

SCHEDULE 2

(introduced by section 9)

INVESTIGATIONS: SUPPLEMENTARY PROVISIONS ON WITNESSES AND DOCUMENTS

Requirement to give evidence or produce documents

- 1 (1) A requirement under section 9 is imposed by the Commissioner giving the person in question notice in writing specifying—
 - (a) the time and place at which the person is to attend before the Commissioner and the particular subjects concerning which that person is required to give evidence; or
 - (b) the documents, or types of documents, which that person is to produce, the date by which that person is to produce them, and the particular subjects concerning which they are required.
- (2) Such notice must be given—
 - (a) in the case of an individual, by sending it, by registered post or the recorded delivery service, addressed to that person at the person's usual or last known address or, where the person has given an address for service, at that address;
 - (b) in any other case, by sending it, by registered post or the recorded delivery service, addressed to the person at the person's registered or principal office.

Privileges

- 2 (1) A person is not obliged under this Act to answer any question or to produce any document which that person would be entitled to refuse to answer or produce in proceedings in a court in Scotland.
- (2) A Scottish Law Officer or a procurator fiscal is not obliged under this Act to answer any question or to produce any document which that officer would be entitled to decline to answer or to produce in accordance with section 27(3) or, as the case may be, section 23(10) of the Scotland Act.

Evidence on oath

- 3 (1) The Commissioner may—
 - (a) administer an oath to any person giving evidence to the Commissioner; and
 - (b) require that person to take an oath.
- (2) Any person who refuses to take an oath when required to do so under this paragraph is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding three months.

Admissibility of statements in subsequent criminal proceedings

- 4 Any statement made by a person in answer to any question which that person was obliged under this Act to answer is not admissible in any criminal proceedings against that person, except where the proceedings are in respect of perjury relating to that statement.

Status: This is the original version (as it was originally enacted).

Offences

- 5 (1) Any person to whom a notice under paragraph 1 has been duly given who, not being privileged under paragraph 2—
- (a) refuses or fails to attend before the Commissioner as required by the notice;
 - (b) refuses or fails, when attending before the Commissioner as required by the notice, to answer any question concerning the subjects specified in the notice;
 - (c) deliberately alters, suppresses, conceals or destroys any document which that person is required to produce by the notice; or
 - (d) refuses or fails to produce any such document,
- is guilty of an offence.
- (2) It is a defence for a person charged with an offence under sub-paragraph (1)(a), (b) or (d) to prove that there was a reasonable excuse for the refusal or failure.
- (3) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding three months.

Offences by bodies corporate and partnerships

- 6 (1) Where an offence under paragraph 5 which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person who was purporting to act in any such capacity,
- that person, as well as the body corporate, is guilty of that offence and liable to be proceeded against accordingly.
- (2) Where the affairs of a body corporate are managed by its members, sub-paragraph (1) applies in relation to the acts or defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.
- (3) Where an offence under paragraph 5 which has been committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership is guilty of that offence and liable to be proceeded against accordingly.

Producing copies or extracts

- 7 For the purposes of section 9 and this schedule a person complies with a requirement to produce a document if that person produces a copy of, or an extract of the relevant part of, the document.

Allowances and expenses

- 8 The Commissioner may pay such allowances and expenses to persons giving evidence before the Commissioner or producing documents which they have been required or requested to produce as the Commissioner may, with the agreement of the Parliamentary corporation, determine.