



# Regulation of Investigatory Powers Act 2000

## 2000 CHAPTER 23

### PART III

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

##### *Power to require disclosure*

#### **49 Notices requiring disclosure.**

- (1) This section applies where any protected information—
- (a) has come into the possession of any person by means of the exercise of a statutory power to seize, detain, inspect, search or otherwise to interfere with documents or other property, or is likely to do so;
  - (b) has come into the possession of any person by means of the exercise of any statutory power to intercept communications [<sup>F1</sup>or obtain secondary data from communications], or is likely to do so;
  - (c) has come into the possession of any person by means of the exercise of any power conferred by an authorisation under [<sup>F2</sup>section 22(3) [<sup>F3</sup>or (3B)] or under Part II][<sup>F2</sup>Part 3 of the Investigatory Powers Act 2016 or Part 2 of this Act], or as a result of the giving of a notice [<sup>F4</sup>under section 22(4)][<sup>F4</sup>in pursuance of an authorisation under Part 3 of the Act of 2016 or as the result of the issue of a warrant under Chapter 2 of Part 6 of the Act of 2016], or is likely to do so;
  - (d) has come into the possession of any person as a result of having been provided or disclosed in pursuance of any statutory duty (whether or not one arising as a result of a request for information), or is likely to do so; or
  - (e) has, by any other lawful means not involving the exercise of statutory powers, come into the possession of any of the intelligence services, the police, [<sup>F5</sup>the National Crime Agency]<sup>F6</sup>... or [<sup>F7</sup>Her Majesty's Revenue and Customs], or is

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likely so to come into the possession of any of those services, the police, [<sup>F5</sup>the National Crime Agency]<sup>F6</sup>... or [<sup>F7</sup>Her Majesty's Revenue and Customs].

(2) If any person with the appropriate permission under Schedule 2 believes, on reasonable grounds—

- (a) that a key to the protected information is in the possession of any person,
- (b) that the imposition of a disclosure requirement in respect of the protected information is—
  - (i) necessary on grounds falling within subsection (3), or
  - (ii) necessary for the purpose of securing the effective exercise or proper performance by any public authority of any statutory power or statutory duty,
- (c) that the imposition of such a requirement is proportionate to what is sought to be achieved by its imposition, and
- (d) that it is not reasonably practicable for the person with the appropriate permission to obtain possession of the protected information in an intelligible form without the giving of a notice under this section,

the person with that permission may, by notice to the person whom he believes to have possession of the key, impose a disclosure requirement in respect of the protected information.

(3) A disclosure requirement in respect of any protected information is necessary on grounds falling within this subsection if it is necessary—

- (a) in the interests of national security;
- (b) for the purpose of preventing or detecting crime; or
- (c) in the interests of the economic well-being of the United Kingdom.

(4) A notice under this section imposing a disclosure requirement in respect of any protected information—

- (a) must be given in writing or (if not in writing) must be given in a manner that produces a record of its having been given;
- (b) must describe the protected information to which the notice relates;
- (c) must specify the matters falling within subsection (2)(b)(i) or (ii) by reference to which the notice is given;
- (d) must specify the office, rank or position held by the person giving it;
- (e) must specify the office, rank or position of the person who for the purposes of Schedule 2 granted permission for the giving of the notice or (if the person giving the notice was entitled to give it without another person's permission) must set out the circumstances in which that entitlement arose;
- (f) must specify the time by which the notice is to be complied with; and
- (g) must set out the disclosure that is required by the notice and the form and manner in which it is to be made;

and the time specified for the purposes of paragraph (f) must allow a period for compliance which is reasonable in all the circumstances.

(5) Where it appears to a person with the appropriate permission—

- (a) that more than one person is in possession of the key to any protected information,
- (b) that any of those persons is in possession of that key in his capacity as an officer or employee of any body corporate, and

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- (c) that another of those persons is the body corporate itself or another officer or employee of the body corporate,  
a notice under this section shall not be given, by reference to his possession of the key, to any officer or employee of the body corporate unless he is a senior officer of the body corporate or it appears to the person giving the notice that there is no senior officer of the body corporate and (in the case of an employee) no more senior employee of the body corporate to whom it is reasonably practicable to give the notice.
- (6) Where it appears to a person with the appropriate permission—
- (a) that more than one person is in possession of the key to any protected information,  
(b) that any of those persons is in possession of that key in his capacity as an employee of a firm, and  
(c) that another of those persons is the firm itself or a partner of the firm,  
a notice under this section shall not be given, by reference to his possession of the key, to any employee of the firm unless it appears to the person giving the notice that there is neither a partner of the firm nor a more senior employee of the firm to whom it is reasonably practicable to give the notice.
- (7) Subsections (5) and (6) shall not apply to the extent that there are special circumstances of the case that mean that the purposes for which the notice is given would be defeated, in whole or in part, if the notice were given to the person to whom it would otherwise be required to be given by those subsections.
- (8) A notice under this section shall not require the making of any disclosure to any person other than—
- (a) the person giving the notice; or  
(b) such other person as may be specified in or otherwise identified by, or in accordance with, the provisions of the notice.
- (9) A notice under this section shall not require the disclosure of any key which—
- (a) is intended to be used for the purpose only of generating electronic signatures; and  
(b) has not in fact been used for any other purpose.
- [<sup>F8</sup>(9A) In subsection (1)(b) the reference to obtaining secondary data from communications is to be read in accordance with section 16 of the Investigatory Powers Act 2016.]
- (10) In this section “senior officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate; and for this purpose “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.
- (11) Schedule 2 (definition of the appropriate permission) shall have effect.

#### Textual Amendments

- F1** Words in s. 49(1)(b) inserted (30.8.2018) by Investigatory Powers Act 2016 (c. 25), s. 272(1), **Sch. 10 para. 46(2)** (with Sch. 9 paras. 7, 8, 10); S.I. 2018/940, reg. 2(1)(h)(i) (with reg. 2(2))
- F2** Words in s. 49(1)(c) substituted (5.2.2019 for specified purposes) by Investigatory Powers Act 2016 (c. 25), s. 272(1), **Sch. 10 para. 55(a)** (with Sch. 9 paras. 7, 8, 10); S.I. 2019/174, reg. 2(p)(iii)
- F3** Words in s. 49(1)(c) substituted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 2 para. 33(15)(a)**

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- F4** Words in s. 49(1)(c) substituted (5.2.2019 for specified purposes) by Investigatory Powers Act 2016 (c. 25), s. 272(1), **Sch. 10 para. 55(b)** (with Sch. 9 paras. 7, 8, 10); S.I. 2019/174, reg. 2(p)(iii)
- F5** Words in s. 49(1)(e) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 90**; S.I. 2013/1682, art. 3(v)
- F6** Word in s. 49(1)(e) omitted (1.4.2013) by virtue of The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 2 para. 33(15)(b)**
- F7** Words in s. 49(1)(e) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 19**; S.I. 2008/219, **art. 2(b)**
- F8** S. 49(9A) inserted (30.8.2018) by Investigatory Powers Act 2016 (c. 25), s. 272(1), **Sch. 10 para. 46(3)** (with Sch. 9 paras. 7, 8, 10); S.I. 2018/940, reg. 2(1)(h)(i) (with reg. 2(2))

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

- C1** S. 49(1)(e) restricted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), ss. 16, 17, 53(1), **Sch. 2 Pt. 1 para. 11(2)(c)**; S.I. 2005/1126, **art. 2(2)(d)**

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