decision will not take effect pending notification from the Commissioner to all affected parties of the result of the appeal. The decision at the conclusion of any appeal will be final and the associated action will be taken forward upon notification of the outcome.

**116.** The examining officer must comply with the decision and any associated direction of the Commissioner as soon as reasonably practicable, but only once the appeal period has expired (where the decision has been made by a Judicial Commissioner) and no further communication from the Commissioner has been received, or that having been notified of an appeal, the Commissioner confirms the outcome. Where the Commissioner directs the destruction of the

copy, the person must be informed that no confidential material is being retained under paragraphs 14(3)(d) or (e). A decision or direction of the Commissioner does not preclude the examining officer from further retaining the copy under paragraph 14(3)(b) or (c).

## **Records of examinations**

**117.** Records of all examinations and detentions must be kept for statistical or reference purposes for as long as judicial challenge or a complaint about the use of the powers can be made. Records must include, as a minimum, the name of the person examined, the identification of officers using the powers, self-declared ethnicity of the person examined, if given; the location, date, time and total duration of the examination; and, if relevant, the time of detention.

**118.** Records of the examination and reviews of detention by the review officer must also be kept in accordance with the Management of Police Information guidance. Records of the examination, including records of reviews of detention, will not be given to the person or their solicitor at the time of the examination but will be managed in accordance with Management of Police Information guidance, General Data Protection Regulation and the Data Protection Act 2018.

## 4. Detention

### When can a person be detained under Schedule 3?

**119.** An examining officer may detain a person under paragraph 4 of Schedule 3, at any time, for the purpose of exercising examination powers under paragraph 1 and 2 (i.e. in order to determine whether the person appears to be, or to have been, engaged in hostile activity and to question a person in the border area for the purpose of determining whether the person's presence there is connected with the person's entry into, or departure from, Northern Ireland). In order to continue to question a person beyond one hour from the commencement of the examination, the examining officer must detain the person before the expiry of that first hour of the examination.

**120.** The decision of an examining officer to detain a person will be made on a case by case basis, but may be made for the types of reasons described below:

- **The person refuses to co-operate with any legal obligation or insists on leaving.** For example, where the person obstructs or seeks to frustrate the examination.
- **The examining officer, for the purpose of the examination, determines that he/she will need longer than one hour to complete the examination.** For example, where a more extensive search of a person's belongings is necessary, or where the services of an interpreter are required.
- **The examining officer, for the purpose of the examination, deems it appropriate to exercise additional powers available through detention.** For example, to establish a person's identity or to assist in determining a person's engagement in hostile activity through the taking of fingerprints and samples (paragraphs 27 and 35 of Schedule 3), or where it is necessary to carry out a strip search (paragraph 8(5) of Schedule 3).
- **To facilitate relocation of the examination from a port location to another place, because there would be more suitable facilities at that place.**

The above list of reasons is illustrative only, not exhaustive. It is important to note that detention is an option at any time to compel the person to remain with the examining officer to continue to question and/or search during the examination process.

**121.** Where a person is detained under Schedule 3, the examining officer must:

- Inform the person that he or she is not under arrest or caution, but that he or she is being detained under paragraph 4 of Schedule 3;
- Inform the person that the purpose of the detention is to facilitate his or her examination for the purpose explained at the outset of the examination;
- Explain that the person is under particular duties and that he or she has particular rights (see from paragraph 123 of this code for further information); and
- Give them a Notice of Detention under Schedule 3 (as set out at Annex A), which explains a person's duties and rights.

**122.** Detention does not necessitate taking the person to another place. An examining officer may consider relocation from a port location to a police station or any other place where the person's presence is considered necessary:

- If the port location is unsuitable for continued examination i.e. due to a lack of facilities, such as refreshments, toilets, or for some other welfare consideration;
- To gain access to facilities or equipment not available at the initial port i.e. interpretation and translation services, video/audio recording<sup>18</sup>, biometric sampling equipment; and/or
- The examining officer considers it appropriate to relocate for safety reasons.

The above list of reasons is illustrative only, not exhaustive.

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<sup>18</sup> The availability of recording facilities at port should not be the sole prompt for a relocation decision.

## **Duties of the person being examined when under detention**

**123.** The examining officer must advise the detained person that he or she continues to be under a duty to answer questions and give the officer any information in his or her possession which the officer requests for the purposes of the examination. The examining officer must inform the person that wilfully failing to comply with a duty imposed by Schedule 3, or wilfully obstructing, or seeking to frustrate a search or examination under Schedule 3, is a criminal offence under paragraph 16 of Schedule 3.

**124.** The examining officer may, if appropriate, explain that any answer or information that the person provides orally in response to a question asked during the examination cannot be used as evidence in criminal proceedings. The examining officer should then explain that this will not be the case where the person is prosecuted for wilfully failing to comply with a duty imposed under or by virtue of Part 1 of Schedule 3; for obstructing or seeking to frustrate, a search or examination under Schedule 3; or where they are prosecuted for perjury. The examining officer should also explain that it will be possible for oral answers given in response to questions put to the person in a Schedule 3 examination to be used as evidence in a situation where the person has been prosecuted for an offence other than those already mentioned where, in giving evidence, they make a statement that is inconsistent with that oral answer or information given. In such a situation, the person's statement can only be used where they or their legal counsel first adduces it as evidence, or asks a question relating to it, in their defence.

## **Rights of the person being examined when under detention**

**125.** If during the course of examining a person who has been detained under paragraph 4 of Schedule 3, the examining officer decides to examine the person under Schedule 7 to the 2000 Act for counter-terrorism purposes, the person must be detained under paragraph 6 of Schedule 7. The officer must explain to the person that they are no longer detained under Schedule 3 and are being detained under Schedule 7 (at which point the officer must adhere to

the Schedule 7 Code of Practice). The reverse is true where an examining officer decides, during the course of examining a person who has been detained under Schedule 7, to examine the person under Schedule 3. In such circumstances, the person will have the rights and entitlements of a person detained for the purposes of examination from the outset of the second detention, and any rights that have been exercised with respect to the first detention may continue to be exercised during the second detention.

### Right to access a solicitor in private

**126.** Where a person is detained for the purpose of a Schedule 3 examination, that person is entitled to consult a solicitor in private (whether in person or by telephone or any other reasonable way that the person wants to carry out that consultation) at any time if he or she so requests, which will be at public expense through legal aid.<sup>19</sup>

**127.** **The examining officer must postpone questioning the person until he or she has consulted a solicitor in private (or no longer wishes to do so)**, unless the examining officer reasonably believes that postponing questioning until then would be likely to prejudice the purpose of the examination. For example, where the person insists on consulting with a particular solicitor who will not be available to consult with the person within a reasonable time period whether in person, on the telephone or by other means. If the examining officer decides not to postpone questioning the reasons must be recorded.

**128.** **A detained person is entitled to consult privately with a solicitor in person** unless the examining officer reasonably believes that the time it would take to consult a solicitor in person would be likely to prejudice the purpose of the examination. For example, if the detained person's solicitor of choice is a number of hours away and unable to get to the police station or port in sufficient time to allow the examination to proceed. Where the examining officer refuses to allow a person to consult with a particular solicitor in person, he or she must make a written record of their reasons for doing so. The examining officer must inform the detained person

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<sup>19</sup> This includes UK and non-UK Nationals.

that he or she may consult with their solicitor by another mode, for example, private telephone conversation.

**129.** Where consultation in person between the detained person and a particular solicitor is refused, and the person elects to consult in another way, for example by telephone, the examining officer must facilitate this, unless they reasonably believe that doing so would be likely to prejudice the purpose of the examination. For example, the person may not phone the solicitor multiple times, or extend the duration of a call beyond a reasonable time if it appears that the purpose of the examination is likely to be prejudiced. In such circumstances, if the examining officer reasonably believes that the delay caused by requesting multiple phone calls will prejudice the purpose of the examination, for example by leaving insufficient time to interview the person properly, the questioning may proceed.

**130.** Where the person specifies that he or she wants to consult a particular solicitor, and that solicitor will not be available within a reasonable period of time by any means (personal, telephone or other means) the examining officer must advise the person of the duty solicitor scheme.

**131.** The person may choose to be accompanied by a solicitor during questioning, whether the consultation is or has been in person or by way of a telephone call. If the detained person expresses a wish for a solicitor to be present during questioning, the examining officer must facilitate this unless the officer reasonably believes that doing so would be likely to prejudice the purpose of the examination, for example by causing unreasonable delay to the process of examination.

**132.** The examining officer must explain the Schedule 3 powers to the solicitor and the obligations the person is under. The solicitor can also be provided with the Public Information Leaflet.

#### *England, Wales and Northern Ireland*

**133.** In certain exceptional circumstances, the entitlement to consult a solicitor in England, Wales and Northern Ireland can be delayed under paragraph 25 of Schedule 3 with the authority of a superintendent or above. For example, where the officer has reasonable grounds to believe that the consultation would lead to:

- a** Interference with or harm to evidence of an indictable offence;
- 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; or,
- e** Interference with the gathering of information about the commission, preparation, or instigation of acts carried out in connection with a person's engagement in hostile activity.

**134.** In such circumstances and where consultation is allowed, a police officer of at least the rank of Commander or Assistant Chief Constable may direct (under paragraph 26 of Schedule 3) that a detainee may consult a solicitor only in the sight and hearing of a qualified officer<sup>20</sup> (who has no connection to the detainee's case). This may be where the officer has reasonable grounds to believe that the detainee will use the cover of confidentiality of conversations with a solicitor to pass on instructions or information to a third party, either wittingly or unwittingly.

### *Scotland*

**135.** In certain exceptional circumstances, the entitlement to consult a solicitor in Scotland can be delayed under paragraph 30 of Schedule 3 with the authority of a superintendent or above. For example, where, in the officer's view, the delay is necessary on one of the following grounds:

- a** That it is in the interests of the investigation or prevention of crime;
- b** That it is in the interests of the apprehension, prosecution or conviction of offenders;

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<sup>20</sup> 'Qualified officer' is defined under paragraph 26(5) of Schedule 3 as a police officer is of at least the rank of inspector, and in the opinion of the officer giving the direction, has no connection with the detainee's case.

- c That it will further the recovery of property obtained as a result of the commission of an offence;
- d That it will further the operation of Part 2 or 3 of the Proceeds of Crime Act 2002 or the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)) (confiscation of the proceeds of an offence);
- e That it will further the gathering of information about the commission, preparation or instigation of acts carried out in connection with a person's engagement in hostile activity.

**136.** In certain exceptional circumstances and where consultation is allowed, a police officer of at least the rank of Assistance Chief Constable may direct (under paragraph 32 of Schedule 3) that a detainee in Scotland may only consult a solicitor in the present of a uniformed police officer (who has no connection to the detainee's case) not below the rank of inspector. This may be where the officer has reasonable grounds to believe that the detainee will use the cover of confidentiality of conversations with a solicitor to pass on instructions or information to a third party, either wittingly or unwittingly.

**137.** A police officer of at least the rank of Assistant Chief Constable, in Scotland, may also direct that the solicitor is not to be allowed to be present at an interview (under paragraph 34 of Schedule 3) if the officer is satisfied that the solicitor's behaviour during the interview would interfere with, or obstruct, the conduct of the interview.

### Other rights under detention

**138.** **The detained person is entitled to have a friend, relative or other person known to them who is likely to take an interest in their welfare informed as soon as is reasonably practicable that he or she is being detained.** Under certain exceptional circumstances this right can be delayed under paragraph 25 or 30 of Schedule 3 with the authority of a police officer of at least the rank of superintendent, for example, if that officer has reasonable grounds for believing that informing that person will have any of the consequences referred to above.

**139. The detained person is entitled to obtain consular access, upon request, where the person is a citizen of a Commonwealth country or a national of a foreign country.** The detained person must be informed of this right as soon as reasonably practicable. Should the detained person request that his or her High Commission, Embassy or Consulate be told of his or her whereabouts and the ground<sup>21</sup> for his or her detention, the request will be acted upon as soon as reasonably practicable. The exercise of this right must not be interfered with.

**140.** Where the detained person is a citizen of a country with which a bilateral consular convention or agreement<sup>22</sup> is in force requiring notification of their detention, the detained person must be informed that notification of their detention will be sent to the appropriate High Commission, Embassy or Consulate as soon as practicable, whether he or she request it or not, and such notification must be so given. If the detained person has dual or multiple nationalities, this will require both (or all) countries to be informed. Consular officers may, if the detained person agrees, visit the detained person and, if required, arrange legal advice.

**141.** Notwithstanding the provisions of consular conventions, if the detained person claims that they are a refugee or have applied, or intend to apply, for asylum status in the UK, the examining officer must ensure that UK Visas and Immigration (UKVI) is informed as soon as practicable. UKVI will then determine whether compliance with the relevant international obligations requires notification of the detention to be sent and will inform the examining officer as to what action is required.

### Access to healthcare and the examination period

**142.** The examining officer must continue to consider the person's welfare in accordance with paragraph 46 of section 3 to this code. Where a person detained under paragraph 4 of Schedule 3 is removed to hospital because the person needs medical treatment, the period of travel to and from hospital and time spent in hospital is not

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<sup>21</sup> 'Ground' here refers to the power under which they are detained and the purpose of the power.

<sup>22</sup> Consular Convention or Agreement: <https://gov.uk/government/publications/table-of-consularconventions-and-mandatory-notification-obligations> and <https://www.gov.uk/government/publications/foreign-embassies-in-the-uk>.

to be included in calculating the 6 hour examination period. Any time, however, during which the person is being questioned under paragraph 1 or 2 in hospital, or on the way there or back is to be included in calculating the 6 hour examination period. Where a person is removed to hospital for medical treatment, the examining officer must make a written record, clearly indicating when the examination was postponed and restarted.

## **Children and other vulnerable people**

**143.** Special care must be taken when considering whether to examine someone, where it is evident that the person is a child.<sup>23</sup>

**144.** Examining officers must bear in mind that children can be easily intimidated when examined especially if they are travelling alone. It is also important to bear in mind that children can be vulnerable to exploitation by adults wishing to further aims relating to hostile activity. Examining officers are not precluded from examining or detaining children but must do so only where they consider it to be absolutely necessary, for the purpose of allowing a determination to be made as to whether the child may be engaged in some way, wittingly or otherwise, in hostile activity. The examining officer must consider it necessary for the best interest of the child or in the interests of the public to question that child.

**145.** A child travelling alone must not be examined in the absence of a responsible adult (for example a parent, guardian, teacher or social worker) unless there are exceptional reasons for conducting the examination without a responsible adult present. If there are such reasons, the examining officer must record these in writing.

**146.** A child travelling with a responsible adult over 18 must be examined in the presence of that responsible adult unless that person is thought to be exerting influence or pressure which could be detrimental to the child's interest or is obstructive to the achievement of the purpose of the examination or the child objects to the

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<sup>23</sup> A child means anyone who appears to be under the age of 18 in the absence of clear evidence that he or she is older. In Scotland, a child means anyone under the age of 16 except where that person is between 16 and 18 and is the subject of a supervision requirement imposed by a children's hearing, or a person whose case has been referred to a children's hearing in relation to a corresponding order made by a court in England, Wales or Northern Ireland.

presence of this person. If the examining officer decides to examine the child in the absence of the responsible adult with whom that child is travelling, the reasons for taking that decision must be recorded.

**147.** If an examination under detention is considered necessary it must only take place in the presence of a parent, a guardian, or (if the child is in care) a representative of the care authority or voluntary organisation, a social worker, or an adult, who is not a police officer nor an immigration or customs officer nor any other relevant border enforcement officer, nor any person employed by those organisations, who has been appointed by the examining officer to represent the child's interests. The term 'in care' is used in this code to cover all cases in which a child is 'looked after' by a local authority under the terms of the Children Act 1989, the Children (Northern Ireland) Order 1995 or the Children (Scotland) Act 1995. If the adult present during the interview feels the need to consult a solicitor on the child's behalf they can do so.

**148.** These principles apply to other vulnerable people such as those who have a mental disorder. 'Mental disorder' is a generic term which has the meaning given to it in section 1(2) of the Mental Health Act 1983 as amended by the Mental Health Act 2007 – that is, any disorder or disability of mind. In Scotland, the relevant definition of "mental disorder" is contained in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003, which is defined as "mental illness, personality disorder; or, learning disability". In Northern Ireland, the relevant definition of "mental disorder" is contained in article 3(1) of the Mental Health (Northern Ireland) Order 1986 and contains reference to "mental handicap", which is defined as "a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning").

### **Strip Search**

**149.** A strip search is a search involving the removal of more than outer clothing. This search power does not extend to requiring a person to undergo an intimate search (searching a person's body orifice other than the mouth). Strip searches must not be undertaken routinely and can only be conducted when a person has been detained. A strip search at a port or police station may only take place

where an examining officer has reasonable grounds to suspect that the person is concealing something which may be evidence that the person is or has been engaged in hostile activity. The search must be authorised by an officer of at least one rank higher than the examining officer and who has not been directly involved in the questioning of the person.

**150.** Strip searches may also be conducted under other powers where appropriate, for example where there is a risk of serious harm to a person or there is reason to believe that evidence of an offence is in imminent danger of being destroyed.

**151.** The following procedures must be observed when strip searches are conducted:

- An officer carrying out a strip search must be of the same sex as the person searched;
- The search must take place in an area where the person being searched cannot be seen by anyone who does not need to be present, nor by a member of the opposite sex (except an appropriate adult whose presence has been specifically requested by the person being searched);
- Except in cases of urgency, where the examining officer believes there is a risk of serious harm to the person being searched or to others, or whenever a strip search involves exposure of intimate parts of the body, there must be at least two people present other than the person being searched, and if the search is of a child or an otherwise vulnerable person (as defined in relevant legislation referred to in paragraphs 143-148), a responsible adult must also be present;
- Except in urgent cases as above, a strip search of a child may take place in the absence of the responsible adult or with a different responsible adult present, only if the child signifies in the presence of the responsible adult that he or she prefers the search to be done either in the responsible adult's absence, or in the presence of a different responsible adult, provided that the responsible adult whose presence is not wanted agrees to be absent (and the responsible adult who is asked to attend agrees). A record must be made of the child's decision and signed by the responsible adult

and any other responsible adult asked to attend. The presence of more than two people, other than a responsible adult, must be permitted only in the most exceptional circumstances;

- The search must be conducted with the proper regard to the sensitivity and vulnerability of the person concerned in these circumstances, and every reasonable effort must be made to secure the person's co-operation and minimise embarrassment. Persons who are searched must not, in the absence of exceptional circumstances, be required to have all their clothes removed at the same time, for example, a person should be allowed to put on their upper garments and then remove lower garments before further clothing is removed;
- Where necessary to assist the search, the person may be required to hold his or her arms in the air or to stand with his or her legs apart and to bend forward so that a visual examination may be made of the genital and anal areas, provided that no physical contact is made with any bodily orifice;
- If, during the search, articles are found, the person may be asked to hand them over; and
- A strip search must be conducted as quickly as possible and the person allowed to dress as soon as the procedure is complete.

**152.** A record must be made of a strip search, including those present, the identity of the examining officer and the authorising officer, why it was considered necessary and the outcome of the search. The above provisions also apply to any person authorised under paragraph 10 of Schedule 3 by an examining officer to carry out a search on the officer's behalf.

## Reviews of Detention

**153.** A person who has been detained for examination under Schedule 3 must have his or her continued detention reviewed before the end of the period of one hour from the start of the detention. Subsequent reviews of detention must take place at intervals of no more than two hours from the conclusion of the previous review. The reviewing officer who carries out the first review may also carry out subsequent reviews.

**154.** Where a person detained under paragraph 4 of Schedule 3 is removed to hospital because he or she needs medical treatment and the detention clock has been paused under paragraph 5(5), the review clock will also pause. For the purposes of calculating when a review under paragraph 45 is required, any time during which the person is being questioned under paragraph 1 or 2 in hospital or on the way there or back is to be included. Any other time when the person is in hospital or on the way there or back is not to be included.

**155.** Where a person who was initially detained under paragraph 4 of Schedule 3 has been further detained under Schedule 7 to the 2000 Act for counter-terrorism purposes, or vice versa, the review clock will continue to be calculated in accordance with the first detention.

**156.** The review officer must:

- Be accredited to a nationally recognised standard;<sup>24</sup>
- Not be directly involved in the questioning of the person. The review officer may have been involved in the initial screening questions, carrying out background checks or in supervising the examining officer but will not be involved in the questioning. The review officer may speak to the person during the period of the examination, for example where the person wishes to make representations; and
- Be of at least one rank higher than the examining officer. When this code refers to an officer of higher rank, this includes an officer duly authorised in an acting capacity to perform the functions of the higher rank.

**157.** The review officer must consider whether:

- The continued detention is necessary to enable the examining officer to obtain sufficient information for the purpose of allowing a determination to be made as to whether the person appears to be a person who is or has been engaged in hostile activity;
- The examination is being conducted diligently and expeditiously;
- The person being examined is aware of his or her duties and rights under paragraphs 22 and 23, or 30, of Schedule 3, and if any rights

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<sup>24</sup> For further information please see Annex B.

have been requested to be exercised, the degree to which those requests have been satisfied (or otherwise); and

- Reasonable steps have been taken to satisfy the welfare needs of the person.

**158.** A review may be carried out in person or remotely at the discretion of the review officer. The review officer must give the detained person or their solicitor an opportunity to make representations, but this should not be allowed to delay the review within the specified time limits. The review officer is required to inform the detained person of the result of the review. This should be done as soon as practicable but need not happen prior to the end of the one hour period from the point of detention, or the subsequent two hour periods from the point of the previous review. The person must, however, be informed of the result of the review before the recommencement of any interview.

**159.** Where a review officer authorises continued detention, the officer must inform the detainee of any of the detainee's rights, which have not yet been exercised. There is no requirement for the officer to inform the detainee of rights that have already been exercised or are in the process of being exercised.

**160.** There is no requirement to conduct a review of detention where the period of examination following detention lasts less than one hour (this does not include the time under examination prior to detention). A further review of detention must take place before the end of a period of two hours from the conclusion of the first review. Subsequent reviews of detention must take place at intervals of no more than two hours from the conclusion of the previous review.

**161.** A review officer carrying out a review must make a written record of the outcome of the review, including, where applicable:

- The fact that the officer is satisfied that continued detention is necessary for the purposes of exercising a power under paragraph 1 or 2 of Schedule 3;
- The fact that the detained person has been informed of any rights under paragraphs 22 or 23 (or 30 if the detention is in Scotland)

of Schedule 3<sup>25</sup> which have not yet been exercised, and if the exercise of any of those rights is being delayed in accordance with paragraphs 24, 25, 30, or 31 of Schedule 3; and

- Where exercise of a right under paragraph 22, 23 or 30 of Schedule 3 is being delayed, whether the reason(s) for the delay continue to apply.

**162.** If the review officer is of the opinion that the reason(s) have ceased to apply, he or she must inform the officer who authorised the delay of that opinion, unless the review officer was that officer. The officer who authorised the delay, or another officer of at least the rank of superintendent, must then review the need for the delay to continue.

**163.** Records of reviews must be made by the review officer as soon as reasonably practicable and must be kept for statistical or reference purposes for as long as judicial challenge or a complaint about the use of the powers can be made.

## Establishing the identity of a detainee

**164.** Once a person has been detained an examining officer can take any steps which are reasonably necessary for photographing, measuring or identifying the detained person without the need for the person's consent, but this does not include the taking of fingerprints, intimate samples or non-intimate samples. Methods of verifying identity, which do not require consent, may involve the use of reasonable force if necessary and appropriate, and include examining any marks, scars, tattoos or other physical features which may assist in establishing the identity of that person. This may include verifying that a person is not a particular person.

## Non-intimate samples and fingerprints

**165.** There is no power to take intimate samples<sup>26</sup> under Schedule 3 whether by consent or otherwise. Under paragraphs 27 to 29 of Schedule 3, for detained persons in England, Wales or Northern Ireland, and under paragraph 35 for detained persons in Scotland, a

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<sup>25</sup> The rights to inform another person of the detention and to consult a solicitor.

<sup>26</sup> As defined by section 65 of the Police and Criminal Evidence Act 1984 (Part V).

constable has the power to take fingerprints or non-intimate samples e.g. a DNA mouth swab, from a person who has been detained, providing that:

- The taking of fingerprints is necessary in the opinion of the examining officer to facilitate the ascertainment of that person's identity; and that person has refused to identify himself or herself or the examining officer has reasonable grounds for suspecting that that person is not who they claim to be, or for the purposes of assisting in a determination of whether the person appears to be a person who is or has been engaged in hostile activity;
- The taking of non-intimate samples is for the sole purpose of assisting in a determination of whether the person appears to be a person who is or has been engaged in hostile activity;
- If the person has provided their consent in writing, fingerprints and/or non-intimate samples can be taken either at a port or police station;
- Where a person has been convicted of a recordable offence<sup>27</sup> (defined in paragraph 29(4) of Schedule 3), fingerprints and/or non-intimate samples can be taken either at a port or police station without the need for the person's written consent. Where a non-intimate sample is to be taken, the conviction must be on or after 10th April 1995 (or 29th July 1996 in Northern Ireland);
- In England, Wales and Northern Ireland if the detained person does not provide consent in writing, and has not been convicted of a recordable offence, fingerprints and/or non-intimate samples can only be taken if the person has been detained and is at a police station and the taking of the fingerprints or sample is authorised by a police officer of at least the rank of superintendent. If this authority is given verbally, then it must be confirmed in writing as soon as is reasonably practicable; and
- In Scotland, under section 18 of the Criminal Procedure (Scotland) Act 1995, a constable may take fingerprints and non-intimate samples at a police station without consent, as long as he is

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<sup>27</sup> 'Conviction' includes all cautions within the meaning of Part 5 of the Police Act 1997, and all reprimands or warnings given under section 65 of the Crime and Disorder Act 1998, whether spent or otherwise.

'Recordable Offence' means any offence punishable with imprisonment, as well as any specified offence listed in the Schedule of The National Police Records (Recordable Offences) Regulations 2000.

satisfied that it is necessary to determine whether the person is or has been engaged in hostile activity. The examining officer may also take fingerprints if he or she is satisfied that the fingerprints of that person will facilitate the ascertainment of that person's identity; and that person has refused to identify himself or herself or the examining officer has reasonable grounds for suspecting that the person is not who they claim to be.

**166.** Samples must be managed in compliance with the requirements of paragraph 36-44 of Schedule 3.

### **Recording of interviews of persons detained under Schedule 3**

**167.** Where a person is detained under Schedule 3 at a police station in England, Wales, Scotland and Northern Ireland then the interview must be conducted in accordance with Section 5 of this code of practice for the video recording with sound of interviews, as provided for by paragraph 49(1)(c) of Schedule 3.

**168.** Where a person is detained at a port, and suitable audio recording facilities are readily available, the examining officer must record the interview, unless the person willingly expresses a wish not to have it recorded. Where such audio recording facilities are available but recording of an interview does not take place, the examining officer must record the reason why.

**169.** Any such audio recordings are not made for evidential purposes but can be used for policing purposes, or in the case of a complaint, and this must be explained to the person.

**170.** Forces must make arrangements for the recording to be held securely and managed in accordance with the Management of Police Information guidance.

## 5. Video recording with sound of interviews of persons detained under Schedule 3 at a police station

### General

- 171.** This section applies to the video recording with sound of any questioning of a person detained for examination under Schedule 3 which takes place at a police station in England, Wales, Scotland or Northern Ireland.
- 172.** The video recording of interviews shall be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview.
- 173.** Any reference in this code to video recording shall be taken to mean video recording with sound and in this code:
- a** ‘recording medium’ means any removable, physical video recording medium (such as magnetic tape, optical disc or solid state memory) which can be played and copied; and
  - b** ‘secure digital network’ is a computer network system which enables an original interview video recording to be stored as a digital multimedia file or a series of such files, on a secure file server which is accredited by the National Accrerator for Police Information Systems in accordance with the UK Government Protective Marking Scheme.
- 174.** Before commencing an interview, the person must be reminded of their right to legal advice and the reasoning for any restriction to that right that may have been imposed by virtue of paragraphs 24-26 (England, Wales and Northern Ireland) and 30-34 (Scotland) of Schedule 3.
- 175.** A decision not to video record an interview with a Schedule 3 detainee for any reason may be the subject of comment if a case comes to court. The authorising officer should therefore be prepared to justify their decision in each case.

## Interviews to be recorded with sound

**176.** The whole of the interview shall be recorded, including the taking and reading back of any statement.

**177.** On occasions it may be necessary to delay an interview to make arrangements to overcome any difficulties or problems that might otherwise prevent the record being made, for example, non-availability of suitable recording equipment and interview facilities.

**178.** Before any interview to which this code applies starts, the person concerned and any solicitor, responsible adult<sup>28</sup> (where the person being questioned is a child or vulnerable person) or interpreter shall be given a written notice which explains the requirement that under this code the interview must be video recorded with sound. At the same time, the person, the solicitor, the responsible adult and interpreter shall be informed verbally of the content of the notice.

**179.** If the person to be interviewed, the solicitor or the responsible adult raises objections to the interview being recorded, either at the outset or during the interview or during the break in the interview, the interviewing officer shall explain that the interview is being recorded in order to protect both the person being interviewed and the interviewing officer and that there is no opt out facility.

**180.** A sign or indicator which is visible to the detainee must show when the recording equipment is recording.

**181.** A uniformed officer not below the rank of inspector who has not been directly involved in the questioning (the authorising officer) may, if the conditions in paragraph 182 are satisfied, give authority in writing for the interviewing officer not to video record or, as the case may be, continue to video record, that interview. In this case:

- a** The interview or its continuation, shall, without exception, be audio recorded;

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<sup>28</sup> As defined in paragraph 145 of Section 4 of this code.

**b** References in this code to such an interview being video recorded shall be replaced by references to the interview being audio recorded; and,

**c** The authorising officer shall make a note in specific terms of the reasons for not video recording the interview.

**182.** The conditions referred to in paragraph 181 are:

**a** If it is not reasonably practicable to video record or, as the case may be, continue to video record, the interview because of failure of the recording equipment or the non-availability of a suitable interview room or recording equipment; and,

**b** The authorising officer considers on reasonable grounds that the interview, or continuation of the interview, should not be delayed until the failure has been rectified or until a suitable room or recording equipment becomes available.

## **Recording and sealing of master recordings**

**183.** Where it is not already fixed in the appropriate position, the camera(s) shall be placed in the interview room so as to ensure coverage of as much of the room as is practicably possible whilst the interviews are taking place. Examining officers will wish to arrange that, as far as possible, video recording arrangements are unobtrusive. It must be clear to the person being interviewed, however, that there is no opportunity to interfere with the recording equipment or the recording media.

**184.** One recording, the master recording, will be sealed in the detainee's presence. A second recording will be used as a working copy. The master recording is either of the two recordings used in a twin deck/drive machine or the only recording in a single deck/drive machine. The working copy is either the second/third recording used in a twin/triple deck/drive machine or a copy of the master recording made by a single deck/drive machine.

**185.** For the purpose of any interview to which this code applies, no examining officer or other officer is required to record or disclose their identity. To protect the identity of officers, the officer may keep their backs to the camera and may use their warrant or other

identification number and the name of the police location/unit to which they are attached.

## The Interview

### Commencement of interviews

**186.** When the person to be interviewed is brought into the interview room the interviewing officer shall without delay, but in sight of the person, load the recording equipment and set it to record. The recording media must be unwrapped or otherwise opened in the presence of the detainee.

**187.** The examining officer shall then tell the person formally about the video recording with sound and point out the sign or indicator which shows that the recording equipment is activated and recording. The examining officer shall:

- a** Say the interview is being video recorded with sound (or audio recorded where video recording facilities are unavailable);
- b** Give their warrant or other identification number and state the police location/unit they are attached to, and provide these details in relation to any other police officer present;
- c** Ask the person to be interviewed and any other party present (e.g. a solicitor) to identify themselves;
- d** State the date, time of commencement and place of the interview; and
- e** State that the person to be interviewed will be given a notice explaining that they will be supplied with a copy of the recording if they are charged or informed they will be prosecuted.

**188.** Any person entering the interview room after the interview has commenced shall be invited by the interviewing officer to identify themselves for the purpose of the video recording and state the reason why they have entered the interview room.

**189.** The examining officer shall then remind the person of their entitlement to independent legal advice and their right to consult a solicitor.

**190.** The examining officer should then explain that there is no right to silence and confirm that the person understands that a failure to answer a question asked of them or give any information requested by the officer is an offence under paragraph 16 of Schedule 3.

### Interviews with the deaf or with those who do not understand English

**191.** If the person appears to be deaf or there is doubt about their hearing or speaking ability or ability to understand English, they must not be interviewed in the absence of an interpreter.

### Objections and complaints by the person

**192.** If the detained person or a responsible adult raises objections to the interview being video recorded, either at the outset or during the interview or during a break in the interview the provisions outlined in paragraph 181 should be followed.

**193.** If in the course of an interview at a police station a complaint is made by the person being questioned, or on their behalf, about their detention, treatment or questioning or if the complaint is that the provisions of this code have not been observed, then the examining officer shall record the matter and explain to the person how to make a formal complaint (as set out on the Schedule 3 Public Information Leaflet).

**194.** If the person being interviewed indicates that they wish to tell the examining officer about matters not directly connected with the matter about which they are being interviewed and that they are unwilling for these matters to be recorded, the detainee shall be given the opportunity to tell the examining officer about these matters after the conclusion of the formal interview.

### Changing the recording media

**195.** When the recording equipment indicates that the recording media has only a short time left to run, the examining officer shall so inform the person being interviewed and round off that part of the interview. If the examining officer leaves the room for a second set

of recording media, the detainee shall not be left unattended. The examining officer will remove the recording media from the recording equipment and insert the new recording media which shall be unwrapped or opened in the person's presence. The recording equipment shall then be set to record on the new media. To avoid confusion between the recording media, the examining officer shall mark the media with an identification number immediately after they are removed from the recorder.

### Taking a break during the interview

**196.** When a break is taken, the fact that a break is to be taken, the reason for it and the time shall be recorded on the video record.

**197.** When the break is taken and the interview room vacated by the detainee, the recording media shall be removed from the recorder and the procedures for the conclusion of an interview followed.

**198.** When a break is to be a short one, and both the person being interviewed and a police officer remain in the interview room, the recording may be stopped. There is no need to remove the recording media and when the interview recommences the recording should continue on the same recording media. The time the interview recommences shall be recorded on the video record.

**199.** After any break in an interview, once the recording has resumed, the interviewing officer must before resuming the interview remind the person of their right to legal advice if they have not exercised it.

### Failure of recording equipment

**200.** If there is a failure of equipment which can be rectified quickly, e.g. by inserting new recording media, the appropriate procedures outlined under 'changing the recording media' shall be followed. When the recording is resumed the examining officer shall explain what has happened and record the time the interview recommences. If, however, it is not possible to continue recording on that particular recorder and no alternative equipment is readily available, the interview must cease until suitable equipment is available.

## Removing used recording media from recording equipment

**201.** Recording media which is removed from the recording equipment during the course of an interview shall be retained and the procedures under ‘conclusion of interview’ followed.

## Conclusion of interview

**202.** At the conclusion of the interview, the person being interviewed shall be offered the opportunity to clarify anything he or she has said and asked if there is anything that they wish to add.

**203.** At the conclusion of the interview, including the taking and reading back of any written statement, the time shall be recorded in the video record and the recording shall be stopped. The examining officer shall seal the master recording with a master recording label and treat it as an exhibit in accordance with force standing orders. The examining officer shall sign the label and also ask the person, their solicitor and any responsible adult or other third party present during the interview to sign it. If the person or third party refuses to sign the label, an officer of at least the rank of inspector, or if one is not readily available, the custody officer, shall be called into the interview room and asked to sign it.

**204.** The detainee shall be handed a notice which explains that if they are charged or informed they will be prosecuted, a copy of the video recording will be supplied as soon as practicable or as otherwise agreed between the detainee and police or on the order of a court.

## After the interview

**205.** The examining officer shall make a note that the interview has taken place and that it has been recorded. They shall also make a note of the date of the interview, the time it commenced, its duration, any breaks that were taken and the date and the identification number of the master recording.

**206.** Where no proceedings follow in respect of the person whose interview was recorded, the recording media must be kept securely in accordance with the provisions under the following subsection.

## Media Security

### General

**207.** The officer in charge of the police station or force area at which interviews are video recorded in accordance with this code shall make arrangements for the master recordings to be kept securely and their movements accounted for on the same basis as other material which may be used for evidential purposes, in accordance with force standing orders.

### Breaking master recording seal for criminal proceedings

**208.** A police officer may only break the seal on a master copy, which is required for criminal trial or appeal proceedings, with the appropriate authority.

**209.** If in England and Wales it is necessary to gain access to the master copy, the police officer shall arrange for its seal to be broken in the presence of a representative of the Crown Prosecution Service. The person who has been interviewed or their legal adviser shall be informed and given a reasonable opportunity to be present. If they or their legal representative are present they shall be invited to reseal and sign the master copy. If neither accepts or neither is present, this shall be done by the representative of the Crown Prosecution Service.

**210.** If in Scotland or Northern Ireland it is necessary to gain access to the master copy, the written authority not below the rank of Assistant Chief Constable must be obtained before the recording is viewed. The person who has been interviewed and/or his/her solicitor will have the opportunity to be present and to witness the breaking of the seal and the resealing of the master recording.

### Breaking master recording seal: other cases

**211.** In England and Wales the Chief Officer of police is responsible for establishing arrangements for breaking the seal of the master copy where no criminal proceedings result, or the criminal proceedings to which the interview relates, have been concluded and it becomes necessary to break the seal. These arrangements should be those which the Chief Officer considers are reasonably necessary to demonstrate to the person interviewed and any other party who may wish to use or refer to the video recording that the master recording

has not been tampered with and that the video recording remains accurate.

**212.** In Scotland or Northern Ireland, the written authority not below the rank of Assistant Chief Constable must be obtained for breaking the seal of the master copy in all cases.

**213.** Subject to paragraph 215, a representative of each party must be given a reasonable opportunity to be present when the seal is broken and the master copy is copied and re-sealed.

**214.** If one or more of the parties is not present when the master recording seal is broken because they cannot be contacted or refuse to attend, arrangements should be made for an independent person such as a custody visitor, to be present. Alternatively, or as an additional safeguard, arrangements should be made for a film or photographs to be taken of the procedure.

**215.** Paragraph 213 does not require a person to be given an opportunity to be present when:

- a** It is necessary to break the master copy seal for the proper and effective investigation of matters connected to or arising from the examination of the person or the investigation of other matters or an offence; and
- b** The examining officer or an officer in charge of an investigation has reasonable grounds to suspect that allowing such an opportunity might prejudice any such investigation or criminal proceedings which may be brought as a result or endanger any person.

### Documentation

**216.** Where a seal on a master recording is broken, the tape, disk or other unit of recording medium shall be resealed using a new seal bearing a new number. (Only the original seal will bear a number identical to that pre-printed on the original recording.) The person resealing the master recording will enter on the new seal the date of resealing and a suffix indicating whether this is the first, second etc. time the seal on the master recording has been broken. He/she shall also invite the person who was previously interviewed, if present, to make a mark on the new seal.

## Recording of interviews by Secure Digital Network

**217.** A secure digital network does not use removable media and this section specifies the provisions which will apply when a secure digital network is used.

**218.** The following requirements are solely applicable to the use of a secure digital network for the recording of interviews. In some cases, these are instead of or additional to the practices outlined in the previous subsections.

### Commencement of interview

**219.** When the detainee is brought into the interview room, the examining officer shall without delay and in the sight of the detainee, switch on the recording equipment and enter the information necessary to log on to the secure network and start recording.

**220.** The examining officer must then inform the detainee that the interview is being recorded using a secure digital network and that recording has commenced.

**221.** In addition to the requirements of paragraph 187 (a) to (d) above, the interviewer must inform the person that they will be given access to the recording of the interview in the event that they are charged or informed that they will be prosecuted but if they are not charged or informed that they will be prosecuted they will only be given access as agreed with the police or on the order of a court.

### Taking a break during interview

**222.** When a break is taken, the fact that a break is to be taken, the reason for it and the time shall be recorded on the audio recording. The recording shall be stopped and the procedures for the conclusion of an interview followed.

**223.** When the interview recommences, the procedures for commencing an interview shall be followed to create a new file to record the continuation of the interview. The time the interview recommences shall be recorded on the audio recording.

**224.** After any break in the interview, once the recording has resumed, the interviewing officer must before resuming the interview

remind the person of their right to legal advice if they have not exercised it.

### Failure of recording equipment

**225.** If there is an equipment failure which can be rectified quickly, e.g. by commencing a new secure digital network recording, the interviewer shall follow the appropriate procedures under 'taking a break during interview'. When the recording is resumed the interviewer shall explain what happened and record the time the interview recommences. If, however, it is not possible to continue recording on the secure digital network the interview should be recorded on removable media.

### Conclusion of interview

**226.** At the conclusion of interview, the detainee shall be offered the opportunity to clarify anything he or she has said and asked if there is anything they want to add.

**227.** At the conclusion of the interview, including the taking and reading back of any written statement, the time shall be recorded and the detainee shall be handed a notice which explains that if they are charged or informed that they will be prosecuted, they will be given access to the recording of the interview either electronically or by being given a copy on removable recording media, but if they are not charged or informed that they will be prosecuted, they will only be given access as agreed with the police or on the order of a court.

**228.** The detainee must be asked to confirm that they have received a copy of the notice. If the detainee fails to accept or to acknowledge receipt of the notice, the examining officer will state for the recording that a copy of the notice has been provided to the detainee and that they have refused to take a copy of the notice or have refused to acknowledge receipt.

**229.** The time shall be recorded and the examining officer shall notify the detainee that the recording is being saved to the secure network. The examining officer must save the recording in the presence of the detainee. The detainee should then be informed that the interview is terminated.

## After the interview

**230.** The examining officer shall make a note that the interview has taken place, was audibly recorded, its time, duration and date and the original recording's identification number.

**231.** If no proceedings follow in respect of the person whose interview was recorded, the recordings must be kept securely.

## Security of secure digital network interview records

**232.** Interview record files are stored in read only format on non-removable storage devices, for example, hard disk drives, to ensure their integrity. The recordings are first saved locally to a secure non-removable device before being transferred to the remote network device. If for any reason the network connection fails, the recording remains on the local device and will be transferred when the network connections are restored.

**233.** Access to interview recordings, including copying to removable media, must be strictly controlled and monitored to ensure that access is restricted to those who require access to achieve a legitimate end. For example, police officers involved in the investigation of hostile activity or a criminal offence, or persons interviewed if they have been charged or informed they may be prosecuted and their legal representatives.

## 6. Examination of goods

### What goods can be examined?

**234.** An examining officer, or a person designated under paragraph 10 of Schedule 3, may only examine goods for the purpose of determining whether they have been used in connection with a person's engagement in hostile activity. The examination must not be undertaken for any other purpose.

**235.** "Goods" is defined non-exhaustively in paragraph 9(7) of Schedule 3 as including property of any description and containers. This definition includes both non-postal and postal items, whether unaccompanied or in the possession of a person.

### Where Schedule 3 powers can be exercised in relation to goods

**236.** The power to examine goods under paragraph 9 of Schedule 3 may be exercised:

- In respect of goods which have arrived in or about to leave Great Britain or Northern Ireland on a ship, vehicle or international train. (See paragraph 9(2)(a) of Schedule 3.)<sup>29</sup>
- In respect of goods which have arrived at or are about to leave any place in Great Britain or Northern Ireland on an aircraft (whether the place they have come from or are going to is within or outside Great Britain or Northern Ireland). (See paragraph 9(2)(b) of Schedule 3.)

**237.** Examination of goods may be carried out only:

- at a port;
- at premises operated by a sea cargo agent or an air cargo agent;
- at a transit shed;
- at a location designated by the Secretary of State.

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<sup>29</sup> The Channel Tunnel (International Arrangements) Order 1993, as amended by Schedule 3, provides that examining officers can exercise Schedule 3 powers in a railway station or other place where persons embark or disembark, or goods are loaded or unloaded, on or from a through train or shuttle train and in the tunnel system.

**238.** In order to determine whether to examine goods under paragraph 9, examining officers are permitted to:

- board a ship or aircraft;
- enter a vehicle;
- enter premises operated by a sea cargo agent or an air cargo agent;
- enter a transit shed; and
- enter a designated examination location.

Wherever possible, reasonable efforts should be made to obtain the permission of the owner or occupier before entering.

## **Selection Criteria**

**239.** Although the selection of goods for examination is not conditional upon the examining officer having grounds to suspect that the goods have been used in connection with a person's engagement in hostile activity, the decision to select goods for examination must not be arbitrary. An examining officer's decision to select goods for examination must be informed by the threat from hostile activity to the United Kingdom and its interests posed by foreign states and hostile actors acting for, on behalf of, or otherwise in the interests of, those States, whether active in or outside the United Kingdom.

**240.** Considerations that relate to the threat of hostile activity, include factors such as, but not exclusively:

- Known and suspected sources of hostile activity;
- Persons or groups whose current or past involvement in hostile activity, or threats of it, is known or suspected, and suspected or known supporters or sponsors of such activity;
- Any information on the origins and/or location of hostile actors;
- Possible current, emerging and future hostile activity;
- The means and documentation by which the goods have travelled and the route of travel that the goods have taken;
- Patterns of travel through specific ports or in the wider vicinity that may be linked to hostile activity, or appear unusual for the intended destination; and/or,
- The physical appearance of the goods.

## Examination

### Conducting an examination

**241.** If goods that are selected for examination are unaccompanied, the examining officer must apply a notice to the outside of the goods once the examination has been completed to indicate that the goods have been examined. The notice will identify the police force that has examined the goods, and will give a unique reference number for the examination. This must allow the identification of the examining officer who carried out the examination in the event of a query or complaint. The procedure for making a complaint about the examination of goods is the same as that relating to complaints about the examination of a person, and is set out in Section 7 of this code.

**242.** After examining small goods, an examining officer will also enclose a Goods Information Leaflet with the goods. The Goods Information Leaflet is available in multiple languages, and outlines the purpose and provisions of Schedule 3, obligations under Schedule 3, and relevant contact details (including those needed to provide feedback or make a complaint).

**243.** Examining officers must make every reasonable effort to exercise the power in such a way as to minimise causing embarrassment or offence to the sender or recipient of the goods or a person carrying the goods, and must not examine goods for longer than is necessary.

### Treatment of confidential material

**244.** If during the process of examining goods it becomes apparent that there are reasonable grounds for believing the goods consist of or include confidential material, then the examining officer must deal with this material in the manner provided for in Section 3 of this code under the relevant subsection (“treatment of confidential material”).

**245.** Officers are not precluded from retaining goods which contain confidential material in order to separate it from material which is not confidential, to achieve the purpose for which the goods have been retained.

## **Records of examinations**

**246.** Records of all examinations of goods must be kept for statistical or reference purposes for as long as judicial challenge or a complaint about the use of the powers can be made. Statistical records must include, as a minimum, the name of the person to whom the goods belong, the identification of the officer using the powers, the date, time and place of the examination, brief details of the item examined and any damage caused during the examination. Records of all examinations will be managed in accordance with Management of Police Information guidance, General Data Protection Regulation and the Data Protection Act 2018.

## **ANNEX A** Notice of Detention under Schedule 3 to the Counter-Terrorism and Border Security Act 2018

To.....  
.....

You have been detained under paragraph 4 of Schedule 3 to the Counter-Terrorism and Border Security Act 2018 (“Schedule 3”). This is so that an Examining Officer may exercise powers under paragraph 1 or 2 of that Schedule for the purpose either of determining whether you appear to be a person who is or has been engaged in hostile activity or whether your presence in the border area is connected with your entering or leaving Northern Ireland. You will not be examined under this power for more than 6 hours beginning with the time you were first questioned under Schedule 3. You are not under criminal investigation and are not under arrest on suspicion of having committed an offence. For this reason you are not being issued with a caution and you do not have the right to remain silent. Should the circumstances change during the course of the examination you will be notified.

### **Your duties**

Whilst being examined you must:

- (a) Answer questions put to you by the examining officer;
- (b) Give the examining officer any information in your possession which the officer requests (including the PINs and passcodes to any electronic devices in your possession);
- (c) Give the examining officer on request either a valid passport which includes a photograph, or another document which establishes your identity;
- (d) Declare whether you have with you documents of a kind specified by the examining officer;
- (e) Give the examining officer on request any document which you have with you and is of a kind specified by the officer;
- (f) Co-operate with any search of your person or property; and/or

- (g) Not wilfully obstruct or seek to frustrate the taking of photographs, or the taking of fingerprints or non-intimate biometric samples if the taking has been authorised by a superintendent or is authorised by virtue of a relevant previous conviction.

If you wilfully fail to comply with any of these duties, or willingly obstruct or seek to frustrate a search or examination conducted under Schedule 3, you could be prosecuted under paragraph 16 of Schedule 3.

Any answer or information that you provide orally in response to a question asked during the examination cannot be used as evidence in criminal proceedings. This, however, will not be the case where you are prosecuted for wilfully failing to comply with a duty imposed under or by virtue of Part 1 of Schedule 3; for obstructing or seeking to frustrate, a search or examination under Schedule 3; or where you are prosecuted for perjury.

It will also be possible for oral answers given in response to questions put to you in a Schedule 3 examination to be used as evidence in a situation where you have been prosecuted for an offence other than those mentioned above where, in giving evidence, you make a statement that is inconsistent with that oral answer or information given. In such a situation, your statement can only be used as evidence where you or your legal counsel first adduces it as evidence, or asks a question relating to it, in their defence.

## Your rights:

### Do you want someone informed?

You may, if you wish, have a friend, a relative or a person who is known to you, or who is likely to take an interest in your welfare, informed that you are being detained. ***In certain circumstances, under paragraph 25 of Schedule 3 to the Counter Terrorism and Border Security Act 2018 (or paragraph 30(4) in Scotland), an officer of at least the rank of superintendent may delay the exercise of this right.***

### Do you want to consult a solicitor?

You may wish to consult a solicitor privately, whether in person or by telephone. This may be at public expense. You may not be questioned until you have consulted a solicitor (or you no longer wish to do so)) unless the examining officer reasonably believes that postponing questioning would be likely to prejudice the determination of the matters to be established by the examination. If you do not wish to consult a solicitor now, you may do so later and at any time while you are detained. ***In certain circumstances, under paragraph 25 of Schedule 3 to the Counter Terrorism and Border Security Act 2019, or paragraph 30(4) of Schedule 3 in Scotland, an officer of at least the rank of Superintendent may delay the exercise of this right.***

If you do not have details of a solicitor, details of an independent solicitor can be supplied to you.

### Do you want to contact your Consul?

If you are detained and a citizen of a Commonwealth country or a national of a foreign country you may request access to your Consul. If you do request that your High Commission, Embassy or Consulate be told of your whereabouts and the ground for your detention, the request will be acted upon as soon as practicable. The exercise of this right may not be interfered with.

Additionally, if you are a citizen of a country with which the United Kingdom has a bilateral consular convention or agreement in force

requiring notification of the detention of its citizens, notification of your detention will be sent to the appropriate High Commission, Embassy or Consulate as soon as practicable, whether you request it or not.

Consular officers may, if you agree, visit you to talk with you, and if required, arrange legal advice. Such legal advice will take place out of the hearing of a police officer.

**Notice of Detention**

Served on Day: ..... date: ..... at: ..... hours By (Warrant No):.....

Witnessed by (Warrant No):

.....

Signature of detained person:

.....

Witnessed by: (interpreter/Appropriate Adult/Solicitor):

.....

## ANNEX B

# Training and Accreditation of examining officers and review officers under Schedule 3 to the Counter- Terrorism and Border Security Act 2018

### ACCREDITATION OF EXAMINING OFFICERS

#### Requirement for Code of Practice

1. The Secretary of State is required to issue a Code of Practice about training to be undertaken by constables, immigration officers and customs officers who are to act as examining officers or exercise other functions under Schedule 3.

#### Requirement for training and accreditation

2. Any police, immigration or customs officer who is to use Schedule 3 powers unsupervised must have received training and accreditation in the exercise of those functions.<sup>30</sup>

#### Training and accreditation standards

3. Training standards and the accreditation programme will be set and governed by the College of Policing on behalf of the National Police Chiefs' Council (NPCC) (or their successors).

4. The training and accreditation of examining officers must be a national programme delivered at a local level by a force or a group of regional forces. This approach gives individual forces or regional areas the responsibility and flexibility to deliver training and accreditation to suit their local needs, although the core elements of

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<sup>30</sup> See Section 1, paragraph 10 of this code of practice.

competence to practice as an examining officer will be a mandatory requirement.

### Training and accreditation for an examining officer

5. All examining officers must undertake a nationally approved programme, which must include a period of training and a pass/fail examination. On successful completion of the training and examination, officers must be accredited by their relevant Chief Officer, Director General or Commissioner (as appropriate).

### Accreditation of police officers as examining officers

6. The accreditation training and testing programme will be delivered nationally once the Schedule 3 Code of Practice has been brought into force by regulations.

### Accreditation of immigration and customs officers as examining officers

7. A customs officer may not seek accreditation to act as an examining officer under Schedule 3 unless that officer has been designated by both the Secretary of State and the Commissioners of Her Majesty's Revenue and Customs for the purposes of exercising powers under Schedule 7 to the Terrorism Act 2000 (see paragraph 57(3)(c) of Schedule 3).

8. Similarly, an immigration officer may not seek accreditation to act as an examining officer unless that officer has been designated by the Secretary of State for the purpose of exercising Schedule 7 powers (see paragraph 57(3)(b) of Schedule 3).

9. In order to exercise Schedule 3 powers, a customs officer or immigration officer must have been accredited, unless authorised by an examining officer to exercise powers under paragraphs 7-9 of Schedule 3. The process of attaining such accreditation will be similar to that for accrediting police officers as examining officers and will include a period of training followed by a pass/fail examination. The Chief Officer of the police force area where the immigration or customs officer will operate must have been consulted and in agreement with the process used for testing competency and the proposal to accredit.

## Designation of immigration and customs officers as examining officers

**10.** An immigration or customs officer can only exercise functions under Schedule 3 where the officer has been designated by the Secretary of State (or, in the case of customs officers, by the Secretary of State and the Commissioners of Customs and Excise), to exercise similar powers under Schedule 7 to the Terrorism Act 2000.

## Two year cycle of accreditation

**11.** To continue to use the Schedule 3 powers, examining officers must be re-accredited every two years. The re-accreditation process will consist of a refresher course followed by a pass/fail multiple choice examination. If an individual fails the examination they will not be able to act as an examining officer until they have successfully completed the accreditation process or unless supervised by an accredited examining officer for the purposes of paragraphs 7 to 9 of Schedule 3. The scope for re-training and testing will be as agreed between the NPCC and appropriate stakeholders.

## Assessment of ongoing competence

**12.** Ongoing competence in the use of Schedule 3 powers will be assessed during the two year period following accreditation at a force level through local staff management and performance monitoring processes. Any necessary remedial action will be taken in line with individual force policy and procedure.

**13.** The NPCC will issue advice to forces on methods of assessing on-going competence for the examining officer role. This will include an option for the withdrawal of accreditation where an officer's performance in the role does not meet the desired standard.

## ACCREDITATION OF REVIEW OFFICERS

### Requirement for Code of Practice

**14.** The Secretary of State is required to issue a Code of Practice about the provision of training to be undertaken by persons who are to act as review officers.

### Requirement for training and accreditation

**15.** Review officers are required to periodically review the need for continued detention of people detained under Schedule 3. Only

accredited review officers may perform this function. In order to be accredited, prospective review officers must receive training. Training will only be provided to appropriate supervisory police officers, including those likely to perform the role in an acting capacity.<sup>31</sup>

### Training and accreditation standards

**16.** Training standards and the accreditation programme will be set and governed by the College of Policing on behalf of the NPCC (or their successors).

**17.** The training and accreditation of review officers will be a national programme delivered at a local level by a force or a group of regional forces. This approach gives individual forces or regional areas the responsibility and flexibility to deliver training and accreditation to suit their local needs, although the core elements of competence to practice as a review officer will be a mandatory requirement.

### Training and accreditation for a review officer

**18.** All review officers will undertake a nationally approved programme, which will include a period of training and a pass/fail examination. On successful completion of the training and examination, officers will be accredited by their appropriate Chief Officer.

### Accreditation of police officers as review officers

**19.** The accreditation training and testing programme will be delivered nationally once the Schedule 3 Code of Practice has been brought into force by regulations.

### Two year cycle of accreditation

**20.** To continue to act as review officers, officers must be re-accredited every two years. The re-accreditation process will consist of a refresher course followed by a pass/fail multiple choice examination. If an individual fails the examination they will not be able to act as a review officer until they have successfully completed

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<sup>31</sup> An officer in an acting role must be an accredited Examining Officer and accredited Review Officer. They must also hold a current OSPRE Part 1 / NPPF Step 2 qualification. The Review Officer must be one rank above the officer carrying out the Schedule 3 examination. The officer acting up will be in this rank for a specific period of time. If no such officer is available then an alternative Review Officer would be sought from another location.

the accreditation process. The scope for re-training and testing will be as agreed between the NPCC and appropriate stakeholders.

### Assessment of ongoing competence

**21.** Ongoing competence in the role of review officer will be assessed during the two year period following accreditation at a force level through local staff management and performance monitoring processes. Any necessary remedial action will be taken in line with individual force policy and procedure.

**22.** The NPCC will issue advice to forces on methods of assessing on-going competence for the review officer role. This will include an option for the withdrawal of accreditation where an officer's performance in the role does not meet the desired standard.