

*Status: Point in time view as at 04/06/2007. This version of this schedule contains provisions that are not valid for this point in time.*

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## SCHEDULES

### SCHEDULE 1

Section 9.

#### SPECIAL PROCEDURE

##### Modifications etc. (not altering text)

- C1** Ss. 8, 9, 15, 16, 17(1)(b)(2) (4), 18-20, 21, 22(1)-(4), 28, 29, 30(1)-(4)(a)(5)-(11), 31, 32(1)-(9), 34(1)-(5), 35, 36, 37, 39, 40-44, 50, 51(d), 52, 54, 55, 64(1)-(4)(5)(6), Sch. 1 applied with modifications by [S.I. 1985/1800](#), [arts. 3-11](#), [Schs. 1, 2](#)
- C2** Sch. 1 extended (10.6.1991) by [Criminal Justice \(International Co-operation\) Act 1990](#) (c. 5, SIF 39:1), [s. 7\(1\)](#); [S.I. 1991/1072](#), [art. 2](#), [Sch. Pt. I](#)  
Sch. 1 extended (17.5.1996) by [S.I. 1996/1296](#), [art. 16\(1\)](#).  
Sch. 1: power to apply conferred (30.9.2003) by [2001 c. 19](#), [ss. 6\(2\), 39\(2\)](#) (with [s. 16\(7\)](#)); [S.I. 2003/2268](#), [art. 2](#)
- C3** Sch. 1 applied (with modifications) (2.12.2002) by [Police Reform Act 2002](#) (c. 30), [s. 38](#), [Sch. 4 para. 17\(a\)\(b\)](#); [S.I. 2002/2750](#), [art. 2\(a\)\(ii\)\(d\)](#)  
Sch. 1 applied (with modifications) (14.10.2002) by [The Police and Criminal Evidence Act 1984](#) ([Department of Trade and Industry Investigations](#)) Order 2002 ([S.I. 2002/2326](#)), [arts. 3, 4](#)
- C4** Sch. 1 incorporated (16.5.2008) by [The London Gateway Port Harbour Empowerment Order 2008](#) ([S.I. 2008/1261](#)), [art. 52](#)

#### *Making of orders by <sup>F1</sup>judge*

##### Textual Amendments

- F1** Sch. 1: words in cross-heading substituted (1.4.2005) by [Courts Act 2003](#) (c. 39), [ss. 65, 110](#), [Sch. 4 para. 6\(1\)](#); [S.I. 2005/910](#), [art. 3\(u\)](#)

- 1 If on an application made by a constable a circuit judge is satisfied that one or other of the sets of access conditions is fulfilled, he may make an order under paragraph 4 below.
- 2 The first set of access conditions is fulfilled if—
- (a) there are reasonable grounds for believing—
- (i) that <sup>F2</sup>[an indictable offence] has been committed;
- (ii) that there is material which consists of special procedure material or includes special procedure material and does not also include excluded material on premises specified in the application <sup>F3</sup>, or on premises occupied or controlled by a person specified in the application (including all such premises on which there are reasonable grounds for believing that there is such material as it is reasonably practicable so to specify);]

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- (iii) that the material is likely to be of substantial value (whether by itself or together with other material) to the investigation in connection with which the application is made; and
- (iv) that the material is likely to be relevant evidence;
- (b) other methods of obtaining the material—
  - (i) have been tried without success; or
  - (ii) have not been tried because it appeared that they were bound to fail; and
- (c) it is in the public interest, having regard—
  - (i) to the benefit likely to accrue to the investigation if the material is obtained; and
  - (ii) to the circumstances under which the person in possession of the material holds it,
 that the material should be produced or that access to it should be given.

#### Textual Amendments

- F2** Words in Sch. 1 para. 2(a)(i) substituted (1.1.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\), ss. 111, 178, Sch. 7 Pt. 3 para. 43\(13\)](#); S.I. 2005/3495, [art. 2\(1\)\(m\)](#)
- F3** Words in Sch. 1 para. 2(a)(ii) added (1.1.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\), ss. 113\(11\), 178](#); S.I. 2005/3495, [art. 2\(1\)\(n\)](#)

- 3 The second set of access conditions is fulfilled if—
- (a) there are reasonable grounds for believing that there is material which consists of or includes excluded material or special procedure material on premises specified in the application [<sup>F4</sup>, or on premises occupied or controlled by a person specified in the application (including all such premises on which there are reasonable grounds for believing that there is such material as it is reasonably practicable so to specify);]
  - (b) but for section 9(2) above a search of [<sup>F5</sup>such premises] for that material could have been authorised by the issue of a warrant to a constable under an enactment other than this Schedule; and
  - (c) the issue of such a warrant would have been appropriate.

#### Textual Amendments

- F4** Words in Sch. 1 para. 3(a) added (1.1.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\), ss. 113\(11\), 178](#); S.I. 2005/3495, [art. 2\(1\)\(n\)](#)
- F5** Words in Sch. 1 para. 3(b) substituted (1.1.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\), ss. 113\(12\), 178](#); S.I. 2005/3495, [art. 2\(1\)\(n\)](#)

- 4 An order under this paragraph is an order that the person who appears to the circuit judge to be in possession of the material to which the application relates shall—
- (a) produce it to a constable for him to take away; or
  - (b) give a constable access to it,
- not later than the end of the period of seven days from the date of the order or the end of such longer period as the order may specify.

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- 5 Where the material consists of information [<sup>F6</sup>stored in any electronic form]—
- (a) an order under paragraph 4(a) above shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible [<sup>F7</sup>or from which it can readily be produced in a visible and legible form]; and
  - (b) an order under paragraph 4(b) above shall have effect as an order to give a constable access to the material in a form in which it is visible and legible.

#### Textual Amendments

- F6** Words in Sch. 1 para. 5 substituted (1.4.2003) by 2001 c. 16, ss. 70, 138(2), Sch. 2 Pt. 2 para. 14(a); S.I. 2003/708, art. 2(k)
- F7** Words in Sch. 1 para. 5(a) inserted (1.4.2003) by 2001 c. 16, ss. 70, 138(2), Sch. 2 Pt. 2 para. 14(b); S.I. 2003/708, art. 2(k)

- 6 For the purposes of sections 21 and 22 above material produced in pursuance of an order under paragraph 4(a) above shall be treated as if it were material seized by a constable.

#### *Notices of applications for orders*

- 7 An application for an order under paragraph 4 above shall be made inter partes.
- 8 Notice of an application for such an order may be served on a person either by delivering it to him or by leaving it at his proper address or by sending it by post to him in a registered letter or by the recorded delivery service.
- 9 Such a notice may be served—
- (a) on a body corporate, by serving it on the body's secretary or clerk or other similar officer; and
  - (b) on a partnership, by serving in on one of the partners.
- 10 For the purposes of this Schedule, and of section 7 of the <sup>M1</sup>Interpretation Act 1978 in its application to this Schedule, the proper address of a person, in the case of secretary or clerk or other similar officer of a body corporate, shall be that of the registered or principal office of that body, in the case of a partner of a firm shall be that of the principal office of the firm, and in any other case shall be the last known address of the person to be served.

#### Marginal Citations

- M1** 1978 c. 30.

- 11 Where notice of an application for an order under paragraph 4 above has been served on a person, he shall not conceal, destroy, alter or dispose of the material to which the application relates except—
- (a) with the leave of a judge; or
  - (b) with the written permission of a constable,
- until—
- (i) the application is dismissed or abandoned; or
  - (ii) he has complied with an order under paragraph 4 above made on the application.

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### Issue of warrants by <sup>F8</sup>judge]

#### Textual Amendments

**F8** Sch.1: words in cross-heading substituted (1.4.2005) by Courts Act 2003 (c. 39), ss. 65, 110, **Sch. 4 para. 6(1)**; S.I. 2005/910, **art. 3(u)**

- 12 If on an application made by a constable a <sup>F9</sup>judge]—
- (a) is satisfied—
- (i) that either set of access conditions is fulfilled; and
- (ii) that any of the further conditions set out in paragraph 14 below is also fulfilled <sup>F10</sup>in relation to each set of premises specified in the application] ; or
- (b) is satisfied—
- (i) that the second set of access conditions is fulfilled; and
- (ii) that an order under paragraph 4 above relating to the material has not been complied with,
- he may issue a warrant authorising a constable to enter and search the premises <sup>F11</sup>or (as the case may be) all premises occupied or controlled by the person referred to in paragraph 2(a)(ii) or 3(a), including such sets of premises as are specified in the application (an “all premises warrant”)] .

#### Textual Amendments

- F9** Words in Sch. 1 para. 12 substituted (1.4.2005) by Courts Act 2003 (c. 39), ss. 65, 110, **Sch. 4 para. 6(1)**; S.I. 2005/910, **art. 3(u)**
- F10** Words in Sch. 1 para. 12(a)(ii) inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 113(13)(a)**, 178; S.I. 2005/3495, **art. 2(1)(n)**
- F11** Words in Sch. 1 para. 12 inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 113(13)(b)**, 178; S.I. 2005/3495, **art. 2(1)(n)**

- <sup>F12</sup>12A The judge may not issue an all premises warrant unless he is satisfied—
- (a) that there are reasonable grounds for believing that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application, as well as those which are, in order to find the material in question; and
- (b) that it is not reasonably practicable to specify all the premises which he occupies or controls which might need to be searched.]

#### Textual Amendments

**F12** Sch. 1 para. 12A inserted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 113(14)**, 178; S.I. 2005/3495, **art. 2(1)(n)**

- 13 A constable may seize and retain anything for which a search has been authorised under paragraph 12 above.
- 14 The further conditions mentioned in paragraph 12 (a)(ii) above are—
- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises <sup>F13</sup>. . . ;

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- (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the material;
- (c) that the material contains information which—
  - (i) is subject to a restriction or obligation such as is mentioned in section 11(2)(b) above; and
  - (ii) is likely to be disclosed in breach of it if a warrant is not issued;
- (d) that service of notice of an application for an order under paragraph 4 above may seriously prejudice the investigation.

#### Textual Amendments

**F13** Words in Sch. 1 para. 14(a) repealed (1.1.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 113(15), 178, [Sch. 17 Pt. 2](#); S.I. 2005/3495, [art. 2\(1\)\(n\)\(t\)\(u\)\(xxiv\)](#)

- 15 (1) If a person fails to comply with an order under paragraph 4 above, a [<sup>F14</sup>judge] may deal with him as if he had committed a contempt of the Crown Court.
- (2) Any enactment relating to contempt of the Crown Court shall have effect in relation to such a failure as if it were such a contempt.

#### Textual Amendments

**F14** Words in Sch. 1 para. 15 substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), ss. 65, 110, [Sch. 4 para. 6\(1\)](#); S.I. 2005/910, [art. 3\(u\)](#)

#### Costs

- 16 The costs of any application under this Schedule and of anything done or to be done in pursuance of an order made under it shall be in the discretion of the judge.

#### <sup>F15</sup> Interpretation

#### Textual Amendments

**F15** Sch. 1 para. 17 inserted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), ss. 65, 110, [Sch. 4 para. 6\(2\)](#); S.I. 2005/910, [art. 3\(u\)](#)

- 17 In this Schedule “judge” means a Circuit judge or a District Judge (Magistrates' Courts).]

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