



# Regulation of Investigatory Powers Act 2000

## 2000 CHAPTER 23

### PART III

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

##### *Offences*

#### **53 Failure to comply with a notice.**

- (1) A person to whom a section 49 notice has been given is guilty of an offence if he knowingly fails, in accordance with the notice, to make the disclosure required by virtue of the giving of the notice.
- (2) In proceedings against any person for an offence under this section, if it is shown that that person was in possession of a key to any protected information at any time before the time of the giving of the section 49 notice, that person shall be taken for the purposes of those proceedings to have continued to be in possession of that key at all subsequent times, unless it is shown that the key was not in his possession after the giving of the notice and before the time by which he was required to disclose it.
- (3) For the purposes of this section a person shall be taken to have shown that he was not in possession of a key to protected information at a particular time if—
  - (a) sufficient evidence of that fact is adduced to raise an issue with respect to it; and
  - (b) the contrary is not proved beyond a reasonable doubt.
- (4) In proceedings against any person for an offence under this section it shall be a defence for that person to show—
  - (a) that it was not reasonably practicable for him to make the disclosure required by virtue of the giving of the section 49 notice before the time by which he was required, in accordance with that notice, to make it; but

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- (b) that he did make that disclosure as soon after that time as it was reasonably practicable for him to do so.
- (5) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding [<sup>F1</sup>the appropriate maximum term] or to a fine, or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both.
- [<sup>F2</sup>(5A) In subsection (5) ‘the appropriate maximum term’ means—
- (a) in a national security case [<sup>F3</sup>or a child indecency case], five years; and
- (b) in any other case, two years.
- (5B) In subsection (5A) ‘a national security case’ means a case in which the grounds specified in the notice to which the offence relates as the grounds for imposing a disclosure requirement were or included a belief that the imposition of the requirement was necessary in the interests of national security.]
- [<sup>F4</sup>(6) In subsection (5A) “ a child indecency case ” means a case in which the grounds specified in the notice to which the offence relates as the grounds for imposing a disclosure requirement were or included a belief that the imposition of the requirement was necessary for the purpose of preventing or detecting an offence under any of the provisions listed in subsection (7).
- (7) Those provisions are—
- (a) section 1 of the Protection of Children Act 1978 (showing or taking etc an indecent photograph of a child: England and Wales);
- (b) Article 3 of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)) (corresponding offence for Northern Ireland);
- (c) section 52 or 52A of the Civic Government (Scotland) Act 1982 (showing or taking etc or possessing an indecent photograph of a child: Scotland);
- (d) section 160 of the Criminal Justice Act 1988 (possessing an indecent photograph of a child: England and Wales);
- (e) Article 15 of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (S.I. 1988/1847 (N.I. 17)) (corresponding offence for Northern Ireland).]

#### Textual Amendments

- F1** Words in s. 53(5)(a) substituted (13.4.2006) by [Terrorism Act 2006 \(c. 11\), ss. 15\(1\)\(a\), 39\(2\)](#) (with s. 15(3)); S.I. 2006/1013, [art. 2\(2\)\(a\)](#)
- F2** S. 53(5A)(5B) inserted (13.4.2006) by [Terrorism Act 2006 \(c. 11\), ss. 15\(2\), 39\(2\)](#) (with s. 15(3)); S.I. 2006/1013, [art. 2\(2\)\(a\)](#)
- F3** Words in s. 53(5A)(a) inserted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\), ss. 26\(2\)\(4\), 116](#); S.I. 2009/3096, [art. 3\(e\)](#)
- F4** S. 53(6)(7) inserted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\), ss. 26\(3\)\(4\), 116](#); S.I. 2009/3096, [art. 3\(e\)](#)

## 54 Tipping-off.

- (1) This section applies where a section 49 notice contains a provision requiring—
- (a) the person to whom the notice is given, and

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- (b) every other person who becomes aware of it or of its contents, to keep secret the giving of the notice, its contents and the things done in pursuance of it.
- (2) A requirement to keep anything secret shall not be included in a section 49 notice except where—
- it is included with the consent of the person who for the purposes of Schedule 2 granted the permission for the giving of the notice; or
  - the person who gives the notice is himself a person whose permission for the giving of such a notice in relation to the information in question would have constituted appropriate permission under that Schedule.
- (3) A section 49 notice shall not contain a requirement to keep anything secret except where the protected information to which it relates—
- has come into the possession of the police, [<sup>F5</sup>the National Crime Agency], <sup>F6</sup>... [<sup>F7</sup>Her Majesty's Revenue and Customs] or any of the intelligence services, or
  - is likely to come into the possession of the police, [<sup>F5</sup>the National Crime Agency], <sup>F6</sup>... [<sup>F7</sup>Her Majesty's Revenue and Customs] or any of the intelligence services,
- by means which it is reasonable, in order to maintain the effectiveness of any investigation or operation or of investigatory techniques generally, or in the interests of the safety or well-being of any person, to keep secret from a particular person.
- (4) A person who makes a disclosure to any other person of anything that he is required by a section 49 notice to keep secret shall be guilty of an offence and liable—
- on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both;
  - on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both.
- (5) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that—
- the disclosure was effected entirely by the operation of software designed to indicate when a key to protected information has ceased to be secure; and
  - that person could not reasonably have been expected to take steps, after being given the notice or (as the case may be) becoming aware of it or of its contents, to prevent the disclosure.
- (6) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that—
- the disclosure was made by or to a professional legal adviser in connection with the giving, by the adviser to any client of his, of advice about the effect of provisions of this Part; and
  - the person to whom or, as the case may be, by whom it was made was the client or a representative of the client.
- (7) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that the disclosure was made by a legal adviser—
- in contemplation of, or in connection with, any legal proceedings; and
  - for the purposes of those proceedings.

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- (8) Neither subsection (6) nor subsection (7) applies in the case of a disclosure made with a view to furthering any criminal purpose.
- (9) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that the disclosure was confined to a disclosure made to a [<sup>F8</sup>Judicial Commissioner ] or authorised—
- (a) by such a Commissioner;
  - (b) by the terms of the notice;
  - (c) by or on behalf of the person who gave the notice; or
  - (d) by or on behalf of a person who—
    - (i) is in lawful possession of the protected information to which the notice relates; and
    - (ii) came into possession of that information as mentioned in section 49(1).
- (10) In proceedings for an offence under this section against a person other than the person to whom the notice was given, it shall be a defence for the person against whom the proceedings are brought to show that he neither knew nor had reasonable grounds for suspecting that the notice contained a requirement to keep secret what was disclosed.

<sup>F9</sup>(11) . . . . .

#### **Textual Amendments**

- F5** Words in s. 54(3)(a)(b) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 8 para. 92**; S.I. 2013/1682, art. 3(v)
- F6** Word in s. 54(3)(a)(b) 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(17)**
- F7** Word in s. 54(3) substituted (15.2.2008) by [Serious Crime Act 2007 \(c. 27\)](#), ss. 88, 94, **Sch. 12 para. 21**; S.I. 2008/219, **art. 2(b)**
- F8** Words in s. 54(9) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\)](#), **ss. 233(4)(b)**, 272(1) (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2017/859, reg. 2(e)
- F9** S. 54(11) omitted (1.9.2017) by virtue of [Investigatory Powers Act 2016 \(c. 25\)](#), **ss. 233(4)(d)**, 272(1) (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2017/859, reg. 2(e)

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

- C1** S. 54 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)(d)**; S.I. 2005/1126, **art. 2(2)(d)**

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