

## SCHEDULES

### SCHEDULE 5

Section 57.

#### AUTHORISED INVESTIGATORS

##### *Preliminary*

- 1 (1) In this Schedule—
- “authorised investigator” means a person authorised under section 57 of this Act to exercise the powers conferred by this Schedule;
  - “the investigation”, in relation to an authorised investigator, means the investigation for the purposes of which those powers are exercisable by him.
- (2) References in this Schedule to documents include references to information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form.
- (3) References in this Schedule to the Crown include references to the Crown in right of Her Majesty’s Government in Northern Ireland.

##### *Investigation powers*

- 2 (1) An authorised investigator may by notice in writing require any person who he has reason to believe has information relevant to the investigation to attend before him at a specified place either forthwith or at a specified time and answer questions or otherwise furnish information with respect to any matter relevant to the investigation.
- (2) An authorised investigator may by notice in writing require any such person to produce at a specified place and either forthwith or at a specified time any specified documents which appear to the authorised investigator to relate to any matter relevant to the investigation or any documents of a specified class which appear to him to relate to any such matter.
- (3) If any documents are produced pursuant to a notice under sub-paragraph (2) above the authorised investigator may—
- (a) take copies of or abstracts from them;
  - (b) require the person producing them to provide an explanation of them;
  - (c) retain them if he has reasonable grounds for believing that they might otherwise be concealed, lost, damaged, altered or destroyed.
- (4) If any documents are not produced pursuant to a notice under sub-paragraph (2) above the authorised investigator may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.
- (5) A person shall not under this paragraph be required to disclose any information or produce any document—

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- (a) which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court; or
- (b) which in Scotland is an item subject to legal privilege as defined in section 40 of the Criminal Justice (Scotland) Act 1987;

except that a lawyer may be required to furnish the name and address of his client.

- (6) A person shall not under this paragraph be required to disclose any information or produce any document—
  - (a) which is held by him on behalf of the Crown; or
  - (b) in respect of which he owes an obligation of confidence by virtue of the carrying on of a banking business.
- (7) A person need not comply with any requirement imposed by an authorised investigator under this paragraph unless the investigator has, if required to do so, produced evidence of his authority, and that evidence need not identify him by name if it contains other means of identification.

#### *Search warrants*

- 3 (1) A justice of the peace or, in Scotland, a sheriff may, on an application made by an authorised investigator, issue a warrant under this paragraph if he is satisfied, in relation to any documents, that there are reasonable grounds for believing—
  - (a) that—
    - (i) a person has failed to comply with an obligation under paragraph 2 above to produce them;
    - (ii) it is not practicable to serve a notice under that paragraph in relation to them; or
    - (iii) service of such a notice in relation to them might seriously prejudice the investigation; and
  - (b) that they are on premises specified in the application.
- (2) A warrant under this paragraph shall authorise any constable (using such force as is reasonably necessary)—
  - (a) to enter and search the premises; and
  - (b) to take possession of any documents appearing to be documents of a description specified in the application or to take in relation to any documents so appearing any other steps which may appear to be necessary for preserving them and preventing interference with them.
- (3) An application under this paragraph in Northern Ireland shall be made by a complaint on oath, in England and Wales by information on oath and in Scotland supported by evidence on oath.
- (4) A warrant issued by a sheriff shall be authority for opening lockfast places and may authorise persons named in the warrant to accompany a constable who is executing it.
- (5) The power exercisable by a justice of the peace under this paragraph in Northern Ireland may be exercised by the Secretary of State if, in addition to being satisfied as to the matters mentioned in sub-paragraph (1) above, it appears to him that the information which it would be necessary to provide in support of an application under that sub-paragraph would, if disclosed, be likely to place any person in danger or prejudice the capability of members of the Royal Ulster Constabulary to investigate acts of terrorism or the activities of a proscribed organisation.

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### *Offences*

- 4 (1) A person is guilty of an offence if without reasonable excuse he fails to comply with a requirement imposed on him under paragraph 2 above.
- (2) A person is guilty of an offence if, in purported compliance with such a requirement, he makes a statement which he knows to be false or misleading in a material particular or recklessly makes a statement which is false or misleading in a material particular.
- (3) A person who—
- (a) knows or has reasonable cause to suspect that an investigation by an authorised investigator is being carried out or is likely to be carried out by virtue of this Schedule; and
  - (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or has reasonable cause to suspect are or would be relevant to such an investigation,
- is guilty of an offence unless he proves that he had no intention of concealing the facts disclosed by the document from any person carrying out such an investigation.
- (4) A person guilty of an offence under sub-paragraph (1) or (2) above is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.
- (5) A person guilty of an offence under sub-paragraph (3) above is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

### *Admissibility of evidence*

- 5 A statement made by a person in response to a requirement imposed by virtue of paragraph 2 above may not be used in evidence against him except—
- (a) on a prosecution for an offence under paragraph 4(2) above;
  - (b) on a prosecution for some other offence where he or a witness called on his behalf has in giving evidence made a statement inconsistent with the first-mentioned statement; or
  - (c) on a prosecution for perjury.

### *Restriction on disclosure of information*

- 6 (1) Information obtained by a person in his capacity as an authorised investigator may not be disclosed by him except to a constable or—
- (a) for the purposes of any prosecution, whether in the United Kingdom or elsewhere;
  - (b) to any government department or Northern Ireland department or other authority or body discharging its functions on behalf of the Crown;
  - (c) to any competent authority; or

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- (d) for the purpose of assisting any public or other authority for the time being designated for the purposes of this paragraph by an order made by the Secretary of State to discharge any functions which are specified in the order.
- (2) The following are competent authorities for the purposes of sub-paragraph (1)(c) above—
- (a) an inspector appointed under Part XIV of the Companies Act 1985 or Part XV of the Companies (Northern Ireland) Order 1986;
  - (b) an Official Receiver;
  - (c) the Accountant in Bankruptcy;
  - (d) an Official Assignee;
  - (e) a person appointed to carry out an investigation under section 55 of the Building Societies Act 1986;
  - (f) a body administering a compensation scheme under section 54 of the Financial Services Act 1986;
  - (g) an inspector appointed under section 94 of that Act;
  - (h) a person exercising powers by virtue of section 106 of that Act;
  - (i) an inspector appointed under section 177 of that Act or any corresponding enactment having effect in Northern Ireland;
  - (j) a person appointed by the Bank of England under section 41 of the Banking Act 1987 to carry out an investigation and make a report;
  - (k) a person exercising powers by virtue of section 44(2) of the Insurance Companies Act 1982;
  - (l) any body having supervisory, regulatory or disciplinary functions in relation to any profession or any area of commercial activity; and
  - (m) any person or body having, under the law of any country or territory outside the United Kingdom, functions corresponding to any of the functions of any person or body mentioned in any of the foregoing paragraphs.
- (3) An order under paragraph (d) of sub-paragraph (1) above may impose conditions subject to which, and otherwise restrict the circumstances in which, information may be disclosed under that paragraph.

*Code of practice*

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- (1) The Secretary of State shall make a code of practice in connection with the exercise by authorised investigators of the powers conferred by this Schedule.
  - (2) When the Secretary of State proposes to issue the code of practice under this paragraph he shall prepare and publish a draft of the code, shall consider any representations made to him about the draft and may modify the draft accordingly.
  - (3) The Secretary of State shall lay before both Houses of Parliament a draft of the code of practice prepared by him under this paragraph; and when he has laid the draft of the code before both Houses he may bring the code into operation by an order made by him.
  - (4) An order bringing the code of practice into operation may contain such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient in connection with the code.

- (5) The Secretary of State may from time to time revise the whole or any part of the code of practice issued by him under this paragraph and issue the code as revised; and the foregoing provisions of this paragraph shall apply (with appropriate modifications) to such a revised code as they apply to the first issue of the code.
- (6) A failure on the part of an authorised investigator to comply with any provision of a code of practice issued under this paragraph shall not of itself render him liable to any criminal or civil proceedings.
- (7) In all criminal and civil proceedings such a code shall be admissible in evidence; and if any provision of such a code appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.
- (8) In this paragraph “criminal proceedings” includes proceedings before a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 or a disciplinary court constituted under section 50 of the said Act of 1957 and proceedings before the Courts-Martial Appeal Court.
- (9) Nothing in paragraph (8) of Article 66 of the Police and Criminal Evidence (Northern Ireland) Order 1989 or subsection (9) of section 67 of the Police and Criminal Evidence Act 1984 shall require authorised investigators to have regard in exercising the powers conferred by this Schedule to any provision of a code under that Order or that Act.