

REGULATION OF INVESTIGATORY POWERS ACT 2000

EXPLANATORY NOTES

OTHER AUTHORISATIONS

Part V: Miscellaneous and Supplemental

Schedule 2: Persons Having the Appropriate Permission

357. *Schedule 2* deals with the duration and types of appropriate permission which may empower a person to serve a notice under section 49 of this Act requiring disclosure of information. The authority required to grant such permission varies depending on the powers under which unintelligible information is or is likely to be obtained.

Paragraph 1: Requirement that appropriate permission is granted by a judge

358. This paragraph states that subject to the provisions of the paragraphs below, authority to serve a notice must be given by a judge as described in Sub-paragraph (1).

359. The effect of Sub-paragraph (2) is that where a judge's permission has been obtained under this paragraph, no further authority is required to serve a notice.

Paragraph 2: Data obtained under warrant etc

360. This paragraph deals with unintelligible information which is or is likely to be obtained under a statutory power exercised in accordance with:

- a warrant issued by the Secretary of State or a person holding judicial office; or
- an authorisation under Part III of the Police Act 1997.

Examples of legislation under which the Secretary of State may issue a warrant include Chapter I of Part I of this Act and the Intelligence Services Act 1994. Examples of legislation under which a person holding judicial office may issue a warrant include the Police and Criminal Evidence Act 1984 and the Drug Trafficking Act 1994.

361. *Sub-paragraph (2)* states that the warrant or authorisation may empower a person to serve a notice requiring disclosure if:

- the warrant or authorisation gave explicit permission for the notice to be given; or
- written permission has been given by the authority since the warrant or authorisation was issued.

362. *Sub-paragraphs (3) to (5)* describe those persons who are capable of having the appropriate permission to serve a notice in relation to material to which this paragraph applies. And *Sub-paragraphs (6) to (8)* describe those persons who may issue a warrant or authorisation in relation to such material.

363. The effect of this paragraph is that where, for example, protected material has been obtained under an interception warrant, the authorisation to serve a disclosure notice may be granted by the Secretary of State.
364. *Sub-paragraph (9)* excludes from this paragraph unintelligible information:
- which has been obtained under a statutory power without a warrant; but
 - which has been obtained in the course of, or in connection with, an exercise of another power for which a warrant was required.
365. This might include, for example, cases where a constable has a right to enter premises under a warrant and while on the premises uncovers matter which he suspects to be evidence of a crime unrelated to the warrant itself, in accordance with e.g. section 19 of the Police and Criminal Evidence Act 1984 (PACE).

Paragraph 3: Data obtained by the intelligence services under statute but without a warrant

366. This paragraph deals with unintelligible information which is, or is likely to be, lawfully obtained by the intelligence services but not under a warrant issued by the Secretary of State. This might include, for example, material obtained under a directed surveillance authorisation given under Part II of this Act.
367. *Sub-paragraph (2)* enables the Secretary of State to give authority for a notice to be served in such instances.

Paragraph 4: Data obtained under statute by other persons but without a warrant

368. This paragraph deals with unintelligible information which is or is likely to be obtained by certain agencies (other than the intelligence services) under statutory powers but not under a warrant issued by the Secretary of State or judicial authority. This includes, for example, material obtained by the police under powers conferred by section 19 of PACE.
369. The effect of *Sub-paragraph (2)* is that senior officers of the police, customs and excise and armed forces (as described in Paragraph 6) may authorise the service of a written notice in relation to material to which this paragraph applies.
370. The effect of *sub-paragraph (3)* is that where material to which this paragraph applies is obtained by agencies other than those described in *Sub-paragraph (2)*, authority to serve a written notice is to be given by a judge, provided that the stipulations set out in *Sub-paragraph (4)* are complied with.

Paragraph 5: Data obtained without the exercise of statutory powers

371. This paragraph deals with unintelligible information which is or is likely to come into the possession of an intelligence service, the police or customs and excise by any other lawful means not involving the exercise of statutory powers (e.g. material which has been voluntarily handed over).
372. The effect of *Sub-paragraph (2)* is to enable the Secretary of State to give his permission to serve a notice in relation to material, obtained by an intelligence service, falling under this paragraph.

Paragraph 6: General requirements relating to the appropriate permission

373. This paragraph makes some further stipulations about the categories of person who may be empowered to require disclosure. It also makes some stipulations about the permissions that may be given by members of the police, customs and excise and the armed forces.

374. *Sub-paragraph (3)* states that in the case of information which has come into the police's possession by means of powers to stop and search vehicles and pedestrians under the Terrorism Act 2000 or the Prevention of Terrorism (Temporary Provisions) Act 1989 (PTA), those able to authorise the serving of notice must be an officer of police of or above the rank specified in section 44 and section 13A of those Acts respectively.

Section 13A of the PTA, for example, specifies such ranks as:

- *commander of the metropolitan police, as respects the metropolitan police area;*
- *commander of the City of London police, as respects the City of London; or*
- *assistant chief constable for any other police area.*

Paragraph 7: Duration of permission

375. This paragraph provides for the duration of the validity of authorisations to serve a notice and prevents the issue of a notice after the authorisation has expired.

Paragraph 8: Formalities for permissions granted by the Secretary of State

376. This paragraph states that any permissions granted by the Secretary of State in accordance with Schedule 2 may only be granted:
- if signed by him personally; or
 - if signed by a member of the Senior Civil Service (or Diplomatic Service equivalent) and expressly authorised by the Secretary of State. The express authorisation must be in relation to that particular warrant (i.e. there can be no standing authorisation).