

SCHEDULES

SCHEDULE 5

TERRORIST INVESTIGATIONS: INFORMATION

PART I

ENGLAND AND WALES AND NORTHERN IRELAND

Excluded and special procedure material: production & access

- 5 (1) A constable may apply to a Circuit judge for an order under this paragraph for the purposes of a terrorist investigation.
- (2) An application for an order shall relate to particular material, or material of a particular description, which consists of or includes excluded material or special procedure material.
- (3) An order under this paragraph may require a specified person—
- (a) to produce to a constable within a specified period for seizure and retention any material which he has in his possession, custody or power and to which the application relates;
 - (b) to give a constable access to any material of the kind mentioned in paragraph (a) within a specified period;
 - (c) to state to the best of his knowledge and belief the location of material to which the application relates if it is not in, and it will not come into, his possession, custody or power within the period specified under paragraph (a) or (b).
- (4) For the purposes of this paragraph—
- (a) an order may specify a person only if he appears to the Circuit judge to have in his possession, custody or power any of the material to which the application relates, and
 - (b) a period specified in an order shall be the period of seven days beginning with the date of the order unless it appears to the judge that a different period would be appropriate in the particular circumstances of the application.
- (5) Where a Circuit judge makes an order under sub-paragraph (3)(b) in relation to material on any premises, he may, on the application of a constable, order any person who appears to the judge to be entitled to grant entry to the premises to allow any constable to enter the premises to obtain access to the material.
- 6 (1) A Circuit judge may grant an application under paragraph 5 if satisfied—
- (a) that the material to which the application relates consists of or includes excluded material or special procedure material,
 - (b) that it does not include items subject to legal privilege, and

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- (c) that the conditions in sub-paragraphs (2) and (3) are satisfied in respect of that material.
 - (2) The first condition is that—
 - (a) the order is sought for the purposes of a terrorist investigation, and
 - (b) 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 a terrorist investigation.
 - (3) The second condition is that there are reasonable grounds for believing that it is in the public interest that the material should be produced or that access to it should be given having regard—
 - (a) to the benefit likely to accrue to a terrorist investigation if the material is obtained, and
 - (b) to the circumstances under which the person concerned has any of the material in his possession, custody or power.
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- (1) An order under paragraph 5 may be made in relation to—
 - (a) material consisting of or including excluded or special procedure material which is expected to come into existence within the period of 28 days beginning with the date of the order;
 - (b) a person who the Circuit judge thinks is likely to have any of the material to which the application relates in his possession, custody or power within that period.
 - (2) Where an order is made under paragraph 5 by virtue of this paragraph, paragraph 5(3) shall apply with the following modifications—
 - (a) the order shall require the specified person to notify a named constable as soon as is reasonably practicable after any material to which the application relates comes into his possession, custody or power,
 - (b) the reference in paragraph 5(3)(a) to material which the specified person has in his possession, custody or power shall be taken as a reference to the material referred to in paragraph (a) above which comes into his possession, custody or power, and
 - (c) the reference in paragraph 5(3)(c) to the specified period shall be taken as a reference to the period of 28 days beginning with the date of the order.
 - (3) Where an order is made under paragraph 5 by virtue of this paragraph, paragraph 5(4) shall not apply and the order—
 - (a) may only specify a person falling within sub-paragraph (1)(b), and
 - (b) shall specify the period of seven days beginning with the date of notification required under sub-paragraph (2)(a) unless it appears to the judge that a different period would be appropriate in the particular circumstances of the application.
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- (1) An order under paragraph 5—
 - (a) shall not confer any right to production of, or access to, items subject to legal privilege, and
 - (b) shall have effect notwithstanding any restriction on the disclosure of information imposed by statute or otherwise.
 - (2) Where the material to which an application under paragraph 5 relates consists of information contained in a computer—

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- (a) an order under paragraph 5(3)(a) 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 paragraph 5(3)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.
- 9 (1) An order under paragraph 5 may be made in relation to material in the possession, custody or power of a government department.
- (2) Where an order is made by virtue of sub-paragraph (1)—
 - (a) it shall be served as if the proceedings were civil proceedings against the department, and
 - (b) it may require any officer of the department, whether named in the order or not, who may for the time being have in his possession, custody or power the material concerned, to comply with the order.
- (3) In this paragraph “government department” means an authorised government department for the purposes of the Crown Proceedings Act 1947.
- 10 (1) An order of a Circuit judge under paragraph 5 shall have effect as if it were an order of the Crown Court.
- (2) Crown Court Rules may make provision about proceedings relating to an order under paragraph 5.
- (3) In particular, the rules may make provision about the variation or discharge of an order.