

SCHEDULE 1

Article 6

EXCLUDED AND SPECIAL PROCEDURE MATERIAL

*Making of orders by judge advocates*

1. If on an application made by a service policeman a judge advocate 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 a relevant offence has been committed;
    - (ii) that on relevant residential premises specified in the application there is material which consists of special procedure material or includes special procedure material and does not also include excluded material;
    - (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 relevant residential premises specified in the application;
  - (b) but for section 9(2) of PACE 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<sup>(1)</sup>;
  - (b) section 26 of the Theft Act 1968<sup>(2)</sup>; and
  - (c) section 4 of the Biological Weapons Act 1974<sup>(3)</sup>.

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(1) 1911 c. 28.

(2) 1968 c. 60.

(3) 1974 c. 6.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

5. An order under this paragraph is an order that the person who appears to the judge advocate 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 stored in any electronic form—

- (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 or from which it can readily be produced in a visible and legible form; 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 sub-paragraph (1), the reference to a person's proper address shall be to such address determined in accordance with paragraph 10.

10.—(1) Subject to sub-paragraph (2), the proper address of a person subject to service law is the address of the unit to which he belongs.

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

(3) The proper address of a person who is not subject to service law is 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 material to which the application relates except—

- (a) with the leave of a judge advocate, or
- (b) with the written permission of a service policeman,

until the application is dismissed or abandoned or he has complied with an order under paragraph 5 made in respect of the application.

#### *Issue of warrants by judge advocate*

12. If on an application made by a service policeman a judge advocate—

- (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 are 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;
- (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 PACE; 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.