

## SCHEDULES

### SCHEDULE 15

Section 154

#### POWERS OF ENTRY AND INSPECTION

##### *Issue of warrants in connection with non-compliance and offences*

- 1 (1) This paragraph applies if a judge of the High Court, a circuit judge or a District Judge (Magistrates' Courts) is satisfied by information on oath supplied by the Commissioner that—
  - (a) there are reasonable grounds for suspecting that—
    - (i) a controller or processor has failed or is failing as described in section 149(2), or
    - (ii) an offence under this Act has been or is being committed, and
  - (b) there are reasonable grounds for suspecting that evidence of the failure or of the commission of the offence is to be found on premises specified in the information or is capable of being viewed using equipment on such premises.
- (2) The judge may grant a warrant to the Commissioner.

##### *Issue of warrants in connection with assessment notices*

- 2 (1) This paragraph applies if a judge of the High Court, a circuit judge or a District Judge (Magistrates' Courts) is satisfied by information on oath supplied by the Commissioner that a controller or processor has failed to comply with a requirement imposed by an assessment notice.
- (2) The judge may, for the purpose of enabling the Commissioner to determine whether the controller or processor has complied or is complying with the data protection legislation, grant a warrant to the Commissioner in relation to premises that were specified in the assessment notice.

##### *Restrictions on issuing warrants: processing for the special purposes*

- 3 A judge must not issue a warrant under this Schedule in respect of personal data processed for the special purposes unless a determination under section 174 with respect to the data or the processing has taken effect.

##### *Restrictions on issuing warrants: procedural requirements*

- 4 (1) A judge must not issue a warrant under this Schedule unless satisfied that—
  - (a) the conditions in sub-paragraphs (2) to (4) are met,
  - (b) compliance with those conditions would defeat the object of entry to the premises in question, or
  - (c) the Commissioner requires access to the premises in question urgently.

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- (2) The first condition is that the Commissioner has given 7 days' notice in writing to the occupier of the premises in question demanding access to the premises.
- (3) The second condition is that—
  - (a) access to the premises was demanded at a reasonable hour and was unreasonably refused, or
  - (b) entry to the premises was granted but the occupier unreasonably refused to comply with a request by the Commissioner or the Commissioner's officers or staff to be allowed to do any of the things referred to in paragraph 5.
- (4) The third condition is that, since the refusal, the occupier of the premises—
  - (a) has been notified by the Commissioner of the application for the warrant, and
  - (b) has had an opportunity to be heard by the judge on the question of whether or not the warrant should be issued.
- (5) In determining whether the first condition is met, an assessment notice given to the occupier is to be disregarded.

#### *Content of warrants*

- 5 (1) A warrant issued under this Schedule must authorise the Commissioner or any of the Commissioner's officers or staff—
  - (a) to enter the premises,
  - (b) to search the premises, and
  - (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.
- (2) A warrant issued under paragraph 1 must authorise the Commissioner or any of the Commissioner's officers or staff—
  - (a) to inspect and seize any documents or other material found on the premises which may be evidence of the failure or offence mentioned in that paragraph,
  - (b) to require any person on the premises to provide, in an appropriate form, a copy of information capable of being viewed using equipment on the premises which may be evidence of that failure or offence,
  - (c) to require any person on the premises to provide an explanation of any document or other material found on the premises and of any information capable of being viewed using equipment on the premises, and
  - (d) to require any person on the premises to provide such other information as may reasonably be required for the purpose of determining whether the controller or processor has failed or is failing as described in section 149(2).
- (3) A warrant issued under paragraph 2 must authorise the Commissioner or any of the Commissioner's officers or staff—
  - (a) to inspect and seize any documents or other material found on the premises which may enable the Commissioner to determine whether the controller or processor has complied or is complying with the data protection legislation,
  - (b) to require any person on the premises to provide, in an appropriate form, a copy of information capable of being viewed using equipment on the premises which may enable the Commissioner to make such a determination,

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- (c) to require any person on the premises to provide an explanation of any document or other material found on the premises and of any information capable of being viewed using equipment on the premises, and
  - (d) to require any person on the premises to provide such other information as may reasonably be required for the purpose of determining whether the controller or processor has complied or is complying with the data protection legislation.
- (4) A warrant issued under this Schedule must authorise the Commissioner or any of the Commissioner’s officers or staff to do the things described in sub-paragraphs (1) to (3) at any time in the period of 7 days beginning with the day on which the warrant is issued.
- (5) For the purposes of this paragraph, a copy of information is in an “appropriate form” if —
- (a) it can be taken away, and
  - (b) it is visible and legible or it can readily be made visible and legible.

#### *Copies of warrants*

- 6 A judge who issues a warrant under this Schedule must—
- (a) issue two copies of it, and
  - (b) certify them clearly as copies.

#### *Execution of warrants: reasonable force*

- 7 A person executing a warrant issued under this Schedule may use such reasonable force as may be necessary.

#### *Execution of warrants: time when executed*

- 8 A warrant issued under this Schedule may be executed only at a reasonable hour, unless it appears to the person executing it that there are grounds for suspecting that exercising it at a reasonable hour would defeat the object of the warrant.

#### *Execution of warrants: occupier of premises*

- 9 (1) If an occupier of the premises in respect of which a warrant is issued under this Schedule is present when the warrant is executed, the person executing the warrant must—
- (a) show the occupier the warrant, and
  - (b) give the occupier a copy of it.
- (2) Otherwise, a copy of the warrant must be left in a prominent place on the premises.

#### *Execution of warrants: seizure of documents etc*

- 10 (1) This paragraph applies where a person executing a warrant under this Schedule seizes something.
- (2) The person must, on request—
- (a) give a receipt for it, and

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- (b) 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.

*Matters exempt from inspection and seizure: privileged communications*

- 11 (1) The powers of inspection and seizure conferred by a warrant issued under this Schedule are not exercisable in respect of a communication which is made—
- (a) between a professional legal adviser and the adviser’s client, and
  - (b) in connection with the giving of legal advice to the client with respect to obligations, liabilities or rights under the data protection legislation.
- (2) The powers of inspection and seizure conferred by a warrant issued under this Schedule are not exercisable in respect of a communication which is made—
- (a) between a professional legal adviser and the adviser’s client or between such an adviser or client and another person,
  - (b) in connection with or in contemplation of proceedings under or arising out of the data protection legislation, and
  - (c) for the purposes of such proceedings.
- (3) Sub-paragraphs (1) and (2) do not prevent the exercise of powers conferred by a warrant issued under this Schedule in respect of—
- (a) anything in the possession of a person other than the professional legal adviser or the adviser’s client, or
  - (b) anything held with the intention of furthering a criminal purpose.
- (4) The references to a communication in sub-paragraphs (1) and (2) include—
- (a) a copy or other record of the communication, and
  - (b) anything enclosed with or referred to in the communication if made as described in sub-paragraph (1)(b) or in sub-paragraph (2)(b) and (c).
- (5) In sub-paragraphs (1) to (3), the references to the client of a professional legal adviser include a person acting on behalf of such a client.

*Matters exempt from inspection and seizure: Parliamentary privilege*

- 12 The powers of inspection and seizure conferred by a warrant issued under this Schedule are not exercisable where their exercise would involve an infringement of the privileges of either House of Parliament.

*Partially exempt material*

- 13 (1) This paragraph applies if a person in occupation of premises in respect of which a warrant is issued under this Schedule objects to the inspection or seizure of any material under the warrant on the grounds that it consists partly of matters in respect of which those powers are not exercisable.
- (2) The person must, if the person executing the warrant so requests, provide that person with a copy of so much of the material as is not exempt from those powers.

### *Return of warrants*

- 14 (1) Where a warrant issued under this Schedule is executed—
- (a) it must be returned to the court from which it was issued 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 issued under this Schedule is not executed, it must be returned to the court from which it was issued within the time authorised for its execution.

### *Offences*

- 15 (1) It is an offence for a person—
- (a) intentionally to obstruct a person in the execution of a warrant issued under this Schedule, or
  - (b) to fail without reasonable excuse to give a person executing such a warrant such assistance as the person may reasonably require for the execution of the warrant.
- (2) It is an offence for a person—
- (a) to make a statement in response to a requirement under paragraph 5(2)(c) or (d) or (3)(c) or (d) which the person knows to be false in a material respect, or
  - (b) recklessly to make a statement in response to such a requirement which is false in a material respect.

### *Self-incrimination*

- 16 (1) An explanation given, or information provided, by a person in response to a requirement under paragraph 5(2)(c) or (d) or (3)(c) or (d) may only be used in evidence against that person—
- (a) on a prosecution for an offence under a provision listed in sub-paragraph (2), 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.
- (2) Those provisions are—
- (a) paragraph 15,
  - (b) section 5 of the Perjury Act 1911 (false statements made otherwise than on oath),
  - (c) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath), or
  - (d) Article 10 of the Perjury (Northern Ireland) Order 1979 ([S.I. 1979/1714 \(N.I. 19\)](#)) (false statutory declarations and other false unsworn statements).

### *Vessels, vehicles etc*

- 17 In this Schedule—

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- (a) “premises” includes a vehicle, vessel or other means of transport, and
- (b) references to the occupier of premises include the person in charge of a vehicle, vessel or other means of transport.

#### *Scotland*

- 18 In the application of this Schedule to Scotland—
- (a) references to a judge of the High Court have effect as if they were references to a judge of the Court of Session,
  - (b) references to a circuit judge have effect as if they were references to the sheriff or the summary sheriff,
  - (c) references to information on oath have effect as if they were references to evidence on oath, and
  - (d) references to the court from which the warrant was issued have effect as if they were references to the sheriff clerk.

#### *Northern Ireland*

- 19 In the application of this Schedule to Northern Ireland—
- (a) references to a circuit judge have effect as if they were references to a county court judge, and
  - (b) references to information on oath have effect as if they were references to a complaint on oath.