

SCHEDULES

SCHEDULE 5

Section 61

POWERS OF ENTRY AND SEARCH ETC

Power to issue search warrant

- 1 (1) A justice of the peace who is satisfied that the requirements in sub-paragraph (3) are met in relation to relevant higher education premises may issue a warrant under this paragraph (a “search warrant”) in respect of the premises.
- (2) “Relevant higher education premises” means premises in England which—
- (a) are occupied by a supported higher education provider or a linked institution in relation to such a provider, and
 - (b) are used for, or in connection with, the provision of higher education courses by such a provider,
- but does not include premises which are used wholly or mainly as a private dwelling.
- (3) The requirements of this sub-paragraph are met in relation to premises occupied by a supported higher education provider or a linked institution in relation to such a provider if—
- (a) there are reasonable grounds for suspecting that there is, or has been, a breach of a registration condition or funding condition of the provider,
 - (b) the suspected breach is sufficiently serious to justify entering the premises,
 - (c) entry to the premises is necessary to determine whether the suspected breach is taking place or has taken place, and
 - (d) either of the requirements in sub-paragraph (4) is met.
- (4) The requirements referred to in sub-paragraph (3)(d) are—
- (a) that entry to the premises has been, or it is likely to be, refused;
 - (b) that requesting entry may frustrate or seriously prejudice the purpose of entry.
- (5) References in this Schedule to a registration condition of a supported higher education provider are to an ongoing registration condition of the provider (see section 3(8)).
- (6) References in this Schedule to a funding condition of a supported higher education provider are to—
- (a) a term or condition subject to which a grant, loan or other payment under section 39 or 40 (financial support for providers) was paid to the provider, or
 - (b) a condition imposed on the provider by or under regulations made under section 22 of the Teaching and Higher Education Act 1998 (financial support for students) in connection with the designation of a course for the purposes of that section.

Application for search warrant by an authorised person

- 2 (1) A search warrant may be issued only on the application of a person authorised in writing by the OfS or the Secretary of State to exercise the powers conferred by a search warrant (an “authorised person”).
- (2) An application for a search warrant in respect of premises may be made without notice being given to—
- (a) the supported higher education provider or linked institution occupying the premises, or
 - (b) any other persons who may be affected by it.
- (3) An application for a search warrant in respect of premises must be supported by an information in writing.
- (4) An authorised person applying for a search warrant must answer on oath any question that the justice of the peace hearing the application asks the person.

Search warrant

- 3 (1) A search warrant must—
- (a) specify the name of the authorised person who applied for it,
 - (b) specify the date on which it is issued,
 - (c) state that it is issued under this Schedule,
 - (d) specify the premises to be searched,
 - (e) specify the supported higher education provider or linked institution occupying the premises, and
 - (f) identify, so far as is possible, the suspected breach of a registration condition or funding condition of the provider.
- (2) A search warrant may permit or require a constable to accompany an authorised person who is executing it.
- (3) A search warrant authorises an authorised person to enter each set of premises specified in the warrant on one occasion only unless it specifies that it authorises multiple entries.
- (4) If a search warrant specifies that it authorises multiple entries, it must also specify whether the number of entries authorised is unlimited or limited to a specified maximum.
- (5) Two copies must be made of a search warrant that specifies only one set of premises and does not authorise multiple entries.
- (6) As many copies as are reasonably required may be made of any other kind of search warrant.
- (7) The copies made under sub-paragraphs (5) and (6) must be clearly certified as copies.

Powers conferred by search warrant

- 4 (1) A search warrant authorises an authorised person—
- (a) to enter the premises specified in the warrant at a reasonable hour,
 - (b) to search the premises to the extent that is reasonably required for the purpose of determining whether there is, or has been, a breach of a registration

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- condition or funding condition of the relevant supported higher education provider,
 - (c) for that purpose, to inspect items found on the premises,
 - (d) for that purpose, to copy documents found on the premises, and
 - (e) to seize and retain items found on the premises which the authorised person reasonably believes are evidence of a breach of a registration condition or a funding condition of the relevant supported higher education provider.
- (2) A search warrant may be executed by any authorised person.
- (3) A constable accompanying an authorised person under paragraph 3(2) may, if necessary, use reasonable force to enable the exercise of the powers conferred by the warrant.
- (4) An authorised person entering premises under a search warrant may—
- (a) be accompanied by such other persons as the authorised person considers necessary, and
 - (b) take onto the premises such equipment as the authorised person considers necessary.

Entering and searching premises

- 5 (1) Where the occupier of the premises to be entered and searched is present at the time when an authorised person seeks to execute a search warrant, the authorised person must—
- (a) identify himself or herself to the occupier,
 - (b) produce to the occupier documentary evidence that he or she is an authorised person,
 - (c) produce the search warrant to the occupier, and
 - (d) supply the occupier with a certified copy of it.
- (2) Where the occupier of the premises is not present at the time when an authorised person seeks to execute a search warrant—
- (a) if another person who appears to the authorised person to be in charge of the premises is present, sub-paragraph (1) has effect as if references to the occupier were references to the other person;
 - (b) if there is no such person present, the authorised person must leave a certified copy of the warrant in a prominent place on the premises.
- (3) An authorised person who enters premises under a search warrant must take reasonable steps to ensure that, when the authorised person leaves the premises, they are as secure as they were before the authorised person entered them.
- (4) Entry and search under a search warrant may not take place after the end of the period of one month beginning with the date on which it is issued.

Inspecting, copying, seizing and retaining items

- 6 (1) The powers conferred by a search warrant to inspect, copy, seize and retain items found on premises include—
- (a) power to require a person on the premises who is holding or accountable for items that are on the premises to produce them,

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- (b) power to require a person on the premises to provide an explanation of an item or state where an item may be found,
 - (c) in relation to documents kept by means of a computer, power to require them to be produced in a form in which they are legible and can be taken away, and
 - (d) power to require a person on the premises to provide such other assistance as the authorised person may reasonably require.
- (2) Those powers also include—
 - (a) power to check the operation of a computer or electronic storage device, and
 - (b) power to require a person within sub-paragraph (3) to provide the authorised person with such reasonable assistance as the authorised person may require for that purpose.
- (3) A person is within this sub-paragraph if the person is—
 - (a) a person by whom or on whose behalf the computer or device is or has been used, or
 - (b) a person having charge of, or otherwise concerned with the operation of, the computer or device.
- (4) The power conferred by a search warrant to inspect, copy, seize and retain items does not include power to inspect, copy, seize or retain excluded items.
- (5) “Excluded items” means items that are—
 - (a) items subject to legal privilege (as defined in section 10 of the Police and Criminal Evidence Act 1984);
 - (b) excluded material (as defined in section 11 of that Act);
 - (c) special procedure material (as defined in section 14 of that Act).
- (6) If an item is seized from premises in the exercise of powers conferred by a search warrant, the authorised person executing the warrant—
 - (a) must make reasonable efforts to give a notice to a person who appears to be the occupier of the premises or otherwise to be in charge of the premises (an “affected person”), and
 - (b) if it is not reasonably practicable to do so, must leave a copy of the notice in a prominent place on the premises.
- (7) A notice under sub-paragraph (6) must—
 - (a) state what has been seized and the reason for its seizure, and
 - (b) specify which registration condition or funding condition the authorised person believes has been breached.
- (8) An authorised person exercising powers under a search warrant must—
 - (a) make a record of items seized from premises in the exercise of the powers, and
 - (b) if a person who appears to the authorised person to be an affected person in relation to the premises asks for a copy of that record, provide a copy of that record to that person within a reasonable time.
- (9) An item which is seized in the exercise of powers under a search warrant may be retained as long as is necessary in all the circumstances, including for use as evidence on a prosecution for an offence.

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- (10) An item may not be retained for use as evidence on a prosecution for an offence if a photograph or a copy would be sufficient for that purpose.
- (11) Nothing in this paragraph confers power to search a person.

Offence

- 7 (1) A person commits an offence if, without reasonable excuse, the person—
- (a) intentionally obstructs the exercise of a power conferred by a search warrant, or
 - (b) fails to comply with a requirement reasonably imposed in the exercise of a power conferred by a search warrant.
- (2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Self-incrimination

- 8 (1) An explanation or information provided by a person in response to a requirement under paragraph 6(1)(b) or (d) or (2)(b) may be used in evidence against the person, subject to sub-paragraphs (2) to (4).
- (2) In criminal proceedings against the person—
- (a) no evidence relating to the explanation or information may be adduced by or on behalf of the prosecution, and
 - (b) no question relating to it may be asked by or on behalf of the prosecution.
- (3) Sub-paragraph (2) does not apply if the proceedings are for—
- (a) an offence under paragraph 7 of this Schedule, or
 - (b) an offence under section 5 of the Perjury Act 1911 (false statements made otherwise than on oath).
- (4) Sub-paragraph (2) does not apply if, in the proceedings—
- (a) evidence relating to the explanation or information is adduced by or on behalf of the person who provided it, or
 - (b) a question relating to it is asked by or on behalf of that person.

Interpretation

- 9 (1) In this Schedule—
- “authorised person” has the meaning given in paragraph 2;
 - “document” means anything in which information of any description is recorded;
 - “item” includes—
 - (a) a document;
 - (b) a computer or electronic storage device;
 - “linked institution”, in relation to a supported higher education provider, has the meaning given in section 61(3);
 - “relevant supported higher education provider” means—
 - (a) in the case of premises occupied by a supported higher education provider, that provider, and

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(b) in the case of premises occupied by a linked institution in relation to a supported higher education provider, that provider;
“supported higher education provider” has the meaning given in section 61(2).

- (2) For the purposes of this Schedule, references to items found on premises include—
- (a) documents stored on computers or electronic storage devices on the premises, and
 - (b) documents stored elsewhere which can be accessed by computers on the premises.