



# Regulation of Investigatory Powers Act 2000

## 2000 CHAPTER 23

### PART III

#### INVESTIGATION OF ELECTRONIC DATA PROTECTED BY ENCRYPTION ETC.

##### *Safeguards*

#### **55 General duties of specified authorities.**

- (1) This section applies to—
- (a) the Secretary of State and every other Minister of the Crown in charge of a government department;
  - (b) every chief officer of police;
  - [<sup>F1</sup>(ba) the Director General of the Serious Organised Crime Agency;]
  - [<sup>F2</sup>(bb) the Director General of the Scottish Crime and Drug Enforcement Agency;]
  - (c) the Commissioners of Customs and Excise; and
  - (d) every person whose officers or employees include persons with duties that involve the giving of section 49 notices.
- (2) It shall be the duty of each of the persons to whom this section applies to ensure that such arrangements are in force, in relation to persons under his control who by virtue of this Part obtain possession of keys to protected information, as he considers necessary for securing—
- (a) that a key disclosed in pursuance of a section 49 notice is used for obtaining access to, or putting into an intelligible form, only protected information in relation to which power to give such a notice was exercised or could have been exercised if the key had not already been disclosed;
  - (b) that the uses to which a key so disclosed is put are reasonable having regard both to the uses to which the person using the key is entitled to put any

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protected information to which it relates and to the other circumstances of the case;

- (c) that, having regard to those matters, the use and any retention of the key are proportionate to what is sought to be achieved by its use or retention;
- (d) that the requirements of subsection (3) are satisfied in relation to any key disclosed in pursuance of a section 49 notice;
- (e) that, for the purpose of ensuring that those requirements are satisfied, any key so disclosed is stored, for so long as it is retained, in a secure manner;
- (f) that all records of a key so disclosed (if not destroyed earlier) are destroyed as soon as the key is no longer needed for the purpose of enabling protected information to be put into an intelligible form.

(3) The requirements of this subsection are satisfied in relation to any key disclosed in pursuance of a section 49 notice if—

- (a) the number of persons to whom the key is disclosed or otherwise made available, and
- (b) the number of copies made of the key,

are each limited to the minimum that is necessary for the purpose of enabling protected information to be put into an intelligible form.

[<sup>F3</sup>(3B) Paragraph 6(2) of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) does not apply in relation to the duties of the Director General of the Scottish Crime and Drug Enforcement Agency under this section.]

[<sup>F4</sup>(3A) Paragraph 11 of Schedule 1 to the Serious Organised Crime and Police Act 2005 does not apply in relation to the duties of the Director General of the Serious Organised Crime Agency under this section.]

(4) Subject to subsection (5), where any relevant person incurs any loss or damage in consequence of—

- (a) any breach by a person to whom this section applies of the duty imposed on him by subsection (2), or
- (b) any contravention by any person whatever of arrangements made in pursuance of that subsection in relation to persons under the control of a person to whom this section applies,

the breach or contravention shall be actionable against the person to whom this section applies at the suit or instance of the relevant person.

(5) A person is a relevant person for the purposes of subsection (4) if he is—

- (a) a person who has made a disclosure in pursuance of a section 49 notice; or
- (b) a person whose protected information or key has been disclosed in pursuance of such a notice;

and loss or damage shall be taken into account for the purposes of that subsection to the extent only that it relates to the disclosure of particular protected information or a particular key which, in the case of a person falling with paragraph (b), must be his information or key.

(6) For the purposes of subsection (5)—

- (a) information belongs to a person if he has any right that would be infringed by an unauthorised disclosure of the information; and
- (b) a key belongs to a person if it is a key to information that belongs to him or he has any right that would be infringed by an unauthorised disclosure of the key.

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- (7) In any proceedings brought by virtue of subsection (4), it shall be the duty of the court to have regard to any opinion with respect to the matters to which the proceedings relate that is or has been given by a relevant Commissioner.
- (8) In this section “relevant Commissioner” means the Interception of Communications Commissioner, the Intelligence Services Commissioner, the Investigatory Powers Commissioner for Northern Ireland or any Surveillance Commissioner or Assistant Surveillance Commissioner.

#### Textual Amendments

- F1** S. 55(1)(ba) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 148(2)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))
- F2** S. 55(1)(bb) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(1)(a)**
- F3** S. 55(3B) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(1)(b)**
- F4** S. 55(3A) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 148(3)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

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