
**DATA PROTECTION (SEARCH AND SEIZURE)
REGULATIONS 2006**

**Subsidiary
2006/041**

Regulations made under s. 37(1).

**DATA PROTECTION (SEARCH AND SEIZURE)
REGULATIONS 2006**

(LN. 2006/041)

13.4.2006

Amending enactments	Relevant current provisions	Commencement date
---------------------	-----------------------------	-------------------

ARRANGEMENT OF REGULATIONS.

Regulation

1. Title and Commencement.
2. Definitions.
3. Powers of Authorised Officers on Warrant.
4. Requirements for issue of warrant.
5. Issue of copies of warrant.
6. Execution of warrants
7. Exemptions from inspection and seizure.
8. Legal Professional Privilege.
9. Return of warrants.
10. Offences.

2004-01

Data Protection

DATA PROTECTION (SEARCH AND SEIZURE) REGULATIONS 2006

**Subsidiary
2006/041**

DATA PROTECTION (SEARCH AND SEIZURE) REGULATIONS 2006

Subsidiary
2006/041

In the exercise of his powers under section 37(1) of the Data Protection Ordinance 2004, and all other enabling powers, the Minister with responsibility for Consumer Affairs and Civic Rights has made the following regulations—

Title and Commencement.

1. These regulations may be cited as the Data Protection (Search and Seizure) Regulations 2006 and comes into operation on 13 April 2006.

Definitions.

2. In these regulations—

“authorised officer” means as an authorised officer as defined in section 29(1) of the Data Protection Ordinance 2004;

“Commissioner” means the Commissioner as defined in section 2 of the Data Protection Ordinance 2004;

“premises” includes any vessel, vehicle, aircraft or hovercraft, and references to the occupier of any premises include references to the person in charge of any vessel, vehicle, aircraft or hovercraft and to any cabinet, safe, or other container on those premises.

Powers of Authorised Officers on Warrant.

3.(1) A Justice of the Peace may, subject to sub-regulation (2) and regulation 4, grant a warrant to the Commissioner or an authorised officer if satisfied by information on oath supplied by the Commissioner or an authorised officer that there are reasonable grounds—

(a) for suspecting—

(i) that the data controller has contravened or is contravening any of the data protection principles set out in section 6 of the Ordinance; or

(ii) that an offence under the Ordinance has been or is being committed; and

(b) for suspecting that evidence of the contravention or of the commission of the offence is to be found on any premises specified in the information.

(2) A Justice of the Peace shall not issue a warrant under these Regulations in respect of any personal data processed only for journalistic,

**DATA PROTECTION (SEARCH AND SEIZURE)
REGULATIONS 2006****Subsidiary
2006/041**

artistic or literary purposes if the criteria set out in section 13(1) of the Ordinance are satisfied. For the purposes of considering whether such criteria are satisfied regard may be had to any code of practice referred to in section 13(3) of the Ordinance.

(3) A warrant issued under sub-regulation (1) shall authorise the Commissioner or any of his officers or staff or an authorised officer at any time within five days of the date of the warrant to enter the premises, to search them, to inspect, examine, operate and test any equipment found there which is used or intended to be used for the processing of personal data and to inspect and seize any documents or other material found there which may be such evidence as is mentioned in that sub-regulation.

Requirements for issue of warrant.

4.(1) A Justice of the Peace shall not issue a warrant under these Regulations unless he is satisfied—

- (a) that the Commissioner has given seven days' notice in writing to the occupier of the premises in question demanding access to the premises; and
- (b) that either—
 - (i) access was demanded at a reasonable hour and was unreasonably refused; or
 - (ii) although entry to the premises was granted, the occupier unreasonably refused to comply with a request by the Commissioner, any of the Commissioner's officers or staff or an authorised officer to permit him to do any of the things referred to in regulation 1(3); and
- (c) that the occupier, has, after the refusal, been notified by the Commissioner of the application for the warrant and has had an opportunity of being heard by a Justice of the Peace on the question whether or not it should be issued.

(2) Sub-regulation (1) shall not apply if the Justice of the Peace is satisfied that—

- (a) the case is one of urgency; or
- (b) that compliance with those provisions would defeat the object of the entry.

**DATA PROTECTION (SEARCH AND SEIZURE)
REGULATIONS 2006****Subsidiary
2006/041****Issue of copies of warrant.**

5. A Justice of the Peace who issues a warrant under these Regulations shall also issue two copies of it and certify them clearly as copies.

Execution of warrants

6.(1) A person executing a warrant issued under these Regulations may use such reasonable force as may be necessary.

(2) A warrant issued under these Regulations shall be executed at a reasonable hour unless it appears to the person executing it that there are grounds for suspecting that the evidence in question would not be found if it were so executed.

(3) If the person who occupies the premises in respect of which a warrant is issued under these Regulations is present when the warrant is executed, he shall be shown the warrant and supplied with a copy of it; and if that person is not present a copy of the warrant shall be left in a prominent place on the premises.

(4) A person seizing anything in pursuance of a warrant under these Regulations shall give a receipt for it if asked to do so.

(5) Anything so seized may be retained for so long as is necessary in all the circumstances but the person in occupation of the premises in question shall be given a copy of any information that is seized if he so requests and the person executing the warrant considers that it can be done without undue delay.

Exemptions from inspection and seizure.

7.(1) The powers of inspection and seizure conferred by a warrant issued under these Regulations shall not be exercisable in respect of personal data—

- (a) which by virtue of section 9 or regulations made under section 20(1) or 20(2) of the Ordinance are exempt from compliance with the Ordinance;
- (b) which is covered by regulation 8.

(2) If the person in occupation of any premises in respect of which a warrant is issued under these Regulations objects to the inspection or seizure under the warrant of any material on the grounds that it consists partly of matters in respect of which those powers are not exercisable, he

**DATA PROTECTION (SEARCH AND SEIZURE)
REGULATIONS 2006**

shall, if the person executing the warrant so requests, furnish that person with a copy of so much of the material as is not exempt from those powers.

Legal Professional Privilege

8.(1) Subject to the provisions of this regulation, the powers of inspection and seizure conferred by a warrant issued under these Regulations shall not be exercisable in respect of—

- (a) any communication between a professional legal adviser and his client in connection with the giving of legal advice to the client with respect to his obligations, liabilities or rights under the Ordinance; or
- (b) any communication between a professional legal adviser and his client, or between such an adviser or his client and any other person, made in connection with or in contemplation of proceedings under or arising out of the Ordinance (including proceedings before the Tribunal) and for the purposes of such proceedings.

(2) Sub-regulation (1) applies also to—

- (a) any copy or other record of any such communication as is there mentioned; and
- (b) any document or article enclosed with or referred to in any such communication if made in connection with the giving of any advice or, as the case may be, in connection with or in contemplation of and for the purposes of such proceedings as are there mentioned.

(3) This regulation does not apply to anything in the possession of any person other than the professional legal adviser or his client or to anything held with the intention of furthering a criminal purpose.

(4) In this regulation references to the client of a professional legal adviser include references to any person representing such a client.

Return of warrants.

9. A warrant issued under these Regulations shall be returned to the court from which it was issued—

- (a) after being executed, or

**DATA PROTECTION (SEARCH AND SEIZURE)
REGULATIONS 2006**

**Subsidiary
2006/041**

- (b) if not executed within the time authorised for its execution,

and the person by whom any such warrant is executed shall make an endorsement on it stating what powers have been exercised by him under the warrant.

Offences.

10. The following persons are guilty of an offence under section 29–

- (a) a person who intentionally obstructs a person in the execution of a warrant issued under these Regulations; or
- (b) a person who fails without reasonable excuse to give any person executing such a warrant such assistance as he may reasonably require for the execution of the warrant.