

## SCHEDULES

### SCHEDULE 23

Section 85

#### EXTENSION OF HMRC POWERS: SCOTLAND

##### *Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)*

- 1 Part 3 of the Criminal Law (Consolidation) (Scotland) Act 1995 is amended as follows.
- 2 The heading to that Part becomes “Investigation of Revenue and Customs offences”.
- 3 At the beginning of that Part insert—

##### *“Investigation of offences by HMRC*

#### **23A Investigation of offences by Her Majesty’s Revenue and Customs**

- (1) This Part of this Act applies to the investigation of Revenue and Customs offences.
- (2) Subject to subsection (3) below, in this Part of this Act, a “Revenue and Customs offence” is an offence which relates to a matter in relation to which Her Majesty’s Revenue and Customs have functions other than any matter specified in—
  - (a) section 54(4)(b) or (f) of; or
  - (b) paragraphs 3, 7, 10, 13 to 15, 19 or 24 to 29 of Schedule 1 to, the Commissioners for Revenue and Customs Act 2005 (former Inland Revenue matters).
- (3) In sections 23B to 23P and 26A of this Act, any reference to a “Revenue and Customs offence” shall be construed as if, in subsection (2) above, there were added at the end the words “and other than any matter relating to the movement of goods which is subject to any prohibition or restriction for the time being in force under or by virtue of any enactment”.

##### *Production orders*

#### **23B Production orders**

- (1) The sheriff may, if satisfied on information on oath given by an authorised officer as to the matters mentioned in subsection (2) below, make an order under subsection (3) below (in this Part, a “production order”).
- (2) Those matters are—
  - (a) that there are reasonable grounds to suspect that a Revenue and Customs offence has been or is being committed; and

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- (b) that a person (in this Part, a “haver”) specified by the officer has possession or control of a document which may be required as evidence for the purposes of any proceedings in respect of such an offence.
- (3) A production order is an order requiring the haver, before the expiry of the period specified in the order—
  - (a) to deliver the document to an officer; or
  - (b) to—
    - (i) give an officer access to the document; and
    - (ii) permit the officer to make copies of or remove the document.
- (4) The period specified in a production order is—
  - (a) the period of 10 working days beginning with the day on which the order is made; or
  - (b) such other period as the sheriff considers appropriate.
- (5) A sheriff may make a production order in relation to a haver residing or having a place of business in an area of Scotland notwithstanding that it is outside the area of that sheriff and any such order shall, without being backed or endorsed by another sheriff, have effect throughout Scotland.
- (6) Subject to section 23J of this Act, a production order has effect in spite of any restriction on disclosure of information (however imposed).
- (7) Without prejudice to section 23D(1) of this Act, failure by a person to comply with a production order may be dealt with as a contempt of court.
- (8) In subsection (4)(a) above, “working day” means any day other than—
  - (a) a Saturday;
  - (b) a Sunday; or
  - (c) any day which is a public holiday in the area in which the production order is to have effect.

### **23C Production orders: supplementary**

- (1) The sheriff may deal with an application for a production order *ex parte* in chambers.
- (2) The sheriff may, on the application of a person mentioned in subsection (3) below—
  - (a) vary; or
  - (b) discharge,a production order.
- (3) The persons referred to in subsection (2) above are—
  - (a) the authorised officer who applied for the production order;
  - (b) a person affected by the order.
- (4) Without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995, rules of court made by Act of Adjournal may make provision in relation to—

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- (a) proceedings relating to the making of production orders; and
- (b) the variation or discharge of such orders.

### **23D Offences in relation to production orders**

- (1) A person who intentionally—
  - (a) falsifies;
  - (b) conceals;
  - (c) destroys or otherwise disposes of,a document to which this section applies, or who causes or permits any of those acts, commits an offence.
- (2) This section applies to a document which the person is required, under a production order, to—
  - (a) deliver to an officer; or
  - (b) give an officer access to.
- (3) A person does not commit an offence if the person acts—
  - (a) with the written permission of—
    - (i) an officer; or
    - (ii) the sheriff who made the order,after the document has been delivered or the officer has had access to it;
  - (b) subject to subsection (4) below, after the expiry of the period of 2 years beginning with the day on which the order is made.
- (4) Subsection (3)(b) above does not apply where, before the expiry of the period referred to in that paragraph, an officer gives notice in writing to the person that the order has not been complied with to that officer's satisfaction.
- (5) A person who commits an offence under subsection (1) above is liable—
  - (a) on summary conviction, to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a period not exceeding 2 years or to a fine or both.

### *Revenue and Customs warrants*

### **23E Revenue and Customs warrants**

- (1) The sheriff may, if satisfied on information on oath given by an authorised officer as to the matters mentioned in subsection (2) below, grant a warrant under subsection (3) below (in this Part, a “Revenue and Customs warrant”).
- (2) Those matters are—
  - (a) that there are reasonable grounds to suspect that a Revenue and Customs offence has been or is being committed; and
  - (b) that evidence of that offence is to be found in or on premises specified in the information.

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- (3) A Revenue and Customs warrant is a warrant authorising an officer to—
- (a) enter, if necessary by force, the premises specified in the information; and
  - (b) search those premises,
- before the expiry of the period of one month beginning with the day on which the warrant is granted.
- (4) The sheriff may, when granting a warrant, impose such conditions as the sheriff considers appropriate.
- (5) An officer who enters premises under the authority of a Revenue and Customs warrant may—
- (a) subject to any condition imposed under subsection (4) above, take with the officer such other persons (including persons who are not officers) as appear to that officer to be necessary;
  - (b) subject to subsection (6) below, seize and remove any document or other thing found in or on the premises which the officer has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of the offence mentioned in subsection (2)(a) above; and
  - (c) subject to subsections (6) and (7) below—
    - (i) search or cause to be searched any person found in or on the premises whom the officer has reasonable cause to believe may be in possession of any such document or thing; and
    - (ii) seize and remove any such document or thing found.
- (6) An officer acting under the authority of a Revenue and Customs warrant may, if the officer considers it appropriate, make copies of any document or thing found in or on the premises or on any person searched under subsection (5)(c) above.
- (7) No person may be searched under subsection (5)(c) above except by a person of the same sex.
- (8) A sheriff may grant a Revenue and Customs warrant in relation to premises situated in an area of Scotland notwithstanding that it is outside the area of that sheriff and any such warrant may, without being backed or endorsed by another sheriff, be executed throughout Scotland in the same way as it may be executed within the sheriffdom of the sheriff who granted it.
- (9) In this section and in sections 23F to 23H of this Act, “premises” includes any place and, in particular—
- (a) any vehicle, vessel, aircraft or hovercraft;
  - (b) any offshore installation (within the meaning of section 12(1) of the Mineral Workings (Offshore Installations) Act 1971); and
  - (c) any tent or other movable structure.

*Orders and warrants: common provisions*

### **23F Procedure where documents etc removed**

- (1) This section applies where—

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- (a) a document is removed under a production order;
  - (b) a document or other thing is removed under a Revenue and Customs warrant.
- (2) An officer who removes any document or thing shall, if requested to do so by a person mentioned in subsection (3) below, provide that person with a record of what that officer removed.
- (3) The persons referred to in subsection (2) above are—
- (a) in the case of a document removed under a production order, a haver;
  - (b) in the case of a document or thing removed under a Revenue and Customs warrant—
    - (i) a person who is the occupier of any premises from which the document or thing was removed; or
    - (ii) a person who had possession or control of the document or thing before it was removed.
- (4) The officer must provide the record within a reasonable time of the request for it.

### **23G Access to and copies of documents etc removed**

- (1) This section applies where—
- (a) a document is removed under a production order;
  - (b) a document or other thing is removed under a Revenue and Customs warrant.
- (2) A person mentioned in subsection (3) below may apply to the officer in overall charge of the investigation to which the order or warrant relates—
- (a) for access to the document or thing; or
  - (b) for a copy or photograph of it.
- (3) The persons referred to in subsection (2) above are—
- (a) in the case of a document removed under a production order—
    - (i) a haver; or
    - (ii) a person acting on behalf of the haver;
  - (b) in the case of a document or thing removed under a Revenue and Customs warrant, a person who had possession or control of the document or thing before it was removed.
- (4) Unless subsection (5) below applies, the officer in overall charge of the investigation shall—
- (a) in a case to which subsection (2)(a) above applies, allow the applicant supervised access to the document or thing; or
  - (b) in a case to which subsection (2)(b) above applies—
    - (i) allow the applicant supervised access to the document or thing for the purposes of photographing or copying it; or
    - (ii) photograph or copy the document or thing (or cause it to be so photographed or copied) and provide the applicant with such a photograph or copy within a reasonable time.

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- (5) The officer in overall charge need not comply with subsection (4) above where that officer has reasonable grounds for believing that to do so would prejudice—
- (a) the investigation;
  - (b) the investigation of a Revenue and Customs offence other than the offence for the purposes of the investigation of which the document or thing was removed; or
  - (c) any criminal proceedings which may be brought as a result of any investigation mentioned in paragraph (a) or (b) above.
- (6) In subsection (4) above, “supervised access” means access under the supervision of an officer approved by the officer in overall charge of the investigation.

### **23H Failure to comply with requirements of section 23F and 23G**

- (1) This section applies where—
- (a) a document is removed under a production order;
  - (b) a document or other thing is removed under a Revenue and Customs warrant.
- (2) Subject to subsection (3) below, a person who claims that—
- (a) an officer has failed to comply with the requirements of section 23F(2) or (3) of this Act; or
  - (b) an officer in overall charge of an investigation has failed to comply with the requirements of section 23G(4) of this Act,
- may apply to the sheriff for an order under subsection (4) below.
- (3) An application under subsection (2) above—
- (a) relating to a failure mentioned in subsection (2)(a) above, may be made only by a person who is entitled to make a request under section 23F(2) of this Act;
  - (b) relating to a failure mentioned in subsection (2)(b) above, may be made only by—
    - (i) a haver;
    - (ii) a person acting on behalf of a haver but only where that person applied under section 23G(2) of this Act;
    - (iii) a person who had possession or control of the document or thing before it was removed under a Revenue and Customs warrant.
- (4) The sheriff may, if satisfied that—
- (a) the officer has failed to comply with the requirements of section 23F(2) or (3) of this Act; or
  - (b) the officer in overall charge of the investigation has failed to comply with the requirements of section 23G(4) of this Act,
- order the officer or, as the case may be, the officer in overall charge of the investigation to comply with the requirements within such time and in such manner as the sheriff specifies in the order.

### **23J Confidentiality**

- (1) Neither a production order nor a Revenue and Customs warrant authorises the seizure, removal or copying of any documents or other things subject to legal privilege.
- (2) Subsection (1) above does not apply where the document or thing is held for the purposes of furthering a criminal purpose.
- (3) In this section—
  - “documents or other things subject to legal privilege” means—
    - (a) communications between a professional legal adviser and the adviser’s client; or
    - (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings, which would, in legal proceedings, be protected from disclosure by virtue of any rule of law relating to confidentiality of communications.

### **23K Meaning of “document” etc**

- (1) In sections 23B to 23J of this Act, references to a “document” include—
  - (a) any thing in which information of any description is recorded; and
  - (b) any part of such a thing.
- (2) Where a production order or a Revenue and Customs warrant applies to a document in electronic or magnetic form, the order or, as the case may be, the warrant requires the person having possession or control of the document to deliver or, as the case may be, give access to the information in a form which is visible and legible and, if the officer executing the order or warrant wishes to remove it, in a form which can be removed.

#### *Execution and enforcement of orders and warrants outwith Scotland*

### **23L Cross-border exercise of powers**

- (1) Section 4 of the Summary Jurisdiction Act 1881 (execution of process of Scottish courts in England and Wales) shall apply to—
  - (a) a production order; and
  - (b) a Revenue and Customs warrant,as it applies to a process mentioned in that section.
- (2) Section 29 of the Petty Sessions (Ireland) Act 1851 (execution of warrants in Northern Ireland) shall apply to—
  - (a) a production order; and
  - (b) a Revenue and Customs warrant,as it applies to a warrant mentioned in that section.

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*Detention and questioning of suspects and witnesses*

**23M Powers relating to suspects and potential witnesses**

- (1) Where an authorised officer has reasonable grounds for suspecting that a person has committed or is committing, at any place, a Revenue and Customs offence, the officer may require—
  - (a) that person, if found by the officer at that place or at any place where the officer is entitled to be, to give—
    - (i) the information mentioned in subsection (2) below; and
    - (ii) an explanation of the circumstances which have given rise to the officer’s suspicion;
  - (b) any other person whom the officer finds at that place or at any place where the officer is entitled to be and who the officer believes has information relating to the offence, to give the information mentioned in subsection (2) below.
- (2) That information is—
  - (a) the person’s name;
  - (b) the person’s address;
  - (c) the person’s date of birth;
  - (d) the person’s place of birth (in such detail as the officer considers necessary or expedient for the purpose of establishing that person’s identity); and
  - (e) the person’s nationality.
- (3) The officer may require the person mentioned in paragraph (a) of subsection (1) above to remain with the officer while the officer (any or all) —
  - (a) subject to subsection (4) below, verifies any information mentioned in subsection (2) above given by the person;
  - (b) subject to section (5) below, establishes whether the person may be a person suspected of having committed a Revenue and Customs offence other than the offence in relation to which the officer made the requirement of that person under paragraph (a) of subsection (1) above;
  - (c) notes any explanation proffered by the person.
- (4) The officer shall exercise the power under paragraph (a) of subsection (3) above only where it appears to the officer that such verification can be obtained quickly.
- (5) The officer shall exercise the power under paragraph (b) of subsection (3) above only where—
  - (a) the person mentioned in paragraph (a) of subsection (1) above has given a name and address; and
  - (b) it appears to the officer that establishing the matter mentioned in paragraph (b) of subsection (3) above can be achieved quickly.
- (6) The officer may use reasonable force to ensure that the person mentioned in paragraph (a) of subsection (1) above remains with that officer.



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- (7) The officer shall inform a person, when making a requirement of that person under—
- (a) paragraph (a) of subsection (1) above, of the officer’s suspicion and of the general nature of the offence which the officer suspects that the person has committed or is committing;
  - (b) paragraph (b) of subsection (1) above, of the officer’s suspicion, of the general nature of the offence which the officer suspects has been or is being committed and that the reason for the requirement is that the officer believes the person has information relating to the offence;
  - (c) subsection (3) above, why the person is being required to remain with the officer;
  - (d) any of the said subsections, that failure to comply with the requirement may constitute an offence.

### **23N Fingerprinting of persons suspected of offences**

- (1) An authorised officer may, if the person mentioned in section 23M(1)(a) of this Act gives a name and address, require that person to provide—
- (a) that person’s fingerprints; or
  - (b) a record, created by an approved device, of the skin on that person’s fingers.
- (2) Such fingerprints or record may be used only for the purposes of—
- (a) verifying the name and address given by the person;
  - (b) establishing whether the person may be a person who is suspected of having committed any other Revenue and Customs offence,
- and all record of such fingerprints or record shall be destroyed as soon as possible after they have fulfilled those purposes.
- (3) The officer shall inform a person, when making a requirement of that person under subsection (1) above—
- (a) of the existence of the power to make the requirement and why the officer proposes to exercise it in the person’s case; and
  - (b) that failure to comply with the requirement may constitute an offence.
- (4) In subsection (1)(b) above, an “approved device” is any device approved by the Scottish Ministers under section 13(8) of the Criminal Procedure (Scotland) Act 1995.

### **23P Offences arising from breach of requirements under sections 23M and 23N**

- (1) A person mentioned in paragraph (a) of subsection (1) of section 23M of this Act who, having been required—
- (a) under that subsection to give the information mentioned in subsection (2) of that section;
  - (b) under subsection (3) of that section to remain with an officer; or

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- (c) under subsection (1) of section 23N of this Act to provide that person’s fingerprints or a record such as is mentioned in paragraph (b) of that subsection, fails, without reasonable excuse, to do so, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) A person mentioned in paragraph (b) of subsection (1) of section 23M of this Act who, having been required under that subsection to give the information mentioned in subsection (2) of that section, fails, without reasonable excuse, to do so, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (3) An authorised officer may arrest without warrant any person whom the officer has reasonable grounds for suspecting has committed an offence under subsection (1) or (2) above.”
- 4 In section 24 (detention and questioning by customs officers)—
- (a) in subsection (1)—
- (i) for “an offence punishable by imprisonment relating to an assigned matter” substitute “a Revenue and Customs offence punishable by imprisonment”,
- (ii) for “a customs office” substitute “an office of Revenue and Customs”, and
- (iii) for “customs office”, in the second place, substitute “office of Revenue and Customs”,
- (b) in subsection (5), for “customs office” (in both places) substitute “office of Revenue and Customs”,
- (c) in subsection (8)—
- (i) for “his name and address” substitute “the information mentioned in subsection (8A) below”, and
- (ii) for “customs office” substitute “office of Revenue and Customs”,
- (d) after that subsection insert—
- “(8A) That information is—
- (a) the person’s name;
- (b) the person’s address;
- (c) the person’s date of birth;
- (d) the person’s place of birth (in such detail as the officer considers necessary or expedient for the purpose of establishing that person’s identify); and
- (e) the person’s nationality.”,
- (e) omit subsection (9), and
- (f) the heading accordingly becomes “**Detention and questioning at office of Revenue and Customs**”.
- 5 In section 25(1) (right to have someone informed of the fact of detention)—
- (a) for “a customs office” substitute “an office of Revenue and Customs”, and
- (b) for “customs office”, in the second and third places, substitute “office of Revenue and Customs”.

6 In section 26 (detention in connection with drug smuggling offences), for “a customs office” (in both places) substitute “an office of Revenue and Customs”.

7 After that section insert—

*“Power of arrest*

**26A Power of arrest**

Where an authorised officer has reasonable grounds for suspecting that a Revenue and Customs offence has been or is being committed, the officer may arrest without warrant any person whom the officer has reasonable grounds for suspecting to be guilty of the offence.

*General provisions*

**26B Interpretation of Part 3 etc**

(1) In this Part of this Act—

“authorised officer” means an officer acting with the authority (which may be general or specific) of the Commissioners for Her Majesty’s Revenue and Customs;

“office of Revenue and Customs” means premises wholly or partly occupied by Her Majesty’s Revenue and Customs; and

“officer” means an officer of Revenue and Customs.

(2) In any proceedings (whether civil or criminal) under or arising from this Part of this Act, a certificate of the Commissioners for Her Majesty’s Revenue and Customs that an officer had authority to exercise a power or function conferred by a provision of this Part shall be conclusive proof of that fact.”

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

8 Section 307 of the Criminal Procedure (Scotland) Act 1995 (interpretation) is amended as follows.

9 In subsection (1), in the definition of “officer of law”, for paragraph (ba) substitute—

“(ba) subject to subsection (1A) below, an officer of Revenue and Customs acting with the authority (which may be general or specific) of the Commissioners for Her Majesty’s Revenue and Customs;”.

10 After that subsection insert—

“(1A) The inclusion of officers of Revenue and Customs as “officers of law” shall not have effect in relation to any matter specified in—

(a) section 54(4)(b) or (f) of; or

(b) paragraphs 3, 7, 10, 13 to 15, 19 or 24 to 29 of Schedule 1 to, the Commissioners for Revenue and Customs Act 2005 (former Inland Revenue matters).

(1B) In any proceedings (whether civil or criminal) under or arising from this Act, a certificate of the Commissioners for Her Majesty’s Revenue and Customs

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that an officer of Revenue and Customs had the authority to exercise a power or function conferred by a provision of this Act shall be conclusive evidence of that fact.”

*Criminal Justice and Police Act 2001 (c. 16)*

- 11 The Criminal Justice and Police Act 2001 is amended as follows.
- 12 In section 63(2) (powers to obtain hard copies etc of information stored in electronic form), after paragraph (g) insert—
- “(ga) section 23E(5)(b) (as read with section 23K(2)) of the Criminal Law (Consolidation) (Scotland) Act 1995;”.
- 13 In Schedule 1—
- (a) in Part 1, after paragraph 59 insert—
- “Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)*
- 59A The power of seizure conferred by section 23E(3) of the Criminal Law (Consolidation) (Scotland) Act 1995 (seizure of evidence of Revenue and Customs offences).”, and
- (b) in Part 2, after paragraph 81 insert—
- “Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)*
- 81A The power of seizure conferred by section 23E(3) (as read with section 23E(5)(c)) of the Criminal Law (Consolidation) (Scotland) Act 1995 (seizure of evidence of Revenue and Customs offences).”
- 14 (1) The amendments made by this Schedule come into force in accordance with provision made by the Treasury by order.
- (2) The power to make an order under this paragraph is exercisable by statutory instrument.