

## SCHEDULES

### SCHEDULE 5

Section 37

#### INVESTIGATION OF PROCEEDS OF ICC CRIME

##### PART 1

##### PRODUCTION OR ACCESS ORDERS

###### *Application for order*

- 1 (1) An order under this Part of this Schedule may be made by a Circuit judge or, in Northern Ireland, a county court judge on an application made in pursuance of a direction by the Secretary of State under section 37(1) (investigation of proceeds of ICC crime).
- (2) Any such application—
  - (a) in England and Wales, may be made without notice and may be granted without a hearing; and
  - (b) in Northern Ireland, may be made on an ex parte application to a judge in chambers.

###### *Grounds for making order*

- 2 (1) The judge may make an order under this Part of this Schedule if he is satisfied that there are reasonable grounds for suspecting—
  - (a) that a specified person has benefited from an ICC crime, and
  - (b) that the material to which the application relates is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made.
- (2) No such order shall be made if it appears to the judge that the material to which the application relates consists of or include items subject to legal privilege.
- (3) Paragraphs 3 and 4 specify the descriptions of order that may be made.

###### *Production or access orders: standard orders*

- 3 (1) The judge may order a specified person who appears to have in his possession, custody or power specified material, or material of a specified description, to which the application relates, either—
  - (a) to produce the material to a constable within a specified period for the constable to take away (a “production order”), or
  - (b) to give a constable access to the material within a specified period (an “access order”).

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- (2) The specified period shall be seven days beginning with the date of the order unless it appears to the judge making the order that a longer or shorter period would be appropriate in the particular circumstances of the application.
- (3) Where the judge makes an access order in relation to material on any premises he may, on the application of a constable, order any person who appears to him to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.
- (4) In this paragraph “specified” means specified in the order.
- (5) Where a production or access order is made by virtue of paragraph 4 (special orders), the provisions of this paragraph have effect subject to the modifications specified in that paragraph.

*Production or access orders: special orders*

- 4 (1) A production or access order may be made in relation to a person who the judge thinks is likely to have material to which the application relates in his possession, custody or power within the period of 28 days beginning with the date of the order.
- (2) A production or access order may also be made in relation to material consisting of or including material which is expected to come into existence within that period.  
 In that case it must specify a person within sub-paragraph (1).
- (3) Where a production or access order is made by virtue of this paragraph—
  - (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, and
  - (b) paragraph 3 has effect with the following modifications.
- (4) The modifications are—
  - (a) that the references in paragraph 3(1) to material which the specified person has in his possession, custody or power shall be read as references to the material that comes into his possession, custody or power, and
  - (b) that the reference in paragraph 3(2) to the date of the order shall be read as a reference to the date of the notification required by sub-paragraph (3)(a) above.
- (5) In this paragraph “specified” means specified in the order.

*Effect of order: general*

- 5 (1) An order under this Part of this Schedule has effect as if it were an order of the Crown Court.
- (2) Provision may be made by Crown Court Rules as to—
  - (a) the discharge and variation of such orders, and
  - (b) proceedings relating to such orders.

*Effect of order: supplementary*

- 6 (1) The following provisions have effect with respect to the effect of an order under this Part of this Schedule.
- (2) Where the material to which the order relates consists of information contained in a computer—
- (a) a production order 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, and
  - (b) an access order has effect as an order to give access to the material in a form in which it is visible and legible.
- (3) An order under this Part of this Schedule does not confer any right to production of, or access to, items subject to legal privilege.
- (4) Subject to sub-paragraph (3), the order has effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.
- (5) For the purposes of sections 21 and 22 of the Police and Criminal Evidence Act 1984 (c. 60) or, in Northern Ireland, Articles 23 and 24 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (access to, and copying and retention of, seized material) material produced in pursuance of an order under this Part of this Schedule shall be treated as if it were material seized by a constable.

*Order in relation to material in possession of government department*

- 7 (1) An order under this Part of this Schedule may be made in relation to material in the possession, custody or power of a government department.
- (2) An order so made—
- (a) shall be served as if the proceedings were civil proceedings against the department, and
  - (b) 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 it.
- (3) In this paragraph “government department” means an authorised government department for the purposes of the Crown Proceedings Act 1947 (c. 44) or an authorised Northern Ireland department for the purposes of that Act as it applies to the Crown in right of Her Majesty’s Government in Northern Ireland.

## PART 2

### SEARCH WARRANTS

*Application for warrant*

- 8 A search warrant may be issued under this Part of this Schedule by a Circuit Judge or, in Northern Ireland, a county court judge on an application made in pursuance of a direction by the Secretary of State under section 37(1) (investigation of proceeds of ICC crime).

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### *Effect of warrant*

- 9 (1) A search warrant issued under this Part of this Schedule authorises any constable—
- (a) to enter and search the premises specified in the warrant, and
  - (b) to seize and retain any material found on the search that is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the warrant was issued.
- (2) The warrant does not confer any right to seize material that consists of or includes items subject to legal privilege.

### *Grounds for issue of warrant*

- 10 (1) The judge may issue a search warrant under this Part of this Schedule in the following cases.
- (2) The first case is where the judge is satisfied that a production or access order made in relation to material on the premises has not been complied with.
- (3) The second case is where the judge is satisfied—
- (a) that there are reasonable grounds for suspecting that a specified person has benefited from an ICC crime,
  - (b) that there are grounds for making a production or access order (see paragraph 2) in relation to material on the premises, and
  - (c) that it would not be appropriate to make a production or access order in relation to the material for any of the following reasons.
- (4) Those reasons are—
- (a) that it is not practicable to communicate with any person entitled to produce the material,
  - (b) that it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or
  - (c) that the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable could secure immediate access to the material.
- (5) The third case is where the judge is satisfied—
- (a) that there are reasonable grounds for suspecting that a specified person has benefited from an ICC crime,
  - (b) that there are reasonable grounds for suspecting that there is material on the premises which cannot be particularised at the time of the application but which—
    - (i) relates to the specified person, or to the question whether that person has benefited from an ICC crime, or to any question as to the extent or whereabouts of the proceeds of an ICC crime, and
    - (ii) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made, and
  - (c) that any of the following circumstances apply.
- (6) Those circumstances are—

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- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises,
- (b) that entry to the premises will not be granted unless a warrant is produced, or
- (c) that the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable arriving at the premises could secure immediate entry to them.

### **PART 3**

#### SUPPLEMENTARY PROVISIONS

11 In this Schedule—

“constable” includes a person commissioned by the Commissioners of Customs and Excise; and

“items subject to legal privilege” and “premises” have the same meaning as in the Police and Criminal Evidence Act 1984 (c. 60) or, in Northern Ireland, the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).