

*Status: Point in time view as at 06/04/2010.*

*Changes to legislation: Data Protection Act 1998, Cross Heading: Issue of warrants is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 9

#### 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)
- C1 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.
- [<sup>F1</sup>(1A) Sub-paragraph (1B) applies if a circuit judge or a District Judge (Magistrates' Courts) is satisfied by information on oath supplied by the Commissioner that a data controller has failed to comply with a requirement imposed by an assessment notice.
- (1B) The judge may, for the purpose of enabling the Commissioner to determine whether the data controller has complied or is complying with the data protection principles, grant a warrant to the Commissioner in relation to any premises that were specified in the assessment notice; but this is subject to sub-paragraph (2) and paragraph 2.]
- (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 [<sup>F2</sup>this Schedule] shall authorise the Commissioner or any of his officers or staff at any time within seven days of the date of the warrant
- [<sup>F3</sup>(a) to enter the premises;
  - (b) to search the premises;
  - (c) to inspect, examine, operate and test any equipment found on the premises which is used or intended to be used for the processing of personal data;
  - (d) to inspect and seize any documents or other material found on the premises which—
    - (i) in the case of a warrant issued under sub-paragraph (1), may be such evidence as is mentioned in that paragraph;

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- (ii) in the case of a warrant issued under sub-paragraph (1B), may enable the Commissioner to determine whether the data controller has complied or is complying with the data protection principles;
- (e) to require any person on the premises to provide an explanation of any document or other material found on the premises;
- (f) to require any person on the premises to provide such other information as may reasonably be required for the purpose of determining whether the data controller has contravened, or is contravening, the data protection principles.]

#### Textual Amendments

- F1** Sch. 9 para. 1(1A)(1B) inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), ss. 175, 182, **Sch. 20 para. 14(2)** (with s. 180 Sch. 22 para. 46); S.I. 2010/816, **art. 2**, Sch. para. 19
- F2** Words in Sch. 9 para. 1(3) substituted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), ss. 175, 182, **Sch. 20 para. 14(3)(a)** (with s. 180); S.I. 2010/816, **art. 2**, Sch. para. 19
- F3** Words in Sch. 9 para. 1(3) substituted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), ss. 175, 182, **Sch. 20 para. 14(3)(b)** (with s. 180); S.I. 2010/816, **art. 2**, Sch. para. 19

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

- C1** 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—
    - (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.

[<sup>F4</sup>(1A) In determining whether the Commissioner has given an occupier the seven days' notice referred to in sub-paragraph (1)(a) any assessment notice served on the occupier is to be disregarded.]

- (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.

#### Textual Amendments

- F4** Sch. 9 para. 2(1A) inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), ss. 175, 182, **Sch. 20 para. 14(4)** (with s. 180); S.I. 2010/816, **art. 2**, Sch. para. 19

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- 3           A judge who issues a warrant under this Schedule shall also issue two copies of it and certify them clearly as copies.

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