

## SCHEDULES

### SCHEDULE 2

#### POWERS OF ENTRY, SEARCH AND SEIZURE

##### PART 2

##### SCOTLAND

###### *Introductory*

- 18 (1) [This Part](#) of [this Schedule](#) applies in Scotland.
- (2) In [this Part](#) of [this Schedule](#) “relevant act” means—
- (a) an offence under [this Part](#) of this Act, other than an offence under—
    - (i) section 5 (unauthorised entry to a prohibited place);
    - (ii) section 6 (prohibited place: failure to comply with order of constable);
    - (iii) section 11 (cordoned area: failure to comply with order of constable);
    - (iv) [this Schedule](#);
    - (v) Schedule 3 (disclosure orders);
    - (vi) Schedule 4 (customer information orders);
  - (b) an act or threat within section 33(3)(b) or (c).

###### *Production orders*

- 19 (1) The procurator fiscal may apply to a sheriff for an order under [this paragraph](#).
- (2) The sheriff may grant the application if satisfied that conditions 1 to 4 are met.
- (3) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed.
- (4) Condition 2 is that there are reasonable grounds for suspecting that a person specified in the application has in their possession, custody or control material which is likely to be evidence that a relevant act has been, or is about to be, committed.
- (5) Condition 3 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed.
- (6) Condition 4 is that there are reasonable grounds for believing that it is in the public interest that the material should be produced or access to it should be given having regard to—
- (a) the benefit likely to accrue to the investigation if the material is obtained, and

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- (b) the circumstances under which the person concerned has any of the material in their possession, custody or control.
- (7) An order under [this paragraph](#) is an order that the person specified in the application must do any of the following—
- (a) produce to a constable within a specified period for seizure and retention any material which the person has in their possession, custody or control and to which the application relates;
  - (b) give a constable access to any material of the kind mentioned in [paragraph \(a\)](#) within a specified period;
  - (c) state to the best of the person’s knowledge and belief the location of the material to which the application relates if it is not in, and will not come into, the person’s possession, custody or control within the period specified under [paragraph \(a\)](#) or [\(b\)](#).
- (8) The specified period is to be the period of 7 days beginning with the date of the order, unless it appears to the sheriff that a different period would be appropriate in the particular circumstances of the application.
- (9) Where the sheriff makes an order under [sub-paragraph \(7\)\(b\)](#) in relation to material on any premises, they may, on the application of the procurator fiscal, order any person who appears to them to be entitled to grant entry to the premises to allow any constable to enter the premises to obtain access to the material.
- 20 (1) The procurator fiscal may apply to a sheriff for an order under [this paragraph](#).
- (2) The sheriff may grant the application if satisfied that conditions 1 to 5 are met.
- (3) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed.
- (4) Condition 2 is that there are reasonable grounds for suspecting that, within the period of 28 days beginning with the date of the order, there is likely to come into existence material which is evidence that a relevant act has been, or is about to be, committed.
- (5) Condition 3 is that there are reasonable grounds for suspecting that a person specified in the application is likely within that period to have in their possession, custody or control any of the material to which the application relates.
- (6) Condition 4 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed.
- (7) Condition 5 is that there are reasonable grounds for believing that it is in the public interest that the material should be produced or access to it should be given having regard to—
- (a) the benefit likely to accrue to the investigation if the material is obtained, and
  - (b) the circumstances under which the person concerned is likely to have any of the material in their possession, custody or control.
- (8) An order under [this paragraph](#) is an order that the person specified in the application must do any of the following—
- (a) notify a named constable as soon as reasonably practicable after any material to which the application relates comes into the person’s possession, custody or control;

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- (b) produce to a constable within a specified period for seizure and retention any material to which the application relates which comes into the person's possession, custody or control;
  - (c) give a constable access to any material of the kind mentioned in paragraph (b) within a specified period;
  - (d) state to the best of the person's knowledge and belief the location of the material to which the application relates if it is not in, and will not come into, the person's possession, custody or control within the period of 28 days beginning with the date of the order.
- (9) The specified period is to be the period of 7 days beginning with the date of the notification required by sub-paragraph (8)(a), unless it appears to the sheriff that a different period would be appropriate in the particular circumstances of the application.
- (10) Where the sheriff makes an order under sub-paragraph (8)(c) in relation to material on any premises, they may, on the application of the procurator fiscal, order any person who appears to them to be entitled to grant entry to the premises to allow any constable to enter the premises to obtain access to the material.

*Production orders: supplementary*

- 21 An application for an order under paragraph 19 or 20 may be made without notice to a sheriff in chambers.
- 22 (1) An order under paragraph 19 or 20 has effect despite any obligation as to secrecy or other restriction on the disclosure of information imposed by an enactment or otherwise.
- (2) Where the material consists of information stored in electronic form—
- (a) an order under paragraph 19(7)(a) or 20(8)(b) has 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, or from which it can readily be produced in a visible and legible form, and
  - (b) an order under paragraph 19(7)(b) or 20(8)(c) has effect as an order to give a constable access to the material in a form in which it is visible and legible.
- 23 (1) An order under paragraph 19 or 20 may be made in relation to material in the possession, custody or control of a government department.
- (2) Where an order is made by virtue of sub-paragraph (1)—
- (a) it is to 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 their possession, custody or control the material concerned, to comply with the order.
- (3) In this paragraph “government department” means—
- (a) a public department within the meaning of the Crown Suits (Scotland) Act 1857, and
  - (b) any part of the Scottish Administration.
- 24 (1) Without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995, provision may be made by the High Court of Justiciary by Act of Adjournal as to—

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- (a) the recall and variation of orders under paragraph 19 or 20; and
  - (b) proceedings relating to such orders.
- (2) The following provisions have effect pending the coming into force of an Act of Adjournal under sub-paragraph (1)—
- (a) an order under paragraph 19 or 20 may be recalled or varied by a sheriff on a written application made to the sheriff by any person subject to the order;
  - (b) unless the sheriff otherwise directs on grounds of urgency, the applicant must, not less than 48 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 procurator fiscal on whose application the order was made.

*Search, seizure and retention*

- 25 (1) The procurator fiscal may apply to a sheriff for the issue of a warrant under [this paragraph](#).
- (2) The sheriff may grant the application if satisfied that an order made under [paragraph 19 or 20](#) in relation to material on the relevant premises has not been complied with.
- (3) The sheriff may also grant the application if satisfied that—
- (a) conditions 1 to 5 are met, and
  - (b) in the case of an application for an all premises warrant, condition 6 is met.
- (4) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed.
- (5) Condition 2 is that there are reasonable grounds for suspecting that there is on the relevant premises material which is likely to be evidence that a relevant act has been, or is about to be, committed.
- (6) Condition 3 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed.
- (7) Condition 4 is that there are reasonable grounds for believing that it is in the public interest that the material should be obtained having regard to—
- (a) the benefit likely to accrue to the investigation if the material is obtained, and
  - (b) the circumstances under which the person concerned has any of the material in their possession, custody or control.
- (8) Condition 5 is that any of the following apply—
- (a) it is not practicable to communicate with any person entitled to produce the material;
  - (b) it is not practicable to communicate with any person entitled to grant access to the material;
  - (c) the investigation may be seriously prejudiced unless a constable can secure immediate access to the material.
- (9) Condition 6 is that it is not reasonably practicable to specify in the application all the premises which the person specified in the application occupies or controls and which might need to be searched.
- (10) A warrant under [this paragraph](#) is a warrant authorising any constable—

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- (a) to enter the relevant premises,
  - (b) to search the relevant premises and any person found there, and
  - (c) to seize and retain any material found on a search under paragraph (b) which is likely to be evidence that a relevant act has been, or is about to be, committed.
- (11) In [this paragraph](#) the “relevant premises” are—
- (a) one or more sets of premises specified in the application (in which case the application is for a “specific premises warrant”), or
  - (b) any premises occupied or controlled by a person specified in the application, including such sets of premises as are so specified (in which case the application is for an “all premises warrant”).

### *Explanations*

- 26 (1) The procurator fiscal may apply to a sheriff for an order under [this paragraph](#) requiring any person specified in the order to provide an explanation of material—
- (a) seized under a warrant under paragraph 25, or
  - (b) produced or made available to a constable under paragraph 19 or 20.
- (2) An application for an order under this paragraph may be made without notice to a sheriff in chambers.
- (3) Without prejudice to paragraph 30, an order under [this paragraph](#) may require a lawyer to provide the name and address of their client.
- (4) A statement by a person in response to a requirement imposed by an order under [this paragraph](#) may only be used in evidence against the person—
- (a) on a prosecution for an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995, or
  - (b) on a prosecution for some other offence where in giving evidence they make a statement inconsistent with it.
- (5) [Paragraphs 23 and 24](#) apply to orders under [this paragraph](#) as they apply to orders made under [paragraph 19](#) or [20](#).

### *Urgent cases*

- 27 (1) A police officer of at least the rank of superintendent may by a written order signed by them give to any constable the authority which may be given by a warrant under [paragraph 25](#) (subject to [sub-paragraph \(2\)](#)).
- (2) An order under [this paragraph](#) does not authorise a constable to retain confidential journalistic material.
- (3) An officer may not make an order under [this paragraph](#) unless the officer—
- (a) is satisfied as mentioned in [paragraph 25\(2\)](#) or (3), and
  - (b) has reasonable grounds for believing that the case is one of great emergency and that immediate action is necessary.
- (4) Where an order is made under [this paragraph](#) particulars of the case must be notified as soon as is reasonably practicable to the Secretary of State.
- (5) A person who wilfully obstructs a search under [this paragraph](#) commits an offence.

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- (6) A person who commits an offence under [sub-paragraph \(5\)](#) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale (or both).
- (7) “Confidential journalistic material” has the same meaning as in the Investigatory Powers Act 2016 (see section 264(6) and (7) of that Act).
- 28 (1) [This paragraph](#) applies where confidential journalistic material is seized by virtue of an order under [paragraph 27](#).
- (2) The procurator fiscal may apply to a sheriff for the issue of a warrant under [this paragraph](#).
- (3) An application under [sub-paragraph \(2\)](#) must be made as soon as reasonably practicable.
- (4) The sheriff may grant an application under [sub-paragraph \(2\)](#) if satisfied that conditions 1 to 3 are met.
- (5) Condition 1 is that there are reasonable grounds for suspecting that a relevant act has been, or is about to be, committed.
- (6) Condition 2 is that there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or with other material, to an investigation into whether a relevant act has been, or is about to be, committed.
- (7) Condition 3 is that there are reasonable grounds for believing that it is in the public interest that the material should be retained having regard to the benefit likely to accrue to the investigation if the material is retained.
- (8) A warrant under [this paragraph](#) is a warrant authorising the retention of confidential journalistic material.
- (9) A warrant under [this paragraph](#) may impose conditions on the retention and use of the material.
- (10) If the sheriff does not grant an application for the issue of a warrant under [this paragraph](#) in relation to any of the material to which the application relates, the sheriff may direct that the material is—
- (a) returned to the person from whom it was seized, or
  - (b) destroyed.
- (11) “Confidential journalistic material” has the same meaning as in [paragraph 27](#).
- 29 (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 the officer may by a written notice signed by them require any person specified in the notice to provide an explanation of any material seized in pursuance of an order under [paragraph 27](#).
- (2) [Paragraph 26\(3\)](#) and [\(4\)](#) apply to a notice under [this paragraph](#) as they apply to an order under that paragraph.
- (3) A person who fails to comply with a notice under [this paragraph](#) commits an offence.
- (4) It is a defence for a person charged with an offence under [sub-paragraph \(3\)](#) to show that they had a reasonable excuse for their failure.

- (5) A person is taken to have shown that they had a reasonable excuse for their failure if—
  - (a) sufficient evidence of that fact is adduced to raise an issue with respect to it, and
  - (b) the contrary is not proved beyond reasonable doubt.
- (6) A person guilty of an offence under [sub-paragraph \(3\)](#) is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).

*Supplementary*

- 30 (1) [This Part](#) of [this Schedule](#) is without prejudice to any rule of law under which—
- (a) communications between a professional legal adviser and their client, or
  - (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings,
- are in legal proceedings protected from disclosure on the ground of confidentiality.
- (2) For the purpose of exercising any powers conferred on them under [this Part](#) of [this Schedule](#) a constable may, if necessary, open lockfast places on premises which they are entitled to enter in pursuance of an order under [paragraph 19](#) or [20](#), a warrant under [paragraph 25](#) or an order under [paragraph 27](#).
  - (3) A search of a person under [this Part](#) of [this Schedule](#) may only be carried out by a person of the same sex.