



Regulation of Investigatory Powers Act 2000

2000 CHAPTER 23

PART I

COMMUNICATIONS

CHAPTER I

INTERCEPTION

Interception capability and costs

12 Maintenance of interception capability.

- (1) The Secretary of State may by order provide for the imposition by him on persons who—
 - (a) are providing public postal services or public telecommunications services, or
 - (b) are proposing to do so,of such obligations as it appears to him reasonable to impose for the purpose of securing that it is and remains practicable for requirements to provide assistance in relation to interception warrants to be imposed and complied with.
- (2) The Secretary of State's power to impose the obligations provided for by an order under this section shall be exercisable by the giving, in accordance with the order, of a notice requiring the person who is to be subject to the obligations to take all such steps as may be specified or described in the notice.
- (3) Subject to subsection (11), the only steps that may be specified or described in a notice given to a person under subsection (2) are steps appearing to the Secretary of State to be necessary for securing that that person has the practical capability of providing

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any assistance which he may be required to provide in relation to relevant interception warrants.

[^{F1}(3A) An obligation may be imposed in accordance with an order under this section on, and a notice under subsection (2) given to, persons outside the United Kingdom (and may be so imposed or given in relation to conduct outside the United Kingdom).

(3B) Where a notice under subsection (2) is to be given to a person outside the United Kingdom, the notice may (in addition to electronic or other means of giving a notice) be given to the person—

- (a) by delivering it to the person's principal office within the United Kingdom or, if the person has no such office in the United Kingdom, to any place in the United Kingdom where the person carries on business or conducts activities, or
- (b) if the person has specified an address in the United Kingdom as one at which the person, or someone on the person's behalf, will accept documents of the same description as a notice, by delivering it to that address.]

(4) A person shall not be liable to have an obligation imposed on him in accordance with an order under this section by reason only that he provides, or is proposing to provide, to members of the public a telecommunications service the provision of which is or, as the case may be, will be no more than—

- (a) the means by which he provides a service which is not a telecommunications service; or
- (b) necessarily incidental to the provision by him of a service which is not a telecommunications service.

(5) Where a notice is given to any person under subsection (2) and otherwise than by virtue of subsection (6)(c), that person may, before the end of such period as may be specified in an order under this section, refer the notice to the Technical Advisory Board.

(6) Where a notice given to any person under subsection (2) is referred to the Technical Advisory Board under subsection (5)—

- (a) there shall be no requirement for that person to comply, except in pursuance of a notice under paragraph (c)(ii), with any obligations imposed by the notice;
- (b) the Board shall consider the technical requirements and the financial consequences, for the person making the reference, of the notice referred to them and shall report their conclusions on those matters to that person and to the Secretary of State; and
- (c) the Secretary of State, after considering any report of the Board relating to the notice, may either—
 - (i) withdraw the notice; or
 - (ii) give a further notice under subsection (2) confirming its effect, with or without modifications.

(7) It shall be the duty of a person [^{F2}(whether or not the person is in the United Kingdom)] to whom a notice is given under subsection (2) to comply with the notice; and that duty shall be enforceable [^{F3}(including in the case of a person outside the United Kingdom)] by civil proceedings by the Secretary of State for an injunction, or for specific performance of a statutory duty under section 45 of the ^{M1}Court of Session Act 1988, or for any other appropriate relief.

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- (8) A notice for the purposes of subsection (2) must specify such period as appears to the Secretary of State to be reasonable as the period within which the steps specified or described in the notice are to be taken.
- (9) Before making an order under this section the Secretary of State shall consult with—
- (a) such persons appearing to him to be likely to be subject to the obligations for which it provides,
 - (b) the Technical Advisory Board,
 - (c) such persons representing persons falling within paragraph (a), and
 - (d) such persons with statutory functions in relation to persons falling within that paragraph,
- as he considers appropriate.
- (10) The Secretary of State shall not make an order under this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (11) For the purposes of this section the question whether a person has the practical capability of providing assistance in relation to relevant interception warrants shall include the question whether all such arrangements have been made as the Secretary of State considers necessary—
- (a) with respect to the disclosure of intercepted material;
 - (b) for the purpose of ensuring that security and confidentiality are maintained in relation to, and to matters connected with, the provision of any such assistance; and
 - (c) for the purpose of facilitating the carrying out of any functions in relation to this Chapter of the Interception of Communications Commissioner;
- but before determining for the purposes of the making of any order, or the imposition of any obligation, under this section what arrangements he considers necessary for the purpose mentioned in paragraph (c) the Secretary of State shall consult that Commissioner.
- (12) In this section “relevant interception warrant”—
- (a) in relation to a person providing a public postal service, means an interception warrant relating to the interception of communications in the course of their transmission by means of that service; and
 - (b) in relation to a person providing a public telecommunications service, means an interception warrant relating to the interception of communications in the course of their transmission by means of a telecommunication system used for the purposes of that service.

Annotations:

Amendments (Textual)

- F1** S. 12(3A)(3B) inserted (temp.) (17.7.2014) by [Data Retention and Investigatory Powers Act 2014](#) (c. 27), [ss. 4\(6\)](#), 8(1)(3)
- F2** Words in s. 12(7) inserted (temp.) (17.7.2014) by [Data Retention and Investigatory Powers Act 2014](#) (c. 27), [ss. 4\(7\)\(a\)](#), 8(1)(3)
- F3** Words in s. 12(7) inserted (temp.) (17.7.2014) by [Data Retention and Investigatory Powers Act 2014](#) (c. 27), [ss. 4\(7\)\(b\)](#), 8(1)(3)

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Modifications etc. (not altering text)

- C1** S. 12(3A)(3B) continued (temp.) (30.12.2016) by [Investigatory Powers Act 2016 \(c. 25\)](#), s. 272(1), [Sch. 9 para. 9](#) (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2016/1233, reg. 2(p)
- C2** S. 12(7) continued (temp.) (30.12.2016) by [Investigatory Powers Act 2016 \(c. 25\)](#), s. 272(1), [Sch. 9 para. 9](#) (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2016/1233, reg. 2(p)
- C3** S. 12(11)(c) modified (1.9.2017) by [The Investigatory Powers Act 2016 \(Commencement No. 3 and Transitory, Transitional and Saving Provisions\) Regulations 2017 \(S.I. 2017/859\)](#), [reg. 4](#)

Marginal Citations

- M1** 1988 c. 36.

13 Technical Advisory Board.

- (1) There shall be a Technical Advisory Board consisting of such number of persons appointed by the Secretary of State as he may by order provide.
- (2) The order providing for the membership of the Technical Advisory Board must also make provision which is calculated to ensure—
 - (a) that the membership of the Technical Advisory Board includes persons likely effectively to represent the interests of the persons on whom obligations may be imposed under section 12;
 - (b) that the membership of the Board includes persons likely effectively to represent the interests of the persons by or on whose behalf applications for interception warrants may be made;
 - (c) that such other persons (if any) as the Secretary of State thinks fit may be appointed to be members of the Board; and
 - (d) that the Board is so constituted as to produce a balance between the representation of the interests mentioned in paragraph (a) and the representation of those mentioned in paragraph (b).
- (3) The Secretary of State shall not make an order under this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

14 Grants for interception costs.

- (1) It shall be the duty of the Secretary of State to ensure that such arrangements are in force as are necessary for securing that a person who provides—
 - (a) a postal service, or
 - (b) a telecommunications service,
 receives such contribution as is, in the circumstances of that person's case, a fair contribution towards the costs incurred, or likely to be incurred, by that person in consequence of the matters mentioned in subsection (2).
- (2) Those matters are—
 - (a) in relation to a person providing a postal service, the issue of interception warrants relating to communications transmitted by means of that postal service;
 - (b) in relation to a person providing a telecommunications service, the issue of interception warrants relating to communications transmitted by means of a telecommunication system used for the purposes of that service;

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- (c) in relation to each description of person, the imposition on that person of obligations provided for by an order under section 12.
- (3) For the purpose of complying with his duty under this section, the Secretary of State may make arrangements for payments to be made out of money provided by Parliament.

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 30(6A)-(6D) inserted by 2016 anaw 6 s. 187(2)(b)
- s. 48(3)(c)(iii) and word inserted by 2016 c. 25 Sch. 10 para. 65(b)
- s. 49(9A) inserted by 2016 c. 25 Sch. 10 para. 46(3)
- s. 65(5)(c)-(czm) substituted for s. 65(5)(c) by 2016 c. 25 s. 243(1)(c)
- s. 65(5)(ba)(bb) inserted by 2016 c. 25 s. 243(1)(b)
- s. 65(6)(dza) inserted by 2016 c. 25 s. 243(1)(d)(ii)
- s. 65(6A) inserted by 2016 c. 25 s. 243(1)(e)
- s. 65(7ZB) inserted by 2016 c. 25 s. 243(1)(h)
- s. 65(8)(a)-(bc) substituted for s. 65(a)(b) by 2016 c. 25 s. 243(1)(i)
- s. 65(9A) inserted by 2016 c. 25 s. 243(1)(j)
- s. 67(7)(aza)-(azc) inserted by 2016 c. 25 s. 243(2)(a)
- s. 67A inserted by 2016 c. 25 s. 242(1)
- s. 68(4A)-(4E) inserted by 2016 c. 25 s. 242(3)
- s. 68(7)(g)-(ha) substituted for. s. 68(7)(g)(h) by 2016 c. 25 s. 243(5)(c)
- s. 69(2)(j)(k) inserted by 2016 c. 25 s. 242(4)(b)
- s. 78(4A) inserted by 2016 c. 25 s. 242(5)(b)
- Sch. 1 para. 16A and cross-heading inserted by 2016 anaw 6 s. 187(3)
- Sch. 1 Pt. 1 para. 20H inserted by 2013 c. 32 Sch. 12 para. 74
- Sch. 2 para. 2(1)(c) and word inserted by 2016 c. 25 Sch. 10 para. 66(2)(b)
- Sch. 2 para. 2(6)(d) and word inserted by 2016 c. 25 Sch. 10 para. 66(4)(b)
- Sch. 2 para. 2(6A) inserted by 2016 c. 25 Sch. 10 para. 66(5)