

SCHEDULE 1

Article 6

SPECIAL PROCEDURE

Making of Orders by Judicial Officers

1. If on an application made by a service policeman a judicial officer is satisfied that one or other of the sets of access conditions is fulfilled, he may make an order under paragraph 5.
2. The first set of access conditions is fulfilled if—
 - (a) there are reasonable grounds for believing—
 - (i) that an offence to which section 5 applies 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) of the 1984 Act a search of the premises for that material could have been authorised by the issue of a warrant to a constable under any of the enactments specified in paragraph 4 in a case in which—
 - (i) the specified premises were in England; and
 - (ii) the offence in respect of which the warrant was sought was committed in England; and
 - (c) the issue of such a warrant would have been appropriate.
4. The enactments referred to in paragraph 3(b) are—
 - (a) section 9 of the Official Secrets Act 1911⁽¹⁾;
 - (b) section 26 of the Theft Act 1968⁽²⁾; and
 - (c) section 4 of the Biological Weapons Act 1974⁽³⁾.

(1) 1 & 2 Geo. 5 c. 28.

(2) 1968 c. 60.

(3) 1974 c. 6.

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5. An order under this paragraph is an order that the person who appears to the judicial officer to be in possession of the material to which the application relates shall—

- (a) produce it to a service policeman for him to take away; or
- (b) give a service policeman access to it,

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.

6. Where the material consists of information contained in a computer—

- (a) an order under paragraph 5(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 5(b) shall have effect as an order to give a service policeman access to the material in a form in which it is visible and legible.

7. For the purposes of articles 16 and 17 material produced in pursuance of an order under paragraph 5(a) shall be treated as if it were material seized by a service policeman.

Notices of applications for orders

8. An application for an order under paragraph 5 shall be made *inter partes*.

9.—(1) 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.

(2) For the purposes of this Schedule, the reference to a person's proper address shall be to such address determined in accordance with paragraph 10.

10.—(1) Subject to the following provisions of this paragraph, a reference to a person's proper address is to the address of the unit to which he belongs.

(2) Where a person is on attachment to a unit, a reference to his proper address is to the address of the unit to which he is attached.

(3) In the case of a person who—

- (a) is not subject to service law⁽⁴⁾, or
- (b) is subject to service law only by virtue of section 131 of either of the 1955 Acts or section 51 of the 1957 Act,

a reference to his proper address is to his usual or last known place of residence.

11. Where notice of an application for an order under paragraph 5 has been served on a person, he shall not conceal, destroy, alter or dispose of the materials to which the application relates except—

- (a) with the leave of a judicial officer; or
- (b) with the written permission of a service policeman,

until—

- (i) the application is dismissed or abandoned; or
- (ii) he has complied with an order under paragraph 5 made on the application.

Issue of warrants by judicial officer

12. If on an application made by a service policeman a judicial officer—

(4) See section 16(2) for the interpretation for the purposes of Part 2 of references to persons "subject to service law".

- (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 is also fulfilled; or
 - (b) is satisfied—
 - (i) that the second set of access conditions is fulfilled; and
 - (ii) that an order under paragraph 5 relating to the material has not been complied with, he may issue a warrant authorising a service policeman to enter and search the premises.
- 13.** A service policeman may seize and retain anything for which a search has been authorised under paragraph 12.
- 14.** The further conditions mentioned in paragraph 12(a)(ii) 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) of the 1984 Act; 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 5 may seriously prejudice the investigation.

SCHEDULE 2

Article 11

OATHS AND AFFIRMATIONS

1. The service policeman taking the oath shall hold the New Testament, or if a Jew the Old Testament, in his uplifted hand and shall say, or repeat, after the person administering it, the oath provided in paragraph 5 of this Schedule.

2. If the service policeman to whom an oath is administered desires to swear in the form and manner in which an oath is usually administered in Scotland, he may do so with uplifted hand and saying, or repeating, after the person administering it, the Scottish oath provided in paragraph 6 of this Schedule.

3. If the form of oath provided in this Schedule is not appropriate to the religious beliefs of the service policeman taking the oath, an oath may be administered in such form and manner as the service policeman declares to be binding on his conscience in accordance with his religious beliefs.

4. A service policeman making a solemn affirmation instead of taking an oath shall say, or repeat, after the person administering it, the affirmation provided in paragraph 7 of this Schedule.

5. The oath shall be sworn in the following form:

“I swear by Almighty God that I shall truthfully answer any questions I am asked.”

6. The form of Scottish oath shall be the same as the form of oath set out above except that for the words “I swear by Almighty God” there shall be substituted the words “I swear by Almighty God and as I shall answer to God at the Great Day of Judgment”.

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7. The form of affirmation shall be the same as the form of oath set out above except that for the words “I swear by Almighty God” there shall be substituted the words “I (*state name*) solemnly, sincerely and truly declare and affirm”.