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## SCHEDULES

### SCHEDULE 5

#### TERRORIST INVESTIGATIONS: INFORMATION

#### 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

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- (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.
- 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)—

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- (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 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 [<sup>F1</sup>premises mentioned in sub-paragraph (2A)] ,
  - (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).
- [<sup>F2</sup>(2A) The premises referred to in sub-paragraph (2)(a) are—
- (a) one or more sets of premises specified in the application (in which case the application is for a “specific premises warrant”); or
  - (b) any premises occupied or controlled by a person specified in the application, including such sets of premises as are so specified (in which case the application is for an “all premises warrant”).]

(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 [<sup>F3</sup>premises to which the application relates] which is likely to be of substantial value to a terrorist investigation, <sup>F4</sup> . . .
    - (c) that one of the conditions in paragraph 29 is satisfied [<sup>F5</sup>, and]

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- [<sup>F6</sup>(d) in the case of an application for an all premises warrant, that it is not reasonably practicable to specify in the application all the premises which the person so specified occupies or controls and which might need to be searched.]
- (5) Where [<sup>F7</sup>a specific premises 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.
- [<sup>F8</sup>(6A) Where an all premises warrant is granted, entry and search in pursuance of the warrant of any premises which are non-residential premises must be within the period of 24 hours beginning with the time when the warrant is granted.
- (6B) For the purpose of sub-paragraph (6A) “ non-residential premises ” means any premises other than those which the constable executing the warrant 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.

#### Textual Amendments

- F1** Words in Sch. 5 para. 28(2)(a) substituted (13.4.2006) by [Terrorism Act 2006 \(c. 11\)](#), [s. 27\(2\)](#); S.I. 2006/1013, [art. 2](#)
- F2** Sch. 5 para. 28(2A) inserted (13.4.2006) by [Terrorism Act 2006 \(c. 11\)](#), [s. 27\(3\)](#); S.I. 2006/1013, [art. 2](#)
- F3** Words in Sch. 5 para. 28(4)(b) substituted (13.4.2006) by [Terrorism Act 2006 \(c. 11\)](#), [s. 27\(4\)\(a\)](#); S.I. 2006/1013, [art. 2](#)
- F4** Word in Sch. 5 para. 28(4)(b) repealed (13.4.2006) by [Terrorism Act 2006 \(c. 11\)](#), [s. 37\(5\)](#), [Sch. 3](#); S.I. 2006/1013, [art. 2](#)
- F5** Word in Sch. 5 para. 28(4)(c) inserted (13.4.2006) by [Terrorism Act 2006 \(c. 11\)](#), [s. 27\(4\)\(b\)](#); S.I. 2006/1013, [art. 2](#)
- F6** Sch. 5 para. 28(4)(d) inserted (13.4.2006) by [Terrorism Act 2006 \(c. 11\)](#), [s. 27\(4\)\(c\)](#); S.I. 2006/1013, [art. 2](#)
- F7** Words in Sch. 5 para. 28(5) substituted (13.4.2006) by [Terrorism Act 2006 \(c. 11\)](#), [s. 27\(5\)](#); S.I. 2006/1013, [art. 2](#)
- F8** Sch. 5 para. 28(6A)(6B) inserted (13.4.2006) by [Terrorism Act 2006 \(c. 11\)](#), [s. 27\(6\)](#); S.I. 2006/1013, [art. 2](#)

- 29 (1) The conditions referred to in paragraph 28(4)(c) are—
- (a) that an order made under paragraph [<sup>F9</sup>22] in relation to material on the premises has not been complied with [<sup>F10</sup>and, in the case of an application for an all premises warrant, the person specified in the order in pursuance of paragraph 22(3) is also specified in the application] , 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,

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- (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 [<sup>F11</sup>to which the application for the warrant relates] , 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

- F9** 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
- F10** Words in Sch. 5 para. 29(1)(a) inserted (13.4.2006) by Terrorism Act 2006 (c. 11), s. 27(7)(a); S.I. 2006/1013, art. 2
- F11** Words in Sch. 5 para. 29(2)(b) substituted (13.4.2006) by Terrorism Act 2006 (c. 11), s. 27(7)(b); S.I. 2006/1013, 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 [<sup>F12</sup> section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) ], 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.

#### Textual Amendments

- F12** Words in Sch. 5 para. 30(3)(a) substituted (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), sch. 7 para. 69; S.S.I. 2011/178, art. 2, sch.

#### 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

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- (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 [<sup>F13</sup>premises which he is entitled to enter in pursuance of] an order under paragraph 22, a warrant under paragraph 28 or [<sup>F14</sup>an order under paragraph 31] .
- (3) A search of a person under this Part of this Schedule may only be carried out by a person of the same sex.

#### **Textual Amendments**

**F13** Words in Sch. 5 para. 33(2) substituted (13.4.2006) by [Terrorism Act 2006 \(c. 11\), s. 27\(8\)\(a\)](#); S.I. 2006/1013, [art. 2](#)

**F14** Words in Sch. 5 para. 33(2) substituted (13.4.2006) by [Terrorism Act 2006 \(c. 11\), s. 27\(8\)\(b\)](#); S.I. 2006/1013, [art. 2](#)

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