

SCHEDULES

SCHEDULE 1

Section 9.

SPECIAL PROCEDURE

Making of orders by circuit judge

- 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 a serious arrestable 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 ;
 - (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.
- 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 ;
 - (b) but for section 9(2) above a search of the 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.
- 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,

Status: This is the original version (as it was originally enacted).

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.

- 5 Where the material consists of information contained in a computer—
- (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; 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.
- 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 it on one of the partners.
- 10 For the purposes of this Schedule, and of section 7 of the 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.
- 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.

Issue of warrants by circuit judge

- 12 If on an application made by a constable a circuit 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 ; or
 - (b) is satisfied—
 - (i) that the second set of access conditions is fulfilled; and

Status: This is the original version (as it was originally enacted).

- (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.
- 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 to which the application relates ;
 - (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.
- 15 (1) If a person fails to comply with an order under paragraph 4 above, a circuit 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.

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.