



Electronic Communications Act 2000

2000 CHAPTER 7

PART I

CRYPTOGRAPHY SERVICE PROVIDERS

1 Register of approved providers

- (1) It shall be the duty of the Secretary of State to establish and maintain a register of approved providers of cryptography support services.
- (2) The Secretary of State shall secure that the register contains particulars of every person who is for the time being approved under any arrangements in force under section 2.
- (3) The particulars that must be recorded in every entry in the register relating to an approved person are—
 - (a) the name and address of that person;
 - (b) the services in respect of which that person is approved; and
 - (c) the conditions of the approval.
- (4) It shall be the duty of the Secretary of State to ensure that such arrangements are in force as he considers appropriate for—
 - (a) allowing members of the public to inspect the contents of the register; and
 - (b) securing that such publicity is given to any withdrawal or modification of an approval as will bring it to the attention of persons likely to be interested in it.

2 Arrangements for the grant of approvals

- (1) It shall be the duty of the Secretary of State to secure that there are arrangements in force for granting approvals to persons who—
 - (a) are providing cryptography support services in the United Kingdom or are proposing to do so; and
 - (b) seek approval in respect of any such services that they are providing, or are proposing to provide, whether in the United Kingdom or elsewhere.

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- (2) The arrangements must—
- (a) allow for an approval to be granted either in respect of all the services in respect of which it is sought or in respect of only some of them;
 - (b) ensure that an approval is granted to a person in respect of any services only if the condition for the grant of an approval to that person is fulfilled in accordance with subsection (3);
 - (c) provide for an approval granted to any person to have effect subject to such conditions (whether or not connected with the provision of the services in respect of which the approval is granted) as may be contained in the approval;
 - (d) enable a person to whom the Secretary of State is proposing to grant an approval to refuse it if the proposal is in different terms from the approval which was sought;
 - (e) make provision for the handling of complaints and disputes which—
 - (i) are required by the conditions of an approved person's approval to be dealt with in accordance with a procedure maintained by him in pursuance of those conditions; but
 - (ii) are not disposed of by the application of that procedure;
 - (f) provide for the modification and withdrawal of approvals.
- (3) The condition that must be fulfilled before an approval is granted to any person is that the Secretary of State is satisfied that that person—
- (a) will comply, in providing the services in respect of which he is approved, with such technical and other requirements as may be prescribed;
 - (b) is a person in relation to whom such other requirements as may be prescribed are, and will continue to be, satisfied;
 - (c) is, and will continue to be, able and willing to comply with any requirements that the Secretary of State is proposing to impose by means of conditions of the approval; and
 - (d) is otherwise a fit and proper person to be approved in respect of those services.
- (4) Regulations made by virtue of paragraph (a) or (b) of subsection (3) may frame a requirement for the purposes of that subsection by reference to the opinion of a person specified in the regulations, or of a person chosen in a manner determined in accordance with the regulations.
- (5) The requirements which (subject to subsection (6)) may be imposed by conditions contained in an approval in accordance with the arrangements include—
- (a) requirements to provide information to such persons, in such form, at such times and in response to such requests as may be specified in or determined under the terms of the condition;
 - (b) requirements that impose obligations that will continue or recur notwithstanding the withdrawal (in whole or in part) of the approval;
 - (c) requirements framed by reference to the opinion or directions of a person specified in or chosen in accordance with provision contained in the conditions.
- (6) Nothing in the arrangements shall authorise the imposition, by conditions contained in an approval, of any requirements for—
- (a) the provision of information, or
 - (b) the maintenance of a procedure for handling complaints or disputes,

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in relation to any matter other than one appearing to the Secretary of State to be relevant to the matters mentioned in subsection (3)(a) to (d).

- (7) Any requirement to provide information that is imposed in accordance with the arrangements on any person by the conditions of his approval shall be enforceable at the suit or instance of the Secretary of State.
- (8) Where any arrangements under this section so provide, a person who—
- (a) seeks an approval under the arrangements,
 - (b) applies for a modification of such an approval,
 - (c) is for the time being approved under the arrangements, or
 - (d) has his approval under the arrangements modified wholly or partly in consequence of an application made by him,
- shall pay to the Secretary of State, at such time or times as may be prescribed, such fee or fees as may be prescribed in relation to that time or those times.
- (9) Sums received by the Secretary of State by virtue of subsection (8) shall be paid into the Consolidated Fund.
- (10) For the purposes of subsection (1) cryptography support services are provided in the United Kingdom if—
- (a) they are provided from premises in the United Kingdom;
 - (b) they are provided to a person who is in the United Kingdom when he makes use of the services; or
 - (c) they are provided to a person who makes use of the services for the purposes of a business carried on in the United Kingdom or from premises in the United Kingdom.

3 Delegation of approval functions

- (1) The Secretary of State may appoint any person to carry out, in his place, such of his functions under the preceding provisions of this Part (other than any power of his to make regulations) as may be specified in the appointment.
- (2) An appointment under this section—
- (a) shall have effect only to such extent, and subject to such conditions, as may be set out in the appointment; and
 - (b) may be revoked or varied at any time by a notice given by the Secretary of State to the appointed person.
- (3) A person appointed under this section shall, in the carrying out of the functions specified in his appointment, comply with all such general directions as may be given to him from time to time by the Secretary of State.
- (4) Subject to any order under subsection (5) and to any directions given by the Secretary of State, where a body established by or under any enactment or the holder of any office created by or under any enactment is appointed to carry out any functions of the Secretary of State under this Part—
- (a) the enactments relating to the functions of that body or office shall have effect as if the functions of that body or office included the functions specified in the appointment; and

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- (b) the body or office-holder shall be taken to have power to do anything which is calculated to facilitate, or is incidental or conducive to, the carrying out of the functions so specified.
- (5) The Secretary of State may, by order made by statutory instrument, provide for enactments relating to any such body or office as is mentioned in subsection (4) to have effect, so far as appears to him appropriate for purposes connected with the carrying out of functions that have been or may be conferred on the body or office-holder under this section, with such modifications as may be provided for in the order.
- (6) An order shall not be made under subsection (5) unless a draft of it has first been laid before Parliament and approved by a resolution of each House.
- (7) It shall be the duty of the Secretary of State to secure—
- (a) that any appointment made under this section is published in such manner as he considers best calculated to bring it to the attention of persons likely to be interested in it;
 - (b) that any variation or revocation of such an appointment is also so published; and
 - (c) that the time fixed for any notice varying or revoking such an appointment to take effect allows a reasonable period after the giving of the notice for the making of any necessary incidental or transitional arrangements.
- (8) Nothing in this section, or in anything done under this section, shall prejudice—
- (a) any power of the Secretary of State, apart from this Act, to exercise functions through a Minister or official in his department;
 - (b) any power of any person by virtue of subsection (4), or by virtue of an order under subsection (5), to act on behalf of a body or office-holder in connection with the carrying out of any function;
 - (c) any provision by virtue of section 2(4) or (5)(c) that imposes a requirement by reference to the opinion of any person or determines the manner of choosing a person whose opinion is to be referred to.

4 Restrictions on disclosure of information

- (1) Subject to the following provisions of this section, no information which—
- (a) has been obtained under or by virtue of the provisions of this Part, and
 - (b) relates to the private affairs of any individual or to any particular business,
- shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.
- (2) Subsection (1) does not apply to any disclosure of information which is made—
- (a) for the purpose of facilitating the carrying out of any functions under this Part, or any prescribed functions, of the Secretary of State or a person appointed under section 3;
 - (b) for the purpose of facilitating the carrying out of any functions of a local weights and measures authority in Great Britain;
 - (c) for the purpose of facilitating the carrying out of prescribed public functions of any person;
 - (d) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;

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- (e) for the purposes of any civil proceedings which—
 - (i) relate to the provision of cryptography support services; and
 - (ii) are proceedings to which a person approved in accordance with arrangements under section 2 is a party; or
 - (f) in pursuance of a Community obligation.
- (3) In subsection (2)(a) the reference to functions under this Part does not include a reference to any power of the Secretary of State to make regulations.
- (4) In subsection (2)(c) “public functions” includes any function conferred by or in accordance with any provision contained in or made under any enactment or Community legislation.
- (5) If information is disclosed to the public in circumstances in which the disclosure does not contravene this section, this section shall not prevent its further disclosure by any person.
- (6) Any person who discloses any information in contravention of this section shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or to both.

5 Regulations under Part I

- (1) In this Part “prescribed” means prescribed by regulations made by the Secretary of State, or determined in such manner as may be provided for in any such regulations.
- (2) The powers of the Secretary of State to make regulations under this Part shall be exercisable by statutory instrument, which (except in the case of the initial regulations) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) The initial regulations shall not be made unless a draft of them has been laid before Parliament and approved by a resolution of each House.
- (4) In this section “the initial regulations” means the regulations made on the first occasion on which the Secretary of State exercises his powers to make regulations under this Part.
- (5) Before making any regulations by virtue of section 2(3)(a) or (b) the Secretary of State shall consult—
- (a) such persons appearing to him to be likely to be affected by those regulations, and
 - (b) such persons appearing to him to be representative of persons likely to be so affected,
- as he thinks fit.
- (6) Regulations made by the Secretary of State under any provision of this Part—
- (a) may make different provision for different cases; and
 - (b) may contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit.

6 Provision of cryptography support services

- (1) In this Part “cryptography support service” means any service which is provided to the senders or recipients of electronic communications, or to those storing electronic data, and is designed to facilitate the use of cryptographic techniques for the purpose of—
 - (a) securing that such communications or data can be accessed, or can be put into an intelligible form, only by certain persons; or
 - (b) securing that the authenticity or integrity of such communications or data is capable of being ascertained.
- (2) References in this Part to the provision of a cryptography support service do not include references to the supply of, or of any right to use, computer software or computer hardware except where the supply is integral to the provision of cryptography support services not consisting in such a supply.