

SCHEDULES

SCHEDULE 12

Section 107

OFCOM’S POWERS OF ENTRY, INSPECTION AND AUDIT

Authorised persons

- 1 (1) OFCOM may authorise persons to—
 - (a) exercise powers of entry and inspection under paragraph 2;
 - (b) carry out audits in accordance with notices under paragraph 4;
 - (c) apply for a warrant to be issued under paragraph 5, and execute such a warrant that has been issued.
- (2) “Authorised person” means—
 - (a) in paragraph 2, a person authorised for the purposes mentioned in sub-paragraph (1)(a);
 - (b) in paragraph 4, a person authorised for the purposes mentioned in sub-paragraph (1)(b);
 - (c) in other paragraphs of this Schedule, a person authorised for the purposes mentioned in sub-paragraph (1)(c).
- (3) An authorisation under this paragraph must be in writing.

Power of entry and inspection without a warrant

- 2 (1) The powers conferred by this paragraph may be exercised in relation to premises only if OFCOM—
 - (a) believe that the premises are being used by the provider of a regulated service in connection with the provision of a regulated service, and
 - (b) have given the occupier of the premises seven days’ notice that they propose to exercise the powers.
- (2) The powers conferred by this paragraph must be exercised at a reasonable hour.
- (3) Before exercising a power of entry under this paragraph, an authorised person must, if requested to do so by a person on the premises—
 - (a) produce evidence of the authorised person’s identity, and
 - (b) outline the purpose for which the power is exercised.
- (4) An authorised person may—
 - (a) enter the premises,
 - (b) inspect the premises,
 - (c) observe the carrying on of the regulated service at the premises,
 - (d) inspect any document or equipment found on the premises,

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- (e) require any person on the premises to provide any information, or produce any document in the person’s possession or control, that the authorised person considers is relevant to the provision of the regulated service, and
 - (f) require any person on the premises to provide an explanation of any document or to state where it may be found.
- (5) The power to observe the carrying on of the regulated service at the premises includes the power to view, using equipment or a device on the premises, information generated in real time by the performance of a test or demonstration required by a notice given under paragraph 3.
- (6) An authorised person may take copies of any document found or produced under sub-paragraph (4).
- (7) An authorised person may exercise powers conferred by this paragraph only so far as is required in connection with the exercise by OFCOM of their functions under this Act.

Notice requiring information, documents or tests at inspection

- 3 (1) This paragraph applies where OFCOM intend to exercise the powers conferred by paragraph 2 to enter and inspect premises.
- (2) OFCOM may give the occupier of the premises a notice requiring relevant information to be provided, relevant documents to be produced, or a relevant test or demonstration to be performed, during the inspection.
- (3) Any such notice must be given at least seven days in advance of the proposed inspection date.
- (4) For the purposes of this paragraph, information or a document, test or demonstration is “relevant” if it is required in connection with the exercise by OFCOM of their functions under this Act.
- (5) A notice under this paragraph must—
- (a) specify or describe the information to be provided, the documents to be produced, or the test or demonstration to be performed, during the inspection, and
 - (b) contain information about the consequences of not complying with the notice.

Audit

- 4 (1) OFCOM may give the provider of a regulated service a notice (an “audit notice”) requiring the provider to permit OFCOM to carry out an audit—
- (a) to assess whether the provider has complied or is complying with enforceable requirements that apply in respect of the service, or
 - (b) to assess—
 - (i) the nature and level of risk of the provider failing to comply with an enforceable requirement that applies in respect of the service, and
 - (ii) ways to mitigate such a risk.
- (2) An audit notice may require the provider to take any of the following actions for a purpose mentioned in sub-paragraph (1)—

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- (a) to permit an authorised person to enter and inspect specified premises;
 - (b) to permit an authorised person to observe the carrying on of the regulated service at the premises;
 - (c) to direct an authorised person to documents on the premises that are of a specified description;
 - (d) to assist an authorised person to view information of a specified description that is capable of being viewed using equipment or a device on the premises;
 - (e) to assist an authorised person to view, using equipment or a device on the premises, information demonstrating in real time the operation of systems, processes or features of a specified description, including functionalities or algorithms of a specified description;
 - (f) to assist an authorised person to view, using equipment or a device on the premises, information generated in real time by the performance of a test or demonstration of a specified description;
 - (g) to comply with a request from an authorised person for a copy (in such form as may be requested) of the documents or information to which the person is directed or which the person is assisted to view;
 - (h) to permit an authorised person to inspect the documents, information or equipment to which the person is directed or which the person is assisted to view;
 - (i) to provide an authorised person with an explanation of such documents or information;
 - (j) to make available for interview by the authorised person a specified number of people of a specified description who are involved in the provision of the regulated service (not exceeding the number who are willing to be interviewed).
- (3) An audit notice—
- (a) must be given at least 28 days in advance of the start of the audit, and
 - (b) must specify the time or times at which, or period or periods within which, each requirement imposed by the notice must be complied with.
- (4) An audit notice may not require a provider to permit an authorised person to enter domestic premises.
- (5) An audit notice may not require a provider to do anything that would result in the disclosure of information or documents in respect of which a claim to legal professional privilege, or (in Scotland) to confidentiality of communications, could be maintained in legal proceedings.
- (6) An audit notice must contain information about the consequences of not complying with the requirements which it imposes.
- (7) An audit notice may by further notice—
- (a) be revoked by OFCOM;
 - (b) be varied by OFCOM so as to make it less onerous.
- (8) OFCOM may require a provider to pay some or all of the reasonable costs of an audit carried out in accordance with an audit notice.
- (9) If OFCOM require a provider to pay an amount as mentioned in sub-paragraph (8), paragraph 6 of Schedule 13 applies in relation to the amount as it applies in relation to a penalty within the meaning of that Schedule.

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(10) In this paragraph “specified” means specified in an audit notice.

Conditions for issue of a warrant

- 5 (1) A justice of the peace or (in Northern Ireland) a lay magistrate may issue a warrant in relation to premises specified in an application only if satisfied on sworn information in writing given by an authorised person that—
- (a) the premises are being used by the provider of a regulated service in connection with the provision of a regulated service;
 - (b) there are reasonable grounds to suspect that—
 - (i) the provider is failing to comply, or has failed to comply, with an enforceable requirement that applies in respect of that service, and
 - (ii) there is information or equipment on the premises, or there are documents on the premises, relevant to OFCOM’s investigation into that failure (or possible failure); and
 - (c) any of the conditions in sub-paragraph (2) are met.
- (2) The conditions are that, in relation to the premises specified in the application for a warrant—
- (a) OFCOM have previously given notice to enter the premises, as required in relation to entry without a warrant under paragraph 2, but a person authorised by OFCOM to exercise powers under that paragraph was denied access,
 - (b) a requirement imposed by a person acting in the exercise of powers conferred by paragraph 2 has not been complied with,
 - (c) a requirement of a notice under paragraph 3 has not been complied with,
 - (d) a requirement of a notice under paragraph 4 (audit notice) has not been complied with,
 - (e) giving notice to enter the premises would defeat the object of entry, or
 - (f) OFCOM require access to the premises urgently.

Evidence of authority

- 6 (1) Before exercising a power of entry under a warrant, an authorised person must—
- (a) produce a copy of the warrant,
 - (b) supply the occupier (if present), or any other person appearing to the authorised person to be in charge of the premises, with a copy of the warrant, and
 - (c) if requested to do so—
 - (i) produce evidence of the authorised person’s identity, and
 - (ii) outline the purpose for which the power is exercised.
- (2) If neither the occupier nor any other person appearing to the authorised person to be in charge of the premises is present, the authorised person must leave a copy of the warrant in a prominent place on the premises.

Powers exercisable by warrant

- 7 An authorised person executing a warrant may do any of the following for the purposes of OFCOM’s investigation into whether there is, or has been, a failure referred to in paragraph 5(1)(b)(i)—

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- (a) enter the premises specified in the warrant;
- (b) search the premises;
- (c) inspect any documents or equipment found on the premises, or any information capable of being viewed using equipment or a device on the premises;
- (d) require any person on the premises to provide information, including requiring an explanation of any document found on the premises or any information capable of being viewed using equipment or a device on the premises;
- (e) require any person on the premises to produce any document in the person’s possession or control;
- (f) take copies of any document found on the premises or produced in response to a requirement under paragraph (e);
- (g) require information which is stored in electronic form and may be accessed from the premises to be produced in a form in which it can be taken away and in which it is visible and legible (or from which it can readily be produced in a visible and legible form);
- (h) operate any equipment found on the premises for the purposes of producing such information in such a form;
- (i) require any person on the premises to give the authorised person any assistance that the authorised person may reasonably require (including for the purposes of paragraphs (g) and (h));
- (j) take copies of anything produced in accordance with paragraph (g);
- (k) seize any document found on the premises or produced in response to a requirement under paragraph (e), or anything produced in accordance with paragraph (g), or any equipment found on the premises;
- (l) open any container found on the premises;
- (m) take a photograph or video recording of anything found on the premises.

Powers of seizure: supplementary

- 8 (1) This paragraph applies where the person executing a warrant seizes a document or other thing.
- (2) The person must, on request—
- (a) give a receipt for it, and
 - (b) (in the case of a document) give an occupier of the premises a copy of it.
- (3) Sub-paragraph (2)(b) does not apply if the person executing the warrant considers that providing a copy would result in undue delay.
- (4) Anything seized may be retained for so long as is necessary in all the circumstances.

Further provision about executing warrants

- 9 Entry and search under a warrant must be at a reasonable hour, unless it appears to the person executing it that the purpose of a search would be frustrated or seriously prejudiced by entry at a reasonable hour.
- 10 Entry and search under a warrant must be within the period of one month starting with the date of its issue.

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- 11 An authorised person executing a warrant may take such other persons and such equipment and materials onto the premises as appear to that person to be necessary.
- 12 A person taken on to the premises under paragraph 11 may exercise any power conferred on an authorised person by paragraph 7 if the person is in the company and under the supervision of an authorised person executing a warrant.
- 13 An authorised person may use reasonable force, if necessary, for the purpose of exercising a power under a warrant.
- 14 A warrant authorises entry on one occasion only, unless it specifies that it authorises multiple entries.
- 15 If the premises are unoccupied or the occupier is temporarily absent, an authorised person executing a warrant must leave the premises as effectively secured against trespassers as that person found them.

Return of warrants

- 16 (1) Where a warrant is executed—
- (a) it must be returned to the appropriate person (see sub-paragraph (3)) after being executed, and
 - (b) the person by whom it is executed must write on the warrant a statement of the powers that have been exercised under the warrant.
- (2) Where a warrant is not executed, it must be returned to the appropriate person within the time authorised for its execution.
- (3) The appropriate person is—
- (a) in the case of a warrant issued in England and Wales, the designated officer for the local justice area in which the justice of the peace was acting when issuing the warrant;
 - (b) in the case of a warrant issued in Scotland, the clerk of the justice of the peace court;
 - (c) in the case of a warrant issued in Northern Ireland, the clerk of petty sessions.
- (4) The appropriate person must retain a search warrant returned under sub-paragraph (1) or (2) until the end of the period of 12 months starting with the date of its return.
- (5) If during that period the occupier of premises to which the warrant relates asks to inspect it, the occupier must be allowed to do so.

Restrictions on powers

- 17 (1) This paragraph applies in relation to—
- (a) powers conferred by paragraph 2 (entry and inspection without warrant), and
 - (b) powers exercisable under a warrant.
- (2) Those powers are not exercisable in respect of domestic premises.
- (3) Those powers are not exercisable in relation to information or documents in respect of which a claim to legal professional privilege, or (in Scotland) to confidentiality of communications, could be maintained in legal proceedings.

Offences

- 18 (1) A person commits an offence if—
- (a) the person intentionally obstructs a person acting under this Schedule;
 - (b) the person fails, without reasonable excuse, to comply with any requirement imposed by a person acting under this Schedule;
 - (c) in response to a requirement imposed by a person acting under this Schedule, the person provides information that is false in a material respect, knowing that it is false in a material respect or being reckless as to whether it is false in a material respect.
- (2) A person who commits an offence under this paragraph is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine (or both);
 - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
 - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

Interpretation

- 19 In this Schedule—
- “domestic premises” means premises, or a part of premises, used as a dwelling;
 - “premises” means premises in the United Kingdom.
- 20 References in this Schedule to a person “acting under this Schedule” are to a person acting—
- (a) in the exercise of powers conferred by paragraph 2 (entry and inspection without warrant), or
 - (b) in the execution of a warrant,
- and the reference in paragraph 18(1)(a) also includes a person carrying out an audit in accordance with an audit notice.
- 21 In this Schedule “enforceable requirement” has the same meaning as in Chapter 6 of Part 7 (see section 131), except that—
- (a) it does not include—
 - (i) a requirement under (or a requirement of a notice under) section 104 (reports by skilled persons), or
 - (ii) a requirement imposed by a person acting under this Schedule;
 - (b) it includes a requirement imposed by a notice under section 121(1) (notices to deal with terrorism content and CSEA content).
- 22 In paragraphs 6 to 17 and 20 “warrant” means a warrant issued under paragraph 5.
- 23 In the application of paragraph 5(1) to Scotland, the reference to sworn information in writing has effect as a reference to evidence on oath.
- 24 In the application of paragraph 5(1) to Northern Ireland, the reference to sworn information in writing has effect as a reference to a complaint on oath.