

SCHEDULE 4

Regulation 19

Powers of entry in misuse of aid examinations

PART 1

Interpretation and application

Interpretation

1. In this Schedule—

“authorised officer” means an officer of the CMA who has been authorised in writing by the CMA to exercise powers under this Schedule;

“business premises” means premises (or any part of premises) not used as a dwelling;

“document” includes information recorded in any form;

“named officer” means an authorised officer named in a warrant issued under Part 3 of this Schedule;

“occupier”, in relation to business premises, means a person whom an authorised officer reasonably believes is the occupier of those premises;

“premises” includes any land or means of transport; and

“relevant document” means any document of a kind in respect of which an application under paragraph 6 is granted.

Application

2. This Schedule applies if—

- (a) the CMA is examining alleged misuse of aid by a beneficiary under regulation 19;
- (b) the CMA has requested information from the aid grantor under regulation 19(3); and
- (c) the aid grantor has not provided the information in accordance with that regulation.

PART 2

Entry without a warrant

Power to enter business premises without a warrant

3. An authorised officer may enter the business premises of a beneficiary to obtain information for the purpose of deciding under regulation 19 whether there has been a misuse of aid by the beneficiary if the CMA is satisfied that—

- (a) there are reasonable grounds to suspect that there has been a misuse of aid by the beneficiary;
- (b) entry to the business premises of the beneficiary is necessary for the CMA to decide under regulation 19 whether there has been a misuse of aid by the beneficiary;
- (c) the suspected misuse of aid is sufficiently serious to justify entering the business premises of the beneficiary; and

- (d) there are reasonable grounds to suspect that there are on the business premises documents—
 - (i) the production of which has been requested under regulation 19(4)(b); and
 - (ii) which have not been produced as requested.

Safeguards

4.—(1) No authorised officer may enter business premises in the exercise of the powers under paragraph 3 unless the officer has given the occupier of the premises a written notice which—

- (a) gives at least two working days’ notice of the intended entry;
- (b) indicates the subject matter and the purpose of the intended entry; and
- (c) indicates the nature of the offences created by paragraph 15.

(2) The power of entry conferred by paragraph 3 is to be exercised by the authorised officer on the production of their authorisation.

(3) The power of entry conferred by paragraph 3 may be exercised only at a reasonable hour.

Associated powers

5. An authorised officer entering business premises in exercise of the powers under paragraph 3 may—

- (a) take with the officer such equipment as appears to the officer to be necessary;
- (b) require any person on the premises—
 - (i) to produce any document which the officer considers relevant to the purpose of deciding under regulation 19 whether there has been a misuse of aid by the beneficiary; and
 - (ii) if the document is produced, to provide an explanation of it;
- (c) require any person on the premises to state, to the best of the person’s knowledge and belief, where any document referred to in sub-paragraph (b) is to be found;
- (d) take copies of any document which is produced;
- (e) require any information which is stored in any electronic form and is accessible from the premises and which the officer considers relevant to the purpose of deciding under regulation 19 whether there has been a misuse of aid by the beneficiary to be produced in a form—
 - (i) in which it can be taken away; and
 - (ii) in which it is visible and legible or from which it can be readily be produced in a visible and legible form; and
- (f) take any steps which appear to be necessary for the purpose of preserving or preventing interference with any document which the officer considers relates to any matter relevant to the purpose of deciding under regulation 19 whether there has been a misuse of aid by the beneficiary.

PART 3

Entry with a warrant

Power to enter business premises with a warrant

6.—(1) On an application made to it by the CMA, the court may issue a warrant if it is satisfied that—

- (a) there are reasonable grounds to suspect that there has been a misuse of aid by the beneficiary;
- (b) entry to the business premises of the beneficiary is necessary for the CMA to decide under regulation 19 whether there has been a misuse of aid by the beneficiary;
- (c) the suspected misuse of aid is sufficiently serious to justify entering the business premises of the beneficiary; and
- (d) the requirements in sub-paragraph (2) or (3) are met.

(2) The requirements of this sub-paragraph are met if there are reasonable grounds to suspect that—

- (a) there are on the business premises documents which the CMA has the power under regulation 19(4)(b) to request for the purposes of deciding whether there has been a misuse of aid; and
- (b) if the documents were requested under regulation 19(4)(b), they would not be produced but would be concealed, removed, tampered with or destroyed.

(3) The requirements of this sub-paragraph are met if there are reasonable grounds to suspect that there are on the business premises documents—

- (a) the production of which has been requested under regulation 19(4)(b); and
- (b) which have not been produced as requested.

Application for warrant

7. An application for a warrant under paragraph 6 must be made in accordance with the rules of the court.

Powers conferred by search warrant

8.—(1) A warrant issued under paragraph 6 authorises a named officer and any other authorised officer to accompany the named officer to—

- (a) enter the premises specified in the warrant, using such force as is reasonably necessary for that purpose;
- (b) search the premises and take copies of any document appearing to be a relevant document;
- (c) seize any document appearing to be a relevant document if—
 - (i) such action appears to be necessary for preserving the document or preventing interference with it; or
 - (ii) it is not reasonably practicable to take copies of the document on the premises;
- (d) take any other steps which appear to be necessary for the purpose mentioned in sub-paragraph (c)(i);
- (e) require any person on the premises to provide an explanation of any document appearing to be a relevant document;

- (f) require any person on the premises to state, to the best of the person's knowledge and belief, where a document appearing to be a relevant document may be found; and
 - (g) require any information which is stored in any electronic form and is accessible from the premises and which the named officer considers relevant to the purpose of deciding under regulation 19 whether there has been a misuse of aid by the beneficiary to be produced in a form—
 - (i) in which it can be taken away; and
 - (ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form.
- (2) A warrant issued under paragraph 6 may authorise persons specified in the warrant to accompany the named officer who is executing the warrant.
- (3) Any person entering premises by virtue of a warrant issued under paragraph 6 may take with the person such equipment as appears to the person to be necessary.

Warrants: further provision

9. A warrant issued under paragraph 6 must specify—
- (a) the nature of the offences created by paragraph 15; and
 - (b) the purpose of the intended entry.

Time period

10. A warrant issued under paragraph 6 continues in force until the end of the period of one month beginning with the day on which it is issued.

Execution of warrants: notice

- 11.—(1) This paragraph applies if the court has issued a warrant under paragraph 6 on the basis that the requirements in paragraph 6(3) are met.
- (2) Unless giving notice would be likely to frustrate or seriously prejudice the purpose of entering the premises, a warrant does not authorise entry to any business premises unless the named officer gives at least two working days' notice of the intended entry to the occupier of the premises.

Execution of warrants: evidence of authority

- 12.—(1) If the occupier of the business premises is present at the time when a named officer seeks to execute the warrant, the named officer must—
- (a) identify themselves to the occupier; and
 - (b) produce to the occupier the warrant and documentary evidence that they are a named officer.
- (2) If there is no person at the business premises when the named officer seeks to execute the warrant, the named officer must, before executing it—
- (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and
 - (b) if the occupier is informed, afford the occupier or the occupier's legal or other representative a reasonable opportunity to be present when the warrant is executed.
- (3) If the named officer is unable to inform the occupier of the intended entry, the named officer must, on executing the warrant, leave a copy of it in a prominent place on the premises.

Execution of warrants: securing premises after entry

13. On leaving any premises which a named officer has entered under a warrant issued under paragraph 6, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secure as the named officer found them.

Execution of warrants: seizure

14. Any document seized under a warrant issued under paragraph 6 may be retained for a period of no more than 3 months.

PART 4

Offences

Offences

- 15.—(1) A person commits an offence if, without reasonable excuse, the person—
- (a) intentionally obstructs an authorised officer acting in the exercise of the officer’s powers under paragraph 3, 5, or 8; or
 - (b) fails to comply with a requirement reasonably imposed on them by an authorised officer acting in the exercise of the officer’s powers under paragraph 3, 5 or 8.
- (2) A person who commits an offence under this paragraph is liable—
- (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

PART 5

General

Self-incrimination

16. A statement made by a person in response to a requirement imposed under this Schedule may only be used in evidence against that person—

- (a) on a prosecution for an offence under paragraph 15; or
- (b) on a prosecution for any other offence where—
 - (i) in giving evidence that person makes a statement inconsistent with the statement made in response to a requirement under this Schedule; and
 - (ii) evidence relating to the statement made in response to a requirement under this Schedule is adduced, or a question relating to it is asked, by that person or on that person’s behalf.

Privileged communication

17.—(1) A person is not required under this Schedule to produce or disclose a privileged communication.

- (2) In this paragraph, “privileged communication” means a communication—

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.

- (a) that is—
 - (i) between a professional legal adviser and the adviser’s client; or
 - (ii) made in connection with, or in contemplation of, legal proceedings and for the purposes of those legal proceedings; and
 - (b) which in proceedings in the court would be protected from disclosure on grounds of legal professional privilege.
- (3) In application of this paragraph to Scotland, references to legal professional privilege are to be read as references to confidentiality of communications.