

Status: Point in time view as at 31/05/2016.

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SCHEDULES

[^{F1}SCHEDULE 4A

ENFORCEMENT POWERS IN RELATION TO SHIPS

Textual Amendments

- F1** Sch. 4A inserted (31.5.2016) by Immigration Act 2016 (c. 19), s. 94(1), Sch. 14 para. 8; S.I. 2016/603, reg. 2(d)

PART 2

SCOTLAND

Introductory

- 12 (1) This Part of this Schedule sets out the powers exercisable by immigration officers, Scottish constables and enforcement officers (referred to in this Part of this Schedule as “relevant officers”) under sections 28N and 28P(3).
- (2) In this Part of this Schedule—
- “items subject to legal privilege” has the same meaning as in Chapter 3 of Part 8 of the Proceeds of Crime Act 2002 (see section 412 of that Act);
 - “the ship” means the ship in relation to which the powers set out in this Part of this Schedule are exercised.

Power to stop, board, divert and detain

- 13 (1) This paragraph applies if a relevant officer has reasonable grounds to suspect that—
- (a) an offence under section 25, 25A or 25B is being, or has been, committed on the ship, or
 - (b) the ship is otherwise being used in connection with the commission of an offence under any of those sections.
- (2) The relevant officer may—
- (a) stop the ship;
 - (b) board the ship;
 - (c) require the ship to be taken to a port in the United Kingdom and detained there.
- (3) The relevant officer may require the master of the ship, or any member of its crew, to take such action as is necessary for the purposes of sub-paragraph (2)(c).
- (4) A relevant officer must give notice in writing to the master of any ship detained under this paragraph.

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- (5) The notice must state that the ship is to be detained until the notice is withdrawn by the giving of a further notice in writing signed by a relevant officer.

Power to search and obtain information

- 14 (1) This paragraph applies if a relevant officer has reasonable grounds to suspect that there is evidence on the ship (other than items subject to legal privilege) relating—
- (a) to an offence under section 25, 25A or 25B, or
 - (b) to an offence that is connected with an offence under any of those sections.
- (2) The relevant officer may search—
- (a) the ship;
 - (b) anyone on the ship;
 - (c) anything on the ship (including cargo).
- (3) The relevant officer may require a person on the ship to give information about himself or herself or about anything on the ship.
- (4) The power to search conferred by sub-paragraph (2)—
- (a) is only a power to search to the extent that it is reasonably required for the purpose of discovering evidence of the kind mentioned in sub-paragraph (1), and
 - (b) in the case of a search of a person, does not authorise a relevant officer to require the person to remove any clothing in public other than an outer coat, jacket or gloves.
- (5) In exercising a power conferred by sub-paragraph (2) or (3) a relevant officer may—
- (a) open any containers;
 - (b) require the production of documents, books or records relating to the ship or anything on it (but not including anything the relevant officer has reasonable grounds to believe to be an item subject to legal privilege);
 - (c) make photographs or copies of anything the production of which the relevant officer has power to require.
- (6) The power in sub-paragraph (5)(b) to require the production of documents, books or records includes, in relation to documents, books or records kept in electronic form, power to require the provision of the documents, books or records in a form in which they are legible and can be taken away.
- (7) Sub-paragraph (5) is without prejudice to the generality of the powers conferred by sub-paragraphs (2) and (3).
- (8) A power conferred by this paragraph may be exercised on the ship or elsewhere.

Power of arrest and seizure

- 15 (1) This paragraph applies if a relevant officer has reasonable grounds to suspect that an offence under section 25, 25A or 25B has been, or is being, committed on the ship.
- (2) The relevant officer may arrest without warrant anyone whom the officer has reasonable grounds for suspecting to be guilty of the offence.

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- (3) The relevant officer may seize and retain anything found on the ship which appears to the officer to be evidence of the offence (but not including anything that the officer has reasonable grounds to believe to be an item subject to legal privilege).
- (4) A power conferred by this paragraph may be exercised on the ship or elsewhere.

Protective searches of persons

- 16
- (1) The relevant officer may search a person found on the ship for anything which the officer has reasonable grounds to believe the person might use to—
 - (a) cause physical injury,
 - (b) cause damage to property, or
 - (c) endanger the safety of any ship.
 - (2) The power conferred by sub-paragraph (1) may be exercised—
 - (a) only if the officer has reasonable grounds to believe that anything of a kind mentioned in that sub-paragraph is concealed on the person; and
 - (b) only to the extent that it is reasonably required for the purpose of discovering any such thing.
 - (3) The relevant officer may seize and retain anything which the officer has reasonable grounds to believe might—
 - (a) cause physical injury,
 - (b) cause damage to property, or
 - (c) endanger the safety of any ship.
 - (4) If the person is detained, nothing seized under sub-paragraph (3) may be retained when the person is released from detention.
 - (5) A power conferred by this paragraph to search a person does not authorise a relevant officer to require the person to remove any clothing in public other than an outer coat, jacket or gloves, but it does authorise the search of a person's mouth.
 - (6) A power conferred by this paragraph may be exercised on the ship or elsewhere.

Search for nationality documents

- 17
- (1) The relevant officer may require a person found on the ship to produce a nationality document.
 - (2) The relevant officer may search a person found on the ship where the officer has reasonable grounds to believe that a nationality document is concealed on the person.
 - (3) The power conferred by sub-paragraph (2) may be exercised—
 - (a) only if the officer has reasonable grounds to believe that a nationality document is concealed on the person; and
 - (b) only to the extent that it is reasonably required for the purpose of discovering any such document.
 - (4) Subject as follows, the officer may seize and retain a nationality document for as long as the officer believes the person to whom it relates will arrive in the United Kingdom by virtue of the exercise of the power in paragraph 13.

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- (5) The power to retain a nationality document in sub-paragraph (4) does not affect any other power of an immigration officer to retain a document.
- (6) Where the nationality document has been seized and retained by a relevant officer who is not an immigration officer, the document must be passed to an immigration officer as soon as is practicable after the ship has arrived in the United Kingdom.
- (7) The power conferred by this paragraph to search a person does not authorise a relevant officer to—
 - (a) require the person to remove any clothing in public other than an outer coat, jacket or gloves, or
 - (b) seize and retain any document the officer has reasonable grounds to believe to be an item subject to legal privilege.
- (8) In this paragraph a “nationality document”, in relation to a person, means any document which might—
 - (a) establish the person's identity, nationality or citizenship, or
 - (b) indicate the place from which the person has travelled to the United Kingdom or to which the person is proposing to go.
- (9) A power conferred by this paragraph may be exercised on the ship or elsewhere.

Assistants

- 18 (1) A relevant officer may—
 - (a) be accompanied by other persons, and
 - (b) take equipment or materials,
 to assist the officer in the exercise of powers under this Part of this Schedule.
- (2) A person accompanying a relevant officer under sub-paragraph (1) may perform any of the officer's functions under this Part of this Schedule, but only under the officer's supervision.

Reasonable force

- 19 A relevant officer may use reasonable force, if necessary, in the performance of functions under this Part of this Schedule.

Evidence of authority

- 20 A relevant officer must produce evidence of the officer's authority if asked to do so.

Protection of relevant officers

- 21 A relevant officer is not liable in any criminal or civil proceedings for anything done in the purported performance of functions under this Part of this Schedule if the court is satisfied that—
 - (a) the act was done in good faith, and
 - (b) there were reasonable grounds for doing it.

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Offences

- 22 (1) A person commits an offence under the law of Scotland if the person—
- (a) intentionally obstructs a relevant officer in the performance of functions under this Part of this Schedule, or
 - (b) fails without reasonable excuse to comply with a requirement made by a relevant officer in the performance of those functions.
- (2) A person who provides information in response to a requirement made by a relevant officer in the performance of functions under this Part of this Schedule commits an offence under the law of Scotland if—
- (a) the information is false in a material particular, and the person either knows it is or is reckless as to whether it is, or
 - (b) the person intentionally fails to disclose any material particular.
- (3) A relevant officer may arrest without warrant anyone whom the officer has reasonable grounds for suspecting to be guilty of an offence under this paragraph.
- (4) A person guilty of an offence under this paragraph is liable on summary conviction to imprisonment for a term not exceeding 12 months, to a fine not exceeding level 5 on the standard scale or to both.]

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