
STATUTORY INSTRUMENTS

2003 No. 2426

**The Privacy and Electronic Communications
(EC Directive) Regulations 2003**

National security

28.—(1) Nothing in these Regulations shall require a communications provider to do, or refrain from doing, anything (including the processing of data) if exemption from the requirement in question is required for the purpose of safeguarding national security.

(2) Subject to paragraph (4), a certificate signed by a Minister of the Crown certifying that exemption from any requirement of these Regulations is or at any time was required for the purpose of safeguarding national security shall be conclusive evidence of that fact.

(3) A certificate under paragraph (2) may identify the circumstances in which it applies by means of a general description and may be expressed to have prospective effect.

(4) Any person directly affected by the issuing of a certificate under paragraph (2) may appeal to the Tribunal against the issuing of the certificate.

(5) If, on an appeal under paragraph (4), the Tribunal finds that, applying the principles applied by a court on an application for judicial review, the Minister did not have reasonable grounds for issuing the certificate, the Tribunal may allow the appeal and quash the certificate.

(6) Where, in any proceedings under or by virtue of these Regulations, it is claimed by a communications provider that a certificate under paragraph (2) which identifies the circumstances in which it applies by means of a general description applies in the circumstances in question, any other party to the proceedings may appeal to the Tribunal on the ground that the certificate does not apply in those circumstances and, subject to any determination under paragraph (7), the certificate shall be conclusively presumed so to apply.

(7) On any appeal under paragraph (6), the Tribunal may determine that the certificate does not so apply.

(8) In this regulation—

- (a) “the Tribunal” means the Information Tribunal referred to in section 6 of the Data Protection Act 1998⁽¹⁾;
- (b) Subsections (8), (9), (10) and (12) of section 28 of and Schedule 6 to that Act apply for the purposes of this regulation as they apply for the purposes of section 28;
- (c) section 58 of that Act shall apply for the purposes of this regulation as if the reference in that section to the functions of the Tribunal under that Act included a reference to the functions of the Tribunal under paragraphs (4) to (7) of this regulation; and
- (d) subsections (1), (2) and (5)(f) of section 67 of that Act shall apply in respect of the making of rules relating to the functions of the Tribunal under this regulation.