

SCHEDULES

SCHEDULE 2

Section 49.

PERSONS HAVING THE APPROPRIATE PERMISSION

Requirement that appropriate permission is granted by a judge

- 1 (1) Subject to the following provisions of this Schedule, a person has the appropriate permission in relation to any protected information if, and only if, written permission for the giving of section 49 notices in relation to that information has been granted—
- (a) in England and Wales, by a Circuit judge;
 - (b) in Scotland, by a sheriff; or
 - (c) in Northern Ireland, by a county court judge.
- (2) Nothing in paragraphs 2 to 5 of this Schedule providing for the manner in which a person may be granted the appropriate permission in relation to any protected information without a grant under this paragraph shall be construed as requiring any further permission to be obtained in a case in which permission has been granted under this paragraph.

Data obtained under warrant etc.

- 2 (1) This paragraph applies in the case of protected information falling within section 49(1)(a), (b) or (c) where the statutory power in question is one exercised, or to be exercised, in accordance with—
- (a) a warrant issued by the Secretary of State or a person holding judicial office; or
 - (b) an authorisation under Part III of the Police Act 1997 (authorisation of otherwise unlawful action in respect of property).
- (2) Subject to sub-paragraphs (3) to (5) and paragraph 6(1), a person has the appropriate permission in relation to that protected information (without any grant of permission under paragraph 1) if—
- (a) the warrant or, as the case may be, the authorisation contained the relevant authority's permission for the giving of section 49 notices in relation to protected information to be obtained under the warrant or authorisation; or
 - (b) since the issue of the warrant or authorisation, written permission has been granted by the relevant authority for the giving of such notices in relation to protected information obtained under the warrant or authorisation.
- (3) Only persons holding office under the Crown, the police and customs and excise shall be capable of having the appropriate permission in relation to protected information obtained, or to be obtained, under a warrant issued by the Secretary of State.
- (4) Only a person who—
- (a) was entitled to exercise the power conferred by the warrant, or

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- (b) is of the description of persons on whom the power conferred by the warrant was, or could have been, conferred,
shall be capable of having the appropriate permission in relation to protected information obtained, or to be obtained, under a warrant issued by a person holding judicial office.
- (5) Only the police and the customs and excise shall be capable of having the appropriate permission in relation to protected information obtained, or to be obtained, under an authorisation under Part III of the Police Act 1997.
- (6) In this paragraph “the relevant authority”—
- (a) in relation to a warrant issued by the Secretary of State, means the Secretary of State;
 - (b) in relation to a warrant issued by a person holding judicial office, means any person holding any judicial office that would have entitled him to issue the warrant; and
 - (c) in relation to protected information obtained under an authorisation under Part III of the Police Act 1997, means (subject to sub-paragraph (7)) an authorising officer within the meaning of section 93 of that Act.
- (7) Section 94 of the Police Act 1997 (power of other persons to grant authorisations in urgent cases) shall apply in relation to—
- (a) an application for permission for the giving of section 49 notices in relation to protected information obtained, or to be obtained, under an authorisation under Part III of that Act, and
 - (b) the powers of any authorising officer (within the meaning of section 93 of that Act) to grant such a permission,
- as it applies in relation to an application for an authorisation under section 93 of that Act and the powers of such an officer under that section.
- (8) References in this paragraph to a person holding judicial office are references to—
- (a) any judge of the Crown Court or of the High Court of Justiciary;
 - (b) any sheriff;
 - (c) any justice of the peace;
 - (d) any resident magistrate in Northern Ireland; or
 - (e) any person holding any such judicial office as entitles him to exercise the jurisdiction of a judge of the Crown Court or of a justice of the peace.
- (9) Protected information that comes into a person’s possession by means of the exercise of any statutory power which—
- (a) is exercisable without a warrant, but
 - (b) is so exercisable in the course of, or in connection with, the exercise of another statutory power for which a warrant is required,
- shall not be taken, by reason only of the warrant required for the exercise of the power mentioned in paragraph (b), to be information in the case of which this paragraph applies.

Data obtained by the intelligence services under statute but without a warrant

- 3 (1) This paragraph applies in the case of protected information falling within section 49(1)(a), (b) or (c) which—

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- (a) has come into the possession of any of the intelligence services or is likely to do so; and
 - (b) is not information in the case of which paragraph 2 applies.
- (2) Subject to paragraph 6(1), a person has the appropriate permission in relation to that protected information (without any grant of permission under paragraph 1) if written permission for the giving of section 49 notices in relation to that information has been granted by the Secretary of State.
- (3) Sub-paragraph (2) applies where the protected information is in the possession, or (as the case may be) is likely to come into the possession, of both—
- (a) one or more of the intelligence services, and
 - (b) a public authority which is not one of the intelligence services,
- as if a grant of permission under paragraph 1 were unnecessary only where the application to the Secretary of State for permission under that sub-paragraph is made by or on behalf of a member of one of the intelligence services.

Data obtained under statute by other persons but without a warrant

- 4 (1) This paragraph applies—
- (a) in the case of protected information falling within section 49(1)(a), (b) or (c) which is not information in the case of which paragraph 2 or 3 applies; and
 - (b) in the case of protected information falling within section 49(1)(d) which is not information also falling within section 49(1)(a), (b) or (c) in the case of which paragraph 3 applies.
- (2) Subject to paragraph 6, where—
- (a) the statutory power was exercised, or is likely to be exercised, by the police, the customs and excise or a member of Her Majesty's forces, or
 - (b) the information was provided or disclosed, or is likely to be provided or disclosed, to the police, the customs and excise or a member of Her Majesty's forces, or
 - (c) the information is in the possession of, or is likely to come into the possession of, the police, the customs and excise or a member of Her Majesty's forces,
- the police, the customs and excise or, as the case may be, members of Her Majesty's forces have the appropriate permission in relation to the protected information, without any grant of permission under paragraph 1.
- (3) In any other case a person shall not have the appropriate permission by virtue of a grant of permission under paragraph 1 unless he is a person falling within sub-paragraph (4).
- (4) A person falls within this sub-paragraph if, as the case may be—
- (a) he is the person who exercised the statutory power or is of the description of persons who would have been entitled to exercise it;
 - (b) he is the person to whom the protected information was provided or disclosed, or is of a description of person the provision or disclosure of the information to whom would have discharged the statutory duty; or
 - (c) he is a person who is likely to be a person falling within paragraph (a) or (b) when the power is exercised or the protected information provided or disclosed.

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Data obtained without the exercise of statutory powers

- 5 (1) This paragraph applies in the case of protected information falling within section 49(1)(e).
- (2) Subject to paragraph 6, a person has the appropriate permission in relation to that protected information (without any grant of permission under paragraph 1) if—
- (a) the information is in the possession of any of the intelligence services, or is likely to come into the possession of any of those services; and
 - (b) written permission for the giving of section 49 notices in relation to that information has been granted by the Secretary of State.
- (3) Sub-paragraph (2) applies where the protected information is in the possession, or (as the case may be) is likely to come into the possession, of both—
- (a) one or more of the intelligence services, and
 - (b) the police or the customs and excise,
- as if a grant of permission under paragraph 1 were unnecessary only where the application to the Secretary of State for permission under that sub-paragraph is made by or on behalf of a member of one of the intelligence services.

General requirements relating to the appropriate permission

- 6 (1) A person does not have the appropriate permission in relation to any protected information unless he is either—
- (a) a person who has the protected information in his possession or is likely to obtain possession of it; or
 - (b) a person who is authorised (apart from this Act) to act on behalf of such a person.
- (2) Subject to sub-paragraph (3), a constable does not by virtue of paragraph 1, 4 or 5 have the appropriate permission in relation to any protected information unless—
- (a) he is of or above the rank of superintendent; or
 - (b) permission to give a section 49 notice in relation to that information has been granted by a person holding the rank of superintendent, or any higher rank.
- (3) In the case of protected information that has come into the police's possession by means of the exercise of powers conferred by—
- (a) section 44 of the Terrorism Act 2000 (power to stop and search), or
 - (b) section 13A or 13B of the Prevention of Terrorism (Temporary Provisions) Act 1989 (which had effect for similar purposes before the coming into force of section 44 of the Terrorism Act 2000),
- the permission required by sub-paragraph (2) shall not be granted by any person below the rank mentioned in section 44(4) of that Act of 2000 or, as the case may be, section 13A(1) of that Act of 1989.
- (4) A person commissioned by the Commissioners of Customs and Excise does not by virtue of paragraph 1, 4 or 5 have the appropriate permission in relation to any protected information unless permission to give a section 49 notice in relation to that information has been granted—
- (a) by those Commissioners themselves; or
 - (b) by an officer of their department of or above such level as they may designate for the purposes of this sub-paragraph.

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- (5) A member of Her Majesty's forces does not by virtue of paragraph 1, 4 or 5 have the appropriate permission in relation to any protected information unless—
- (a) he is of or above the rank of lieutenant colonel or its equivalent; or
 - (b) permission to give a section 49 notice in relation to that information has been granted by a person holding the rank of lieutenant colonel or its equivalent, or by a person holding a rank higher than lieutenant colonel or its equivalent.

Duration of permission

- 7 (1) A permission granted by any person under any provision of this Schedule shall not entitle any person to give a section 49 notice at any time after the permission has ceased to have effect.
- (2) Such a permission, once granted, shall continue to have effect (notwithstanding the cancellation, expiry or other discharge of any warrant or authorisation in which it is contained or to which it relates) until such time (if any) as it—
- (a) expires in accordance with any limitation on its duration that was contained in its terms; or
 - (b) is withdrawn by the person who granted it or by a person holding any office or other position that would have entitled him to grant it.

Formalities for permissions granted by the Secretary of State

- 8 A permission for the purposes of any provision of this Schedule shall not be granted by the Secretary of State except—
- (a) under his hand; or
 - (b) in an urgent case in which the Secretary of State has expressly authorised the grant of the permission, under the hand of a senior official.