



# Investigatory Powers Act 2016

## 2016 CHAPTER 25

### PART 2

#### LAWFUL INTERCEPTION OF COMMUNICATIONS

### CHAPTER 3

#### OTHER PROVISIONS ABOUT INTERCEPTION

*Restrictions on use or disclosure of material obtained under warrants etc.*

#### **53 Safeguards relating to retention and disclosure of material**

- (1) The issuing authority must ensure, in relation to every targeted interception warrant or mutual assistance warrant issued by that authority, that arrangements are in force for securing that the requirements of subsections (2) and (5) are met in relation to the material obtained under the warrant.

This is subject to subsection (9).

- (2) The requirements of this subsection are met in relation to the material obtained under a warrant if each of the following is limited to the minimum that is necessary for the authorised purposes (see subsection (3))—
- (a) the number of persons to whom any of the material is disclosed or otherwise made available;
  - (b) the extent to which any of the material is disclosed or otherwise made available;
  - (c) the extent to which any of the material is copied;
  - (d) the number of copies that are made.
- (3) For the purposes of this section something is necessary for the authorised purposes if, and only if—

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- (a) it is, or is likely to become, necessary on any of the grounds falling within section 20 on which a warrant under Chapter 1 of this Part may be necessary,
  - (b) it is necessary for facilitating the carrying out of any functions under this Act of the Secretary of State, the Scottish Ministers or the person to whom the warrant is or was addressed,
  - (c) it is necessary for facilitating the carrying out of any functions of the Judicial Commissioners or the Investigatory Powers Tribunal under or in relation to this Act,
  - (d) it is necessary to ensure that a person (“P”) who is conducting a criminal prosecution has the information P needs to determine what is required of P by P’s duty to secure the fairness of the prosecution, or
  - (e) it is necessary for the performance of any duty imposed on any person by the Public Records Act 1958 or the Public Records Act (Northern Ireland) 1923.
- (4) The arrangements for the time being in force under this section for securing that the requirements of subsection (2) are met in relation to the material obtained under the warrant must include arrangements for securing that every copy made of any of that material is stored, for so long as it is retained, in a secure manner.
- (5) The requirements of this subsection are met in relation to the material obtained under a warrant if every copy made of any of that material (if not destroyed earlier) is destroyed as soon as there are no longer any relevant grounds for retaining it (see subsection (6)).
- (6) For the purposes of subsection (5), there are no longer any relevant grounds for retaining a copy of any material if, and only if—
- (a) its retention is not necessary, or not likely to become necessary, on any of the grounds falling within section 20 on which a warrant under Chapter 1 of this Part may be necessary, and
  - (b) its retention is not necessary for any of the purposes mentioned in paragraphs (b) to (e) of subsection (3) above.
- (7) Where—
- (a) a communication which has been intercepted in accordance with a targeted interception warrant or mutual assistance warrant is retained, following its examination, for purposes other than the destruction of the communication, and
  - (b) it is a communication that contains confidential journalistic material or identifies a source of journalistic information,
- the person to whom the warrant is addressed must inform the Investigatory Powers Commissioner as soon as is reasonably practicable.
- (8) Subsection (9) applies if—
- (a) any material obtained under the warrant has been handed over to any overseas authorities, or
  - (b) a copy of any such material has been given to any overseas authorities.
- (9) To the extent that the requirements of subsections (2) and (5) relate to any of the material mentioned in subsection (8)(a), or to the copy mentioned in subsection (8)(b), the arrangements made for the purposes of this section are not required to secure that those requirements are met (see instead section 54).
- (10) In this section—

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“copy”, in relation to material obtained under a warrant, means any of the following (whether or not in documentary form)—

- (a) any copy, extract or summary of the material which identifies the material as having been obtained under the warrant, and
- (b) any record which—
  - (i) refers to any interception or to the obtaining of any material, and
  - (ii) is a record of the identities of the persons to or by whom the material was sent, or to whom the material relates,

and “copied” is to be read accordingly;

“the issuing authority” means—

- (a) the Secretary of State, in the case of warrants issued by the Secretary of State;
- (b) the Scottish Ministers, in the case of warrants issued by the Scottish Ministers;

“overseas authorities” means authorities of a country or territory outside the United Kingdom.

#### **54 Safeguards relating to disclosure of material overseas**

- (1) The issuing authority must ensure, in relation to every targeted interception warrant or mutual assistance warrant issued by that authority, that arrangements are in force for securing that—
  - (a) any material obtained under the warrant is handed over to overseas authorities only if the requirements of subsection (2) are met, and
  - (b) copies of any such material are given to overseas authorities only if those requirements are met.
- (2) The requirements of this subsection are met in the case of a warrant if it appears to the issuing authority—
  - (a) that requirements corresponding to the requirements of section 53(2) and (5) will apply, to such extent (if any) as the issuing authority considers appropriate, in relation to any of the material which is handed over, or any copy of which is given, to the authorities in question, and
  - (b) that restrictions are in force which would prevent, to such extent (if any) as the issuing authority considers appropriate, the doing of anything in, for the purposes of or in connection with any proceedings outside the United Kingdom which would result in a prohibited disclosure.
- (3) In subsection (2)(b) “prohibited disclosure” means a disclosure which, if made in the United Kingdom, would breach the prohibition in section 56(1).
- (4) In this section—
  - “copy” has the same meaning as in section 53;
  - “the issuing authority” means—
    - (a) the Secretary of State, in the case of warrants issued by the Secretary of State;
    - (b) the Scottish Ministers, in the case of warrants issued by the Scottish Ministers;
  - “overseas authorities” means authorities of a country or territory outside the United Kingdom.

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## **55 Additional safeguards for items subject to legal privilege**

- (1) This section applies where an item subject to legal privilege which has been intercepted in accordance with a targeted interception warrant or mutual assistance warrant is retained, following its examination, for purposes other than the destruction of the item.
- (2) The person to whom the warrant is addressed must inform the Investigatory Powers Commissioner of the retention of the item as soon as is reasonably practicable.
- (3) Unless the Investigatory Powers Commissioner considers that subsection (5) applies to the item, the Commissioner must—
  - (a) direct that the item is destroyed, or
  - (b) impose one or more conditions as to the use or retention of that item.
- (4) If the Investigatory Powers Commissioner considers that subsection (5) applies to the item, the Commissioner may nevertheless impose such conditions under subsection (3)(b) as the Commissioner considers necessary for the purpose of protecting the public interest in the confidentiality of items subject to legal privilege.
- (5) This subsection applies to an item subject to legal privilege if—
  - (a) the public interest in retaining the item outweighs the public interest in the confidentiality of items subject to legal privilege, and
  - (b) retaining the item is necessary in the interests of national security or for the purpose of preventing death or significant injury.
- (6) The Investigatory Powers Commissioner—
  - (a) may require an affected party to make representations about how the Commissioner should exercise any function under subsection (3), and
  - (b) must have regard to any such representations made by an affected party (whether or not as a result of a requirement imposed under paragraph (a)).
- (7) Each of the following is an “affected party” for the purposes of subsection (6)—
  - (a) the person who decided to issue the warrant;
  - (b) the person to whom the warrant is or was addressed.

## **56 Exclusion of matters from legal proceedings etc.**

- (1) No evidence may be adduced, question asked, assertion or disclosure made or other thing done in, for the purposes of or in connection with any legal proceedings or Inquiries Act proceedings which (in any manner)—
  - (a) discloses, in circumstances from which its origin in interception-related conduct may be inferred—
    - (i) any content of an intercepted communication, or
    - (ii) any secondary data obtained from a communication, or
  - (b) tends to suggest that any interception-related conduct has or may have occurred or may be going to occur.

This is subject to Schedule 3 (exceptions).

- (2) “Interception-related conduct” means—

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- (a) conduct by a person within subsection (3) that is, or in the absence of any lawful authority would be, an offence under section 3(1) (offence of unlawful interception);
  - (b) a breach of the prohibition imposed by section 9 (restriction on requesting interception by overseas authorities);
  - (c) a breach of the prohibition imposed by section 10 (restriction on requesting assistance under mutual assistance agreements etc.);
  - (d) the making of an application by any person for a warrant, or the issue of a warrant, under Chapter 1 of this Part;
  - (e) the imposition of any requirement on any person to provide assistance in giving effect to a targeted interception warrant or mutual assistance warrant.
- (3) The persons referred to in subsection (2)(a) are—
- (a) any person who is an intercepting authority (see section 18);
  - (b) any person holding office under the Crown;
  - (c) any person deemed to be the proper officer of Revenue and Customs by virtue of section 8(2) of the Customs and Excise Management Act 1979;
  - (d) any person employed by, or for the purposes of, a police force;
  - (e) any postal operator or telecommunications operator;
  - (f) any person employed or engaged for the purposes of the business of a postal operator or telecommunications operator.
- (4) Any reference in subsection (1) to interception-related conduct also includes any conduct taking place before the coming into force of this section and consisting of—
- (a) conduct by a person within subsection (3) that—
    - (i) was an offence under section 1(1) or (2) of the Regulation of Investigatory Powers Act 2000 (“RIPA”), or
    - (ii) would have been such an offence in the absence of any lawful authority (within the meaning of section 1(5) of RIPA);
  - (b) conduct by a person within subsection (3) that—
    - (i) was an offence under section 1 of the Interception of Communications Act 1985, or
    - (ii) would have been such an offence in the absence of subsections (2) and (3) of that section;
  - (c) a breach by the Secretary of State of the duty under section 1(4) of RIPA (restriction on requesting assistance under mutual assistance agreements);
  - (d) the making of an application by any person for a warrant, or the issue of a warrant, under—
    - (i) Chapter 1 of Part 1 of RIPA, or
    - (ii) the Interception of Communications Act 1985;
  - (e) the imposition of any requirement on any person to provide assistance in giving effect to a warrant under Chapter 1 of Part 1 of RIPA.
- (5) In this section—
- “Inquiries Act proceedings” means proceedings of an inquiry under the Inquiries Act 2005;
  - “intercepted communication” means any communication intercepted in the course of its transmission by means of a postal service or telecommunication system.

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## **57 Duty not to make unauthorised disclosures**

- (1) A person to whom this section applies must not make an unauthorised disclosure to another person.
- (2) A person makes an unauthorised disclosure for the purposes of this section if—
  - (a) the person discloses any of the matters within subsection (4) in relation to—
    - (i) a warrant under Chapter 1 of this Part, or
    - (ii) a warrant under Chapter 1 of Part 1 of the Regulation of Investigatory Powers Act 2000, and
  - (b) the disclosure is not an excepted disclosure (see section 58).
- (3) This section applies to the following persons—
  - (a) any person who is an intercepting authority (see section 18);
  - (b) any person holding office under the Crown;
  - (c) any person employed by, or for the purposes of, a police force;
  - (d) any postal operator or telecommunications operator;
  - (e) any person employed or engaged for the purposes of the business of a postal operator or telecommunications operator;
  - (f) any person to whom any of the matters within subsection (4) have been disclosed in relation to a warrant mentioned in subsection (2)(a).
- (4) The matters referred to in subsection (2)(a) are—
  - (a) the existence or contents of the warrant;
  - (b) the details of the issue of the warrant or of any renewal or modification of the warrant;
  - (c) the existence or contents of any requirement to provide assistance in giving effect to the warrant;
  - (d) the steps taken in pursuance of the warrant or of any such requirement;
  - (e) any of the material obtained under the warrant.

## **58 Section 57: meaning of “excepted disclosure”**

- (1) For the purposes of section 57 a disclosure made in relation to a warrant is an “excepted disclosure” if it falls within any of the Heads set out in—
  - (a) subsection (2) (disclosures authorised by warrant etc.);
  - (b) subsection (4) (oversight bodies);
  - (c) subsection (5) (legal advisers);
  - (d) subsection (8) (disclosures of a general nature).
- (2) Head 1 is—
  - (a) a disclosure authorised by the warrant;
  - (b) a disclosure authorised by the person to whom the warrant is or was addressed or under any arrangements made by that person for the purposes of this section;
  - (c) a disclosure authorised by the terms of any requirement to provide assistance in giving effect to the warrant (including any requirement for disclosure imposed by virtue of section 41(5) or, in the case of a warrant under Chapter 1 of Part 1 of the Regulation of Investigatory Powers Act 2000 (“RIPA”), section 11(9) of RIPA).

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- (3) But subsection (2)(b) does not apply in the case of a mutual assistance warrant that is or was addressed to a person falling within section 18(1)(h) (competent authorities of overseas countries or territories).
- (4) Head 2 is—
- (a) in the case of a warrant under Chapter 1 of this Part, a disclosure made to, or authorised by, a Judicial Commissioner;
  - (b) in the case of a warrant under Chapter 1 of Part 1 of RIPA, a disclosure made to, or authorised by, the Interception of Communications Commissioner or a Judicial Commissioner;
  - (c) a disclosure made to the Independent Police Complaints Commission for the purposes of facilitating the carrying out of any of its functions;
  - (d) a disclosure made to the Intelligence and Security Committee of Parliament for the purposes of facilitating the carrying out of any of its functions.
- (5) Head 3 is—
- (a) a disclosure made by a legal adviser—
    - (i) in contemplation of, or in connection with, any legal proceedings, and
    - (ii) for the purposes of those proceedings;
  - (b) a disclosure made—
    - (i) by a professional legal adviser (“L”) to L’s client or a representative of L’s client, or
    - (ii) by L’s client, or by a representative of L’s client, to L,in connection with the giving, by L to L’s client, of advice about the effect of the relevant provisions (see subsection (7)).
- (6) But a disclosure within Head 3 is not an excepted disclosure if it is made with the intention of furthering a criminal purpose.
- (7) In subsection (5)(b) “the relevant provisions” means—
- (a) in the case of a warrant under Chapter 1 of this Part, the provisions of this Part;
  - (b) in the case of a warrant under Chapter 1 of Part 1 of RIPA, the provisions of that Chapter.
- (8) Head 4 is—
- (a) a disclosure that—
    - (i) is made by a postal operator or a telecommunications operator in accordance with a requirement imposed by regulations made by the Secretary of State, and
    - (ii) consists of statistical information of a description specified in the regulations;
  - (b) a disclosure of information that does not relate to any particular warrant under Chapter 1 of this Part or under Chapter 1 of Part 1 of RIPA but relates to any such warrants in general.
- (9) Nothing in this section affects the operation of section 56 (which, among other things, prohibits the making of certain disclosures in, for the purposes of or in connection with legal proceedings).

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*Status: This is the original version (as it was originally enacted).*

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## **59 Offence of making unauthorised disclosures**

- (1) A person who fails to comply with section 57(1) commits an offence.
- (2) A person who is guilty of an offence under this section is liable—
  - (a) on summary conviction in England and Wales—
    - (i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or
    - (ii) to a fine,or to both;
  - (b) on summary conviction in Scotland—
    - (i) to imprisonment for a term not exceeding 12 months, or
    - (ii) to a fine not exceeding the statutory maximum,or to both;
  - (c) on summary conviction in Northern Ireland—
    - (i) to imprisonment for a term not exceeding 6 months, or
    - (ii) to a fine not exceeding the statutory maximum,or to both;
  - (d) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.
- (3) In proceedings against any person for an offence under this section in respect of any disclosure, it is a defence for the person to show that the person could not reasonably have been expected, after first becoming aware of the matter disclosed, to take steps to prevent the disclosure.