

## SCHEDULES

### SCHEDULE 3

#### BORDER SECURITY

##### PART 1

##### POWERS

###### *Power to stop, question and detain*

- 1 (1) An examining officer may question a person for the purpose of determining whether the person appears to be a person who is, or has been, engaged in hostile activity if condition 1 or condition 2 is met.
- (2) Condition 1 is met if—
  - (a) the person is at a port or in the border area, and
  - (b) the examining officer believes that the person's presence at the port or in the border area is connected with the person's—
    - (i) entry into, or departure from, Great Britain or Northern Ireland, or
    - (ii) travel by air within Great Britain or Northern Ireland.
- (3) Condition 2 is met if the person is on a ship or aircraft which has arrived at any place in Great Britain or Northern Ireland (whether from within or outside Great Britain or Northern Ireland).
- (4) An examining officer may exercise the powers under this paragraph whether or not there are grounds for suspecting that a person is or has been engaged in hostile activity.
- (5) A person is or has been engaged in hostile activity for the purposes of this Schedule if the person is or has been concerned in the commission, preparation or instigation of a hostile act that is or may be—
  - (a) carried out for, or on behalf of, a State other than the United Kingdom, or
  - (b) otherwise in the interests of a State other than the United Kingdom.
- (6) An act is a "hostile act" if it—
  - (a) threatens national security,
  - (b) threatens the economic well-being of the United Kingdom in a way relevant to the interests of national security, or
  - (c) is an act of serious crime.
- (7) For the purposes of this paragraph—
  - (a) it is immaterial—
    - (i) whether a person is aware that activity in which they are or have been engaged is hostile activity, or

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- (ii) whether a State for or on behalf of which, or in the interests of which, a hostile act is carried out has instigated, sanctioned, or is otherwise aware of, the carrying out of the act;
  - (b) “State” includes the government of a State and any organ of its government;
  - (c) references to a State other than the United Kingdom include references to any territory outside the United Kingdom;
  - (d) the reference to serious crime is to crime where—
    - (i) the offence, or one of the offences, which is or would be constituted by the conduct concerned is an offence for which a person who has reached the age of 18 (or, in relation to Scotland or Northern Ireland, 21) and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of 3 years or more, or
    - (ii) the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.
- 2 An examining officer may question a person who is in the border area for the purpose of determining whether the person’s presence in the area is connected with the person’s entry into, or departure from, Northern Ireland.
- 3 A person (“P”) questioned under paragraph 1 or 2 must—
- (a) give the examining officer any information in P’s possession that the officer requests;
  - (b) give the examining officer on request either a valid passport which includes a photograph or another document which establishes P’s identity;
  - (c) declare whether any documents of a kind specified by the examining officer are in P’s possession;
  - (d) give the examining officer on request any such document.
- 4 (1) For the purposes of exercising a power under paragraph 1 or 2 an examining officer may—
- (a) stop a person or vehicle;
  - (b) detain a person.
- (2) For the purpose of detaining a person under this paragraph, an examining officer may authorise the person’s removal from a ship, aircraft or vehicle.
- (3) Where a person is detained under this paragraph the provisions of Parts 2 and 3 of this Schedule (detention and review of detention) apply.
- (4) The power conferred by sub-paragraph (1)(a) to stop a vehicle does not include a power to stop an aircraft that is airborne.
- 5 (1) This paragraph applies where a person is questioned under paragraph 1 or 2.
- (2) At the end of the 1 hour period, the person may not be questioned under either of those paragraphs unless the person is detained under paragraph 4.
- (3) If the person is detained under paragraph 4, the person must be released not later than the end of the 6 hour period (unless detained under another power).
- (4) In this paragraph—
- “the 1 hour period” is the period of 1 hour beginning with the time the person is first questioned under paragraph 1 or 2;

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“the 6 hour period” is the period of 6 hours beginning with that time.

- (5) If a person detained under paragraph 4 is removed to hospital because the person needs medical treatment—
- (a) any time during which the person is being questioned under paragraph 1 or 2 in hospital or on the way there or back is to be included in calculating the 6 hour period, but
  - (b) any other time when the person is in hospital or on the way there or back is not to be included.
- 6 (1) An answer or information given orally by a person in response to a question asked under paragraph 1 or 2 may not be used in evidence in criminal proceedings.
- (2) Sub-paragraph (1) does not apply—
- (a) in the case of proceedings under paragraph 23,
  - (b) on a prosecution for perjury, or
  - (c) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the answer or information mentioned in sub-paragraph (1).
- (3) A statement may not be used by virtue of sub-paragraph (2)(c) unless—
- (a) evidence relating to it is adduced, or
  - (b) a question relating to it is asked,
- by or on behalf of the person in the proceedings arising out of the prosecution.
- (4) In sub-paragraph (2)(b) the reference to a prosecution for perjury is—
- (a) in the case of England and Wales, a reference to a prosecution for an offence under section 5 of the Perjury Act 1911;
  - (b) in the case of Northern Ireland, a reference to a prosecution for an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)).

### Searches

- 7 An examining officer may, for the purpose of determining whether there are any persons the officer may wish to question under paragraph 1—
- (a) search a ship or aircraft;
  - (b) search anything on a ship or aircraft;
  - (c) search anything that the officer reasonably believes has been, or is about to be, on a ship or aircraft.
- 8 (1) An examining officer who questions a person under paragraph 1 may—
- (a) search the person;
  - (b) search anything on a ship or aircraft that the person has with them or which belongs to them;
  - (c) search anything which the person has with them or which belongs to them and which the officer reasonably believes has been, or is about to be, on a ship or aircraft;
  - (d) search a ship or aircraft for anything falling within paragraph (b);
  - (e) search a vehicle which is on a ship or aircraft;
  - (f) search a vehicle which the officer reasonably believes has been, or is about to be, on a ship or aircraft.

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- (2) Where an examining officer questions a person in the border area under paragraph 1 the officer may (in addition to the matters specified in sub-paragraph (1))—
- (a) search a vehicle;
  - (b) search anything in or on a vehicle;
  - (c) search anything which the officer reasonably believes has been, or is about to be, in or on a vehicle.
- (3) The powers conferred by sub-paragraphs (1) and (2) are exercisable only for the purposes of determining whether a person is or has been engaged in hostile activity.
- (4) A search of a person under this paragraph—
- (a) must be carried out by somebody of the same sex;
  - (b) does not extend to the carrying out of an intimate search.
- (5) A strip search of a person may not be carried out under this paragraph unless—
- (a) the person is detained under paragraph 4,
  - (b) the examining officer has reasonable grounds to suspect that the person is concealing something which may be evidence that the person is or has been engaged in hostile activity, and
  - (c) the search is authorised by a senior officer who has not been directly involved in the questioning of the person.
- (6) “Senior officer” means—
- (a) where the examining officer is a constable, a constable of a higher rank than the examining officer,
  - (b) where the examining officer is an immigration officer, an immigration officer of a higher grade than the examining officer, and
  - (c) where the examining officer is a customs officer, a customs officer of a higher grade than the examining officer.
- (7) In this paragraph—
- “intimate search” means a search which consists of a physical examination of a person’s body orifices other than the mouth;
- “strip search” means a search which is not an intimate search but involves the removal of an article of clothing which—
- (a) is being worn wholly or partly on the trunk, and
  - (b) is being so worn either next to the skin or next to an article of underwear.
- 9 (1) An examining officer may examine goods to which this paragraph applies for the purpose of determining whether they have been used in connection with a person’s engagement in hostile activity.
- (2) This paragraph applies to—
- (a) goods which have arrived in or are about to leave Great Britain or Northern Ireland on a ship or vehicle, and
  - (b) goods which have arrived at or are about to leave any place in Great Britain or Northern Ireland on an aircraft (whether the place they have come from or are going to is within or outside Great Britain or Northern Ireland).
- (3) The reference in sub-paragraph (2)(a) to goods which are about to leave Great Britain or Northern Ireland on a ship includes goods which—

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- (a) are held at premises operated by a sea cargo agent, and
  - (b) are to be delivered to a place in Great Britain or Northern Ireland for carriage on a ship.
- (4) The reference in sub-paragraph (2)(b) to goods which are about to leave any place in Great Britain or Northern Ireland on an aircraft includes goods which—
- (a) are held at premises operated by an air cargo agent, and
  - (b) are to be delivered to a place in Great Britain or Northern Ireland for carriage on an aircraft.
- (5) An examination under this paragraph may be carried out only—
- (a) at a port;
  - (b) at premises operated by a sea cargo agent or an air cargo agent;
  - (c) at a transit shed;
  - (d) at a designated examination location.
- (6) For the purposes of determining whether to carry out an examination under this paragraph an examining officer may—
- (a) board a ship or aircraft;
  - (b) enter premises operated by a sea cargo agent or an air cargo agent;
  - (c) enter a transit shed;
  - (d) enter a designated examination location.
- (7) In this paragraph—
- “air cargo agent” has the meaning given by section 21F(1) of the Aviation Security Act 1982;
  - “designated examination location” means a location designated by the Secretary of State under paragraph 9(2D) of Schedule 7 to the Terrorism Act 2000;
  - “goods” includes property of any description and containers;
  - “sea cargo agent” has the meaning given by section 41(1) of the Aviation and Maritime Security Act 1990;
  - “transit shed” has the meaning given by section 25A of the Customs and Excise Management Act 1979.
- 10 (1) An examining officer may authorise a person to carry out on the officer’s behalf a search or examination under any of paragraphs 7 to 9.
- (2) A person authorised under this paragraph is to be treated as an examining officer for the purposes of—
- (a) paragraphs 9(6) and 11, and
  - (b) Part 4 of this Schedule.

#### *Retention of property*

- 11 (1) This paragraph applies to any article which—
- (a) is given to an examining officer in accordance with paragraph 3(d),
  - (b) is searched or found on a search under paragraph 8, or
  - (c) is examined under paragraph 9.
- (2) An examining officer may retain the article—

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- (a) for the purpose of examination, for a period not exceeding 7 days beginning with the day on which the retention commences,
  - (b) while the officer believes that it may be needed for use as evidence in criminal proceedings,
  - (c) while the officer believes that it may be needed in connection with a decision of the Secretary of State whether to make a deportation order under the Immigration Act 1971,
  - (d) while the officer believes that it could be used in connection with the carrying out of a hostile act, or
  - (e) while the officer believes it necessary to do so for the purpose of preventing death or significant injury.
- 12 (1) This paragraph applies in relation to an article retained by virtue of paragraph 11(2)(d) or (e), other than an article in respect of which an authorisation is granted under paragraph 14.
- (2) The Investigatory Powers Commissioner (“the Commissioner”) must be informed of the article’s retention as soon as is reasonably practicable.
- (3) Sub-paragraph (4) applies where it appears to the Commissioner that there are reasonable grounds to believe—
- (a) that the article has been or could be used in connection with the carrying out of a hostile act, or
  - (b) that returning the article to the person from whom it was taken could result in a risk of death or significant injury to any person.
- (4) The Commissioner may—
- (a) direct that the article is destroyed, or
  - (b) authorise the retention and use of the article (subject to sub-paragraph (5)).
- (5) The Commissioner may authorise the retention and use of an article under sub-paragraph (4)(b) that consists of or includes confidential material only if satisfied that—
- (a) arrangements are in place that are sufficient for ensuring that the material is retained securely, and
  - (b) the material will be used only so far as necessary and proportionate for a relevant purpose.
- (6) If the Commissioner does not proceed under sub-paragraph (4) in relation to an article, the Commissioner must (subject to sub-paragraph (7)) direct that the article is returned to the person from whom it was taken.
- (7) Sub-paragraph (6) does not apply if the article is further retained under a power conferred by paragraph 11(2)(b) or (c).
- (8) In authorising the retention and use of an article under this paragraph the Commissioner may impose whatever conditions the Commissioner thinks appropriate in relation to its retention and use.
- (9) For the purposes of sub-paragraph (5)(b), the use of material is necessary for a relevant purpose if it is necessary—
- (a) in the interests of national security,
  - (b) in the interests of the economic well-being of the United Kingdom so far as those interests are also relevant to the interests of national security,

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- (c) for the purpose of preventing or detecting serious crime, or
  - (d) for the purpose of preventing death or significant injury.
- (10) In this paragraph “confidential material” means—
- (a) confidential journalistic material, within the meaning of the Investigatory Powers Act 2016 (see section 264(6) and (7) of that Act), and
  - (b) protected material as defined by sub-paragraph (11).
- (11) “Protected material”—
- (a) in relation to England and Wales, means—
    - (i) items subject to legal privilege, within the meaning of the Police and Criminal Evidence Act 1984 (see section 10 of that Act),
    - (ii) material falling within section 11(1)(a) or (b) of that Act (certain personal records, human tissue or tissue fluid held in confidence), or
    - (iii) material to which section 14(2) of that Act applies (other material acquired in course of a trade etc that is held in confidence);
  - (b) in relation to Scotland, means—
    - (i) items in respect of which a claim to confidentiality of communications could be maintained in legal proceedings, or
    - (ii) other material of a kind mentioned in paragraph (a)(ii) or (iii) of this sub-paragraph;
  - (c) in relation to Northern Ireland, means—
    - (i) items subject to legal privilege, within the meaning of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (see Article 12 of that Order),
    - (ii) material falling with Article 13(1)(a) or (b) of that Order (certain personal records, human tissue or tissue fluid held in confidence), or
    - (iii) material to which Article 16(2) of that Order applies (other material acquired in the course of a trade etc that is held in confidence).
- 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;

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- (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
    - (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.
- 14 (1) This paragraph applies where—
- (a) an article is retained by virtue of paragraph 11(2)(d) or (e), and
  - (b) the examining officer who retained the article considers that the urgency condition is met in relation to the article.
- (2) The urgency condition is met in relation to an article if—
- (a) there is an urgent need for the article to be examined or otherwise used for the purpose of preventing—
    - (i) the carrying out of a hostile act, or
    - (ii) death or significant injury,
 or for the purpose of mitigating the risk of any such act, death or injury occurring, and
  - (b) the time it would take for the requirements of paragraphs 12 and 13 to be complied with in relation to the article would not enable such use to take place with sufficient urgency.
- (3) The examining officer may apply to a senior officer for authorisation to continue to retain and use the article.
- (4) An application under sub-paragraph (3) in relation to an article may be made only to a senior officer who has not been directly involved in the exercise of any power



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under this Part of this Schedule to take the article or to question a person from whom the article was taken.

- (5) A senior officer may grant an authorisation under this paragraph for the retention and use of the article if satisfied—
- (a) that there are reasonable grounds for considering that the urgency condition is met in relation to the article, and
  - (b) in the case of an article that consists of or includes confidential material, that—
    - (i) arrangements are in place that are sufficient for ensuring that the material is retained securely, and
    - (ii) the material will be used only so far as necessary and proportionate for a purpose mentioned in sub-paragraph (2)(a).
- (6) An authorisation under this paragraph—
- (a) must be recorded in writing;
  - (b) may be granted subject to whatever conditions the senior officer thinks appropriate.
- (7) Paragraphs 15 and 16 contain further provision about authorisations granted under this paragraph.
- (8) In this paragraph—
- “confidential material” has the meaning given by paragraph 12(10) and (11);
  - “senior officer” means—
    - (a) where the examining officer is a constable, another constable of at least the rank of superintendent,
    - (b) where the examining officer is an immigration officer, an immigration officer of a higher grade than the examining officer, and
    - (c) where the examining officer is a customs officer, a customs officer of a higher grade than the examining officer.
- 15 (1) If a senior officer grants an authorisation under paragraph 14, the examining officer who applied for the authorisation must inform the Investigatory Powers Commissioner and each affected party of its grant.
- (2) The information required under sub-paragraph (1) must be given as soon as reasonably practicable and in any event within 24 hours after the grant of the authorisation.
- (3) An affected party may make representations to the Commissioner about how the Commissioner should proceed under paragraph 16 in respect of an authorisation granted under paragraph 14.
- (4) Representations under sub-paragraph (3) must be made in writing no later than the end of two working days beginning with the first working day after the day on which the authorisation is granted.
- (5) The information provided under sub-paragraph (1) must include an explanation of the right to make representations in writing and the time by which they must be made.

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- (6) The Commissioner must have regard to any representations received before the end of the time mentioned in sub-paragraph (4) in determining how to proceed under paragraph 16.
- (7) The requirement under this paragraph 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) In this paragraph and paragraph 16—  
“affected party” has the meaning given by paragraph 13(3);  
“working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the authorisation is granted.
- 16 (1) This paragraph applies after the Investigatory Powers Commissioner has considered any representations made about an authorisation in accordance with paragraph 15.
- (2) The Commissioner must—  
(a) approve the grant of the authorisation, or  
(b) cancel the authorisation.
- (3) A decision under sub-paragraph (2) must be made—  
(a) after the end of the time for making representations referred to in paragraph 15(4), and  
(b) before the end of three working days beginning with the first working day after the day on which the authorisation is granted.
- (4) If the decision under sub-paragraph (2) is to approve the grant of the authorisation, the retention and use of the article may continue in accordance with the conditions on which the authorisation was granted (subject to any further conditions or variation of the existing conditions that the Commissioner specifies).
- (5) If the decision under sub-paragraph (2) is to cancel the authorisation, any further use of the article must stop as soon as possible.
- (6) If the Commissioner cancels the authorisation the Commissioner may direct that the article—  
(a) is destroyed, or  
(b) is returned to the person from whom it was taken,  
and the Commissioner may further direct that all reasonable steps are taken to secure that any information derived from the article is destroyed.
- (7) Sub-paragraphs (5) and (6) do not apply if the article is further retained under a power conferred by paragraph 11(2)(b) or (c).
- (8) The Commissioner must inform each affected party of the Commissioner’s decision under sub-paragraph (2).
- (9) The requirement under this paragraph to provide information to the person from whom the article was taken applies only so far as it is reasonably practicable to do so.
- (10) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, exercises a function under this paragraph 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.

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- (11) Nothing in this paragraph affects the lawfulness of—
- (a) anything done under an authorisation before it is cancelled;
  - (b) if anything is in the process of being done under an authorisation when it is cancelled—
    - (i) anything done before that thing could be stopped, or
    - (ii) anything done which it is not reasonably practicable to stop.

*Power to make and retain copies*

- 17 (1) This paragraph applies where the examining officer is a constable.
- (2) The officer may copy anything which—
- (a) is given to the officer in accordance with paragraph 3,
  - (b) is searched or found on a search under paragraph 8, or
  - (c) is examined under paragraph 9.
- (3) The copy may be retained—
- (a) for so long as it is necessary for the purpose of determining whether a person is or has been engaged in hostile activity,
  - (b) while the examining officer believes that it may be needed for use as evidence in criminal proceedings,
  - (c) while the examining officer believes that it may be needed in connection with a decision by the Secretary of State whether to make a deportation order under the Immigration Act 1971,
  - (d) while the examining officer believes it necessary to retain the copy—
    - (i) in the interests of national security,
    - (ii) in the interests of the economic well-being of the United Kingdom so far as those interests are also relevant to the interests of national security, or
    - (iii) for the purpose of preventing or detecting an act of serious crime, or
  - (e) while the examining officer believes it necessary to retain the copy to prevent death or significant injury.
- 18 (1) This paragraph applies in relation to a copy consisting of or including confidential material that is retained by virtue of paragraph 17(3)(d) or (e), other than a copy in respect of which an authorisation is granted under paragraph 20.
- (2) The Investigatory Powers Commissioner (“the Commissioner”) must be informed of the copy’s retention as soon as is reasonably practicable.
- (3) The Commissioner may authorise the retention and use of the copy if both of the following two conditions are met.
- (4) The first condition is that it appears to the Commissioner that there are reasonable grounds to believe that it is necessary to retain the copy—
- (a) in the interests of national security,
  - (b) in the interests of the economic well-being of the United Kingdom so far as those interests are also relevant to the interests of national security,
  - (c) for the purpose of preventing or detecting an act of serious crime, or
  - (d) for the purpose of preventing death or significant injury.

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- (5) The second condition is that the Commissioner is satisfied that—
- (a) arrangements are in place that are sufficient for ensuring that any confidential material contained in the copy is retained securely, and
  - (b) the material will be used only so far as necessary and proportionate for a relevant purpose.
- (6) If the Commissioner does not proceed under sub-paragraph (3) in relation to a copy, the Commissioner must (subject to sub-paragraph (7)) direct that the copy is destroyed.
- (7) Sub-paragraph (6) does not apply if the copy is further retained under a power conferred by paragraph 17(3)(b) or (c).
- (8) In authorising the retention and use of a copy under sub-paragraph (3) the Commissioner may impose whatever conditions the Commissioner thinks appropriate in relation to its retention and use.
- (9) For the purposes of sub-paragraph (5)(b), the use of material is necessary for a relevant purpose if it is necessary—
- (a) in the interests of national security,
  - (b) in the interests of the economic well-being of the United Kingdom so far as those interests are also relevant to the interests of national security,
  - (c) for the purpose of preventing or detecting serious crime, or
  - (d) for the purpose of preventing death or significant injury.
- (10) In this paragraph “confidential material” has the meaning given by paragraph 12(10) and (11).
- 19 (1) Before proceeding under paragraph 18 in relation to a copy, 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 18 in relation to a copy, 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 from which the copy was made.
- (4) In sub-paragraph (3) “responsible chief officer” means—
- (a) in a case where the copy was made 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 copy was made in connection with an investigation being conducted by the Police Service of Scotland, the chief constable of the Police Service of Scotland;

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- (c) in a case where the copy was made 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
    - (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 a copy is given under paragraph 18, or
  - (b) authorisation for the retention and use of a copy is granted under that paragraph.
- (6) The Commissioner must inform the person from whom the article was taken from which the copy was made that—
- (a) a direction to destroy the copy has been given, or
  - (b) (as the case may be) authorisation to retain and use the copy 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 from which a copy was made applies only so far as it is reasonably practicable to do so.
- (8) Representations under sub-paragraph (1) must be made in writing.
- 20 (1) This paragraph applies where—
- (a) a copy consisting of or including confidential material is retained by virtue of paragraph 17(3)(d) or (e), and
  - (b) the examining officer who retained the copy considers that the urgency condition is met in relation to the copy.
- (2) The urgency condition is met in relation to a copy if—
- (a) there is an urgent need for the copy to be examined or otherwise used for the purpose of preventing—
    - (i) the carrying out of a hostile act, or
    - (ii) death or significant injury,or for the purpose of mitigating the risk of any such act, death or injury occurring, and
  - (b) the time it would take for the requirements of paragraphs 18 and 19 to be complied with in relation to the copy would not enable such use to take place with sufficient urgency.
- (3) The examining officer may apply to a senior officer for authorisation to continue to retain and use the copy.
- (4) An application under sub-paragraph (3) in relation to a copy may be made only to a senior officer who has not been directly involved in the exercise of any power under

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this Part of this Schedule to make the copy or to question a person from whom the article was taken from which the copy was made.

- (5) A senior officer may grant an authorisation under this paragraph for the retention and use of a copy if satisfied that—
- (a) there are reasonable grounds for considering that the urgency condition is met in relation to the copy,
  - (b) arrangements are in place that are sufficient for ensuring that confidential material contained in the copy is retained securely, and
  - (c) the material will be used only so far as necessary and proportionate for a purpose mentioned in sub-paragraph (2)(a).
- (6) An authorisation under this paragraph—
- (a) must be recorded in writing;
  - (b) may be granted subject to whatever conditions the senior officer thinks appropriate.
- (7) Paragraphs 21 and 22 contain further provision about authorisations granted under this paragraph.
- (8) In this paragraph—
- “confidential material” has the meaning given by paragraph 12(10) and (11);
- “senior officer” means—
- (a) where the examining officer is a constable, another constable of at least the rank of superintendent,
  - (b) where the examining officer is an immigration officer, an immigration officer of a higher grade than the examining officer, and
  - (c) where the examining officer is a customs officer, a customs officer of a higher grade than the examining officer.
- 21 (1) If a senior officer grants an authorisation under paragraph 20, the examining officer who applied for the authorisation must inform the Investigatory Powers Commissioner and each affected party of its grant.
- (2) The information required under sub-paragraph (1) must be given as soon as reasonably practicable and in any event within 24 hours after the grant of the authorisation.
- (3) An affected party may make representations to the Commissioner about how the Commissioner should proceed under paragraph 22 in respect of an authorisation granted under paragraph 20.
- (4) Representations under sub-paragraph (3) must be made in writing no later than the end of two working days beginning with the first working day after the day on which the authorisation is granted.
- (5) The information provided under sub-paragraph (1) must include an explanation of the right to make representations in writing and the time by which they must be made.
- (6) The Commissioner must have regard to any representations made before the end of the time mentioned in sub-paragraph (4) in determining how to proceed under paragraph 22.

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- (7) The requirement under this paragraph to provide information to the person from whom an article was taken from which the copy was made applies only so far as it is reasonably practicable to do so.
- (8) In this paragraph and paragraph 22—  
“affected party” has the meaning given by paragraph 19(3);  
“working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the authorisation is granted.
- 22 (1) This paragraph applies after the Investigatory Powers Commissioner has considered any representations made about an authorisation in accordance with paragraph 21.
- (2) The Commissioner must—  
(a) approve the grant of the authorisation, or  
(b) cancel the authorisation.
- (3) A decision under sub-paragraph (2) must be made—  
(a) after the end of the period for making representations referred to in paragraph 21(4), and  
(b) before the end of three working days beginning with the first working day after the day on which the authorisation is granted.
- (4) If the decision under sub-paragraph (2) is to approve the grant of the authorisation, the retention and use of the copy may continue in accordance with the conditions on which the authorisation was granted (subject to any further conditions or variation of the existing conditions that the Commissioner specifies).
- (5) If the decision under sub-paragraph (2) is to cancel the authorisation, any further use of the copy must stop as soon as possible.
- (6) If the Commissioner cancels the authorisation the Commissioner may direct that—  
(a) the copy is destroyed, and  
(b) all reasonable steps are taken to secure that any information derived from the copy is also destroyed.
- (7) Sub-paragraphs (5) and (6) do not apply if the copy is further retained under a power conferred by paragraph 17(3)(b) or (c).
- (8) The Commissioner must inform each affected party of the Commissioner’s decision under sub-paragraph (2).
- (9) The requirement under this paragraph to provide information to the person from whom the article was taken from which the copy was made applies only so far as it is reasonably practicable to do so.
- (10) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, exercises a function under this paragraph in relation to a copy, an affected party may ask the Investigatory Powers Commissioner to decide whether to approve the way in which the function was exercised.
- (11) Nothing in this paragraph affects the lawfulness of—  
(a) anything done under an authorisation before it cancelled;

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- (b) if anything is in the process of being done under an authorisation when it is cancelled—
  - (i) anything done before that thing could be stopped, or
  - (ii) anything done which it is not reasonably practicable to stop.

### *Offences*

- 23 (1) A person commits an offence if the person—
- (a) wilfully fails to comply with a duty imposed under or by virtue of this Part of this Schedule, or
  - (b) wilfully obstructs, or seeks to frustrate, a search or examination under or by virtue of this Part of this Schedule.
- (2) A person guilty of an offence under this paragraph is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 4 on the standard scale, or to both;
  - (b) on summary conviction in Scotland or Northern Ireland, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding level 4 on the standard scale, or to both.
- (3) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales), the reference in sub-paragraph (2)(a) to 51 weeks is to be read as a reference to 3 months.
- (4) Proceedings for an offence under this paragraph are not to be started—
- (a) in England and Wales, except with the consent of the Director of Public Prosecutions;
  - (b) in Northern Ireland, except with the consent of the Director of Public Prosecutions for Northern Ireland.
- (5) But if it appears to the Director of Public Prosecutions or the Director of Public Prosecutions for Northern Ireland that an offence under this paragraph has been committed for a purpose wholly or partly connected with the affairs of a country other than the United Kingdom, consent may be given for the purposes of this paragraph only with the permission—
- (a) in the case of the Director of Public Prosecutions, of the Attorney General, and
  - (b) in the case of the Director of Public Prosecutions for Northern Ireland, of the Advocate General for Northern Ireland.

### *Exercise of powers*

- 24 The powers conferred by this Part of this Schedule are exercisable in spite of the rights conferred by section 1 of the Immigration Act 1971 (general principles regulating entry into and staying in the United Kingdom).