

## SCHEDULES

### SCHEDULE 7

#### TERRORIST INVESTIGATIONS

##### PART II

##### SCOTLAND

###### *Interpretation*

- 11 In this Part of this Schedule a “terrorist investigation” means any investigation to which section 17(1) of this Act applies.

###### *Order for production of material*

- 12 (1) A procurator fiscal may, for the purpose of a terrorist investigation, apply to a sheriff for an order under sub-paragraph (2) below in relation to particular material or material of a particular description.
- (2) If on such an application the sheriff is satisfied that the conditions in sub-paragraph (5) below are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall—
- (a) produce it to a constable for him to take away; or
  - (b) give a constable access to it,
- within such period as the order may specify and if the material is not in that person’s possession (and will not come into his possession within that period) to state to the best of his knowledge and belief where it is.
- (3) An order under sub-paragraph (2) above may relate to material of a particular description which is expected to come into existence or become available to the person concerned in the period of twenty-eight days beginning with the date of the order; and an order made in relation to such material shall require that person to notify a named constable as soon as possible after the material comes into existence or becomes available to that person.
- (4) The period to be specified in an order under sub-paragraph (2) above shall be seven days from the date of the order or, in the case of an order made by virtue of sub-paragraph (3) above, from the notification to the constable unless it appears to the sheriff that a longer or shorter period would be appropriate in the particular circumstances of the application.
- (5) The conditions referred to in sub-paragraph (2) above are—
- (a) that a terrorist investigation is being carried out and that there are reasonable grounds for believing that the material to which the application relates is

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- likely to be of substantial value (whether by itself or together with other material) to the investigation; and
- (b) that there are reasonable grounds for believing that 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.
- (6) Where the sheriff makes an order under sub-paragraph (2)(b) above in relation to material on any premises he may, on the application of the procurator fiscal, order any person who appears to him to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.
- 13 (1) Provision may be made by Act of Adjournal as to—
- (a) the discharge and variation of orders under paragraph 12 above; 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) above—
- (a) an order under paragraph 12 above may be discharged or varied by a 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 forty-eight 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 to be discharged or varied was made.
- (3) Where the material to which an application under paragraph 12 above relates consists of information contained in a computer—
- (a) an order under sub-paragraph (2)(a) of that paragraph 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 sub-paragraph (2)(b) of that paragraph shall have effect as an order to give access to the material in a form in which it is visible and legible;
- (4) Subject to paragraph 17(1)(b) below, an order under paragraph 12 above shall have effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by statute or otherwise.
- (5) An order may be made under paragraph 12 above in relation to material in the possession of a government department which is an authorised government department for the purposes of the Crown Proceedings Act 1947; and any such order (which shall be served as if the proceedings were civil proceedings against the department) may require any officer of the department, whether named in the order or not, who may for the time being be in possession of the material concerned to comply with such order.

*Warrant for search of premises*

- 14 (1) A procurator fiscal may, for the purpose of a terrorist investigation, apply to a sheriff for a warrant under this paragraph in relation to specified premises.

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- (2) On such application the sheriff may issue a warrant authorising a constable to enter and search the premises if the sheriff is satisfied—
- (a) that an order made under paragraph 12 above in relation to material on the premises has not been complied with; or
  - (b) that the conditions in sub-paragraph (3) below are fulfilled.
- (3) The conditions referred to in sub-paragraph (2)(b) above are—
- (a) that there are reasonable grounds for believing that there is material on the premises specified in the application in respect of which the conditions in sub-paragraph (5) of paragraph 12 above are fulfilled; and
  - (b) that it would not be appropriate to make an order under that paragraph in relation to the material because—
    - (i) it is not practicable to communicate with any person entitled to produce the material; or
    - (ii) 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
    - (iii) the investigation for the purposes of which the application is made may be seriously prejudiced unless a constable can secure immediate access to the material.
- (4) A warrant under this paragraph shall authorise a constable to enter the premises specified in the warrant and to search the premises and any persons found there and to seize and retain any material found there or on any such person, if he has reasonable grounds for believing that it is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.
- (5) A warrant under this paragraph may authorise persons named in the warrant to accompany a constable who is executing it.

*Explanation of seized or produced material*

- 15 (1) A sheriff may, on an application made by a procurator fiscal, order any person specified in the order to provide an explanation of any material produced or made available to a constable under paragraph 12 above or seized in pursuance of a warrant under paragraph 14 above.
- (2) A person shall not under this paragraph be required to disclose any information which he would be entitled to refuse to disclose on grounds of confidentiality in legal proceedings as being—
- (a) communications between a professional legal adviser and his client, or
  - (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings,
- except that a lawyer may be required to furnish the name and address of his client.
- (3) A statement by a person in response to a requirement imposed by virtue of this section may only be used in evidence against him—
- (a) on a prosecution for an offence under section 2 of the False Oaths (Scotland) Act 1933; or
  - (b) on a prosecution for some other offence where in giving evidence he makes a statement inconsistent with it.

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- (4) Sub-paragraphs (1), (2) and (5) of paragraph 13 above shall apply to orders under this paragraph as they apply to orders under paragraph 12 above.

*Urgent cases*

- 16 (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 and that in the interests of the State immediate action is necessary, he may by a written order signed by him give to any constable the authority which may be given by a search warrant under paragraph 14 above.
- (2) Where an authority is given under this paragraph particulars of the case shall be notified as soon as may be to the Secretary of State.
- (3) If such a police officer as is mentioned in sub-paragraph (1) above has reasonable grounds for believing that the case is such as is there mentioned he may by a notice in writing signed by him require any person specified in the notice to provide an explanation of any materials seized in pursuance of an order under this paragraph.
- (4) Any person who without reasonable excuse fails to comply with a notice under sub-paragraph (3) above is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.
- (5) Sub-paragraphs (2) and (3) of paragraph 15 above shall apply to a requirement under sub-paragraph (3) above as they apply to an order under that paragraph.

*Supplementary*

- 17 (1) This Part of this Schedule is without prejudice to—
- (a) any power of entry or search or any power to seize or retain property which is otherwise exercisable by a constable;
  - (b) any rule of law whereby—
    - (i) communications between a professional legal adviser and his client, or
    - (ii) 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 him under this Part of this Schedule a constable may, if necessary, open lockfast places on premises specified in an order under paragraph 12 or 16 above or a warrant under paragraph 14 above.
- (3) A search of a person under this Part of this Schedule may only be carried out by a person of the same sex.