

# REGULATION OF INVESTIGATORY POWERS ACT 2000

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *“Copy” is defined in subsection (8).*

127. *Subsection (4)* defines “authorised purposes”, which are the reasons which determine the extent of distribution and disclosure allowed under subsection (2) and the reasons for which intercepted material may be retained rather than being destroyed under subsection (3).
128. *Subsection (5)* requires that intercepted material and related communications data are stored in a secure manner for as long as they are retained.
129. *Subsections (6) and (7)* apply where possession of intercepted material or related communications data has been surrendered to any authorities of a country or territory outside the United Kingdom. Possession may be surrendered in this way where an interception warrant has been issued for the purpose of complying with a request under an international mutual assistance agreement designated under Section 1(4). For example, where such a request results in the provision of intercept material by the communication service provider to the competent authorities of another country in real-time, the material will not, at any point, be under the control of an intercepting agency in the United Kingdom.
130. For these reasons, the Secretary of State will be required to make such arrangements (if any) corresponding to subsections (2) and (3) as he thinks fit. The Secretary of State will also be required to ensure, to such extent (if any) as he thinks fit, that restrictions are in force preventing the disclosure in any proceedings outside the United Kingdom which could not be made in the United Kingdom by virtue of Section 17 (the exclusion of intercept material from legal proceedings).

#### *Section 16: Extra safeguards in the case of certificated warrants*

131. This Section creates extra safeguards in addition to those provided in Section 15, in the case of warrants to which Section 8(4) certificates apply.
132. *Subsections (1) and (2)* provide the additional safeguards which apply. Material intercepted under the authority of a warrant to which a certificate applies should only be examined if it:
  - has been certified as necessary to be examined in the interests of national security; for the purpose of preventing or detecting serious crime; or for the purpose of safeguarding the economic well-being of the United Kingdom; and
  - does not have as its purpose, or one of its purposes, the identification of material contained in communications sent by, or intended for, an individual who is known to be for the time being in the British Islands; and

- has not been selected by reference to such an individual.
133. *Subsection (3)* provides an exception to the second and third criteria above where under a Section 8(4) certificate the Secretary of State has certified that material selected by reference to such an individual is necessary for one of the three purposes outlined above. This material may only relate to communications sent during the period specified in the certificate; and the period specified must not be more than three months.
134. *Subsections (4), (5) and (6)* provide two further exceptions where:
- the person to whom the warrant is addressed believes on reasonable grounds both that the material examined is not referable to an individual known to be in the British Islands, and that the material has not been selected for the purpose of identifying material contained in communications sent by, or intended for, such an individual; or
  - it has appeared to the person to whom the warrant is addressed that circumstances have changed such that the individual concerned has entered the British Islands, or that their belief in the individual's absence from the British Islands was mistaken; and since it first so appeared, written authorisation to examine the material has been given by a senior official.
135. The senior official may only provide authorisation until the end of the first working day after the day on which the change of circumstances became apparent.

### ***Section 17: Exclusion of matters from legal proceedings***

136. *Section 17*, subject to certain exceptions, prohibits evidence, questioning or assertion in (or for the purposes of, or in connection with) legal proceedings likely to reveal the existence or absence of a warrant. A similar provision is contained in section 9 of the Interception of Communications Act 1985, which this Act repeals.
137. *Subsection (1)* imposes the basic prohibition. It does this directly, by stating that the contents of intercepted material and associated communications data may not be disclosed, and indirectly by prohibiting the disclosure of any suggestion that actions under subsection (2) have occurred.
138. *Subsection (2)* describes the actions which may not be disclosed, including actions by persons named in subsection (3) which would constitute offences under this Act or section 1 of the 1985 Act.
139. *Subsection (3)* lists the people referred to in subsection (2)(a). They are people who may be in possession of information about authorised interception. In paragraph (3)(b) persons holding office under the Crown includes constables and, by virtue of Section 81(6), Crown servants and members of the Armed Forces.

### ***Section 18: Exceptions to section 17***

140. *Subsections (1) and (3)* list the proceedings in relation to which the prohibition in section 17(1) will not apply. None of the exceptions make anything admissible that would, but for the Act, be inadmissible. The exceptions merely remove the prohibition imposed by Section 17.