



# Counter-Terrorism Act 2008

## 2008 CHAPTER 28

### PART 1

#### POWERS TO GATHER AND SHARE INFORMATION

##### *Power to remove documents for examination*

#### **1 Power to remove documents for examination**

- (1) This section applies to a search under any of the following provisions—
- (a) section 43(1) of the Terrorism Act 2000 (c. 11) (search of suspected terrorist);
  - (b) section 43(2) of that Act (search of person arrested under section 41 on suspicion of being a terrorist);
  - (c) paragraph 1, 3, 11, 15, 28 or 31 of Schedule 5 to that Act (terrorist investigations);
  - (d) section 52(1) or (3)(b) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (search for evidence of commission of weapons-related offences);
  - (e) section 7A, 7B or 7C of the Prevention of Terrorism Act 2005 (c. 2) (searches in connection with control orders);
  - (f) section 28 of the Terrorism Act 2006 (c. 11) (search for terrorist publications).
- (2) A constable who carries out a search to which this section applies may, for the purpose of ascertaining whether a document is one that may be seized, remove the document to another place for examination and retain it there until the examination is completed.
- (3) Where a constable carrying out a search to which this section applies has power to remove a document by virtue of this section, and the document—
- (a) consists of information that is stored in electronic form, and
  - (b) is accessible from the premises being searched,
- the constable may require the document to be produced in a form in which it can be taken away, and in which it is visible and legible or from which it can readily be produced in a visible and legible form.

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- (4) A constable has the same powers of seizure in relation to a document removed under this section as the constable would have if it had not been removed (and if anything discovered on examination after removal had been discovered without it having been removed).

## **2 Offence of obstruction**

- (1) A person who wilfully obstructs a constable in the exercise of the power conferred by section 1 commits an offence.
- (2) A person guilty of an offence under this section is liable on summary conviction—
- (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 5 on the standard scale, or both;
  - (b) in Scotland, to imprisonment for a term not exceeding twelve months or a fine not exceeding level 5 on the standard scale, or both;
  - (c) in Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.
- (3) In subsection (2)(a) as it applies in relation to an offence committed before section 281(5) of the Criminal Justice Act 2003 (c. 44) comes into force, for “51 weeks” substitute “six months”.

## **3 Items subject to legal privilege**

- (1) Section 1 does not authorise a constable to remove a document if the constable has reasonable cause to believe—
- (a) it is an item subject to legal privilege, or
  - (b) it has an item subject to legal privilege comprised in it.
- (2) Subsection (1)(b) does not prevent the removal of a document if it is not reasonably practicable for the item subject to legal privilege to be separated from the rest of the document without prejudicing any use of the rest of the document that would be lawful if it were subsequently seized.
- (3) If, after a document has been removed under section 1, it is discovered that—
- (a) it is an item subject to legal privilege, or
  - (b) it has an item subject to legal privilege comprised in it,
- the document must be returned forthwith.
- (4) Subsection (3)(b) does not require the return of a document if it is not reasonably practicable for the item subject to legal privilege to be separated from the rest of the document without prejudicing any use of the rest of the document that would be lawful if it were subsequently seized.
- (5) Where an item subject to legal privilege is removed under subsection (2) or retained under subsection (4), it must not be examined or put to any other use except to the extent necessary for facilitating the examination of the rest of the document.
- (6) For the purposes of this section “item subject to legal privilege”—
- (a) in England and Wales, has the same meaning as in the Police and Criminal Evidence Act 1984 (c. 60);

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- (b) in Scotland, has the meaning given by section 412 of the Proceeds of Crime Act 2002 (c. 29);
- (c) in Northern Ireland, has the same meaning as in the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

#### **4 Record of removal**

- (1) A constable who removes a document under section 1 must make a written record of the removal.
- (2) The record must be made as soon as is reasonably practicable and in any event within the period of 24 hours beginning with the time when the document was removed.
- (3) The record must—
  - (a) describe the document,
  - (b) specify the object of the removal,
  - (c) where the document was found in the course of a search of a person, state the person's name (if known),
  - (d) where the document was found in the course of a search of any premises, state the address of the premises where the document was found,
  - (e) where the document was found in the course of a search of any premises, state the name (if known) of—
    - (i) any person who, when the record is made, appears to the constable to have been the occupier of the premises when the document was found, and
    - (ii) any person who, when the record is made, appears to the constable to have had custody or control of the document when it was found, and
  - (f) state the date and time when the document was removed.
- (4) If, in a case where the document was found in the course of a search of a person, the constable does not know the person's name, the record must include a description of the person.
- (5) If, in a case where the document was found in the course of a search of any premises, the constable does not know the name of a person mentioned in subsection (3)(e) but is able to provide a description of that person, the record must include such a description.
- (6) The record must identify the constable by reference to the constable's police number.
- (7) The following are entitled, on a request made to the constable, to a copy of the record made under this section—
  - (a) where the document was found in the course of a search of a person, that person; and
  - (b) where the document was found in the course of a search of any premises—
    - (i) the occupier of the premises when it was found, and
    - (ii) any person who had custody or control of the document when it was found.
- (8) The constable must provide the copy within a reasonable time from the making of the request.

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- (9) If, in England and Wales or Northern Ireland, the document is found in the course of a search under a warrant, the constable must make an endorsement on the warrant stating that the document has been removed under section 1.
- (10) In the application of this section in relation to the search of a vehicle, the reference to the address of the premises is to the location of the vehicle together with its registration number (if any).

## **5 Retention of documents**

- (1) A document may not be retained by virtue of section 1 for more than 48 hours without further authorisation.
- (2) A constable of at least the rank of chief inspector may authorise the retention of the document for a further period or periods if satisfied that—
- (a) the examination of the document is being carried out expeditiously, and
  - (b) it is necessary to continue the examination for the purpose of ascertaining whether the document is one that may be seized.
- (3) This does not permit the retention of a document after the end of the period of 96 hours beginning with the time when it was removed for examination.

## **6 Access to documents**

- (1) Where—
- (a) a document is retained by virtue of section 5, and
  - (b) a request for access to the document is made to the officer in charge of the investigation by a person within subsection (3),
- the officer must grant that person access to the document, under the supervision of a constable, subject to subsection (4).
- (2) Where—
- (a) a document is retained by virtue of section 5, and
  - (b) a request for a copy of the document is made to the officer in charge of the investigation by a person within subsection (3),
- that person must be provided with a copy of the document within a reasonable time from the making of the request, subject to subsection (4).
- (3) The persons entitled to make a request under subsection (1) or (2) are—
- (a) where the document was found in the course of a search of a person, that person,
  - (b) where the document was found in the course of a search of any premises—
    - (i) the occupier of the premises when it was found, and
    - (ii) any person who had custody or control of the document when it was found, and
  - (c) a person acting on behalf of a person within paragraph (a) or (b).
- (4) The officer in charge of the investigation may refuse access to the document, or (as the case may be) refuse to provide a copy of it, if the officer has reasonable grounds for believing that to do so—
- (a) would prejudice any investigation for the purposes of which—

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- (i) the original search was carried out, or
  - (ii) the document was removed or is being retained,
- (b) would prejudice the investigation of any offence,
  - (c) would prejudice any criminal proceedings that may be brought as the result of an investigation within paragraph (a) or (b), or
  - (d) would facilitate the commission of an offence.
- (5) In this section—
- “the officer in charge of the investigation” means the officer in charge of the investigation for the purposes of which the document is being retained; and
  - “the original search” means the search in the course of which the document was removed.

## **7 Photographing and copying of documents**

- (1) Where a document is removed under section 1 it must not be photographed or copied, except that—
- (a) a document may be copied for the purpose of providing a copy in response to a request under section 6(2), and
  - (b) a document consisting of information stored in electronic form may be copied for the purpose of producing it in a visible and legible form.
- (2) Where the original document is returned, any copy under subsection (1)(b) must—
- (a) in the case of a copy in electronic form, be destroyed or made inaccessible as soon as is reasonably practicable, and
  - (b) in any other case, be returned at the same time as the original document is returned.
- (3) The following are entitled, on a request made to the relevant chief officer of police, to a certificate that subsection (2) has been complied with—
- (a) where the document was found in the course of a search of a person, that person;
  - (b) where the document was found in the course of a search of any premises—
    - (i) the occupier of the premises when it was found, and
    - (ii) any person who had custody or control of the document when it was found.
- (4) The certificate must be issued by the relevant chief officer of police, or a person authorised by or on behalf of that chief officer, not later than the end of the period of three months beginning with the day on which the request is made.
- (5) For this purpose the relevant chief officer of police is—
- (a) where the search was carried out in England or Wales, the chief officer of police in whose area the search was carried out;
  - (b) where the search was carried out in Scotland, the chief constable of the police force for the area in which the search was carried out;
  - (c) where the search was carried out in Northern Ireland, the Chief Constable of the Police Service of Northern Ireland.

## **8 Return of documents**

- (1) Where a document removed under section 1 is required to be returned, it must be returned—
  - (a) where the document was found in the course of a search of a person, to that person;
  - (b) where the document was found in the course of a search of any premises, to the occupier of the premises when it was found.
- (2) Subsection (1) does not apply where a person who is required to return the document is satisfied that another person has a better right to it; and in such a case it must be returned—
  - (a) to that other person, or
  - (b) to whoever appears to the person required to return the document to have the best right to it.
- (3) Where different persons claim to be entitled to the return of the document, it may be retained for as long as is reasonably necessary for the determination of the person to whom it must be returned.
- (4) This section also applies in relation to a copy of a document that is required to be returned at the same time as the original; and in such a case references to the document in paragraphs (a) and (b) of subsection (1) are to the original.

## **9 Power to remove documents: supplementary provisions**

- (1) In sections 1 to 8 “document” includes any record and, in particular, includes information stored in electronic form.
- (2) In the application of those sections to a search under 52(1) of the Anti-terrorism, Crime and Security Act 2001 (c. 24), for references to a constable substitute references to an authorised officer within the meaning of that section.
- (3) In the application of those sections in relation to the search of a vehicle references to the occupier of the premises are to the person in charge of the vehicle.