

Saving for privileged information

795. (1) In this section—

“computer” has the same meaning as it has in section 787;

“customer”, in relation to a person carrying on the business of banking, includes a person who has in the past availed himself or herself of one or more of the services of the person, as defined in section 149 (12) of the Consumer Credit Act 1995 ;

“information” means information contained in a document, a computer or otherwise; “privileged legal material” means information which, in the opinion of the court, a person is entitled to refuse to produce on the grounds of legal professional privilege.

(2) Subject to subsection (3), nothing in this Part shall compel the disclosure by any person of privileged legal material or authorise the taking of privileged legal material.

(3) The disclosure of information may be compelled, or possession of it taken, pursuant to the powers in this Part, notwithstanding that it is apprehended that the information is privileged legal material provided the compelling of its disclosure or the taking of its possession is done by means whereby the confidentiality of the information can be maintained (as against the person compelling such disclosure or taking such possession) pending the determination by the court of the issue as to whether the information is privileged legal material.

(4) Without prejudice to subsection (5), where, in the circumstances referred to in subsection (3), information has been disclosed or taken possession of pursuant to the powers in this Part, the person—

(a) to whom such information has been so disclosed, or

(b) who has taken possession of it,

shall (unless the person has, within the period subsequently mentioned in this subsection, been served with notice of an application under subsection (5) in relation to the matter concerned) apply to the court for a determination as to whether the information is privileged legal material and an application under this subsection shall be made within 7 days after the date of disclosure or the taking of possession.

(5) A person who, in the circumstances referred to in subsection (3), is compelled to disclose information, or from whose possession information is taken, pursuant to the powers in this Part, may apply to the court for a determination as to whether the information is privileged legal material.

(6) Pending the making of a final determination of an application under subsection (4) or (5), the court may give such interim or interlocutory directions as the court considers appropriate including, without prejudice to the generality of the foregoing, directions as to—

(a) the preservation of the information, in whole or in part, in a safe and secure place in any manner specified by the court,

(b) the appointment of a person with suitable legal qualifications possessing the level of experience, and the independence from any interest falling to be determined between the parties concerned, that the court considers to be appropriate for the purpose of—

(i) examining the information, and

(ii) preparing a report for the court with a view to assisting or facilitating the court in the making by the court of its determination as to whether the information is privileged legal material.

(7) An application under subsection (4), (5) or (6) shall be by motion and may, if the court directs, be heard otherwise than in public.

(8) The Director shall not, under any of sections 778 to 780 , require the production, by a person carrying on the business of banking, of a book or document relating to the affairs of a customer, or relating to the affairs of any other person, unless either—

(a) the Director considers it necessary to do so for the purposes of investigating the affairs of the person carrying on the business of banking, or

(b) the customer or other person is a person on whom a requirement has been imposed by virtue of that section.

(9) The publication, in pursuance of any provision of this Chapter, of any report, information, book or document shall be privileged.