

SCHEDULES

SCHEDULE 7

TERRORIST INVESTIGATIONS

PART I

ENGLAND, WALES AND NORTHERN IRELAND

Interpretation

- 1 In this Part of this Schedule a “terrorist investigation” means any investigation to which section 17(1) of this Act applies and “items subject to legal privilege”, “excluded material” and “special procedure material” have the meanings given in sections 10 to 14 of the Police and Criminal Evidence Act 1984.

Search for material other than excluded or special procedure material

- 2 (1) A justice of the peace may, on an application made by a constable, issue a warrant under this paragraph if satisfied that a terrorist investigation is being carried out and that there are reasonable grounds for believing—
- (a) that there is material on premises specified in the application which is likely to be of substantial value (whether by itself or together with other material) to the investigation;
 - (b) that the material does not consist of or include items subject to legal privilege, excluded material or special procedure material; and
 - (c) that any of the conditions in sub-paragraph (2) below are fulfilled.
- (2) The conditions referred to in sub-paragraph (1)(c) above are—
- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the material;
 - (c) that entry to the premises will not be granted unless a warrant is produced;
 - (d) that the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.
- (3) A warrant under this paragraph shall authorise a constable to enter the premises specified in the warrant and to search the premises and any person found there and to seize and retain anything found there or on any such person, other than items subject to legal privilege, if he has reasonable grounds for believing—
- (a) that it is likely to be of substantial value (whether by itself or together with other material) to the investigation; and

Status: This is the original version (as it was originally enacted).

(b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(4) In Northern Ireland an application for a warrant under this paragraph shall be made by a complaint on oath.

Order for production of excluded or special procedure material

3 (1) A constable may, for the purposes of a terrorist investigation, apply to a Circuit judge for an order under sub-paragraph (2) below in relation to particular material or material of a particular description, being material consisting of or including excluded material or special procedure material.

(2) If on such an application the judge is satisfied that the material consists of or includes such material as is mentioned in sub-paragraph (1) above, that it does not include items subject to legal privilege and that the conditions in sub-paragraph (5) below are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall—

- (a) produce it to a constable for him to take away; or
- (b) give a constable access to it,

within such period as the order may specify and if the material is not in that person's possession (and will not come into his possession within that period) to state to the best of his knowledge and belief where it is.

(3) An order under sub-paragraph (2) above may relate to material of a particular description which is expected to come into existence or become available to the person concerned in the period of twenty-eight days beginning with the date of the order; and an order made in relation to such material shall require that person to notify a named constable as soon as possible after the material comes into existence or becomes available to that person.

(4) The period to be specified in an order under sub-paragraph (2) above shall be seven days from the date of the order or, in the case of an order made by virtue of sub-paragraph (3) above, from the notification to the constable unless it appears to the judge that a longer or shorter period would be appropriate in the particular circumstances of the application.

(5) The conditions referred to in sub-paragraph (2) above are—

- (a) that a terrorist investigation is being carried out and that there are reasonable grounds for believing that the material is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made; and
- (b) that there are reasonable grounds for believing that it is in the public interest, having regard—
 - (i) to the benefit likely to accrue to the investigation if the material is obtained; and
 - (ii) to the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given.

(6) Where the judge makes an order under sub-paragraph (2)(b) above in relation to material on any premises he may, on the application of a constable, order any person

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

who appears to him to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.

- (7) In Northern Ireland the power to make an order under this paragraph shall be exercised by a county court judge.
- 4 (1) Provision may be made by Crown Court Rules as to—
- (a) the discharge and variation of orders under paragraph 3 above; and
 - (b) proceedings relating to such orders.
- (2) The following provisions shall have effect pending the coming into force of Crown Court Rules under sub-paragraph (1) above—
- (a) an order under paragraph 3 above may be discharged or varied by a Circuit judge on a written application made to the appropriate officer of the Crown Court by any person subject to the order;
 - (b) unless a Circuit judge otherwise directs on grounds of urgency, the applicant shall, not less than forty-eight hours before making the application, send a copy of it and a notice in writing of the time and place where the application is to be made to the constable on whose application the order to be discharged or varied was made or on any other constable serving in the same police station.
- (3) An order of a Circuit judge under paragraph 3 above shall have effect as if it were an order of the Crown Court.
- (4) Where the material to which an application under that paragraph relates consists of information contained in a computer—
- (a) an order under sub-paragraph (2)(a) of that paragraph shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
 - (b) an order under sub-paragraph (2)(b) of that paragraph shall have effect as an order to give access to the material in a form in which it is visible and legible.
- (5) An order under paragraph 3 above—
- (a) shall not confer any right to production of, or access to, items subject to legal privilege;
 - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by statute or otherwise.
- (6) An order may be made under paragraph 3 above in relation to material in the possession of a government department which is an authorised government department for the purposes of the Crown Proceedings Act 1947; and any such order (which shall be served as if the proceedings were civil proceedings against the department) may require any officer of the department, whether named in the order or not, who may for the time being be in possession of the material concerned to comply with it.
- (7) In the application of this paragraph to Northern Ireland for references to a Circuit judge there shall be substituted references to a county court judge and for references to a government department or authorised government department there shall be substituted references to a Northern Ireland department or authorised Northern Ireland department.

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

Search for excluded or special procedure material

- 5
- (1) A constable may apply to a Circuit judge for a warrant under this paragraph in relation to specified premises.
 - (2) On such an application the judge may issue a warrant under this paragraph if satisfied—
 - (a) that an order made under paragraph 3 above in relation to material on the premises has not been complied with; or
 - (b) that there are reasonable grounds for believing that there is on the premises material consisting of or including excluded material or special procedure material, that it does not include items subject to legal privilege and that the conditions in sub-paragraph (5) of that paragraph and the condition in sub-paragraph (3) below are fulfilled in respect of that material.
 - (3) The condition referred to in sub-paragraph (2)(b) above is that it would not be appropriate to make an order under paragraph 3 above in relation to the material because—
 - (a) it is not practicable to communicate with any person entitled to produce the material; or
 - (b) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
 - (c) the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable could secure immediate access to the material.
 - (4) A warrant under this paragraph shall authorise a constable to enter the premises specified in the warrant and to search the premises and any person found there and to seize and retain anything found there or on any such person, other than items subject to legal privilege, if he has reasonable grounds for believing that it is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application was made.
 - (5) In Northern Ireland the power to issue a warrant under this paragraph shall be exercised by a county court judge.

Explanation of seized or produced material

- 6
- (1) A Circuit judge may, on an application made by a constable, order any person specified in the order to provide an explanation of any material seized in pursuance of a warrant under paragraph 2 or 5 above or produced or made available to a constable under paragraph 3 above.
 - (2) A person shall not under this paragraph be required to disclose any information which he would be entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the High Court, except that a lawyer may be required to furnish the name and address of his client.
 - (3) A statement by a person in response to a requirement imposed by virtue of this paragraph may only be used in evidence against him—
 - (a) on a prosecution for an offence under sub-paragraph (4) below; or
 - (b) on a prosecution for some other offence where in giving evidence he makes a statement inconsistent with it.

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

- (4) A person who, in purported compliance with a requirement under this paragraph—
- (a) makes a statement which he knows to be false or misleading in a material particular; or
 - (b) recklessly makes a statement which is false or misleading in a material particular,
- is guilty of an offence.
- (5) A person guilty of an offence under sub-paragraph (4) above is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two 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.
- (6) In Northern Ireland the power to make an order under this paragraph shall be exercised by a county court judge.
- (7) Paragraph 4(1), (2), (3) and (6) above shall apply to orders under this paragraph as they apply to orders under paragraph 3.

Urgent cases

- 7
- (1) If a police officer of at least the rank of superintendent has reasonable grounds for believing that the case is one of great emergency and that in the interests of the State immediate action is necessary, he may by a written order signed by him give to any constable the authority which may be given by a search warrant under paragraph 2 or 5 above.
- (2) Where an authority is given under this paragraph particulars of the case shall be notified as soon as may be to the Secretary of State.
- (3) An order under this paragraph may not authorise a search for items subject to legal privilege.
- (4) If such a police officer as is mentioned in sub-paragraph (1) above has reasonable grounds for believing that the case is such as is there mentioned he may by a notice in writing signed by him require any person specified in the notice to provide an explanation of any material seized in pursuance of an order under this paragraph.
- (5) Any person who without reasonable excuse fails to comply with a notice under sub-paragraph (4) above is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.
- (6) Sub-paragraphs (2) to (5) of paragraph 6 above shall apply to a requirement imposed under sub-paragraph (4) above as they apply to a requirement under that paragraph.

Orders by Secretary of State in relation to certain investigations

- 8
- (1) This paragraph has effect in relation to a terrorist investigation concerning any act which appears to the Secretary of State to constitute an offence under Part III of this Act.
- (2) Without prejudice to the foregoing provisions of this Part of this Schedule, the Secretary of State may by a written order signed by him or on his behalf give to any

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

constable in Northern Ireland the authority which may be given by a search warrant under paragraph 2 or 5 above or impose on any person in Northern Ireland any such requirement as may be imposed by an order under paragraph 3 above if—

- (a) he is satisfied as to the matters specified in those paragraphs respectively for the issue of a warrant by a justice of the peace or the making of an order by a county court judge; and
 - (b) it appears to him that the disclosure of information that would be necessary for an application under those provisions would be likely to prejudice the capability of members of the Royal Ulster Constabulary in relation to the investigation of offences under Part III of this Act or otherwise prejudice the safety of, or of persons in, Northern Ireland.
- (3) A person who disobeys an order under this paragraph which corresponds to an order under paragraph 3 above (a “Secretary of State’s production order”) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two 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.
- (4) A Secretary of State’s production order may be varied or revoked by the Secretary of State and references in paragraphs 4(4), (5) and (6) and 5 above to an order under paragraph 3 above shall include references to a Secretary of State’s production order.
- (5) The Secretary of State may by a written order signed by him or on his behalf require any person in Northern Ireland to provide an explanation of any material seized or produced in pursuance of an order under the foregoing provisions of this paragraph; and paragraphs 6(2) to (5) and 7(5) above shall apply to an order under this sub-paragraph as they apply to an order or notice under those paragraphs.

Access to Land Register

- 9 (1) The Chief Land Registrar shall, on an application made by a police officer of at least the rank of superintendent, in relation to a person specified in the application or to property so specified, provide the applicant with any information kept by the Registrar under the Land Registration Act 1925 which relates to that person or property.
- (2) On any such application there shall be given to the Registrar a certificate stating that there are reasonable grounds for suspecting that there is information kept by him which is likely to be of substantial value (whether by itself or together with other information) to a terrorist investigation.
- (3) The information to be provided by the Registrar under this paragraph shall be provided in documentary form.

Supplementary

- 10 (1) Any power of seizure conferred by this Schedule is without prejudice to the powers conferred by section 19 of the Police and Criminal Evidence Act 1984 and for the purposes of sections 21 and 22 of that Act (access to, and copying and retention of, seized material)—
- (a) a terrorist investigation shall be treated as an investigation of or in connection with an offence; and

- (b) material produced in pursuance of an order under paragraph 3 or 8 above shall be treated as if it were material seized by a constable.
- (2) A search of a person under this Part of this Schedule may only be carried out by a person of the same sex.