

# REGULATION OF INVESTIGATORY POWERS ACT 2000

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

*“Wireless telegraphy” and “apparatus” are defined in Section 81.*

*For “while being transmitted”, see subsection (7).*

#### ***Section 4: Power to provide for lawful interception***

42. This Section lists the cases where a power may be exercised to provide for lawful interception without the need for a warrant under Section 5: under an international mutual assistance agreement; under regulations made by the Secretary of State to permit certain kinds of interception in the course of lawful business practice; under prison rules; in hospital premises where high security psychiatric services are provided; and in state hospitals in Scotland.
43. *Subsection (1)* enables the Secretary of State to make regulations specifying the conditions under which communication service providers may be authorised to use telecommunications systems located in the United Kingdom to intercept the communications of subjects on the territory of another country in accordance with the law of that country. The effect of paragraphs (d) and (e) is that regulations must be in operation before interception is authorised under this subsection. This subsection applies only where the subject of the interception is in the country whose competent authorities issued the interception warrant. The inclusion of the phrase “or who the interceptor has reasonable grounds for believing is in a country or territory outside the United Kingdom” reflects the fact that it will not always be possible to be certain about the precise location of the interception subject.
44. In practice, the “interceptor” is likely to be a communication service provider located in the UK which is either providing a public telecommunications service to another country or is in a business relationship with another communication service provider providing such a service.
45. This subsection will allow the United Kingdom to comply with Article 17 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union. This Article is intended to allow operators of satellite communications systems to use a ground station in one Member State to facilitate interception using a “service provider” (in practice, a communications service provider which is in a business relationship with the satellite operator) located in another Member State. The “service provider” and the subject of interception are required to be in the same Member State.
46. *Subsection (2)* makes provision for the Secretary of State to make regulations describing the kinds of interception which it is lawful to carry out in the course of the carrying on of

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

a business. Article 5 of Directive [97/66/EC](#) (the Telecommunications Data Protection and Privacy Directive) exempts from its prohibition on interception.

““Any legally authorised recording of communications in the course of lawful business practice for the purpose of providing evidence of a commercial transaction or of any other business communication”.

47. *Subsection (4)* makes reference to prison rules. Sections 47 and 39 of the respective Acts provide for the Secretary of State to make rules for the regulation and management of prisons and similar institutions, and for the classification, treatment, employment, discipline and control of people detained in them. The rules must, by virtue of section 6 of the Human Rights Act 1998, be compatible with the Convention rights.