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## SCHEDULES

### SCHEDULE 9

Section 50.

#### POWERS OF ENTRY AND INSPECTION

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

- C1 Sch. 9 applied (with modifications) (1.3.2000) by S.I. 1999/2093, reg. 34, Sch. 3 para. 5(3)
- C2 Sch. 9 extended (with modifications) (11.12.2003) by The Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426), reg. 31, Sch. 1 (with regs. 4, 15(3), 28, 29)

##### *Issue of warrants*

- 1 (1) If a circuit judge is satisfied by information on oath supplied by the Commissioner that there are reasonable grounds for suspecting—
  - (a) that a data controller has contravened or is contravening any of the data protection principles, or
  - (b) that an offence under this Act has been or is being committed,and that evidence of the contravention or of the commission of the offence is to be found on any premises specified in the information, he may, subject to sub-paragraph (2) and paragraph 2, grant a warrant to the Commissioner.
- (2) A judge shall not issue a warrant under this Schedule in respect of any personal data processed for the special purposes unless a determination by the Commissioner under section 45 with respect to those data has taken effect.
- (3) A warrant issued under sub-paragraph (1) shall authorise the Commissioner or any of his officers or staff at any time within seven days of the date of the warrant to enter the premises, to search them, to inspect, examine, operate and test any equipment found there which is used or intended to be used for the processing of personal data and to inspect and seize any documents or other material found there which may be such evidence as is mentioned in that sub-paragraph.

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

- C3 Sch. 9 para. 1: power of seizure extended (1.4.2003) by 2001 c. 16, ss. 50, 52-54, 68, 138(2)-(4), Sch. 1 Pt. 1 para. 65; S.I. 2003/708, art. 2

- 2 (1) A judge shall not issue a warrant under this Schedule unless he is satisfied—
  - (a) that the Commissioner has given seven days' notice in writing to the occupier of the premises in question demanding access to the premises, and
  - (b) that either—

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- (i) access was demanded at a reasonable hour and was unreasonably refused, or
  - (ii) although entry to the premises was granted, the occupier unreasonably refused to comply with a request by the Commissioner or any of the Commissioner's officers or staff to permit the Commissioner or the officer or member of staff to do any of the things referred to in paragraph 1(3), and
  - (c) that the occupier, has, after the refusal, been notified by the Commissioner of the application for the warrant and has had an opportunity of being heard by the judge on the question whether or not it should be issued.
- (2) Sub-paragraph (1) shall not apply if the judge is satisfied that the case is one of urgency or that compliance with those provisions would defeat the object of the entry.
- 3 A judge who issues a warrant under this Schedule shall also issue two copies of it and certify them clearly as copies.

#### *Execution of warrants*

- 4 A person executing a warrant issued under this Schedule may use such reasonable force as may be necessary.
- 5 A warrant issued under this Schedule shall be executed at a reasonable hour unless it appears to the person executing it that there are grounds for suspecting that the evidence in question would not be found if it were so executed.
- 6 If the person who occupies the premises in respect of which a warrant is issued under this Schedule is present when the warrant is executed, he shall be shown the warrant and supplied with a copy of it; and if that person is not present a copy of the warrant shall be left in a prominent place on the premises.
- 7 (1) A person seizing anything in pursuance of a warrant under this Schedule shall give a receipt for it if asked to do so.
- (2) Anything so seized may be retained for so long as is necessary in all the circumstances but the person in occupation of the premises in question shall be given a copy of anything that is seized if he so requests and the person executing the warrant considers that it can be done without undue delay.

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

**C4** Sch. 9 para. 7(2) applied (1.4.2003) by 2001 c. 16, ss. 57(1)(m), 138(2); S.I. 2003/708, art. 2

#### *Matters exempt from inspection and seizure*

- 8 The powers of inspection and seizure conferred by a warrant issued under this Schedule shall not be exercisable in respect of personal data which by virtue of section 28 are exempt from any of the provisions of this Act.
- 9 (1) Subject to the provisions of this paragraph, the powers of inspection and seizure conferred by a warrant issued under this Schedule shall not be exercisable in respect of—

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- (a) any communication between a professional legal adviser and his client in connection with the giving of legal advice to the client with respect to his obligations, liabilities or rights under this Act, or
  - (b) any communication between a professional legal adviser and his client, or between such an adviser or his client and any other person, made in connection with or in contemplation of proceedings under or arising out of this Act (including proceedings before the Tribunal) and for the purposes of such proceedings.
- (2) Sub-paragraph (1) applies also to—
- (a) any copy or other record of any such communication as is there mentioned, and
  - (b) any document or article enclosed with or referred to in any such communication if made in connection with the giving of any advice or, as the case may be, in connection with or in contemplation of and for the purposes of such proceedings as are there mentioned.
- (3) This paragraph does not apply to anything in the possession of any person other than the professional legal adviser or his client or to anything held with the intention of furthering a criminal purpose.
- (4) In this paragraph references to the client of a professional legal adviser include references to any person representing such a client.
- 10 If the person in occupation of any premises in respect of which a warrant is issued under this Schedule objects to the inspection or seizure under the warrant of any material on the grounds that it consists partly of matters in respect of which those powers are not exercisable, he shall, if the person executing the warrant so requests, furnish that person with a copy of so much of the material as is not exempt from those powers.

#### *Return of warrants*

- 11 A warrant issued under this Schedule shall be returned to the court from which it was issued—
- (a) after being executed, or
  - (b) if not executed within the time authorised for its execution;
- and the person by whom any such warrant is executed shall make an endorsement on it stating what powers have been exercised by him under the warrant.

#### *Offences*

- 12 Any person who—
- (a) intentionally obstructs a person in the execution of a warrant issued under this Schedule, or
  - (b) fails without reasonable excuse to give any person executing such a warrant such assistance as he may reasonably require for the execution of the warrant,
- is guilty of an offence.

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*Vessels, vehicles etc.*

- 13 In this Schedule “premises” includes any vessel, vehicle, aircraft or hovercraft, and references to the occupier of any premises include references to the person in charge of any vessel, vehicle, aircraft or hovercraft.

*Scotland and Northern Ireland*

- 14 In the application of this Schedule to Scotland—
- (a) for any reference to a circuit judge there is substituted a reference to the sheriff,
  - (b) for any reference to information on oath there is substituted a reference to evidence on oath, and
  - (c) for the reference to the court from which the warrant was issued there is substituted a reference to the sheriff clerk.
- 15 In the application of this Schedule to Northern Ireland—
- (a) for any reference to a circuit judge there is substituted a reference to a county court judge, and
  - (b) for any reference to information on oath there is substituted a reference to a complaint on oath.

VALID FROM 06/04/2010

*[<sup>F1</sup>Self-incrimination*

**Textual Amendments**

- F1** Sch. 9 para. 16 and cross-heading inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), ss. 175, 182, Sch. 20 para. 14(7) (with s. 180); S.I. 2010/816, art. 2, Sch. para. 19

- 16 An explanation given, or information provided, by a person in response to a requirement under paragraph (e) or (f) of paragraph 1(3) may only be used in evidence against that person—
- (a) on a prosecution for an offence under—
    - (i) paragraph 12,
    - (ii) section 5 of the Perjury Act 1911 (false statements made otherwise than on oath),
    - (iii) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath), or
    - (iv) Article 10 of the Perjury (Northern Ireland) Order 1979 (false statutory declarations and other false unsworn statements), or
  - (b) on a prosecution for any other offence where—
    - (i) in giving evidence that person makes a statement inconsistent with that explanation or information, and
    - (ii) evidence relating to that explanation or information is adduced, or a question relating to it is asked, by that person or on that person's behalf.]

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