

## SCHEDULES

### SCHEDULE 5

#### INVESTIGATORY POWERS ETC.

#### PART 5

#### PROVISIONS SUPPLEMENTARY TO PARTS 3 AND 4

##### *Appeals against detention of goods and documents*

- 40 (1) This paragraph applies where goods or documents are being detained as the result of the exercise of a power in Part 4 of this Schedule.
- (2) A person with an interest in the goods or documents may apply for an order requiring them to be released to that or another person.
- (3) An application under this paragraph may be made in England and Wales or Northern Ireland—
- (a) to any magistrates' court in which proceedings have been brought for an offence as the result of the investigation in the course of which the goods or documents were seized,
  - (b) to any magistrates' court in which proceedings have been brought for the forfeiture of the goods or documents or (in the case of seized documents) any goods to which the documents relate, or
  - (c) if no proceedings within paragraph (a) or (b) have been brought, by way of complaint to a magistrates' court.
- (4) An application under this paragraph may be made in Scotland by summary application to the sheriff.
- (5) On an application under this paragraph, the court or sheriff may make an order requiring goods to be released only if satisfied that condition A or B is met.
- (6) Condition A is that—
- (a) no proceedings have been brought—
    - (i) for an offence as the result of the investigation in the course of which the goods or documents were seized, or
    - (ii) for the forfeiture of the goods or documents or (in the case of seized documents) any goods to which the documents relate, and
  - (b) the period of 6 months beginning with the date the goods or documents were seized has expired.
- (7) Condition B is that—
- (a) proceedings of a kind mentioned in sub-paragraph (6)(a) have been brought, and

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*Status: This is the original version (as it was originally enacted).*

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- (b) those proceedings have been concluded without the goods or documents being forfeited.
- (8) A person aggrieved by an order made under this paragraph by a magistrates' court, or by the decision of a magistrates' court not to make such an order, may appeal against the order or decision—
  - (a) in England and Wales, to the Crown Court;
  - (b) in Northern Ireland, to a county court.
- (9) An order made under this paragraph by a magistrates' court may contain such provision as the court thinks appropriate for delaying its coming into force pending the making and determination of any appeal.
- (10) In sub-paragraph (9) “appeal” includes an application under section 111 of the Magistrates' Courts Act 1980 or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 ([SI 1981/1675 \(NI 26\)](#)) (statements of case).