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## SCHEDULES

### [<sup>F1</sup>SCHEDULE A1

#### MONETARY PENALTY NOTICES IN RELATION TO CERTAIN UNLAWFUL INTERCEPTIONS

##### Textual Amendments

- F1** Sch. A1 inserted (17.6.2011) by [The Regulation of Investigatory Powers \(Monetary Penalty Notices and Consents for Interceptions\) Regulations 2011 \(S.I. 2011/1340\)](#), **regs. 1(2), 2(4)** {Sch.}

### PART 2

#### INFORMATION PROVISIONS

##### *Information notices*

- 9 (1) The Commissioner may by notice (“an information notice”) request any person on whom the Commissioner is considering whether to serve a Part 1 notice of intent or a Part 1 monetary penalty notice to provide such information as the Commissioner reasonably requires for the purpose of deciding whether to serve the Part 1 notice concerned.
- (2) Where the Commissioner requests that documents be produced, the Commissioner may take copies of, or extracts from, any document so produced.
- (3) An information notice must—
- specify or describe the information to be provided,
  - specify the manner in which, and the period within which, the information is to be provided,
  - state that the Commissioner considers that the information is information which the Commissioner reasonably requires for the purpose of deciding whether to serve a Part 1 notice of intent or (as the case may be) a Part 1 monetary penalty notice,
  - state the Commissioner's grounds for this view, and
  - provide details of the rights of appeal under paragraph 10 in respect of the information notice.
- (4) For the purposes of sub-paragraph (3)(b)—
- specifying the manner in which the information is to be provided may include specifying the form in which it is to be provided, and
  - the specified period within which the information is to be provided must not be less than 28 days beginning with the day after the day on which the information notice is served.

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- (5) Subject to sub-paragraph (6), the Commissioner may not vary an information notice.
- (6) The Commissioner may vary an information notice by extending the period within which the information is to be provided if the person on whom the notice is served appeals under paragraph 10 in relation to the notice.
- (7) Sub-paragraph (5) does not prevent the Commissioner from issuing a new information notice instead of varying such a notice.
- (8) The Commissioner may cancel an information notice.
- (9) A variation or cancellation of an information notice is effected by serving on the person on whom the notice was served a notice setting out the variation or cancellation.

#### *Appeals against notices*

- 10 (1) A person on whom an information notice is served may appeal to the First-tier Tribunal against—
  - (a) the information notice or any provision of it, or
  - (b) any refusal of a request by the person to issue a notice of variation or cancellation in relation to the information notice.
- (2) Subject to paragraph 9(6), an appeal under this paragraph does not affect the need to comply with the information notice while the appeal is not finally determined.
- (3) Sub-paragraphs (4) to (6) apply in relation to an appeal under sub-paragraph (1)(a).
- (4) The First-tier Tribunal must allow the appeal or substitute such other information notice as could have been served by the Commissioner if the Tribunal considers—
  - (a) that the notice concerned is not in accordance with the law, or
  - (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that the Commissioner ought to have exercised the discretion differently.
- (5) In any other case, the First-tier Tribunal must dismiss the appeal.
- (6) The First-tier Tribunal may review any determination of fact on which the notice concerned was based.
- (7) Sub-paragraphs (8) to (10) apply in relation to an appeal under sub-paragraph (1)(b).
- (8) The First-tier Tribunal must direct the Commissioner to issue, on such terms as the Tribunal considers appropriate, a notice of variation or cancellation in relation to the information notice if the Tribunal considers that the information notice ought to be varied or cancelled on those terms.
- (9) In any other case, the First-tier Tribunal must dismiss the appeal.
- (10) The First-tier Tribunal may review any determination of fact on which the refusal to issue the notice of variation or cancellation was based.

#### *Enforcement of notices*

- 11 (1) The Commissioner may serve a Part 2 monetary penalty notice on a person if the person—

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- (a) without reasonable excuse refuses or fails to comply with an information notice, or
  - (b) knowingly or recklessly gives any information which is false in a material particular in response to an information notice.
- (2) Subject to sub-paragraphs (3) to (7), Part 1 of this Schedule applies in relation to a Part 2 monetary penalty notice and the penalty that relates to that notice as it applies in relation to a Part 1 monetary penalty notice and the penalty that relates to that notice.
- (3) The amount of the monetary penalty determined by the Commissioner and specified in the Part 2 monetary penalty notice may be—
- (a) a fixed amount,
  - (b) an amount calculated by reference to a daily rate, or
  - (c) a fixed amount and an amount calculated by reference to a daily rate,
- provided that the total amount payable does not exceed £10,000.
- (4) In the case of an amount calculated by reference to a daily rate—
- (a) no account is to be taken of the day on which the Part 2 monetary penalty notice is served or any day before that day, and
  - (b) the Part 2 monetary penalty notice must specify—
    - (i) the day on which the amount first starts to accumulate and the circumstances in which it is to cease to accumulate, and
    - (ii) the period or periods within which the amount, or any part or parts so far accumulated, must be paid to the Commissioner (provided that no such period ends less than 28 days beginning with the day after the day on which the notice is served).
- (5) The provisions in Part 1 of this Schedule so far as relating to enforcement obligations do not apply in relation to a Part 2 monetary penalty notice.
- (6) Paragraph 3 applies by virtue of sub-paragraph (2) above as if—
- (a) paragraph 3(6)(b)(i), the word “or” at the end of that sub-paragraph (i) and the word “other” in paragraph 3(6)(b)(ii) were omitted, and
  - (b) in paragraph 3(13) the references to an interception were references to conduct falling within paragraph 11(1)(a) or (b).
- (7) Paragraph 4(5) applies by virtue of sub-paragraph (2) above as if the references to an interception were references to conduct falling within paragraph 11(1)(a) or (b).

*Technical assistance for the Commissioner*

- 12 (1) OFCOM must comply with any reasonable request made by the Commissioner, in connection with the Commissioner's functions under section 1(1A) and (1B) and this Schedule, for advice on technical and similar matters relating to electronic communications.
- (2) For this purpose, the Commissioner may disclose to OFCOM any information obtained by the Commissioner under this Schedule.
- (3) In this paragraph “OFCCOM” means the Office of Communications established by section 1 of the Office of Communications Act 2002<sup>M1</sup>.

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**Marginal Citations**

**M1** 2002 c.11.

*Interpretation: Part 2*

- 13        In this Part—
- “the Commissioner” has the meaning given by paragraph 1(1);
  - “enforcement obligation” has the meaning given by paragraph 2(2);
  - “information” includes documents; and any reference to providing or giving information includes a reference to producing a document;
  - “information notice” has the meaning given by paragraph 9(1);
  - “notice” means notice in writing;
  - “Part 1 monetary penalty notice” means a monetary penalty notice under section 1(1A);
  - “Part 2 monetary penalty notice” means a monetary penalty notice under paragraph 11; “Part 1 notice of intent” means a notice under paragraph 3(2) to (5) (but excluding those provisions as applied by paragraph 11).]

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