



# Regulation of Investigatory Powers Act 2000

## 2000 CHAPTER 23

### PART III

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

##### *Power to require disclosure*

#### **51 Cases in which key required.**

- (1) A section 49 notice imposing a disclosure requirement in respect of any protected information shall not contain a statement for the purposes of section 50(3)(c) unless—
  - (a) the person who for the purposes of Schedule 2 granted the permission for the giving of the notice in relation to that information, or
  - (b) any person whose permission for the giving of a such a notice in relation to that information would constitute the appropriate permission under that Schedule, has given a direction that the requirement can be complied with only by the disclosure of the key itself.
- (2) A direction for the purposes of subsection (1) by [<sup>F1</sup>the police, SOCA, [<sup>F2</sup>SCDEA,] the customs] and excise or a member of Her Majesty's forces shall not be given—
  - (a) in the case of a direction by the police or by a member of Her Majesty's forces who is a member of a police force, except by or with the permission of a chief officer of police;
  - [<sup>F3</sup>(aa) in the case of a direction by SOCA, except by or with the permission of the Director General of the Serious Organised Crime Agency;]
  - [<sup>F4</sup>(ab) in the case of a direction by SCDEA, except by or with the permission of the Director General of the Scottish Crime and Drug Enforcement Agency;]
  - (b) in the case of a direction by the customs and excise, except by or with the permission of the Commissioners of Customs and Excise; or

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- (c) in the case of a direction by a member of Her Majesty's forces who is not a member of a police force, except by or with the permission of a person of or above the rank of brigadier or its equivalent.
- (3) A permission given for the purposes of subsection (2) by a chief officer of police, [<sup>F5</sup>the Director General of the Serious Organised Crime Agency,][<sup>F6</sup>the Director General of the Scottish Crime and Drug Enforcement Agency,] the Commissioners of Customs and Excise or a person of or above any such rank as is mentioned in paragraph (c) of that subsection must be given expressly in relation to the direction in question.
- (4) A person shall not give a direction for the purposes of subsection (1) unless he believes—
- (a) that there are special circumstances of the case which mean that the purposes for which it was believed necessary to impose the requirement in question would be defeated, in whole or in part, if the direction were not given; and
  - (b) that the giving of the direction is proportionate to what is sought to be achieved by prohibiting any compliance with the requirement in question otherwise than by the disclosure of the key itself.
- (5) The matters to be taken into account in considering whether the requirement of subsection (4)(b) is satisfied in the case of any direction shall include—
- (a) the extent and nature of any protected information, in addition to the protected information in respect of which the disclosure requirement is imposed, to which the key is also a key; and
  - (b) any adverse effect that the giving of the direction might have on a business carried on by the person on whom the disclosure requirement is imposed.
- (6) Where a direction for the purposes of subsection (1) is given by a chief officer of police, [<sup>F7</sup>by the Director General of the Serious Organised Crime Agency,][<sup>F8</sup>by the Director General of the Scottish Crime and Drug Enforcement Agency,] by the Commissioners of Customs and Excise or by a member of Her Majesty's forces, the person giving the direction shall give a notification that he has done so —
- (a) in a case where the direction is given—
    - (i) by a member of Her Majesty's forces who is not a member of a police force, and
    - (ii) otherwise than in connection with activities of members of Her Majesty's forces in Northern Ireland, to the Intelligences Services Commissioner; and
  - (b) in any other case, to the Chief Surveillance Commissioner.
- (7) A notification under subsection (6)—
- (a) must be given not more than seven days after the day of the giving of the direction to which it relates; and
  - (b) may be given either in writing or by being transmitted to the Commissioner in question by electronic means.

#### Textual Amendments

- F1** Words in s. 51(2) substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, [Sch. 4 para. 146\(2\)\(a\)](#); S.I. 2006/378, [art. 4\(1\)](#), [Sch. para. 10](#) (subject to [art. 4\(2\)-\(7\)](#))

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- F2** Words in s. 51(2) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(9)(a)(i)**
- F3** S. 51(2)(aa) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 146(2)(b)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))
- F4** S. 51(2)(ab) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(9)(a)(ii)**
- F5** Words in s. 51(3) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 146(3)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))
- F6** Words in s. 51(3) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(9)(b)**
- F7** Words in s. 51(6) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 146(4)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))
- F8** Words in s. 51(6) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(9)(c)**

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