



INSTRUCTIONS AND GUIDELINES

Electronic Examination in the Airport Environment

June 2011

THIS INSTRUCTION & GUIDELINE REFERS TO PRACTICE STATEMENTS:
PS2008/37 TRAVELLER INTERVENTION AND RESPONSE; AND
PS2009/06 ELECTRONIC EXAMINATION AND COMPUTER FORENSICS

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Subject: Examination of mobile phones, laptop computers, electronic devices and media by non-specialist officers in the airport environment

Purpose: To outline procedures for the conduct of electronic examinations at the border and s. 47E(d)

Owner: National Director, Passengers Division

Category: Operational Procedures (OP)

Contact: Director Passenger Policy s22(1)(a)(ii)

The electronic version published on the intranet is the current Instruction and Guideline.

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Summary of main points

This document outlines the Electronic Examination Capability (EEC), the role of the Electronic Examination Officer (EEO) and the procedures in the airport environment for:

- the examination of mobile phones and SIM cards s. 47E(d) [redacted];
- the examination of portable media and devices such as CDs, DVDs, iPods, USB hard drives, memory sticks and flash memory cards s. 47E(d) [redacted]
- the undertaking of basic electronic previews of laptop computers s. [redacted] 47E(d)
- the process for requesting assistance s. 47E(d) [redacted]
- s. 47E(d) [redacted]

This I&G applies to staff in:

- Airport Operations

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1 INTRODUCTION

- 1.1 This Instruction and Guideline outlines the procedures to be observed by officers in undertaking electronic examinations pursuant to s.186 of the *Customs Act 1901* (the Customs Act) and under similar provisions of other Acts administered by Customs and Border Protection.
- 1.2 The Instruction and Guideline outlines the procedures for:
- the examination of mobile phone handsets and SIM cards using software tools and the copying of any relevant documents under s186A of the Customs Act;
 - the basic examination of portable devices and media s. 47E(d) [REDACTED]
 - the limited circumstances in which a basic preview of laptop computers may be undertaken; and
 - requesting assistance s. 47E(d) [REDACTED]
- 1.3 This Instruction and Guideline also provides background as to s. 47E(d) [REDACTED] why material contained on these devices must be handled in accordance with the relevant guidelines and legislation.

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INSTRUCTIONS AND GUIDELINES

2 BACKGROUND

- 2.1 Electronic devices such as mobile phones, SIM cards, laptop computers and portable storage devices may contain prohibited items or contain evidence of or information relevant to a Commonwealth offence.
- 2.2 In response to this, Technology and Enforcement Capability Branch has developed and deployed an Electronic Examination Capability to operational line areas. Appropriately trained and authorised Customs and Border Protection officers at major international airports may conduct basic electronic examinations of devices, including mobile phones, SIM cards, iPhones, iPods, CDs, DVDs, USB hard drives, memory sticks, camera flash memory cards and similar devices.
- 2.3 s. 47E(d)
[Redacted]
- 2.4 In the very limited circumstances outlined in this Instruction and Guideline, a basic preliminary preview of a laptop computer may also be conducted by Airport Operation officers. s. 47E(d)
[Redacted]
- 2.5 Where a detailed examination of an electronic device or media is required, or where appropriate technical expertise is not available, a request for assistance may be made s. 47E(d)
s. 47E(d)
[Redacted]
- 2.6 The use of appropriate technical tools in accordance with agreed procedures s. 47E(d)
[Redacted] ensures admissibility of any located evidence and protects individual officers and Customs and Border Protection against claims of negligence or damage (s.186B of the Customs Act). For this reason, it is important that the procedures outlined in this Instruction and Guideline are followed at all times.
- 2.7 The prime purposes of examining electronic goods are:
- to prevent the cross border movement of prohibited imports/ exports;
 - to locate, secure and preserve evidence for use in court; and
 - for national security purposes.

2.8 Electronic goods that have been held for electronic examination and have found to contain no information of interest to Customs and Border Protection or another agency are to be returned to the owner as soon as possible. s. 47E(d)

2.9 Irrespective of where an examination takes place, the examination of all electronic devices within Customs and Border Protection must comply with the *Customs Act 1901*, Occupational Health and Safety (OH&S) policy, Customs and Border Protection Practice Statements and Instructions and Guidelines, *Cybercrime Act 2001*, the *Customs Administration Act 1985* and the *Privacy Act 1988*.

3 LEGISLATIVE BASIS FOR EXAMINING AND COPYING ELECTRONIC DOCUMENTS

Examining Documents

3.1 Electronic examinations are conducted under section 186 of the Customs Act. The general power in s.186 to examine goods subject to Customs and Border Protection control includes the power to read a document with the use of an electronic device (paragraph 186(3)(e)).

3.2 S.4 of the Customs Act defines 'document' as including any article or material from which sounds, images or writing is capable of being produced with or without the aid of a computer or some other device.

3.3 Ss.186(2) enables officers to arrange for another Customs and Border Protection officer (or other experienced person) to do whatever is reasonably necessary to permit examination of the goods.

3.4 Customs and Border Protection officers may conduct an electronic examination on behalf of other agencies, such as the Department of Immigration and Citizenship or the Australian Crime Commission. If material of interest is located, section 16 of the Customs Administration Act 1985 may permit the disclosure of information to the relevant agencies.

Copying Documents

3.5 S.186A provides Customs and Border Protection officers with certain powers to copy documents found during an examination of goods subject to Customs and Border Protection control.


3.6 To copy a document under s.186A, an officer must be satisfied that the document, or part of it, **may** contain information relevant to one of the matters outlined in paragraph 186A(1)(b):

- i. an importation or exportation of prohibited goods; or
- ii. the commission or attempted commission of an offence against the Customs Act or a prescribed Act. The relevant Acts are prescribed in regulation 167 of the *Customs Regulations 1926* – see attachment A; or

- iii. the performance of functions under s.17 of the *Australian Security Intelligence Organisation Act 1979*; or
- iv. the performance of functions under s.6 of the *Intelligence Services Act 2001*; or
- v. security (within the meaning of s.4 of the *Australian Security Intelligence Organisation Act 1979*)

3.7 Once the examination officer is satisfied that the document may contain information relevant to one of the above matters, an officer may make a copy of the document. An officer must not simply copy all documents in the traveller's possession - each document must be considered for relevance.

3.8 s. 47E(d)



3.9 Where an officer has a reasonable belief that an electronic document **may** contain information relevant to one of the matters listed in paragraph 3.6 above and the goods cannot be appropriately examined or copied, the goods may be held on a Receipt for Goods (form B390) pending further examination.

3.10 An officer who is satisfied that a document may be copied under s.186A may enlist the assistance of another officer to undertake the task of copying the document while they continue with the examination.


3.11 There is no requirement under s.186A or elsewhere for the person carrying the documents to be present when they are copied.

3.12 If copying is conducted under s.186A, officers must, at the time of the examination or afterwards as a post entry, utilise the BAGS 'copy documents facility' to record the number of documents copied and the reason they were copied.

3.13 Where it is impractical to detail each individual document, officers should include a notation, for example '10 commercial documents re: shipping container ABCD 1234'.

3.14 The examination officer must also record the relevant details of the documents copied in their official notebook.

3.15 s. 47E(d)



If a copied document is subsequently determined not to be relevant, that copy should be shredded, destroyed and the ^{s. 47E(d)} report updated to reflect this action.

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Securing electronic documents and preserving evidence

3.16 Once prohibited material (i.e. Reg. 4A) is located, the documents and device or media must be secured and handled as potential evidence. The baggage officer must caution the traveller and advise him/her of their rights under Part 1C of the Crimes Act 1914. s. 47E(d)

[Redacted]

Important point to remember:

- Data is NOT to be copied unless the officer is satisfied that copying is for one of the purposes outlined in paragraph 186A(1)(b) of the Customs Act.
- s. 47E(d)
[Redacted]
- Officers must make contemporaneous notes relating to copied documents in official notebooks. Officers may be required to give evidence as to why data contained on an electronic device or media was copied.
- A s. 47E(d) report should be submitted in all cases where it has been deemed appropriate to copy the electronic data under s.186A of the Customs Act. In the case of a mobile phone or SIM card examination, the s. 47E(d) report must contain a description of the devices that were examined (make/model) and the unique identifier of the downloaded material. This information must be recorded under s. 47E(d) field #18 – Attachments.
- When making a decision to copy a document, officers must record the reason for doing so in the BAGS record, s. 47E(d) report and their notebook. The reason for copying a document must include the relevant part of paragraph 186A(1)(b) of the Customs Act and, where appropriate, regulation 167(3) of the *Customs Regulations 1926* (the Customs Regulations) on which the decision to copy was made (see Attachment A).


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4 PROCEDURES FOR EXAMINING MOBILE PHONES AND SIM CARDS

s. 47E(d)

4.1

s. 47E(d)



s. 47E(d)

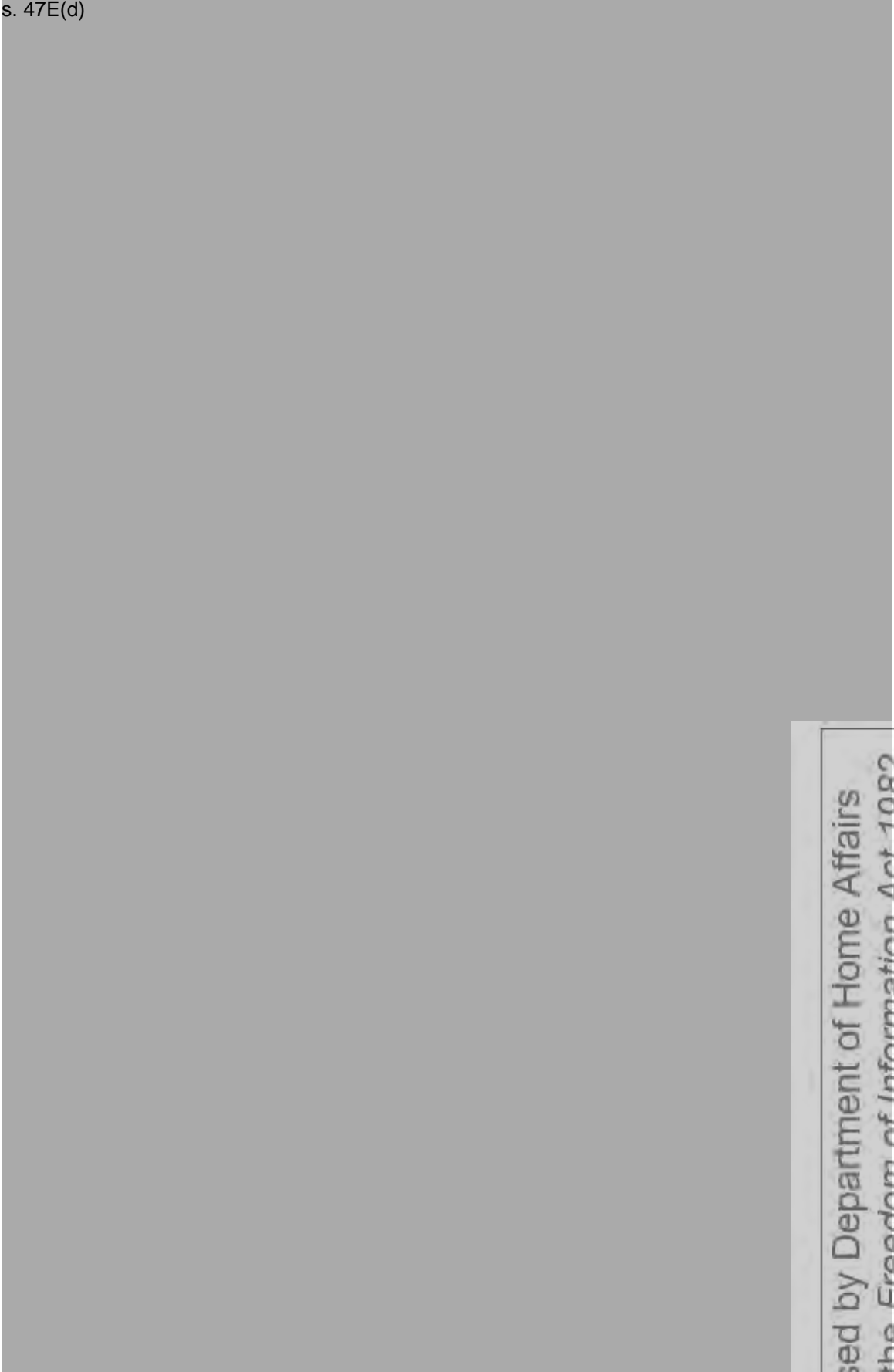


s. 47E(d)



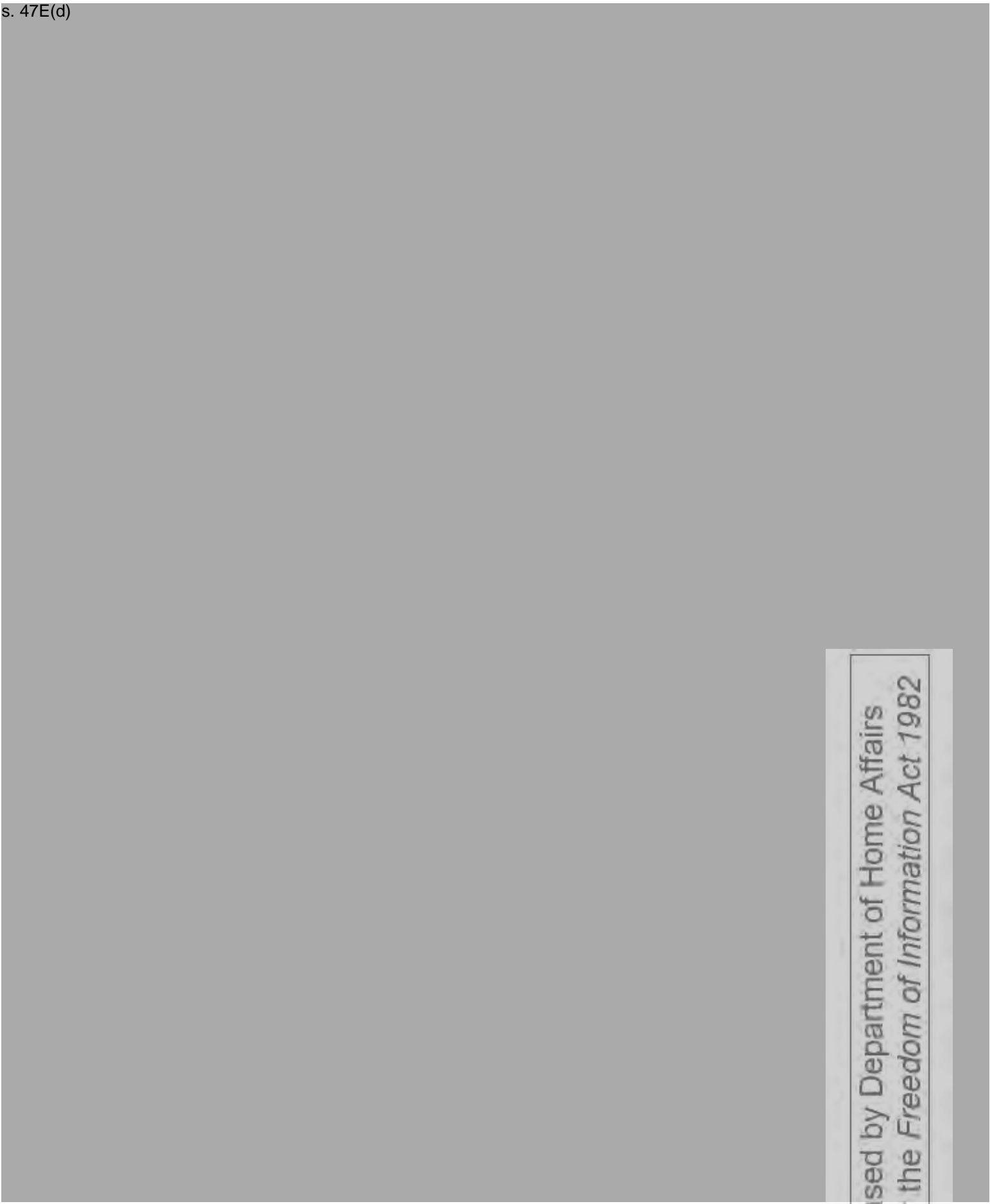
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s. 47E(d)



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s. 47E(d)



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5 EXAMINATION OF ELECTRONIC DEVICES AND MEDIA

5.1 Electronic devices and media commonly used for the storage of digital material can be safely examined using dedicated electronic examination hardware and software provided for that purpose by Technology and Enforcement Capability Branch. This includes CDs, DVDs, USB hard drives, memory sticks, camera flash memory and iPods.

5.2 s. 47E(d) [Redacted]

5.3 s. 47E(d) [Redacted]

5.4 s. 47E(d) [Redacted]

5.5 s. 47E(d) [Redacted]

5.6 s. 47E(d) [Redacted]

5.7 Further guidance s. 47E(d) [Redacted] can be found in reference material developed by Technology & Enforcement Capability Branch.

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6 EXAMINATION OF LAPTOP COMPUTERS

s. 47E(d) [Redacted]

6.1 s. 47E(d) [Redacted]

6.2 s. 47E(d) [Redacted]

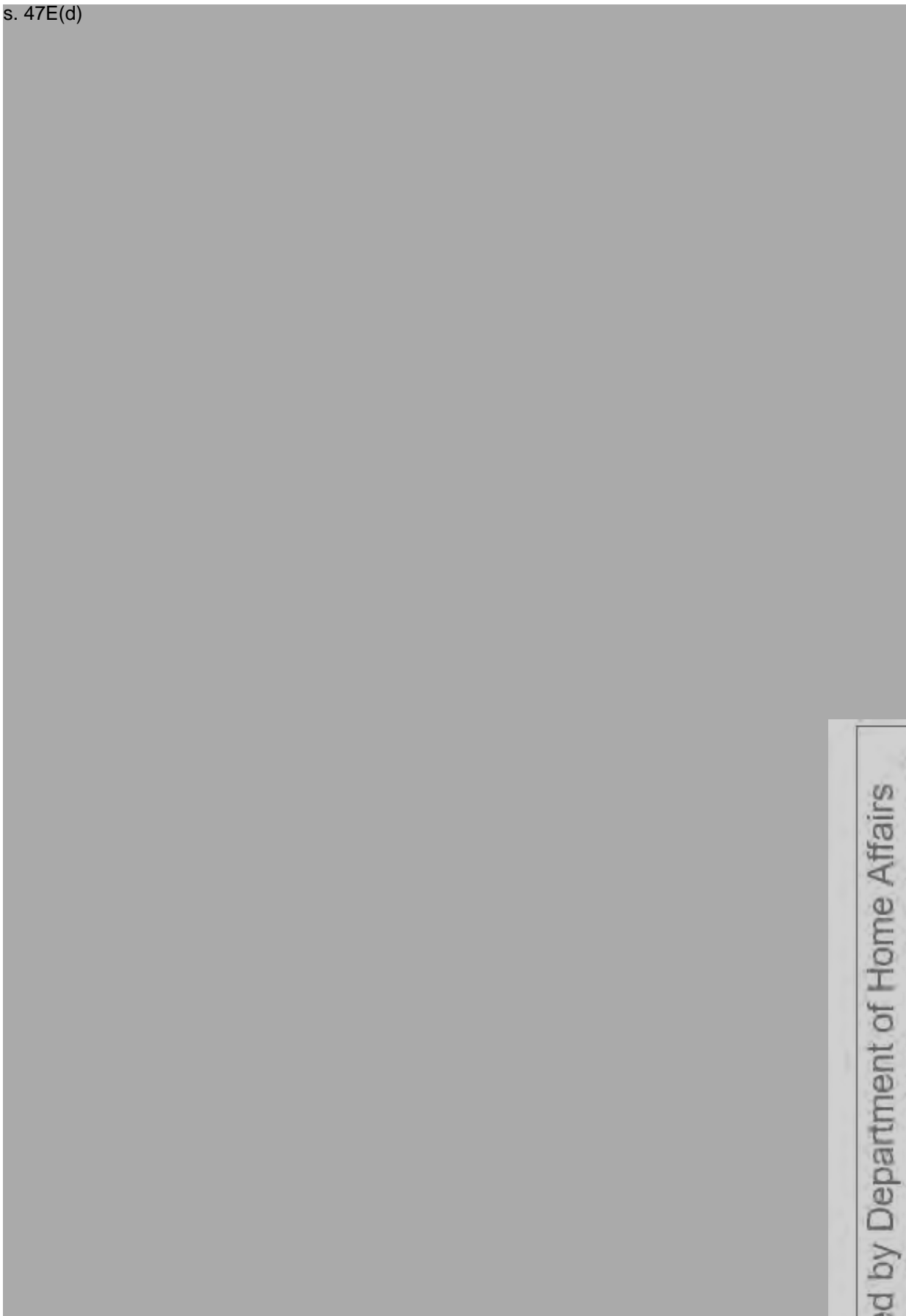
6.3 s. 47E(d) [Redacted]

6.4 s. 47E(d) [Redacted]

s. 47E(d) [Redacted]

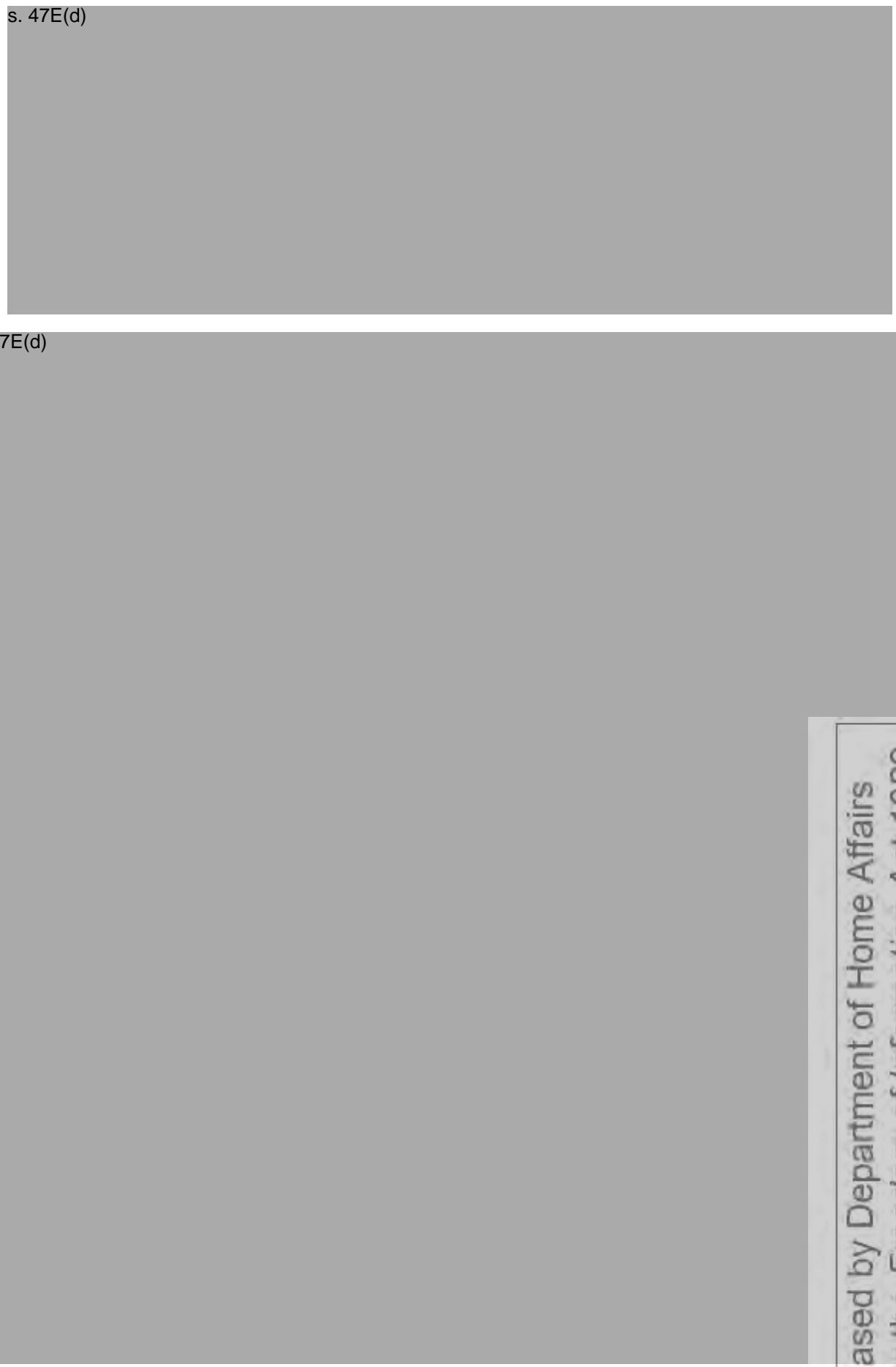
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s. 47E(d)



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s. 47E(d)



s. 47E(d)

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s. 22(1)(a)(ii)



s. 47E(d)



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s. 22(1)(a)(ii)



7 REQUESTS FOR ASSISTANCE s. 47E(d)

7.1

s. 47E(d)

7.2

7.3

7.4

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s. 47E(d)

7.6

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7.14

s. 47E(d)



7.15

7.16

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8 REQUESTS FOR ASSISTANCE s. 47E(d) **- SEIZED GOODS**

8.1 s. 47E(d)

8.2

8.3

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s. 22(1)(a)(ii)

Related Policies and References

Practice Statements:

- Traveller Intervention and Response PS2008/37
- Electronic Examination and Computer Forensics PS2009/06
- Referral of Allegations to Investigations Branch
- OHS Risk management (HSMA 2) PS2007/04
- OHS Management Information Systems (HSMA 3) PS2007/05
- Health & Safety Management Arrangements PS2008/01;

To be read in conjunction with:

- Australian Customs Service Manual, Vol. 18, Investigations of Offences against the Customs Act 1901 (Division 11 – Procedures Regarding Evidence or Goods)
- Customs Act 1901;
- Privacy Act 1988;
- Standards Australia – Guidelines for the Management of IT Evidence.

Instructions & Guidelines

- Electronic Recording of External Search, Baggage Examination and Record of Interview in Airports
- Baggage Examination
- Detention and Search
- Post Detection Procedures
- Cross Border Movement of Physical Currency and Bearer Negotiable Instruments at Airports and Seaports
- Record of Interview
- Briefs of Evidence
- Evidence Handling
- OHS hazard Instruction and Guideline – Viewing Objectionable Material – 1 July 2007
- Referral of Allegations to Investigations Branch
- Computer Forensics.

Reference Material

- User Guide – Electronic Examination Capability: Examining a Mobile Phone s. 47E(d)
- Electronic Examination reference and training material provided by Technology and Enforcement Capability Branch

Key Roles and Responsibilities

Customs and Border Protection policy responsibility for Post Detection Procedures in airport environments rests with the Passenger Policy Section of the Passenger Operations Branch, Passengers Division.

The Director Passenger Policy is responsible for the preparation and dissemination of policy and practices in relation to the function.

Airport Operations North and South are responsible for delivery of the function in the eight international airports.

Enforcement Operations is responsible for delivery of the function at secondary/regional airports.

Technology and Enforcement Capability Branch is responsible for developing, deploying and supporting the Electronic Examination Capability, development of technical policy and procedures, training and reference material. This will be done in consultation with Passengers Division and Investigations Branch where appropriate.

Consultation

Internal

The following internal stakeholders have been consulted in the development of these Instructions and Guidelines.

- Airport Operations Branch North
- Airport Operations Branch South
- Enforcement and Investigations Division
- Intelligence and Targeting Division
- Legal Services Branch

External

- Nil

Approval

Approved on	(date)	(signature)
By	s. 22(1)(a)(ii) National Director Passengers	
Review Period	2 years	

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Attachment A

Section 167 Customs Regulations 1926

167 Prescribed Acts — general regulatory powers

(1) The *Fisheries Management Act 1991*, the *Migration Act 1958*, the *Quarantine Act 1908* and the *Torres Strait Fisheries Act 1984* are prescribed for the following provisions of the Act:

- (a) subsections 184A (2), (4) and (5);
- (b) subparagraph 185 (2) (d) (i);
- (c) sub-subparagraph 185 (2) (d) (ii) (A);
- (d) paragraph 185 (3) (a);
- (e) subparagraph 185 (3) (c) (i);
- (f) subsection 185B (1);
- (g) paragraph 185B (2) (b);
- (h) subparagraph 185 (2) (c) (i);
- (i) subparagraph 186A (1) (b) (ii)

(2) The *Fisheries Management Act 1991* and the *Torres Strait Fisheries Act 1984* are prescribed for the following provisions of the Act:

- (a) subsections 184A (6) and (7);
- (b) sub-subparagraph 185 (2) (d) (ii) (B);
- (c) subparagraph 185 (3) (c) (ii);
- (d) subparagraph 185B (2) (c) (ii).
- (i) subparagraph 186A (1) (b) (ii).

(3) For subparagraph 186A (1) (b) (ii) of the Act, the following Acts are prescribed:

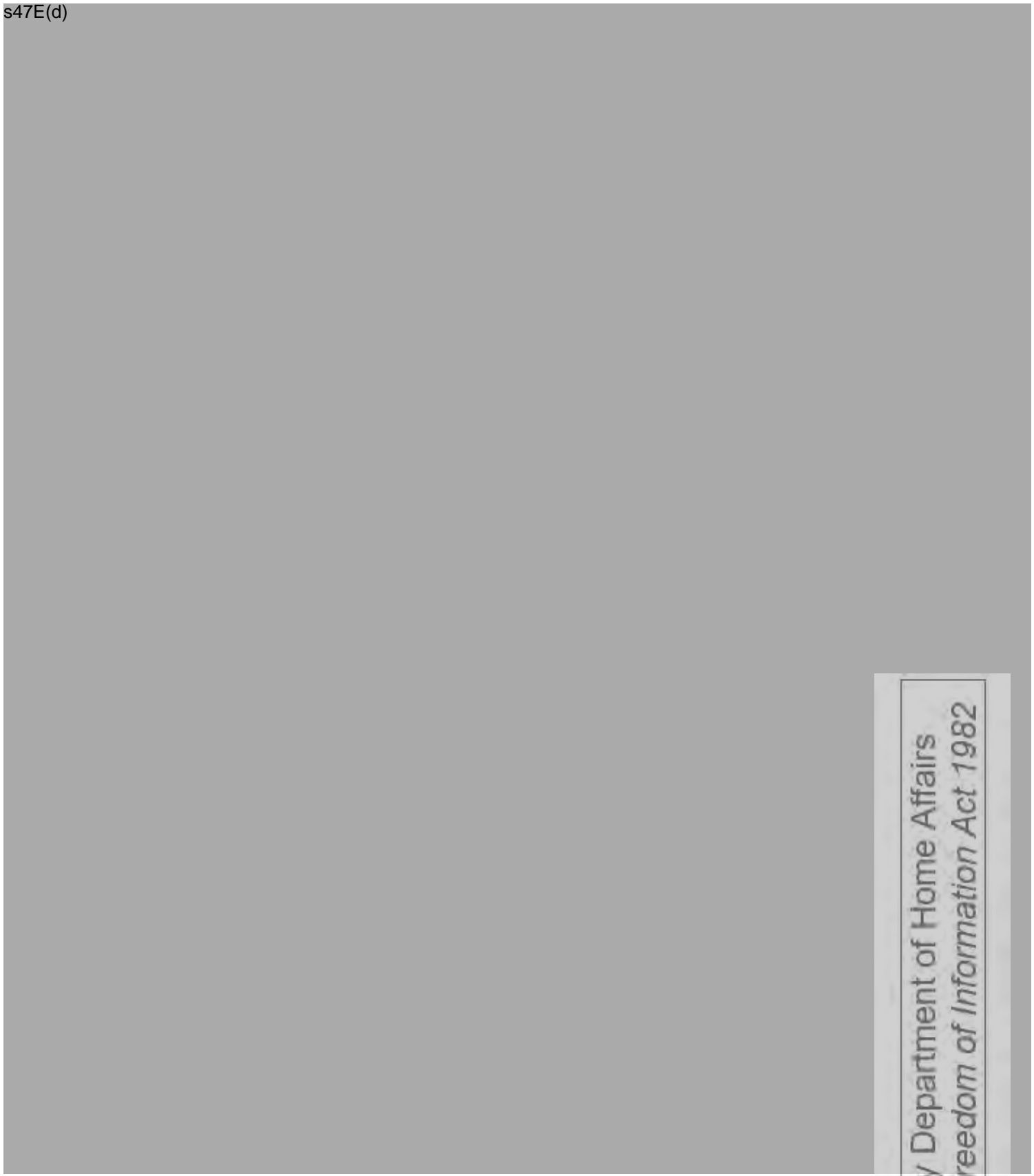
- (a) *Aviation Transport Security Act 2004*;
- (b) *Family Law Act 1975*;
- (c) *Crimes Act 1914*;
- (d) *Crimes (Aviation) Act 1991*;
- (e) *Crimes (Internationally Protected Persons) Act 1976*;
- (f) *Criminal Code Act 1995*;
- (g) *Proceeds of Crime Act 1987*;
- (h) *Financial Transaction Reports Act 1988*;
- (i) *Crimes (Hostages) Act 1989*;
- (j) *Crimes (Ships and Fixed Platforms) Act 1992*;
- (k) *Geneva Conventions Act 1957*;
- (l) *Crimes (Torture) Act 1988*;
- (m) *Bankruptcy Act 1966*;
- (n) *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*;
- (o) *Migration Act 1958*;
- (p) *Fisheries Management Act 1991*;
- (q) *Torres Strait Fisheries Act 1984*;
- (r) *Environment Protection and Biodiversity Conservation Act 1999*;
- (s) *Quarantine Act 1908*.

s47E(d)



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s47E(d)



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