

S49 RIPA NOTICE CORRECT PROCEDURE

A s49 RIPA Warning Form issued at interview by police is not an official s49 Notice and has no legal effect without permission from the correct authorising person (Circuit Judge / Superintendent).

The correct procedure to deal with encrypted devices or charge the suspect for failure to provide PIN/Password is as below.

OIC INSTRUCTIONS

1. **INITIAL DISCUSSION** - Initial discussion with NTAC (dept of GCHQ). OIC to call NTAC 0207 901 4545 for initial discussion about the type of devices and case being considered. They will confirm if case warrants official application to NTAC. If so, they will send you their “application for work to be undertaken” form.
 - a) NTAC usually only consider cases for s49 process where maximum sentence \geq 3 years, although there is flexibility.
2. **APPLICATION FOR WORK TO BE UNDERTAKEN** - Please complete their “application for work to be undertaken” form and send to ntac-esd@ntac.gov.uk.
3. **UNIQUE NOTICE IDENTIFIER FROM NTAC** – If NTAC approve your application and agree that your case warrants use of the s49 procedures, they will provide a “unique notice identifier” (UNI) reference number by email. The UNI is used in remaining procedural forms. In addition, they will send:
 - a. S49 Permission form.
 - b. S49 Notice form.
4. **S49 PERMISSION FROM AUTHORISED PERSON** – Once you have the UNI from NTAC, you need to obtain permission from an authorised person.

This should be from a Crown Court Circuit Judge for almost all scenarios. In exceptional circumstances where the court timetable warrants an urgent action, then obtain authorisation from a Superintendent (or higher officer). Do not seek permission from a District Judge as there is a discrepancy in current legislation being in force for the same.

a) PERMISSION FROM CIRCUIT JUDGE

Use this avenue for almost all scenarios. This is preferred whenever possible, due to potential legal arguments beyond the remit of this guidance. Please contact guidance author should you wish to discuss this legal point.

Complete the form as below:

- i) EFFECT OF NOTICE – (section 4)
 1. Strike out first paragraph seeking ‘intelligible form’ - s50(1) RIPA

- ii) GENERAL REQUIREMENT PERMISSION - (section 12)
 - 2. Sign by Superintendent or higher.
- iii) PERMISSION - (section 15 on last page)
 - 3. Sign this by Circuit Judge.
They may want copy of draft s49 notice when signing.

b) PERMISSION FROM SUPERINTENDENT

Use this avenue only if there is an exceptional urgency in court timetable.

Complete the form as below:

- iv) EFFECT OF NOTICE – (section 4)
 - 1. Strike out second paragraph seeking ‘key’ - s50(3) RIPA
- v) GENERAL REQUIREMENT PERMISSION - (section 12)
 - 2. Strike this section out.
- vi) PERMISSION - (section 15 on last page)
 - 3. Strike out third paragraph seeking ‘disclosure of the key’.
 - 4. Sign by Superintendent or higher.

Before submitting the Permission form for signature, please send your completed form to NTAC to confirm it has been completed properly.

- 5. **S49 NOTICE SERVICE** – Once permission is granted by authorised person, then the s49 Notice Form can be completed and served on Defendant. There is no time limit on this and can be served post charge at any point in the prosecution procedure.
 - a) Where Section 12 of the permission form was used (Superintendent authorisation), then please strike out Section 6 (Choice of Key) of the Notice Form.

Before serving the Notice form to defendant, please send your completed form to NTAC and reviewing lawyer to confirm it has been completed properly.

- 6. **S53 RIPA CHARGE** – If Defendant fails to comply with notice within a reasonable period (eg. 1-2 weeks as stated in your Notice Form), then seek CPS charging authorisation for s53 RIPA failure to comply. Maximum sentences are:
 - a) 5 years – in a child indecency or national security case.
 - b) 2 years – in any other case.
- 7. Please update NTAC whenever a notice is served with the following details:
 - a) The name of the authority who considered the application, including the date, location and any comments made.
 - b) When the notice is served on the suspect – including the date, location and any response.
 - c) Any charges laid, both in connection with the notice and any other offences

- d) Any prosecution brought, both in connection with the notice and any other offences.

Notes

- a) On initial discussion, NTAC GCHQ can usually provide response within 24 hours to OIC to confirm if they are likely to be able to decrypt device. Sometimes they will be able to assist the decryption process in addition to and faster than police local technical teams.
- b) NTAC request that police do not distribute forms as these are updated over time. Instead that the OIC obtain current relevant forms from NTAC directly.
- c) S49 PERMISSION FORM - The technical differences between seeking permission for the 'key' from Judge or 'intelligible form' from Superintendent are not within the remit of this guidance. Please contact this guidance author for a discussion on the same.

At present different forces prefer different routes.

Eg. Police Scotland always seek Judge permission. Some forces like West Mercia tend to seek Superintendent permission.

The advice by this guidance author and NTAC is to seek Circuit Judge permission (instead of Superintendent or higher) unless there are exceptional circumstances and urgency in court timetable.

Please contact this guidance author if a more detailed discussion is required in relation to the technical differences between the two avenues.

- d) Relevant legislation s49, s50, s53, schedule 2 RIPA 2000. – (<https://www.legislation.gov.uk/ukpga/2000/23/section/49>)
- e) Relevant code of practice p31 - (<https://www.gov.uk/government/publications/code-of-practice-for-investigation-of-protected-electronic-information> - 'the Code') and was instigated by the Home Office when the legislation was enacted.
- f) Please contact this guidance author for any further queries. Daniel.caan@cps.gov.uk