

**Changes to legislation:** There are currently no known outstanding effects for the Counter-Terrorism and Border Security Act 2019, Cross Heading: Power to make and retain copies. (See end of Document for details)

## SCHEDULES

### SCHEDULE 3

#### BORDER SECURITY

##### Modifications etc. (not altering text)

- C1** Sch. 3 modified (30.9.2020 immediately after the amendments by S.I. 2020/915, art. 5 come into force) by [The Channel Tunnel \(Arrangements with the Kingdom of the Netherlands\) Order 2020 \(S.I. 2020/916\)](#), arts. 1(3), **6**
- C1** Sch. 3 modified by [S.I. 1994/1405](#), **art. 7** (as amended (coming into force in accordance with art. 1(3) of the amending S.I.) by [The Channel Tunnel \(International Arrangements and Miscellaneous Provisions\) \(Amendment\) Order 2020 \(S.I. 2020/915\)](#), arts. 1(3), **11**)
- C1** [Sch. 3](#) modified by [S.I. 1993/1813](#), **Sch. 4 para. 7** (as inserted (12.2.2019 for specified purposes; 13.8.2020 in so far as not already in force) by [Counter Terrorism and Border Security Act 2019 \(c. 3\)](#), s. 27(1)(g), [Sch. 3 para. 63\(1\)](#) (with s. 25(9), **Sch. 3 para. 63(2)**); [S.I. 2020/792](#), **reg. 2(g)**)

#### PART 1

##### POWERS

###### *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

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- (e) while the examining officer believes it necessary to retain the copy to prevent death or significant injury.

**Commencement Information**

- I1** Sch. 3 para. 17 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)  
**I2** Sch. 3 para. 17 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), **reg. 2(g)**

- 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.
- (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).

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**Commencement Information**

- I3** Sch. 3 para. 18 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)  
**I4** Sch. 3 para. 18 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), [reg. 2\(g\)](#)

- 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;
  - (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

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- (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.

**Commencement Information**

- I5** Sch. 3 para. 19 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)
- I6** Sch. 3 para. 19 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792, reg. 2\(g\)](#)

- 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 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.

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- (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.

**Commencement Information**

**I7** Sch. 3 para. 20 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

**I8** Sch. 3 para. 20 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792, reg. 2\(g\)](#)

- 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.
- (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.

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#### Commencement Information

**I9** Sch. 3 para. 21 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

**I10** Sch. 3 para. 21 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792](#), [reg. 2\(g\)](#)

- 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;
  - (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.

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**I11** Sch. 3 para. 22 in force at Royal Assent for specified purposes, see. s. 27(1)(g)(2)(c)

**I12** Sch. 3 para. 22 in force at 13.8.2020 in so far as not already in force by [S.I. 2020/792, reg. 2\(g\)](#)

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