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SCHEDULES

SCHEDULE 5

Section 37.

TERRORIST INVESTIGATIONS: INFORMATION

PART I

ENGLAND AND WALES AND NORTHERN IRELAND

Searches

- 1 (1) A constable may apply to a justice of the peace for the issue of a warrant under this paragraph for the purposes of a terrorist investigation.
- (2) A warrant under this paragraph shall authorise any constable—
- (a) to enter the premises specified in the warrant,
 - (b) to search the premises and any person found there, and
 - (c) to seize and retain any relevant material which is found on a search under paragraph (b).
- (3) For the purpose of sub-paragraph (2)(c) material is relevant if the constable has reasonable grounds for believing that—
- (a) it is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation, and
 - (b) it must be seized in order to prevent it from being concealed, lost, damaged, altered or destroyed.
- (4) A warrant under this paragraph shall not authorise—
- (a) the seizure and retention of items subject to legal privilege, or
 - (b) a constable to require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket or gloves.
- (5) Subject to paragraph 2, a justice may grant an application under this paragraph if satisfied—
- (a) that the warrant is sought for the purposes of a terrorist investigation,
 - (b) that there are reasonable grounds for believing that there is material on premises specified in the application which is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation and which does not consist of or include excepted material (within the meaning of paragraph 4 below), and
 - (c) that the issue of a warrant is likely to be necessary in the circumstances of the case.

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Modifications etc. (not altering text)

- C1** Sch. 5 para. 1: power(s) of seizure extended (1.4.2003) by 2001 c. 16, ss. 50, 52-54, 68, Sch. 1 Pt. 1 para. 71; S.I. 2003/708, art. 2
- C2** Sch. 5 para. 1: power(s) of seizure extended (1.4.2003) by 2001 c. 16, ss. 51-54, 68, Sch. 1 Pt. 2 para. 83; S.I. 2003/708, art. 2
- C3** Sch. 5 para. 1 modified (E.W.N.I) (1.4.2003) by 2001 c. 16, ss. 55, 68, Sch. 1 Pt. 3 para. 109(1) (with s. 57(3)); S.I. 2003/708, art. 2

- 2 (1) This paragraph applies where an application is made under paragraph 1 and—
- (a) the application is made by a police officer of at least the rank of superintendent,
 - (b) the application does not relate to residential premises, and
 - (c) the justice to whom the application is made is not satisfied of the matter referred to in paragraph 1(5)(c).
- (2) The justice may grant the application if satisfied of the matters referred to in paragraph 1(5)(a) and (b).
- (3) Where a warrant under paragraph 1 is issued by virtue of this paragraph, the powers under paragraph 1(2)(a) and (b) are exercisable only within the period of 24 hours beginning with the time when the warrant is issued.
- (4) For the purpose of sub-paragraph (1) “residential premises” means any premises which the officer making the application has reasonable grounds for believing are used wholly or mainly as a dwelling.

VALID FROM 13/04/2006

- [^{F1}2A (1) This paragraph applies where an application for an all premises warrant is made under paragraph 1 and—
- (a) the application is made by a police officer of at least the rank of superintendent, and
 - (b) the justice to whom the application is made is not satisfied of the matter referred to in paragraph 1(5)(c).
- (2) The justice may grant the application if satisfied of the matters referred to in paragraph 1(5)(a), (b) and (d).
- (3) Where a warrant under paragraph 1 is issued by virtue of this paragraph, the powers under paragraph 1(2)(a) and (b) are exercisable only—
- (a) in respect of premises which are not residential premises, and
 - (b) within the period of 24 hours beginning with the time when the warrant is issued.
- (4) For the purpose of sub-paragraph (3) “residential premises”, in relation to a power under paragraph 1(2)(a) or (b), means any premises which the constable exercising the power has reasonable grounds for believing are used wholly or mainly as a dwelling.]

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Textual Amendments

F1 Sch. 5 para. 2A inserted (13.4.2006) by [Terrorism Act 2006 \(c. 11\)](#), s. 26(6); S.I. 2006/1013, art. 2

- 3
- (1) Subject to sub-paragraph (2), a police officer of at least the rank of superintendent may by a written authority signed by him authorise a search of specified premises which are wholly or partly within a cordoned area.
 - (2) A constable who is not of the rank required by sub-paragraph (1) may give an authorisation under this paragraph if he considers it necessary by reason of urgency.
 - (3) An authorisation under this paragraph shall authorise any constable—
 - (a) to enter the premises specified in the authority,
 - (b) to search the premises and any person found there, and
 - (c) to seize and retain any relevant material (within the meaning of paragraph 1(3)) which is found on a search under paragraph (b).
 - (4) The powers under sub-paragraph (3)(a) and (b) may be exercised—
 - (a) on one or more occasions, and
 - (b) at any time during the period when the designation of the cordoned area under section 33 has effect.
 - (5) An authorisation under this paragraph shall not authorise—
 - (a) the seizure and retention of items subject to legal privilege;
 - (b) a constable to require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket or gloves.
 - (6) An authorisation under this paragraph shall not be given unless the person giving it has reasonable grounds for believing that there is material to be found on the premises which—
 - (a) is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation, and
 - (b) does not consist of or include excepted material.
 - (7) A person commits an offence if he wilfully obstructs a search under this paragraph.
 - (8) A person guilty of an offence under sub-paragraph (7) shall be liable on summary conviction to—
 - (a) imprisonment for a term not exceeding three months,
 - (b) a fine not exceeding level 4 on the standard scale, or
 - (c) both.

Modifications etc. (not altering text)

- C4** Sch. 5 para. 3: power(s) of seizure extended (1.4.2003) by [2001 c. 16](#), ss. 50, 52-54, 68, Sch. 1 Pt. 1 para. 71; S.I. 2003/708, art. 2
- C5** Sch. 5 para. 3: power(s) of seizure extended (1.4.2003) by [2001 c. 16](#), ss. 51-54, 68, Sch. 1 Pt. 2 para. 83; S.I. 2003/708, art. 2
- C6** Sch. 5 para. 3 modified (1.4.2003) by [2001 c. 16](#), ss. 55, 68, Sch. 1 Pt. 3 para. 109(1) (with s. 57(3)); S.I. 2003/708, art. 2

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Excepted material

- 4 In this Part—
- (a) “excluded material” has the meaning given by section 11 of the ^{M1}Police and Criminal Evidence Act 1984,
 - (b) “items subject to legal privilege” has the meaning given by section 10 of that Act, and
 - (c) “special procedure material” has the meaning given by section 14 of that Act;
- and material is “excepted material” if it falls within any of paragraphs (a) to (c).

Marginal Citations

M1 1984 c. 60.

Excluded and special procedure material: production & access

- 5 (1) A constable may apply to a Circuit judge for an order under this paragraph for the purposes of a terrorist investigation.
- (2) An application for an order shall relate to particular material, or material of a particular description, which consists of or includes excluded material or special procedure material.
- (3) An order under this paragraph may require a specified person—
- (a) to produce to a constable within a specified period for seizure and retention any material which he has in his possession, custody or power and to which the application relates;
 - (b) to give a constable access to any material of the kind mentioned in paragraph (a) within a specified period;
 - (c) to state to the best of his knowledge and belief the location of material to which the application relates if it is not in, and it will not come into, his possession, custody or power within the period specified under paragraph (a) or (b).
- (4) For the purposes of this paragraph—
- (a) an order may specify a person only if he appears to the Circuit judge to have in his possession, custody or power any of the material to which the application relates, and
 - (b) a period specified in an order shall be the period of seven days beginning with the date of the order unless it appears to the judge that a different period would be appropriate in the particular circumstances of the application.
- (5) Where a Circuit judge makes an order under sub-paragraph (3)(b) in relation to material on any premises, he may, on the application of a constable, order any person who appears to the judge to be entitled to grant entry to the premises to allow any constable to enter the premises to obtain access to the material.
- 6 (1) A Circuit judge may grant an application under paragraph 5 if satisfied—
- (a) that the material to which the application relates consists of or includes excluded material or special procedure material,
 - (b) that it does not include items subject to legal privilege, and

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- (c) that the conditions in sub-paragraphs (2) and (3) are satisfied in respect of that material.
- (2) The first condition is that—
 - (a) the order is sought for the purposes of a terrorist investigation, and
 - (b) there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation.
- (3) The second condition is that there are reasonable grounds for believing that it is in the public interest that the material should be produced or that access to it should be given having regard—
 - (a) to the benefit likely to accrue to a terrorist investigation if the material is obtained, and
 - (b) to the circumstances under which the person concerned has any of the material in his possession, custody or power.
- 7 (1) An order under paragraph 5 may be made in relation to—
 - (a) material consisting of or including excluded or special procedure material which is expected to come into existence within the period of 28 days beginning with the date of the order;
 - (b) a person who the Circuit judge thinks is likely to have any of the material to which the application relates in his possession, custody or power within that period.
- (2) Where an order is made under paragraph 5 by virtue of this paragraph, paragraph 5(3) shall apply with the following modifications—
 - (a) the order shall require the specified person to notify a named constable as soon as is reasonably practicable after any material to which the application relates comes into his possession, custody or power,
 - (b) the reference in paragraph 5(3)(a) to material which the specified person has in his possession, custody or power shall be taken as a reference to the material referred to in paragraph (a) above which comes into his possession, custody or power, and
 - (c) the reference in paragraph 5(3)(c) to the specified period shall be taken as a reference to the period of 28 days beginning with the date of the order.
- (3) Where an order is made under paragraph 5 by virtue of this paragraph, paragraph 5(4) shall not apply and the order—
 - (a) may only specify a person falling within sub-paragraph (1)(b), and
 - (b) shall specify the period of seven days beginning with the date of notification required under sub-paragraph (2)(a) unless it appears to the judge that a different period would be appropriate in the particular circumstances of the application.
- 8 (1) An order under paragraph 5—
 - (a) shall not confer any right to production of, or access to, items subject to legal privilege, and
 - (b) shall have effect notwithstanding any restriction on the disclosure of information imposed by statute or otherwise.
- (2) Where the material to which an application under paragraph 5 relates consists of information contained in a computer—

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- (a) an order under paragraph 5(3)(a) 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, and
 - (b) an order under paragraph 5(3)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.
- 9 (1) An order under paragraph 5 may be made in relation to material in the possession, custody or power of a government department.
- (2) Where an order is made by virtue of sub-paragraph (1)—
- (a) it shall be served as if the proceedings were civil proceedings against the department, and
 - (b) it may require any officer of the department, whether named in the order or not, who may for the time being have in his possession, custody or power the material concerned, to comply with the order.
- (3) In this paragraph “government department” means an authorised government department for the purposes of the ^{M2}Crown Proceedings Act 1947.

Marginal Citations

M2 1947 c. 44.

- 10 (1) An order of a Circuit judge under paragraph 5 shall have effect as if it were an order of the Crown Court.
- (2) [^{F2}Criminal Procedure Rules] may make provision about proceedings relating to an order under paragraph 5.
- (3) In particular, the rules may make provision about the variation or discharge of an order.

Textual Amendments

F2 Words in [Sch. 5 para. 10\(2\)](#) substituted (1.9.2004 subject to art. 3 of the commencing S.I.) by [Courts Act 2003 \(c. 39\), s. 109\(1\), Sch. 8 para. 389\(2\)](#); S.I. 2004/2066, [art. 2](#)

Commencement Information

I1 [Sch. 5 para. 10](#) wholly in force at 19.2.2001; [Sch. 5 para. 10](#) not in force at Royal Assent see [s. 128](#); [Sch. 5 para. 10\(2\)\(3\)](#) in force at 31.10.2000 by S.I. 2000/2944, [art. 2\(i\)](#); [Sch. 5 para. 10](#) in force at 19.2.2001 in so far as not already in force by S.I. 2001/421, [art. 2](#)

Excluded or special procedure material: search

- 11 (1) A constable may apply to a Circuit judge for the issue of a warrant under this paragraph for the purposes of a terrorist investigation.
- (2) A warrant under this paragraph shall authorise any constable—
- (a) to enter the premises specified in the warrant,
 - (b) to search the premises and any person found there, and

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- (c) to seize and retain any relevant material which is found on a search under paragraph (b).
- (3) A warrant under this paragraph shall not authorise—
- (a) the seizure and retention of items subject to legal privilege;
 - (b) a constable to require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket or gloves.
- (4) For the purpose of sub-paragraph (2)(c) material is relevant if the constable has reasonable grounds for believing that it is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation.

Modifications etc. (not altering text)

- C7** Sch. 5 para. 11: power(s) of seizure extended (1.4.2003) by [2001 c. 16, ss. 50, 52-54, 68, Sch. 1 Pt. 1 para. 71; S.I. 2003/708, art. 2](#)
- C8** Sch. 5 para. 11: power(s) of seizure extended (1.4.2003) by [2001 c. 16, ss. 51-54, 68, Sch. 1 Pt. 2 para. 83; S.I. 2003/708, art. 2](#)

- 12 (1) A Circuit judge may grant an application under paragraph 11 if satisfied that an order made under paragraph 5 in relation to material on the premises specified in the application has not been complied with.
- (2) A Circuit judge may also grant an application under paragraph 11 if satisfied that there are reasonable grounds for believing that—
- (a) there is material on premises specified in the application which consists of or includes excluded material or special procedure material but does not include items subject to legal privilege, and
 - (b) the conditions in sub-paragraphs (3) and (4) are satisfied.
- (3) The first condition is that—
- (a) the warrant is sought for the purposes of a terrorist investigation, and
 - (b) the material is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation.
- (4) The second condition is that it is not appropriate to make an order under paragraph 5 in relation to the material because—
- (a) it is not practicable to communicate with any person entitled to produce the material,
 - (b) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or
 - (c) a terrorist investigation may be seriously prejudiced unless a constable can secure immediate access to the material.

Explanations

- 13 (1) A constable may apply to a Circuit judge for an order under this paragraph requiring any person specified in the order to provide an explanation of any material—
- (a) seized in pursuance of a warrant under paragraph 1 or 11, or
 - (b) produced or made available to a constable under paragraph 5.

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- (2) An order under this paragraph shall not require any person to disclose any information which he would be entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the High Court.
 - (3) But a lawyer may be required to provide the name and address of his client.
 - (4) A statement by a person in response to a requirement imposed by an order under this paragraph—
 - (a) may be made orally or in writing, and
 - (b) may be used in evidence against him only on a prosecution for an offence under paragraph 14.
 - (5) Paragraph 10 shall apply to orders under this paragraph as it applies to orders under paragraph 5.
- 14 (1) A person commits an offence if, in purported compliance with an order under paragraph 13, he—
- (a) makes a statement which he knows to be false or misleading in a material particular, or
 - (b) recklessly makes a statement which is false or misleading in a material particular.
- (2) A person guilty of an offence under sub-paragraph (1) shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

Urgent cases

- 15 (1) A police officer of at least the rank of superintendent may by a written order signed by him give to any constable the authority which may be given by a search warrant under paragraph 1 or 11.
- (2) An order shall not be made under this paragraph unless the officer has reasonable grounds for believing—
- (a) that the case is one of great emergency, and
 - (b) that immediate action is necessary.
- (3) Where an order is made under this paragraph particulars of the case shall be notified as soon as is reasonably practicable to the Secretary of State.
- (4) A person commits an offence if he wilfully obstructs a search under this paragraph.
- (5) A person guilty of an offence under sub-paragraph (4) shall be liable on summary conviction to—
- (a) imprisonment for a term not exceeding three months,
 - (b) a fine not exceeding level 4 on the standard scale, or
 - (c) both.

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Modifications etc. (not altering text)

- C9** Sch. 5 para. 15: power(s) of seizure extended (1.4.2003) by 2001 c. 16, ss. 50, 52-54, 68, Sch. 1 Pt. 1 para. 71; S.I. 2003/708, art. 2
- C10** Sch. 5 para. 15: power(s) of seizure extended (1.4.2003) by 2001 c. 16, ss. 51-54, 68, Sch. 1 Pt. 1 para. 83; S.I. 2003/708, art. 2
- C11** Sch. 5 para. 15 modified (1.4.2003) by 2001 c. 16, ss. 55, 68, Sch. 1 Pt. 3 para. 109(2) (with s. 57(3)); S.I. 2003/708, art. 2

- 16 (1) If a police officer of at least the rank of superintendent has reasonable grounds for believing that the case is one of great emergency he may by a written notice signed by him require any person specified in the notice to provide an explanation of any material seized in pursuance of an order under paragraph 15.
- (2) Sub-paragraphs (2) to (4) of paragraph 13 and paragraph 14 shall apply to a notice under this paragraph as they apply to an order under paragraph 13.
- (3) A person commits an offence if he fails to comply with a notice under this paragraph.
- (4) It is a defence for a person charged with an offence under sub-paragraph (3) to show that he had a reasonable excuse for his failure.
- (5) A person guilty of an offence under sub-paragraph (3) shall be liable on summary conviction to—
- (a) imprisonment for a term not exceeding six months,
 - (b) a fine not exceeding level 5 on the standard scale, or
 - (c) both.

Supplementary

- 17 For the purposes of sections 21 and 22 of the ^{M3}Police and Criminal Evidence Act 1984 (seized material: access, copying and retention)—
- (a) a terrorist investigation shall be treated as an investigation of or in connection with an offence, and
 - (b) material produced in pursuance of an order under paragraph 5 shall be treated as if it were material seized by a constable.

Marginal Citations

- M3** 1984 c. 60.

Northern Ireland

- 18 In the application of this Part to Northern Ireland—
- (a) the reference in paragraph 4(a) to section 11 of the ^{M4}Police and Criminal Evidence Act 1984 shall be taken as a reference to Article 13 of the ^{M5}Police and Criminal Evidence (Northern Ireland) Order 1989,
 - (b) the reference in paragraph 4(b) to section 10 of that Act shall be taken as a reference to Article 12 of that Order,
 - (c) the reference in paragraph 4(c) to section 14 of that Act shall be taken as a reference to Article 16 of that Order,

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- (d) the references in paragraph 9(1) and (2) to “government department” shall be taken as including references to an authorised Northern Ireland department for the purposes of the ^{M6}Crown Proceedings Act 1947,
- [^{F3}(dd) the reference in paragraph 10(2) to “Criminal Procedure Rules” shall be taken as a reference to Crown Court Rules,]
- ^{F4}(e)
- (f) the reference in paragraph 17 to sections 21 and 22 of the ^{M7}Police and Criminal Evidence Act 1984 shall be taken as a reference to Articles 23 and 24 of the ^{M8}Police and Criminal Evidence (Northern Ireland) Order 1989, and
- (g) references to “a Circuit judge” shall be taken as references to a [^{F5}Crown Court judge].

Textual Amendments

- F3** Sch. 5 para. 18(dd) inserted (1.9.2004 subject to art. 3 of the commencing S.I.) by Courts Act 2003 (c. 39), s. 109(1), **Sch. 8 para. 389(3)**; S.I. 2004/2066, **art. 2**
- F4** Sch. 5 para. 18(e) repealed (7.7.2002) by 2001 c. 24, ss. 121(2)(a), 125, **Sch. 8 Pt. 7**; S.I. 2002/1558, **art. 2**
- F5** Words in Sch. 5 para. 18(g) substituted (7.7.2002) by 2001 c. 24, s. 121(2)(b); S.I. 2002/1558, **art. 2**

Marginal Citations

- M4** 1984 c. 60.
- M5** S.I. 1989/1341 (N.I. 12).
- M6** 1947 c. 44.
- M7** 1984 c. 60.
- M8** S.I. 1989/1341 (N.I. 12).

- [^{F6}19 (1) The Secretary of State may by a written order which relates to specified premises give to any constable in Northern Ireland—
- (a) the authority which may be given by a search warrant under paragraph 1;
- (b) the authority which may be given by a search warrant under paragraph 11.
- (2) An order shall not be made under this paragraph unless—
- (a) it appears to the Secretary of State that the information which it would be necessary to provide to the court in support of an application for a warrant would, if disclosed, be likely to place any person in danger or prejudice the capability of members of the Royal Ulster Constabulary to investigate an offence under any of sections 15 to 18 or under section 56, and
- (b) the order is made for the purposes of an investigation of the commission, preparation or instigation of an offence under any of sections 15 to 18 or under section 56.
- (3) The Secretary of State may make an order under sub-paragraph (1)(a) in relation to particular premises only if satisfied—
- (a) that there are reasonable grounds for believing that there is material on the premises which is likely to be of substantial value, whether by itself or together with other material, to the investigation mentioned in sub-paragraph (2)(b), and which does not consist of or include excepted material, and
- (b) that the authority of an order is likely to be necessary in the circumstances of the case.

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- (4) The Secretary of State may make an order under sub-paragraph (1)(b) in relation to particular premises if satisfied that an order made under paragraph 5 in relation to material on the premises has not been complied with.
- (5) The Secretary of State may also make an order under sub-paragraph (1)(b) in relation to particular premises if satisfied that there are reasonable grounds for believing that—
 - (a) there is material on the premises which consists of or includes excluded material or special procedure material but does not include items subject to legal privilege,
 - (b) the material is likely to be of substantial value, whether by itself or together with other material, to the investigation mentioned in sub-paragraph (2)(b), and
 - (c) an order under paragraph 5 would not be appropriate in relation to the material for the reason mentioned in paragraph 12(4)(a) or (b) or because the investigation mentioned in sub-paragraph (2)(b) might be seriously prejudiced unless a constable can secure immediate access to the material.
- (6) An order under sub-paragraph (1)(b) may not be made except in the circumstances specified in sub-paragraphs (4) and (5).
- (7) A person commits an offence if he wilfully obstructs a search under this paragraph.
- (8) A person guilty of an offence under sub-paragraph (7) shall be liable on summary conviction to—
 - (a) imprisonment for a term not exceeding three months,
 - (b) a fine not exceeding level 4 on the standard scale, or
 - (c) both.]

Textual Amendments

F6 Sch. 5 paras. 19-21 ceased to have effect (N.I.) (19.2.2003) by virtue of [The Terrorism Act 2000 \(Continuance of Part VII\) Order 2003 \(S.I. 2003/427\)](#), [art. 2\(2\)\(c\)](#); and repealed (N.I.) (19.2.2006) by [Terrorism \(Northern Ireland\) Act 2006 \(c. 4\)](#), s. 5(2)(3), [Sch.](#)

Modifications etc. (not altering text)

C12 Sch. 5 para. 19: power(s) of seizure extended (1.4.2003) by [2001 c. 16](#), ss. 50, 52-54, 68, [Sch. 1 Pt. 1 para. 71](#); [S.I. 2003/708](#), [art. 2](#)

C13 Sch. 5 para. 19: power(s) of seizure extended (1.4.2003) by [2001 c. 16](#), ss. 51-54, 68, [Sch. 1 Pt. 2 para. 83](#); [S.I. 2003/708](#), [art. 2](#)

C14 Sch. 5 para. 19 modified (1.4.2003) by [2001 c. 16](#), ss. 55, 68, [Sch. 1 Pt. 3 para. 109\(2\)](#) (with s. 57(3)); [S.I. 2003/708](#), [art. 2](#)

- [^{F7}20 (1) The Secretary of State may exercise the power to make an order under paragraph 5 in relation to any person in Northern Ireland who is specified in the order.
- (2) An order shall not be made by virtue of this paragraph unless it appears to the Secretary of State that the information which it would be necessary to provide to a [^{F8}Crown Court judge]] in support of an application for an order under paragraph 5 would, if disclosed—
- (a) be likely to place any person in danger, or

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- (b) be likely to prejudice the capability of members of the Royal Ulster Constabulary to investigate an offence under any of sections 15 to 18 or under section 56.
- (3) Paragraphs 5 to 9 shall apply to the making of an order under paragraph 5 by virtue of this paragraph with the following modifications—
 - (a) references to a [^{F8}Crown Court judge] shall be taken as references to the Secretary of State,
 - (b) the references to “a terrorist investigation” in paragraphs 5(1) and 6(2) (a) shall be taken as references to an investigation of the commission, preparation or instigation of an offence under any of sections 15 to 18 or under section 56, and
 - (c) the references to “a terrorist investigation” in paragraphs 6(2)(b) and 6(3) (a) shall be taken as references to the investigation mentioned in paragraph 6(2)(a).
- (4) Paragraph 10 shall not apply in relation to an order made under paragraph 5 by virtue of this paragraph.
- (5) The Secretary of State may vary or revoke an order made by virtue of this paragraph.
- (6) A person commits an offence if he contravenes an order made by virtue of this paragraph.
- (7) A person guilty of an offence under sub-paragraph (6) shall be liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

Textual Amendments

F7 Sch. 5 paras. 19-21 ceased to have effect (N.I.) (19.2.2003) by virtue of [The Terrorism Act 2000 \(Continuance of Part VII\) Order 2003 \(S.I. 2003/427\)](#), [art. 2\(2\)\(c\)](#); and repealed (N.I.) (19.2.2006) by [Terrorism \(Northern Ireland\) Act 2006 \(c. 4\)](#), s. 5(2)(3), [Sch.](#)

F8 Words in Sch. 5 para. 20(2)(3)(a) substituted (7.7.2002) by [2001 c. 24, s. 121\(3\)](#); [S.I. 2002/1558](#), [art. 2](#)

- [^{F9}21 (1) The Secretary of State may by a written order require any person in Northern Ireland who is specified in the order to provide an explanation of any material—
 - (a) seized in pursuance of an order under paragraph 19, or
 - (b) produced or made available to a constable in pursuance of an order made by virtue of paragraph 20.
- (2) The provisions of paragraphs 13(2) to (4) and 14 shall apply to an order under this paragraph as they apply to an order under paragraph 13.
- (3) The provisions of paragraph 16(3) to (5) shall apply to an order under this paragraph as they apply to a notice under paragraph 16.]

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Textual Amendments

- F9** Sch. 5 paras. 19-21 ceased to have effect (N.I.) (19.2.2003) by virtue of [The Terrorism Act 2000 \(Continuance of Part VII\) Order 2003 \(S.I. 2003/427\)](#), [art. 2\(2\)\(c\)](#); and repealed (N.I.) (19.2.2006) by [Terrorism \(Northern Ireland\) Act 2006 \(c. 4\)](#), s. 5(2)(3), [Sch.](#)

PART II

SCOTLAND

Order for production of material

- 22 (1) The procurator fiscal may apply to the sheriff for an order under this paragraph for the purposes of a terrorist investigation.
- (2) An application for an order shall relate to particular material, or material of a particular description.
- (3) An order under this paragraph may require a specified person—
- (a) to produce to a constable within a specified period for seizure and retention any material which he has in his possession, custody or power and to which the application relates;
 - (b) to give a constable access to any material of the kind mentioned in paragraph (a) within a specified period;
 - (c) to state to the best of his knowledge and belief the location of material to which the application relates if it is not in, and it will not come into, his possession, custody or power within the period specified under paragraph (a) or (b).
- (4) For the purposes of this paragraph—
- (a) an order may specify a person only if he appears to the sheriff to have in his possession, custody or power any of the material to which the application relates, and
 - (b) a period specified in an order shall be the period of seven days beginning with the date of the order unless it appears to the sheriff that a different period would be appropriate in the particular circumstances of the application.
- (5) Where the sheriff makes an order under sub-paragraph (3)(b) in relation to material on any premises, he may, on the application of the procurator fiscal, order any person who appears to the sheriff to be entitled to grant entry to the premises to allow any constable to enter the premises to obtain access to the material.
- 23 (1) The sheriff may grant an application under paragraph 22 if satisfied that the conditions in sub-paragraphs (2) and (3) are satisfied in respect of that material.
- (2) The first condition is that—
- (a) the order is sought for the purposes of a terrorist investigation, and
 - (b) there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation.

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- (3) The second condition is that there are reasonable grounds for believing that it is in the public interest that the material should be produced or that access to it should be given having regard—
- (a) to the benefit likely to accrue to a terrorist investigation if the material is obtained, and
 - (b) to the circumstances under which the person concerned has any of the material in his possession, custody or power.
- 24 (1) An order under paragraph 22 may be made in relation to a person who appears to the sheriff to be likely to have any of the material to which the application relates in his possession, custody or power within the period of 28 days beginning with the date of the order.
- (2) Where an order is made under paragraph 22 by virtue of this paragraph, paragraph 22(3) shall apply with the following modifications—
- (a) the order shall require the specified person to notify a named constable as soon as is reasonably practicable after any material to which the application relates comes into his possession, custody or power,
 - (b) the reference in paragraph 22(3)(a) to material which the specified person has in his possession, custody or power shall be taken as a reference to the material referred to in paragraph (a) above which comes into his possession, custody or power, and
 - (c) the reference in paragraph 22(3)(c) to the specified period shall be taken as a reference to the period of 28 days beginning with the date of the order.
- (3) Where an order is made under paragraph 22 by virtue of this paragraph, paragraph 22(4) shall not apply and the order—
- (a) may only specify a person falling within sub-paragraph (1), and
 - (b) shall specify the period of seven days beginning with the date of notification required under sub-paragraph (2)(a) unless it appears to the sheriff that a different period would be appropriate in the particular circumstances of the application.
- 25 (1) Subject to paragraph 33(1), an order under paragraph 22 shall have effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of the information imposed by statute or otherwise.
- (2) Where the material to which an application under paragraph 22 relates consists of information contained in a computer—
- (a) an order under paragraph 22(3)(a) 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, and
 - (b) an order under paragraph 22(3)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.
- 26 (1) An order under paragraph 22 may be made in relation to material in the possession, custody or power of a government department.
- (2) Where an order is made by virtue of sub-paragraph (1)—
- (a) it shall be served as if the proceedings were civil proceedings against the department, and

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- (b) it may require any officer of the department, whether named in the order or not, who may for the time being have in his possession, custody or power the material concerned, to comply with it.
- (3) In this paragraph “government department” means a public department within the meaning of the Crown Suits Scotland Act 1857 and any part of the Scottish Administration.
- 27 (1) Provision may be made by Act of Adjournal as to—
- (a) the recall and variation of orders under paragraph 22; and
 - (b) proceedings relating to such orders.
- (2) The following provisions shall have effect pending the coming into force of an Act of Adjournal under sub-paragraph (1)—
- (a) an order under paragraph 22 may be recalled or varied by the sheriff on a written application made to him by any person subject to the order;
 - (b) unless the sheriff otherwise directs on grounds of urgency, the applicant shall, not less than 48 hours before making the application, send a copy of it and a notice in writing of the time and place where the application is to be made to the procurator fiscal on whose application the order was made.

Searches

- 28 (1) The procurator fiscal may apply to the sheriff to grant a warrant under this paragraph for the purposes of a terrorist investigation.
- (2) A warrant under this paragraph shall authorise any constable—
- (a) to enter the premises specified in the warrant,
 - (b) to search the premises and any person found there, and
 - (c) to seize and retain any relevant material which is found on a search under paragraph (b).
- (3) For the purpose of sub-paragraph (2)(c) material is relevant if the constable has reasonable grounds for believing that it is likely to be of substantial value, whether by itself or together with other material, to a terrorist investigation.
- (4) The sheriff may grant an application under this paragraph if satisfied—
- (a) that the warrant is sought for the purposes of a terrorist investigation,
 - (b) that there are reasonable grounds for believing that there is material on premises specified in the application which is likely to be of substantial value to a terrorist investigation, and
 - (c) that one of the conditions in paragraph 29 is satisfied.
- (5) Where a warrant is granted in relation to non-residential premises, the entry and search must be within the period of 24 hours beginning with the time when the warrant is granted.
- (6) For the purpose of sub-paragraph (5) “non-residential premises” means any premises other than those which the procurator fiscal has reasonable grounds for believing are used wholly or mainly as a dwelling.
- (7) A warrant under this paragraph may authorise the persons named in the warrant to accompany the constable who is executing it.

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- 29 (1) The conditions referred to in paragraph 28(4)(c) are—
- (a) that an order made under paragraph [F1022] in relation to material on the premises has not been complied with, or
 - (b) that for any of the reasons mentioned in sub-paragraph (2) it would not be appropriate to make such an order.
- (2) The reasons are—
- (a) it is not practicable to communicate with any person entitled to produce the material,
 - (b) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or
 - (c) the investigation for the purposes of which the application is made may be seriously prejudiced unless a constable can secure immediate access to the material.

Textual Amendments

F10 Word in Sch. 5 para. 29(1)(a) substituted (1.4.2003) by 2001 c. 16, s. 70, Sch. 2 Pt. 2 para. 27; S.I. 2003/708, art. 2

Explanations

- 30 (1) The procurator fiscal may apply to the sheriff for an order under this paragraph requiring any person specified in the order to provide an explanation of any material—
- (a) seized in pursuance of a warrant under paragraph 28, or
 - (b) produced or made available to a constable under paragraph 22.
- (2) Without prejudice to paragraph 33(1), an order under this paragraph may require a lawyer to provide the name and address of his client.
- (3) A statement by a person in response to a requirement imposed by an order under this paragraph may only be used in evidence against him—
- (a) on a prosecution for an offence under section 2 of the ^{M9}False Oaths (Scotland) Act 1933, or
 - (b) on a prosecution for some other offence where in giving evidence he makes a statement inconsistent with it.
- (4) Paragraphs 26 and 27 shall apply to orders under this paragraph as they apply to orders under paragraph 22.

Marginal Citations

M9 1933 c. 20.

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Urgent cases

- 31 (1) A police officer of at least the rank of superintendent may by a written order signed by him give to any constable the authority which may be given by a search warrant under paragraph 28.
- (2) An order shall not be made under this paragraph unless the officer has reasonable grounds for believing—
- (a) that the case is one of great emergency, and
 - (b) that immediate action is necessary.
- (3) Where an order is made under this paragraph particulars of the case shall be notified as soon as is reasonably practicable to the Secretary of State.
- 32 (1) If a police officer of at least the rank of superintendent has reasonable grounds for believing that the case is one of great emergency he may by a written notice signed by him require any person specified in the notice to provide an explanation of any material seized in pursuance of an order under paragraph 22.
- (2) Sub-paragraphs (2) and (3) of paragraph 30 shall apply to a notice under this paragraph as they apply to an order under that paragraph.
- (3) A person commits an offence if he fails to comply with a notice under this paragraph.
- (4) It is a defence for a person charged with an offence under sub-paragraph (3) to show that he had a reasonable excuse for his failure.
- (5) A person guilty of an offence under sub-paragraph (3) is liable on summary conviction to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the standard scale or to both.

Supplementary

- 33 (1) This Part of this Schedule is without prejudice to any rule of law whereby—
- (a) communications between a professional legal adviser and his client, or
 - (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings,
- are in legal proceedings protected from disclosure on the ground of confidentiality.
- (2) For the purpose of exercising any powers conferred on him under this Part of this Schedule a constable may, if necessary, open lockfast places on premises specified in an order under paragraph 22, a warrant under paragraph 28 or a notice under paragraph 32.
- (3) A search of a person under this Part of this Schedule may only be carried out by a person of the same sex.

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