

## SCHEDULE 5

(introduced by section 19)

### INVESTIGATION OF PROCEEDS OF ICC CRIME

#### PART 1

##### PRODUCTION OR ACCESS ORDERS

###### *Application for order*

- 1 (1) An order under this Part of this schedule may be made by the sheriff on an application by a person authorised for the purpose under section 19 of this Act.
- (2) Any such application may be made on an ex parte application to a sheriff in chambers.

###### *Grounds for making order*

- 2 (1) The sheriff may make an order under this Part of this schedule if satisfied that there are reasonable grounds for suspecting—
  - (a) that a specified person has benefited from an ICC crime; and
  - (b) that the material to which the application relates is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made.
- (2) No such order shall be made if it appears to the sheriff that the material to which the application relates consists of or includes items subject to legal privilege.
- (3) Paragraphs 3 and 4 below specify the descriptions of order that may be made.

###### *Production or access orders: standard orders*

- 3 (1) If it appears to the sheriff that there is in a specified person's possession, custody or power specified material, or material of a specified description, to which the application relates, the sheriff may order such person either—
  - (a) to produce the material to a constable within a specified period for the constable to take away (a "production order"); or
  - (b) to give a constable access to the material within a specified period (an "access order").
- (2) The specified period shall be seven days beginning with the date of the order unless it appears to the sheriff making the order that a longer or shorter period would be appropriate in the particular circumstances of the application.
- (3) Where an access order is made in relation to material on any premises the sheriff may, on the application of a constable, order any person who appears to the sheriff to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.
- (4) In sub-paragraphs (1) and (2) above "specified" means specified in the order.
- (5) Where a production or access order is made by virtue of paragraph 4 below, the provisions of this paragraph shall have effect subject to the modifications specified in that paragraph.

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*Production or access orders: special orders*

- 4 (1) A production or access order may be made in relation to a person if the sheriff thinks it is likely that material to which the application relates is in the person's possession, custody or power within the period of 28 days beginning with the date of an order.
- (2) A production or access order may also be made in relation to material consisting of or including material which is expected to come into existence within that period.
- (3) In that case it must specify a person within sub-paragraph (1) above.
- (4) Where a production or access order is made by virtue of this paragraph—
- (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 the person's possession, custody or power; and
  - (b) paragraph 3 above has effect with the modifications mentioned in sub-paragraph (5) below.
- (5) The modifications are—
- (a) that the references in paragraph 3(1) above to material in the possession, custody or power of the specified person shall be read as references to the material that comes into the possession, custody or power of the specified person; and
  - (b) that the reference in paragraph 3(2) above to the date of the order shall be read as a reference to the date of the notification required by sub-paragraph (4)(a) above.
- (6) In this paragraph "specified" means specified in the order.

*Supplementary provision in relation to orders*

- 5 (1) The Scottish Ministers may by regulations make provision as to the discharge and variation of orders under this Part of this schedule.
- (2) Provision may be made by act of sederunt as to proceedings relating to such orders.
- (3) Regulations under sub-paragraph (1) above shall be made by statutory instrument; and any such instrument shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

*Effect of order*

- 6 (1) Sub-paragraphs (2) to (4) below have effect with respect to the effect of an order under this Part of this schedule.
- (2) Where the material to which the order relates consists of information contained in a computer—
- (a) a production order 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; and
  - (b) an access order has effect as an order to give access to the material in a form in which it is visible and legible.
- (3) An order under this Part of this schedule does not confer any right to production of, or access to, items subject to legal privilege.

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- (4) Subject to section 39 of the 2001 Act, the order has effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by an enactment or otherwise.

*Order in relation to material in possession of government department*

- 7 (1) An order under this Part of this schedule may be made in relation to material in the possession, custody or power of a government department.
- (2) An order so made shall be served as if the proceedings were civil proceedings against the department.
- (3) Where the material concerned might for the time being be in the possession, custody or power of an officer of the department, an order may require such officer, whether named in the order or not, to comply with it.
- (4) In this paragraph “government department” means a public department within the meaning of the Crown Suits (Scotland) Act 1857 (c. 44) and any part of the Scottish Administration.

## PART 2

### SEARCH WARRANTS

*Application for warrant*

- 8 A search warrant may be issued under this Part of this schedule by a sheriff on an application made by a person authorised for the purpose under section 19 of this Act.

*Effect of warrant*

- 9 (1) A search warrant issued under this Part of this schedule authorises any constable—
- (a) to enter and search the premises specified in the warrant;
  - (b) to seize and retain any material found on the search that is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the warrant was issued; and
  - (c) for the purposes of exercising the powers mentioned in sub-paragraphs (a) and (b) above, to open lockfast places on premises specified in the warrant.
- (2) The warrant does not confer any right to seize material that consists of or includes items subject to legal privilege.

*Grounds for issue of warrant*

- 10 (1) The sheriff may issue a search warrant under this Part of this schedule in the cases mentioned in sub-paragraphs (2), (3) and (5) below.
- (2) The case is where the sheriff is satisfied that a production or access order made in relation to material on the premises has not been complied with.
- (3) The case is where the sheriff is satisfied—

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- (a) that there are reasonable grounds for suspecting that a specified person has benefited from an ICC crime;
- (b) that there are grounds for making a production or access order in relation to material on the premises; and
- (c) that it would not be appropriate to make a production or access order in relation to the material for any of the reasons mentioned in sub-paragraph (4) below.

(4) The reasons are—

- (a) that it is not practicable to communicate with any person entitled to produce the material;
- (b) that it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
- (c) that the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable could secure immediate access to the material.

(5) The case is where the sheriff is satisfied—

- (a) that there are reasonable grounds for suspecting that a specified person has benefited from an ICC crime;
- (b) that there are reasonable grounds for suspecting that there is material on the premises which cannot be particularised at the time of the application but which—
  - (i) relates to the specified person, or to the question whether that person has benefited from an ICC crime, or to any question as to the extent or whereabouts of the proceeds of an ICC crime; and
  - (ii) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made; and
- (c) that any of the circumstances mentioned in sub-paragraph (6) below apply.

(6) The circumstances are—

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) that entry to the premises will not be granted unless a warrant is produced; or
- (c) that the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable arriving at the premises could secure immediate entry to them.

### **PART 3**

#### INTERPRETATION

- 11 In this schedule, “items subject to legal privilege” and “premises” have the meanings respectively given to those expressions by section 33 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39).