

SCHEDULES

SCHEDULE 5

INVESTIGATORY POWERS ETC.

PART 5

PROVISIONS SUPPLEMENTARY TO PARTS 3 AND 4

Offence of obstruction

- 36 (1) A person commits an offence if the person—
- (a) intentionally obstructs an enforcer or an officer of an enforcer who is exercising or seeking to exercise a power under Part 4 of this Schedule in accordance with that Part,
 - (b) intentionally fails to comply with a requirement properly imposed by an enforcer or an officer of an enforcer under Part 4 of this Schedule, or
 - (c) without reasonable cause fails to give an enforcer or an officer of an enforcer any other assistance or information which the enforcer or officer reasonably requires of the person for a purpose for which the enforcer or officer may exercise a power under Part 4 of this Schedule.
- (2) A person commits an offence if, in giving information of a kind referred to in sub-paragraph (1)(c), the person—
- (a) makes a statement which the person knows is false or misleading in a material respect, or
 - (b) recklessly makes a statement which is false or misleading in a material respect.
- (3) A person who is guilty of an offence under sub-paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) Nothing in this paragraph requires a person to answer any question or give any information if to do so might incriminate that person.

Offence of purporting to act as officer

- 37 (1) A person who is not an officer of an enforcer commits an offence if the person purports to act as such under Part 3 or 4 of this Schedule.
- (2) A person who is guilty of an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) If section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force on or before the day on which this Act is passed—

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- (a) section 85 of that Act (removal of limit on certain fines on conviction by magistrates' court) applies in relation to the offence in this paragraph as if it were a relevant offence (as defined in section 85(3) of that Act), and
- (b) regulations described in section 85(11) of that Act may amend or otherwise modify sub-paragraph (2).

Access to seized goods and documents

- 38 (1) This paragraph applies where anything seized by an officer of an enforcer under Part 4 of this Schedule is detained by the enforcer.
- (2) If a request for permission to be granted access to that thing is made to the enforcer by a person who had custody or control of it immediately before it was seized, the enforcer must allow that person access to it under the supervision of an officer of the enforcer.
- (3) If a request for a photograph or copy of that thing is made to the enforcer by a person who had custody or control of it immediately before it was seized, the enforcer must—
- (a) allow that person access to it under the supervision of an officer of the enforcer for the purpose of photographing or copying it, or
 - (b) photograph or copy it, or cause it to be photographed or copied.
- (4) Where anything is photographed or copied under sub-paragraph (3), the photograph or copy must be supplied to the person who made the request within a reasonable time from the making of the request.
- (5) This paragraph does not require access to be granted to, or a photograph or copy to be supplied of, anything if the enforcer has reasonable grounds for believing that to do so would prejudice the investigation for the purposes of which it was seized.
- (6) An enforcer may recover the reasonable costs of complying with a request under this paragraph from the person by whom or on whose behalf it was made.
- (7) References in this paragraph to a person who had custody or control of a thing immediately before it was seized include a representative of such a person.

Notice of testing of goods

- 39 (1) Sub-paragraphs (3) and (4) apply where goods purchased by an officer of a domestic enforcer under paragraph 21 are submitted to a test and as a result—
- (a) proceedings are brought for a breach of, or under, the enforcer's legislation or for the forfeiture of the goods by the enforcer, or
 - (b) a notice is served by the enforcer preventing a person from doing any thing.
- (2) Sub-paragraphs (3) and (4) also apply where goods seized by an officer of a domestic enforcer under paragraph 28 are submitted to a test.
- (3) The enforcer must inform the relevant person of the results of the test.
- (4) The enforcer must allow a relevant person to have the goods tested if it is reasonably practicable to do so.

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- (5) In sub-paragraph (3) “relevant person” means the person from whom the goods were purchased or seized or, where the goods were purchased or seized from a vending machine—
- (a) the person whose name and address are on the vending machine as the owner of the machine, or
 - (b) if there is no such name and address on the machine, the occupier of the premises on which the machine stands or to which it is fixed.
- (6) In sub-paragraph (4) “relevant person” means—
- (a) a person within sub-paragraph (5),
 - (b) in a case within sub-paragraph (1)(a), a person who is a party to the proceedings, and
 - (c) in a case within sub-paragraph (1)(b), a person with an interest in the goods.

Appeals against detention of goods and documents

- 40 (1) This paragraph applies where goods or documents are being detained as the result of the exercise of a power in Part 4 of this Schedule.
- (2) A person with an interest in the goods or documents may apply for an order requiring them to be released to that or another person.
- (3) An application under this paragraph may be made in England and Wales or Northern Ireland—
- (a) to any magistrates’ court in which proceedings have been brought for an offence as the result of the investigation in the course of which the goods or documents were seized,
 - (b) to any magistrates’ court in which proceedings have been brought for the forfeiture of the goods or documents or (in the case of seized documents) any goods to which the documents relate, or
 - (c) if no proceedings within paragraph (a) or (b) have been brought, by way of complaint to a magistrates’ court.
- (4) An application under this paragraph may be made in Scotland by summary application to the sheriff.
- (5) On an application under this paragraph, the court or sheriff may make an order requiring goods to be released only if satisfied that condition A or B is met.
- (6) Condition A is that—
- (a) no proceedings have been brought—
 - (i) for an offence as the result of the investigation in the course of which the goods or documents were seized, or
 - (ii) for the forfeiture of the goods or documents or (in the case of seized documents) any goods to which the documents relate, and
 - (b) the period of 6 months beginning with the date the goods or documents were seized has expired.
- (7) Condition B is that—
- (a) proceedings of a kind mentioned in sub-paragraph (6)(a) have been brought, and

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- (b) those proceedings have been concluded without the goods or documents being forfeited.
- (8) A person aggrieved by an order made under this paragraph by a magistrates' court, or by the decision of a magistrates' court not to make such an order, may appeal against the order or decision—
 - (a) in England and Wales, to the Crown Court;
 - (b) in Northern Ireland, to a county court.
- (9) An order made under this paragraph by a magistrates' court may contain such provision as the court thinks appropriate for delaying its coming into force pending the making and determination of any appeal.
- (10) In sub-paragraph (9) “appeal” includes an application under section 111 of the Magistrates' Courts Act 1980 or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (SI 1981/1675 (NI 26)) (statements of case).

Compensation

- 41
- (1) This paragraph applies where an officer of an enforcer has seized and detained goods under Part 4 of this Schedule for a purpose within paragraph 19(5)(a) or 20(5)(a).
 - (2) The enforcer must pay compensation to any person with an interest in the goods in respect of any loss or damage caused by the seizure and detention, if the condition in sub-paragraph (3) or (4) that is relevant to the enforcer is met.
 - (3) The condition that is relevant to a domestic enforcer is that—
 - (a) the goods have not disclosed a breach of the enforcer's legislation, and
 - (b) the power to seize and detain the goods was not exercised as a result of any neglect or default of the person seeking the compensation.
 - (4) The condition that is relevant to an EU enforcer is that—
 - (a) the goods have not disclosed a Community infringement or a failure to comply with a measure specified in paragraph 20(3)(b), (c) or (d), and
 - (b) the power to seize and detain the goods was not exercised as a result of any neglect or default of the person seeking the compensation.
 - (5) Any dispute about the right to or amount of any compensation payable under this paragraph is to be determined—
 - (a) in England and Wales or Northern Ireland, by arbitration, or
 - (b) in Scotland, by a single arbitrator appointed by the parties or, if there is no agreement between the parties as to that appointment, by the sheriff.

Meaning of “goods” in this Part

- 42 In this Part of this Schedule “goods” does not include a document.