

*Changes to legislation: There are currently no known outstanding effects for the National Security Act 2023, Schedule 2. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 2

Section 23

#### POWERS OF ENTRY, SEARCH AND SEIZURE

##### Modifications etc. (not altering text)

- C1** Sch. 2 applied (20.12.2023) by 1989 c. 6, s. 11(3) (as substituted by National Security Act 2023 (c. 32), s. 100(1), Sch. 18 para. 6(3)(a) (with s. 97); S.I. 2023/1272, reg. 2(f))

#### PART 1

##### ENGLAND AND WALES AND NORTHERN IRELAND

##### Introductory

- 1 (1) This Part of this Schedule applies in England and Wales and in Northern Ireland.
- (2) In this Part of this Schedule “relevant act” means—
- (a) an offence under this Part of this Act, other than an offence under—
    - (i) section 5 (unauthorised entry to a prohibited place);
    - (ii) section 6 (prohibited place: failure to comply with order of constable);
    - (iii) section 11 (cordoned area: failure to comply with order of constable);
    - (iv) this Schedule;
    - (v) Schedule 3 (disclosure orders);
    - (vi) Schedule 4 (customer information orders);
  - (b) an act or threat within section 33(3)(b) or (c).

##### Commencement Information

- I1** Sch. 2 para. 1 not in force at Royal Assent, see 100(1)
- I2** Sch. 2 para. 1 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

##### Material other than confidential material: search, seizure and retention

- 2 (1) A constable may make an application for the issue of a warrant under this paragraph—
- (a) in England and Wales, to a justice of the peace;
  - (b) in Northern Ireland, to a lay magistrate.
- (2) The justice of the peace or lay magistrate may grant the application if satisfied that—

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- (a) conditions 1 and 2 are met, and
  - (b) in the case of an application for an all premises warrant, condition 3 is met.
- (3) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed.
- (4) Condition 2 is that there are reasonable grounds for suspecting that there is on the relevant premises material which—
- (a) is likely to be evidence that a relevant act has been, or is about to be, committed, and
  - (b) does not consist of or include confidential material.
- (5) Condition 3 is that it is not reasonably practicable to specify in the application all the premises which the person specified in the application occupies or controls and which might need to be searched.
- (6) A warrant under [this paragraph](#) is a warrant authorising any constable—
- (a) to enter the relevant premises,
  - (b) to search the relevant premises and any person found there, and
  - (c) to seize and retain any material found on a search under [paragraph \(b\)](#) which is likely to be evidence that a relevant act has been, or is about to be, committed.
- (7) A warrant under [this paragraph](#) does not authorise—
- (a) the seizure and retention of confidential material, or
  - (b) a constable to require a person to remove any clothing in public except for headgear, footwear, an outer coat or jacket and gloves.
- (8) In [this paragraph](#) the “relevant premises” 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”).

#### Commencement Information

**I3** Sch. 2 para. 2 not in force at Royal Assent, see 100(1)

**I4** Sch. 2 para. 2 in force at 20.12.2023 by S.I. 2023/1272, [reg. 2\(a\)](#)

#### *Confidential material: production orders*

- 3 (1) A constable may apply to a judge for an order under [this paragraph](#).
- (2) The judge may grant the application if satisfied that conditions 1 to 4 are met.
- (3) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed.
- (4) Condition 2 is that there are reasonable grounds for suspecting that a person specified in the application has in their possession, custody or control material which—
- (a) is likely to be evidence that a relevant act has been, or is about to be, committed,

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- (b) consists of or includes confidential material, and
  - (c) does not include items subject to legal privilege.
- (5) Condition 3 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed.
- (6) Condition 4 is that there are reasonable grounds for believing that it is in the public interest that the material should be produced or access to it should be given having regard to—
- (a) the benefit likely to accrue to the investigation if the material is obtained, and
  - (b) the circumstances under which the person concerned has any of the material in their possession, custody or control.
- (7) An order under [this paragraph](#) is an order that the person specified in the application must do any of the following—
- (a) produce to a constable within a specified period for seizure and retention any material which the person has in their possession, custody or control and to which the application relates;
  - (b) give a constable access to any material of the kind mentioned in [paragraph \(a\)](#) within a specified period;
  - (c) state to the best of the person’s knowledge and belief the location of the material to which the application relates if it is not in, and will not come into, the person’s possession, custody or control within the period specified under [paragraph \(a\)](#) or [\(b\)](#).
- (8) The specified period is to be the period of 7 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.

**Commencement Information**

**I5** Sch. 2 para. 3 not in force at Royal Assent, see 100(1)

**I6** Sch. 2 para. 3 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

- 4 (1) A constable may apply to a judge for an order under [this paragraph](#).
- (2) The judge may grant the application if satisfied that conditions 1 to 5 are met.
- (3) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed.
- (4) Condition 2 is that there are reasonable grounds for suspecting that, within the period of 28 days beginning with the date of the order, there is likely to come into existence material which—
- (a) is evidence that a relevant act has been, or is about to be, committed,
  - (b) consists of or includes confidential material, and
  - (c) does not include items subject to legal privilege.
- (5) Condition 3 is that there are reasonable grounds for suspecting that a person specified in the application is likely within that period to have in their possession, custody or control any of the material to which the application relates.

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- (6) Condition 4 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed.
- (7) Condition 5 is that there are reasonable grounds for believing that it is in the public interest that the material should be produced or access to it should be given having regard to—
- (a) the benefit likely to accrue to the investigation if the material is obtained, and
  - (b) the circumstances under which the person concerned is likely to have any of the material in their possession, custody or control.
- (8) An order under [this paragraph](#) is an order that the person specified in the application must do any of the following—
- (a) notify a named constable as soon as reasonably practicable after any material to which the application relates comes into the person’s possession, custody or control;
  - (b) produce to a constable within a specified period for seizure and retention any material to which the application relates which comes into the person’s possession, custody or control;
  - (c) give a constable access to any material of the kind mentioned in paragraph (b) within a specified period;
  - (d) state to the best of the person’s knowledge and belief the location of the material to which the application relates if it is not in, and will not come into, the person’s possession, custody or control within the period of 28 days beginning with the date of the order.
- (9) The specified period is to be the period of 7 days beginning with the date of the notification required by sub-paragraph (8)(a), unless it appears to the judge that a different period would be appropriate in the particular circumstances of the application.

#### Commencement Information

- I7** Sch. 2 para. 4 not in force at Royal Assent, see 100(1)  
**I8** [Sch. 2 para. 4](#) in force at 20.12.2023 by [S.I. 2023/1272](#), [reg. 2\(a\)](#)

#### Commencement Information

- I5** Sch. 2 para. 3 not in force at Royal Assent, see 100(1)  
**I6** [Sch. 2 para. 3](#) in force at 20.12.2023 by [S.I. 2023/1272](#), [reg. 2\(a\)](#)  
**I7** Sch. 2 para. 4 not in force at Royal Assent, see 100(1)  
**I8** [Sch. 2 para. 4](#) in force at 20.12.2023 by [S.I. 2023/1272](#), [reg. 2\(a\)](#)

#### *Production orders: supplementary provision*

- 5 An application for an order under paragraph 3 or 4 may be made without notice to a judge in chambers.

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**Commencement Information**

- I9** Sch. 2 para. 5 not in force at Royal Assent, see 100(1)  
**I10** Sch. 2 para. 5 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

- 6 (1) An order under paragraph 3 or 4—
- (a) does not confer any right to production of, or access to, items subject to legal privilege, and
  - (b) has effect despite any restriction on the disclosure of information imposed by an enactment or otherwise.
- (2) Where the material consists of information stored in electronic form—
- (a) an order under paragraph 3(7)(a) or 4(8)(b) has 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, or from which it can readily be produced in a visible and legible form, and
  - (b) an order under paragraph 3(7)(b) or 4(8)(c) has effect as an order to give a constable access to the material in a form in which it is visible and legible.

**Commencement Information**

- I11** Sch. 2 para. 6 not in force at Royal Assent, see 100(1)  
**I12** Sch. 2 para. 6 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

- 7 (1) An order under paragraph 3 or 4 may be made in relation to material in the possession, custody or control of a government department or a Northern Ireland department.
- (2) Where an order is made by virtue of sub-paragraph (1)—
- (a) it is to 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 their possession, custody or control the material concerned, to comply with the order.
- (3) In this paragraph “government department” means an authorised government department for the purposes of the Crown Proceedings Act 1947.

**Commencement Information**

- I13** Sch. 2 para. 7 not in force at Royal Assent, see 100(1)  
**I14** Sch. 2 para. 7 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

- 8 An order under paragraph 3 or 4 has effect as if it were an order of the court.

**Commencement Information**

- I15** Sch. 2 para. 8 not in force at Royal Assent, see 100(1)  
**I16** Sch. 2 para. 8 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

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#### Commencement Information

- I9** Sch. 2 para. 5 not in force at Royal Assent, see 100(1)
- I10** [Sch. 2 para. 5](#) in force at 20.12.2023 by [S.I. 2023/1272](#), [reg. 2\(a\)](#)
- I11** Sch. 2 para. 6 not in force at Royal Assent, see 100(1)
- I12** [Sch. 2 para. 6](#) in force at 20.12.2023 by [S.I. 2023/1272](#), [reg. 2\(a\)](#)
- I13** Sch. 2 para. 7 not in force at Royal Assent, see 100(1)
- I14** [Sch. 2 para. 7](#) in force at 20.12.2023 by [S.I. 2023/1272](#), [reg. 2\(a\)](#)
- I15** Sch. 2 para. 8 not in force at Royal Assent, see 100(1)
- I16** [Sch. 2 para. 8](#) in force at 20.12.2023 by [S.I. 2023/1272](#), [reg. 2\(a\)](#)

#### *Confidential material: search, seizure and retention*

- 9 (1) A constable may apply to a judge for the issue of a warrant under [this paragraph](#).
- (2) The judge may grant the application if satisfied that an order made under [paragraph 3](#) or [4](#) in relation to material on the relevant premises has not been complied with.
- (3) The judge may also grant the application if satisfied that—
- (a) conditions 1 to 5 are met, and
  - (b) in the case of an application for an all premises warrant, condition 6 is met.
- (4) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed.
- (5) Condition 2 is that there are reasonable grounds for suspecting that there is on the relevant premises material which—
- (a) is likely to be evidence that a relevant act has been, or is about to be, committed,
  - (b) consists of or includes confidential material, and
  - (c) does not include items subject to legal privilege.
- (6) Condition 3 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed.
- (7) Condition 4 is that there are reasonable grounds for believing that it is in the public interest that the material should be obtained having regard to—
- (a) the benefit likely to accrue to the investigation if the material is obtained, and
  - (b) the circumstances under which the person concerned has any of the material in their possession, custody or control.
- (8) Condition 5 is that any of the following apply—
- (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;
  - (c) the investigation may be seriously prejudiced unless a constable can secure immediate access to the material.
- (9) Condition 6 is that it is not reasonably practicable to specify in the application all the premises which the person specified in the application occupies or controls and which might need to be searched.

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- (10) A warrant under [this paragraph](#) is a warrant authorising any constable—
- (a) to enter the relevant premises,
  - (b) to search the relevant premises and any person found there, and
  - (c) to seize and retain any material found on a search under [paragraph \(b\)](#) which is likely to be evidence that a relevant act has been, or is about to be, committed.
- (11) A warrant under [this paragraph](#) does 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 or jacket and gloves.
- (12) In [this paragraph](#) the “relevant premises” 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”).

#### Commencement Information

**I17** Sch. 2 para. 9 not in force at Royal Assent, see 100(1)

**I18** [Sch. 2 para. 9](#) in force at 20.12.2023 by [S.I. 2023/1272](#), [reg. 2\(a\)](#)

#### Explanations

- 10 (1) A constable may apply to a judge for an order under [this paragraph](#) requiring any person specified in the order to provide an explanation of material—
- (a) seized under a warrant under [paragraph 2](#) or [9](#), or
  - (b) produced or made available to a constable under [paragraph 3](#) or [4](#).
- (2) An application for an order under this paragraph may be made without notice to a judge in chambers.
- (3) An order under [this paragraph](#) may not require any person to disclose any information which they would be entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the High Court.
- (4) But a lawyer may be required to provide the name and address of their client.
- (5) 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 the person only on a prosecution for an offence under [paragraph 11](#).
- (6) An order under this paragraph has effect as if it were an order of the court.

#### Commencement Information

**I19** Sch. 2 para. 10 not in force at Royal Assent, see 100(1)



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**I20** Sch. 2 para. 10 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

- 11 (1) A person commits an offence if, in purported compliance with an order under [paragraph 10](#), they—
- (a) make a statement which they know to be false or misleading in a material particular, or
  - (b) recklessly make a statement which is false or misleading in a material particular.
- (2) A person who commits an offence under [sub-paragraph \(1\)](#) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both),
  - (b) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both).

#### Commencement Information

**I21** Sch. 2 para. 11 not in force at Royal Assent, see 100(1)

**I22** Sch. 2 para. 11 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

#### Commencement Information

**I19** Sch. 2 para. 10 not in force at Royal Assent, see 100(1)

**I20** Sch. 2 para. 10 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

**I21** Sch. 2 para. 11 not in force at Royal Assent, see 100(1)

**I22** Sch. 2 para. 11 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

#### *Urgent cases*

- 12 (1) A police officer of at least the rank of superintendent may by a written order signed by them give to any constable the authority which may be given by—
- (a) a warrant under [paragraph 2](#), or
  - (b) a warrant under [paragraph 9](#),
- but subject to [sub-paragraph \(2\)](#).
- (2) An order under [this paragraph](#) giving the authority which may be given by a warrant under [paragraph 9](#) does not authorise a constable to retain confidential journalistic material.
- (3) An officer may not make an order under [this paragraph](#) unless the officer —
- (a) is satisfied as mentioned in [paragraph 2\(2\)](#) or [paragraph 9\(2\)](#) or [\(3\)](#) (as the case may be), and
  - (b) has reasonable grounds for believing that the case is one of great emergency and that immediate action is necessary.
- (4) Where an order is made under [this paragraph](#) particulars of the case must be notified as soon as is reasonably practicable to the Secretary of State.
- (5) A person who wilfully obstructs a search under [this paragraph](#) commits an offence.



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- (6) A person who commits an offence under sub-paragraph (5) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale (or both).

**Commencement Information**

- I23** Sch. 2 para. 12 not in force at Royal Assent, see 100(1)  
**I24** Sch. 2 para. 12 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

- 13 (1) [This paragraph](#) applies where confidential journalistic material is seized by virtue of an order under [paragraph 12](#) giving the authority which may be given by a warrant under [paragraph 9](#).
- (2) A constable may apply to a judge for the issue of a warrant under [this paragraph](#).
- (3) An application under [sub-paragraph \(2\)](#) must be made as soon as reasonably practicable after the material is seized.
- (4) The judge may grant an application under [sub-paragraph \(2\)](#) if satisfied that conditions 1 to 3 are met.
- (5) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed.
- (6) Condition 2 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed.
- (7) Condition 3 is that there are reasonable grounds for believing that it is in the public interest that the material should be retained having regard to the benefit likely to accrue to the investigation if the material is retained.
- (8) A warrant under [this paragraph](#) is a warrant authorising the retention of confidential journalistic material.
- (9) A warrant under [this paragraph](#) may impose conditions on the retention and use of the material.
- (10) If the judge does not grant an application for the issue of a warrant under [this paragraph](#) in relation to any of the material to which the application relates, the judge may direct that the material is—
- (a) returned to the person from whom it was seized, or
  - (b) destroyed.

**Commencement Information**

- I25** Sch. 2 para. 13 not in force at Royal Assent, see 100(1)  
**I26** Sch. 2 para. 13 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

- 14 (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 the officer may by a written notice signed by them require any person specified in the notice to provide an explanation of any material seized in pursuance of an order under [paragraph 12](#).

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- (2) Paragraph 10(3) to (5) and paragraph 11 apply to a notice under [this paragraph](#) as they apply to an order under paragraph 10.
- (3) A person who fails to comply with a notice under [this paragraph](#) commits an offence.
- (4) It is a defence for a person charged with an offence under [sub-paragraph \(3\)](#) to show that they had a reasonable excuse for their failure.
- (5) A person is taken to have shown that they had a reasonable excuse for their failure if—
- sufficient evidence of that fact is adduced to raise an issue with respect to it, and
  - the contrary is not proved beyond reasonable doubt.
- (6) A person guilty of an offence under [sub-paragraph \(3\)](#) is liable—
- on summary conviction in England and Wales, to imprisonment for a term not exceeding the maximum term for summary offences or a fine (or both);
  - on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).

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#### Commencement Information

- I27** Sch. 2 para. 14 not in force at Royal Assent, see 100(1)  
**I28** [Sch. 2 para. 14](#) in force at 20.12.2023 by [S.I. 2023/1272](#), [reg. 2\(a\)](#)

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#### Commencement Information

- I23** Sch. 2 para. 12 not in force at Royal Assent, see 100(1)  
**I24** [Sch. 2 para. 12](#) in force at 20.12.2023 by [S.I. 2023/1272](#), [reg. 2\(a\)](#)  
**I25** Sch. 2 para. 13 not in force at Royal Assent, see 100(1)  
**I26** [Sch. 2 para. 13](#) in force at 20.12.2023 by [S.I. 2023/1272](#), [reg. 2\(a\)](#)  
**I27** Sch. 2 para. 14 not in force at Royal Assent, see 100(1)  
**I28** [Sch. 2 para. 14](#) in force at 20.12.2023 by [S.I. 2023/1272](#), [reg. 2\(a\)](#)

#### *Application of PACE*

- 15 (1) For the purposes of the provisions mentioned in [sub-paragraph \(2\)](#)—
- an investigation into whether a relevant act has been, or is about to be, committed is to be treated as an investigation into, or in connection with, an offence, and
  - material produced in pursuance of an order under [paragraph 3](#) or [4](#) is to be treated as if it were material seized by a constable.
- (2) The provisions are—
- sections 21 and 22 of the Police and Criminal Evidence Act 1984;
  - Articles 23 and 24 of the Police and Criminal Evidence (Northern Ireland) Order 1989 ([S.I. 1989/1341 \(N.I. 12\)](#)),
- (seized material: access, copying and retention).

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#### Commencement Information

- I29** Sch. 2 para. 15 not in force at Royal Assent, see 100(1)  
**I30** Sch. 2 para. 15 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

#### Procedure rules

- 16 (1) Criminal Procedure Rules may make provision about proceedings in England and Wales relating to a warrant or order under [this Part](#) of [this Schedule](#) (other than an order under paragraph 12).
- (2) Crown Court rules and magistrates' courts rules may make provision about proceedings in Northern Ireland relating to a warrant or order under [this Part](#) of [this Schedule](#) (other than an order under paragraph 12).
- (3) The provision which may be made by virtue of [this paragraph](#) includes in particular provision about the variation or discharge of an order.

#### Commencement Information

- I31** Sch. 2 para. 16 not in force at Royal Assent, see 100(1)  
**I32** Sch. 2 para. 16 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

#### Interpretation

- 17 (1) This paragraph applies for the interpretation of this Part of this Schedule.
- (2) “Confidential material” means—
- (a) confidential journalistic material, and
  - (b) protected material.
- (3) “Confidential journalistic material” has the same meaning as in the Investigatory Powers Act 2016 (see section 264(6) and (7) of that Act).
- (4) “Protected material”—
- (a) in relation to England and Wales, means—
    - (i) items subject to legal privilege,
    - (ii) material falling within section 11(1)(a) or (b) of the Police and Criminal Evidence Act 1984 (certain personal records, human tissue or tissue fluid held in confidence), or
    - (iii) material to which section 14(2) of that Act applies (other material acquired in the course of a trade etc that is held in confidence);
  - (b) in relation to Northern Ireland, means—
    - (i) items subject to legal privilege;
    - (ii) material falling with Article 13(1)(a) or (b) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (certain personal records, human tissue or tissue fluid held in confidence), or
    - (iii) material to which Article 16(2) of that Order applies (other material acquired in the course of a trade etc that is held in confidence).

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- (5) “Items subject to legal privilege”—
- (a) in relation to England and Wales, has the meaning given by section 10 of the Police and Criminal Evidence Act 1984;
  - (b) in relation to Northern Ireland, has the meaning given by Article 12 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).
- (6) “Judge”—
- (a) in relation to England and Wales, means a judge entitled to exercise the jurisdiction of the Crown Court;
  - (b) in relation to Northern Ireland, means a judge of the Crown Court.

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**Commencement Information**

**I33** Sch. 2 para. 17 not in force at Royal Assent, see 100(1)

**I34** Sch. 2 para. 17 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

**PART 2**

SCOTLAND

*Introductory*

- 18 (1) [This Part](#) of [this Schedule](#) applies in Scotland.
- (2) In [this Part](#) of [this Schedule](#) “relevant act” means—
- (a) an offence under [this Part](#) of this Act, other than an offence under—
    - (i) section 5 (unauthorised entry to a prohibited place);
    - (ii) section 6 (prohibited place: failure to comply with order of constable);
    - (iii) section 11 (cordoned area: failure to comply with order of constable);
    - (iv) [this Schedule](#);
    - (v) Schedule 3 (disclosure orders);
    - (vi) Schedule 4 (customer information orders);
  - (b) an act or threat within section 33(3)(b) or (c).

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**Commencement Information**

**I35** Sch. 2 para. 18 not in force at Royal Assent, see 100(1)

**I36** Sch. 2 para. 18 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

*Production orders*

- 19 (1) The procurator fiscal may apply to a sheriff for an order under [this paragraph](#).
- (2) The sheriff may grant the application if satisfied that conditions 1 to 4 are met.

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*Changes to legislation: There are currently no known outstanding effects for the National Security Act 2023, Schedule 2. (See end of Document for details)*

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- (3) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed.
- (4) Condition 2 is that there are reasonable grounds for suspecting that a person specified in the application has in their possession, custody or control material which is likely to be evidence that a relevant act has been, or is about to be, committed.
- (5) Condition 3 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed.
- (6) Condition 4 is that there are reasonable grounds for believing that it is in the public interest that the material should be produced or access to it should be given having regard to—
  - (a) the benefit likely to accrue to the investigation if the material is obtained, and
  - (b) the circumstances under which the person concerned has any of the material in their possession, custody or control.
- (7) An order under [this paragraph](#) is an order that the person specified in the application must do any of the following—
  - (a) produce to a constable within a specified period for seizure and retention any material which the person has in their possession, custody or control and to which the application relates;
  - (b) give a constable access to any material of the kind mentioned in [paragraph \(a\)](#) within a specified period;
  - (c) state to the best of the person’s knowledge and belief the location of the material to which the application relates if it is not in, and will not come into, the person’s possession, custody or control within the period specified under [paragraph \(a\)](#) or [\(b\)](#).
- (8) The specified period is to be the period of 7 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.
- (9) Where the sheriff makes an order under [sub-paragraph \(7\)\(b\)](#) in relation to material on any premises, they may, on the application of the procurator fiscal, order any person who appears to them to be entitled to grant entry to the premises to allow any constable to enter the premises to obtain access to the material.

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**Commencement Information**

**I37** Sch. 2 para. 19 not in force at Royal Assent, see 100(1)

**I38** Sch. 2 para. 19 in force at 20.12.2023 by S.I. 2023/1272, [reg. 2\(a\)](#)

- 20 (1) The procurator fiscal may apply to a sheriff for an order under [this paragraph](#).
- (2) The sheriff may grant the application if satisfied that conditions 1 to 5 are met.
- (3) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed.
- (4) Condition 2 is that there are reasonable grounds for suspecting that, within the period of 28 days beginning with the date of the order, there is likely to come into existence material which is evidence that a relevant act has been, or is about to be, committed.

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*Changes to legislation: There are currently no known outstanding effects for the National Security Act 2023, Schedule 2. (See end of Document for details)*

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- (5) Condition 3 is that there are reasonable grounds for suspecting that a person specified in the application is likely within that period to have in their possession, custody or control any of the material to which the application relates.
- (6) Condition 4 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed.
- (7) Condition 5 is that there are reasonable grounds for believing that it is in the public interest that the material should be produced or access to it should be given having regard to—
- (a) the benefit likely to accrue to the investigation if the material is obtained, and
  - (b) the circumstances under which the person concerned is likely to have any of the material in their possession, custody or control.
- (8) An order under [this paragraph](#) is an order that the person specified in the application must do any of the following—
- (a) notify a named constable as soon as reasonably practicable after any material to which the application relates comes into the person’s possession, custody or control;
  - (b) produce to a constable within a specified period for seizure and retention any material to which the application relates which comes into the person’s possession, custody or control;
  - (c) give a constable access to any material of the kind mentioned in paragraph (b) within a specified period;
  - (d) state to the best of the person’s knowledge and belief the location of the material to which the application relates if it is not in, and will not come into, the person’s possession, custody or control within the period of 28 days beginning with the date of the order.
- (9) The specified period is to be the period of 7 days beginning with the date of the notification required by sub-paragraph (8)(a), unless it appears to the sheriff that a different period would be appropriate in the particular circumstances of the application.
- (10) Where the sheriff makes an order under [sub-paragraph \(8\)\(c\)](#) in relation to material on any premises, they may, on the application of the procurator fiscal, order any person who appears to them to be entitled to grant entry to the premises to allow any constable to enter the premises to obtain access to the material.

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**Commencement Information**

**I39** Sch. 2 para. 20 not in force at Royal Assent, see 100(1)

**I40** [Sch. 2 para. 20](#) in force at 20.12.2023 by [S.I. 2023/1272](#), [reg. 2\(a\)](#)

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**Commencement Information**

**I37** Sch. 2 para. 19 not in force at Royal Assent, see 100(1)

**I38** [Sch. 2 para. 19](#) in force at 20.12.2023 by [S.I. 2023/1272](#), [reg. 2\(a\)](#)

**I39** Sch. 2 para. 20 not in force at Royal Assent, see 100(1)

**I40** [Sch. 2 para. 20](#) in force at 20.12.2023 by [S.I. 2023/1272](#), [reg. 2\(a\)](#)

*Changes to legislation: There are currently no known outstanding effects for the National Security Act 2023, Schedule 2. (See end of Document for details)*

*Production orders: supplementary*

- 21 An application for an order under paragraph 19 or 20 may be made without notice to a sheriff in chambers.

**Commencement Information**

- I41** Sch. 2 para. 21 not in force at Royal Assent, see 100(1)  
**I42** Sch. 2 para. 21 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

- 22 (1) An order under paragraph 19 or 20 has effect despite any obligation as to secrecy or other restriction on the disclosure of information imposed by an enactment or otherwise.
- (2) Where the material consists of information stored in electronic form—
- (a) an order under paragraph 19(7)(a) or 20(8)(b) has 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, or from which it can readily be produced in a visible and legible form, and
  - (b) an order under paragraph 19(7)(b) or 20(8)(c) has effect as an order to give a constable access to the material in a form in which it is visible and legible.

**Commencement Information**

- I43** Sch. 2 para. 22 not in force at Royal Assent, see 100(1)  
**I44** Sch. 2 para. 22 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

- 23 (1) An order under paragraph 19 or 20 may be made in relation to material in the possession, custody or control of a government department.
- (2) Where an order is made by virtue of sub-paragraph (1)—
- (a) it is to 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 their possession, custody or control the material concerned, to comply with the order.
- (3) In this paragraph “government department” means—
- (a) a public department within the meaning of the Crown Suits (Scotland) Act 1857, and
  - (b) any part of the Scottish Administration.

**Commencement Information**

- I45** Sch. 2 para. 23 not in force at Royal Assent, see 100(1)  
**I46** Sch. 2 para. 23 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

- 24 (1) Without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995, provision may be made by the High Court of Justiciary by Act of Adjournal as to—
- (a) the recall and variation of orders under paragraph 19 or 20; and
  - (b) proceedings relating to such orders.



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*Changes to legislation: There are currently no known outstanding effects for the National Security Act 2023, Schedule 2. (See end of Document for details)*

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- (2) The following provisions have effect pending the coming into force of an Act of Adjournment under sub-paragraph (1)—
- (a) an order under paragraph 19 or 20 may be recalled or varied by a sheriff on a written application made to the sheriff by any person subject to the order;
  - (b) unless the sheriff otherwise directs on grounds of urgency, the applicant must, 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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**Commencement Information**

- I47 Sch. 2 para. 24 not in force at Royal Assent, see 100(1)  
I48 Sch. 2 para. 24 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

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**Commencement Information**

- I41 Sch. 2 para. 21 not in force at Royal Assent, see 100(1)  
I42 Sch. 2 para. 21 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)  
I43 Sch. 2 para. 22 not in force at Royal Assent, see 100(1)  
I44 Sch. 2 para. 22 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)  
I45 Sch. 2 para. 23 not in force at Royal Assent, see 100(1)  
I46 Sch. 2 para. 23 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)  
I47 Sch. 2 para. 24 not in force at Royal Assent, see 100(1)  
I48 Sch. 2 para. 24 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

*Search, seizure and retention*

- 25 (1) The procurator fiscal may apply to a sheriff for the issue of a warrant under [this paragraph](#).
- (2) The sheriff may grant the application if satisfied that an order made under [paragraph 19](#) or [20](#) in relation to material on the relevant premises has not been complied with.
- (3) The sheriff may also grant the application if satisfied that—
- (a) conditions 1 to 5 are met, and
  - (b) in the case of an application for an all premises warrant, condition 6 is met.
- (4) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed.
- (5) Condition 2 is that there are reasonable grounds for suspecting that there is on the relevant premises material which is likely to be evidence that a relevant act has been, or is about to be, committed.
- (6) Condition 3 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed.
- (7) Condition 4 is that there are reasonable grounds for believing that it is in the public interest that the material should be obtained having regard to—
- (a) the benefit likely to accrue to the investigation if the material is obtained, and

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*Changes to legislation: There are currently no known outstanding effects for the National Security Act 2023, Schedule 2. (See end of Document for details)*

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- (b) the circumstances under which the person concerned has any of the material in their possession, custody or control.
- (8) Condition 5 is that any of the following apply—
- (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;
  - (c) the investigation may be seriously prejudiced unless a constable can secure immediate access to the material.
- (9) Condition 6 is that it is not reasonably practicable to specify in the application all the premises which the person specified in the application occupies or controls and which might need to be searched.
- (10) A warrant under [this paragraph](#) is a warrant authorising any constable—
- (a) to enter the relevant premises,
  - (b) to search the relevant premises and any person found there, and
  - (c) to seize and retain any material found on a search under paragraph (b) which is likely to be evidence that a relevant act has been, or is about to be, committed.
- (11) In [this paragraph](#) the “relevant premises” 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”).

**Commencement Information**

**I49** Sch. 2 para. 25 not in force at Royal Assent, see 100(1)

**I50** Sch. 2 para. 25 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

*Explanations*

- 26 (1) The procurator fiscal may apply to a sheriff for an order under [this paragraph](#) requiring any person specified in the order to provide an explanation of material—
- (a) seized under a warrant under paragraph 25, or
  - (b) produced or made available to a constable under paragraph 19 or 20.
- (2) An application for an order under this paragraph may be made without notice to a sheriff in chambers.
- (3) Without prejudice to paragraph 30, an order under [this paragraph](#) may require a lawyer to provide the name and address of their client.
- (4) A statement by a person in response to a requirement imposed by an order under [this paragraph](#) may only be used in evidence against the person—
- (a) on a prosecution for an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995, or

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- (b) on a prosecution for some other offence where in giving evidence they make a statement inconsistent with it.
- (5) Paragraphs 23 and 24 apply to orders under this paragraph as they apply to orders made under paragraph 19 or 20.

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**Commencement Information**

**I51** Sch. 2 para. 26 not in force at Royal Assent, see 100(1)

**I52** Sch. 2 para. 26 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

*Urgent cases*

- 27 (1) A police officer of at least the rank of superintendent may by a written order signed by them give to any constable the authority which may be given by a warrant under paragraph 25 (subject to sub-paragraph (2)).
- (2) An order under this paragraph does not authorise a constable to retain confidential journalistic material.
- (3) An officer may not make an order under this paragraph unless the officer—
- is satisfied as mentioned in paragraph 25(2) or (3), and
  - has reasonable grounds for believing that the case is one of great emergency and that immediate action is necessary.
- (4) Where an order is made under this paragraph particulars of the case must be notified as soon as is reasonably practicable to the Secretary of State.
- (5) A person who wilfully obstructs a search under this paragraph commits an offence.
- (6) A person who commits an offence under sub-paragraph (5) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale (or both).
- (7) “Confidential journalistic material” has the same meaning as in the Investigatory Powers Act 2016 (see section 264(6) and (7) of that Act).

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**Commencement Information**

**I53** Sch. 2 para. 27 not in force at Royal Assent, see 100(1)

**I54** Sch. 2 para. 27 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

- 28 (1) This paragraph applies where confidential journalistic material is seized by virtue of an order under paragraph 27.
- (2) The procurator fiscal may apply to a sheriff for the issue of a warrant under this paragraph.
- (3) An application under sub-paragraph (2) must be made as soon as reasonably practicable.
- (4) The sheriff may grant an application under sub-paragraph (2) if satisfied that conditions 1 to 3 are met.

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- (5) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed.
- (6) Condition 2 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed.
- (7) Condition 3 is that there are reasonable grounds for believing that it is in the public interest that the material should be retained having regard to the benefit likely to accrue to the investigation if the material is retained.
- (8) A warrant under [this paragraph](#) is a warrant authorising the retention of confidential journalistic material.
- (9) A warrant under [this paragraph](#) may impose conditions on the retention and use of the material.
- (10) If the sheriff does not grant an application for the issue of a warrant under [this paragraph](#) in relation to any of the material to which the application relates, the sheriff may direct that the material is—
  - (a) returned to the person from whom it was seized, or
  - (b) destroyed.
- (11) “Confidential journalistic material” has the same meaning as in [paragraph 27](#).

**Commencement Information**

**I55** Sch. 2 para. 28 not in force at Royal Assent, see 100(1)

**I56** Sch. 2 para. 28 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

- 29
- (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 the officer may by a written notice signed by them require any person specified in the notice to provide an explanation of any material seized in pursuance of an order under [paragraph 27](#).
  - (2) [Paragraph 26\(3\)](#) and [\(4\)](#) apply to a notice under [this paragraph](#) as they apply to an order under that paragraph.
  - (3) A person who fails to comply with a notice under [this paragraph](#) commits an offence.
  - (4) It is a defence for a person charged with an offence under [sub-paragraph \(3\)](#) to show that they had a reasonable excuse for their failure.
  - (5) A person is taken to have shown that they had a reasonable excuse for their failure if—
    - (a) sufficient evidence of that fact is adduced to raise an issue with respect to it, and
    - (b) the contrary is not proved beyond reasonable doubt.
  - (6) A person guilty of an offence under [sub-paragraph \(3\)](#) is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).

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*Changes to legislation: There are currently no known outstanding effects for the National Security Act 2023, Schedule 2. (See end of Document for details)*

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**Commencement Information**

- I57** Sch. 2 para. 29 not in force at Royal Assent, see 100(1)  
**I58** Sch. 2 para. 29 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

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**Commencement Information**

- I53** Sch. 2 para. 27 not in force at Royal Assent, see 100(1)  
**I54** Sch. 2 para. 27 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)  
**I55** Sch. 2 para. 28 not in force at Royal Assent, see 100(1)  
**I56** Sch. 2 para. 28 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)  
**I57** Sch. 2 para. 29 not in force at Royal Assent, see 100(1)  
**I58** Sch. 2 para. 29 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

*Supplementary*

- 30 (1) **This Part** of **this Schedule** is without prejudice to any rule of law under which—
- (a) communications between a professional legal adviser and their 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 them under **this Part** of **this Schedule** a constable may, if necessary, open lockfast places on premises which they are entitled to enter in pursuance of an order under **paragraph 19** or **20**, a warrant under **paragraph 25** or an order under **paragraph 27**.
- (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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**Commencement Information**

- I59** Sch. 2 para. 30 not in force at Royal Assent, see 100(1)  
**I60** Sch. 2 para. 30 in force at 20.12.2023 by S.I. 2023/1272, reg. 2(a)

**Changes to legislation:**

There are currently no known outstanding effects for the National Security Act 2023, Schedule 2.