

SCHEDULES

SCHEDULE 3

BORDER SECURITY

PART 1

POWERS

Retention of property

- 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.

Status: This is the original version (as it was originally enacted).

- (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” 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).