

*Status: Point in time view as at 16/02/2009.*

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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.

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