

# REGULATION OF INVESTIGATORY POWERS ACT 2000

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### ***“Relevant judge” is explained in subsection (11).***

144. *Subsection (8)* makes it clear that the judge must be satisfied that the exceptional circumstances of the case make any disclosure under subsection (7)(b) essential in the interests of justice.
145. *Subsection (9)* provides for a relevant judge where he has ordered disclosure under subsection (7)(b) in exceptional circumstances to direct the person conducting the prosecution in any criminal proceedings to make any such admission of fact as that judge thinks is essential in the interests of justice.
146. *Subsection (10)* makes it clear that a judge cannot order an admission of fact in contravention of Section 17(1). The admission, therefore, must be one that does not tend to suggest that an interception has taken place.

#### ***Section 19: Offence for unauthorised disclosures***

147. This section places a requirement upon specified groups of persons to keep secret all matters relating to warranted interception.
148. *Subsection (2)* describes the groups of persons upon whom there is a duty to keep secret matters relating to warranted interception. These include:
  - anyone to whom an interception warrant may be addressed. These are described in Section 6 and include both heads of intercepting agencies but also anyone who may make an application for an interception warrant on their behalf;
  - anyone holding office under the Crown (civil servants, police officers and members of Her Majesty’s forces) and civilian employees of police authorities;
  - anyone providing or employed for the purpose of providing either a postal service or a public telecommunications service;
  - anyone controlling any part of a telecommunications system in the United Kingdom.
149. *Subsection (3)* describes the matters which must be kept secret. In essence these are anything to do with the existence or implementation of a warrant, including the content of the intercepted material and related communications data.
150. *Subsection (4)* creates the offence of unlawful disclosure and specifies the maximum penalties which a person who is found guilty of the criminal offence of unlawful disclosure may be sentenced to; if he is found guilty in a Magistrates’ Court he may be imprisoned for a period up to six months or fined up to the statutory maximum

*These notes refer to the Regulation of Investigatory Powers Act 2000 (c.23) which received Royal Assent on 28 July 2000*

(currently £5000) or both; in a Crown Court he may be imprisoned for a period up to five years, or may be fined (no upper limit), or both.

151. *Subsection (5)* gives a defence where a person could not reasonably have been expected to take steps to prevent the unlawful disclosure.
152. *Subsections (6) and (7)* give further defences to the offence of unlawful disclosure and addresses the question of a person consulting their legal adviser about requirements placed upon them under this Act, and disclosures which their legal adviser may be required to make as a result of such consultation. For example, where a communications service provider is required to provide assistance with the implementation of an interception warrant, the provider may wish to first consult their lawyer. *Subsection (6)* provides a defence to such a consultation being an unlawful disclosure.
153. *Subsection (8)* places a limitation on the defences described in subsections (6) and (7), stating that the defences are not valid where a disclosure was made with a view to furthering any criminal purpose.
154. *Subsection (9)* gives a further defence to the offence of unlawful disclosure, stating that where such a disclosure was authorised in any of the ways described in this subsection this would constitute a defence.

## **Section 20**

155. **Section 20** interprets terms used in this Chapter.

*“External communications”*: under the Interpretation Act 1978, the term “British Islands” means the United Kingdom, the Isle of Man and the Channel Islands. The use of the term in this Chapter therefore means that communications sent between the UK and the Islands, or between the Channel Islands and the Isle of Man, are not treated as external.

*“Related communications data”*: the term “communications data” is defined for the purposes of Chapter II in [Section 21\(4\)](#).