

SCHEDULES

SCHEDULE 3

BORDER SECURITY

PART 1

POWERS

Retention of property

- 13 (1) Before proceeding under paragraph 12 in relation to an article, the Commissioner—
- (a) must invite each affected party to make representations, before the end of whatever period the Commissioner may specify, about how the Commissioner should proceed under that paragraph, and
 - (b) must have regard to any representations made by an affected party before the end of that period.
- (2) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, exercises a function under paragraph 12 in relation to an article, an affected party may ask the Investigatory Powers Commissioner to decide whether to approve the way in which the function was exercised.
- (3) Each of the following is an “affected party” for the purposes of this paragraph—
- (a) where the examining officer is a constable, the responsible chief officer,
 - (b) the Secretary of State, and
 - (c) the person from whom the article was taken.
- (4) In sub-paragraph (3) “responsible chief officer” means—
- (a) in a case where the article was taken in connection with an investigation being conducted by a police force in England and Wales, the chief officer of police of that police force;
 - (b) in a case where the article was taken in connection with an investigation being conducted by the Police Service of Scotland, the chief constable of the Police Service of Scotland;
 - (c) in a case where the article was taken in connection with an investigation being conducted by the Police Service of Northern Ireland, the Chief Constable of the Police Service of Northern Ireland;
 - (d) in any other case—
 - (i) where the examining officer is a constable of a police force in England and Wales, the chief officer of police of that police force,
 - (ii) where the examining officer is a constable of the Police Service of Scotland, the chief constable of the Police Service of Scotland, or

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(iii) where the examining officer is a constable of the Police Service of Northern Ireland, the Chief Constable of the Police Service of Northern Ireland.

- (5) Sub-paragraph (6) applies where —
- (a) a direction for the destruction of an article is given under paragraph 12, or
 - (b) authorisation for the retention and use of an article is granted under that paragraph.
- (6) The Commissioner must inform the person from whom the article was taken that—
- (a) a direction to destroy the article has been given, or
 - (b) (as the case may be) authorisation to retain and use the article has been granted (and in this case the Commissioner must provide details of any conditions subject to which that authorisation was granted).
- (7) A requirement under this paragraph to invite representations from, or to provide information to, the person from whom an article was taken applies only so far as it is reasonably practicable to do so.
- (8) Representations under sub-paragraph (1) must be made in writing.