

SCHEDULE 5

Article 12

EVIDENCE AND INFORMATION

1.—(1) Without prejudice to any other provision of this Order, or to any provision of any other law, the Governor may request any person in or resident in the Territory to furnish any information in their possession or control, or to produce any document in their possession or control, which the Governor may require for the purposes of article 12 of this Order; and any person to whom such a request is made shall comply with it within such time and in such a manner as may be specified in the request.

(2) Nothing in the foregoing sub-paragraph shall be taken to require any person who has acted as counsel or solicitor for any person to furnish or produce any privileged information or document in their possession in that capacity.

(3) Where a person is convicted of an offence under paragraph 4(a) of this Schedule of failing to furnish information or produce a document when requested to do so, the court may make an order requiring them, within such a period as may be specified in the order, to furnish the information or provide the document.

(4) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any document so produced and to request that person, or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them.

(5) The furnishing of any information or the production of any document under this paragraph shall not be treated as a breach of any restriction imposed by law.

2.—(1) If any judge, justice of the peace or magistrate is satisfied by the information on oath given by any police officer, constable or person authorised by the Governor to act for the purposes of this paragraph either generally or in a particular case that:

- (a) there is a reasonable ground for suspecting that an offence under this Order, or with respect to any matters regulated by this Order, an offence relating to customs, has been or is being committed and that evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, ship or aircraft so specified, or
- (b) any documents which ought to have been produced under paragraph (1) and have not been produced are to be found on any such premises or in any such vehicle, ship or aircraft,

he or she may grant a search warrant authorising any police officer or constable, together with any persons named in the warrant and any other police officers or constables, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, ship or aircraft so specified may be, at any time within one month from the date of the warrant and to search the premises, or as the case may be, the vehicle, ship or aircraft.

(2) Any authorised person who has entered any premises or any vehicle, ship or aircraft by virtue of the warrant issued in accordance with sub-paragraph (1) may do all or any of the following things:

- (a) inspect and search those premises or the vehicle, ship or aircraft for any material which they have reasonable grounds to believe may be evidence in relation to an offence referred to in this paragraph;
- (b) seize anything on the premises or on the vehicle, ship or aircraft which they have reasonable grounds for believing is evidence in relation to an offence referred to in this paragraph;
- (c) seize anything on the premises or on the vehicle, ship or aircraft which they have reasonable grounds to believe are to be produced in accordance with paragraph 1; or

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

(3) Any authorised person may require that information produced in accordance with sub-paragraph (2) must be produced in a form which can be taken away and which is visible and legible.

(4) A police officer or constable lawfully on the premises or on the vehicle, ship or aircraft by virtue of a warrant issued under sub-paragraph (1) may:

(a) search any person who they have reasonable grounds to believe may be in the act of committing an offence referred to in this paragraph; and

(b) seize anything they find in a search referred to in paragraph (a), if they have reasonable grounds for believing that it is evidence of an offence referred to in this paragraph,

provided that no person shall be searched in pursuance of this sub-paragraph except by a person of the same sex.

(5) Where by virtue of this paragraph a person is authorised to enter any premises, vehicle, ship or aircraft they may use such force as is reasonably necessary for that purpose.

(6) Any documents or articles of which possession is taken under this paragraph may be retained for a period of three months or, if within that period there are commenced any proceedings for such offence as aforesaid to which they are relevant, until the conclusion of those proceedings.

3. A person authorised by the Governor to exercise any power for the purposes of this Schedule shall, if requested to do so, produce evidence of their authority before exercising that power.

4. Any person who—

(a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule by any person who is empowered to make it; or

(b) furnishes any information or produces any document which to their knowledge is false in a material particular or recklessly furnishes any document or information which is false in a material particular to such a person in response to such a request; or

(c) otherwise wilfully obstructs any person in the exercise of their powers under this Schedule; or

(d) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

shall be guilty of an offence under this Order.

5. Nothing in this Schedule shall be taken to require any person who has acted as counsel or solicitor for any person to give or produce any privileged information or document in his possession in that capacity.