



# Investigatory Powers Act 2016

## 2016 CHAPTER 25

### PART 1

#### GENERAL PRIVACY PROTECTIONS

##### *Prohibitions against unlawful interception*

### 3 Offence of unlawful interception

- (1) A person commits an offence if—
  - (a) the person intentionally intercepts a communication in the course of its transmission by means of—
    - (i) a public telecommunication system,
    - (ii) a private telecommunication system, or
    - (iii) a public postal service,
  - (b) the interception is carried out in the United Kingdom, and
  - (c) the person does not have lawful authority to carry out the interception.
- (2) But it is not an offence under subsection (1) for a person to intercept a communication in the course of its transmission by means of a private telecommunication system if the person—
  - (a) is a person with a right to control the operation or use of the system, or
  - (b) has the express or implied consent of such a person to carry out the interception.
- (3) Sections 4 and 5 contain provision about—
  - (a) the meaning of “interception”, and
  - (b) when interception is to be regarded as carried out in the United Kingdom.
- (4) Section 6 contains provision about when a person has lawful authority to carry out an interception.

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- (5) For the meaning of the terms used in subsection (1)(a)(i) to (iii), see sections 261 and 262.
- (6) A person who is guilty of an offence under subsection (1) is liable—
- (a) on summary conviction in England and Wales, to a fine;
  - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum;
  - (c) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.
- (7) No proceedings for any offence which is an offence by virtue of this section may be instituted—
- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;
  - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

#### **4 Definition of “interception” etc.**

##### *Interception in relation to telecommunication systems*

- (1) For the purposes of this Act, a person intercepts a communication in the course of its transmission by means of a telecommunication system if, and only if—
- (a) the person does a relevant act in relation to the system, and
  - (b) the effect of the relevant act is to make any content of the communication available, at a relevant time, to a person who is not the sender or intended recipient of the communication.

For the meaning of “content” in relation to a communication, see section 261(6).

- (2) In this section “relevant act”, in relation to a telecommunication system, means—
- (a) modifying, or interfering with, the system or its operation;
  - (b) monitoring transmissions made by means of the system;
  - (c) monitoring transmissions made by wireless telegraphy to or from apparatus that is part of the system.
- (3) For the purposes of this section references to modifying a telecommunication system include references to attaching any apparatus to, or otherwise modifying or interfering with—
- (a) any part of the system, or
  - (b) any wireless telegraphy apparatus used for making transmissions to or from apparatus that is part of the system.
- (4) In this section “relevant time”, in relation to a communication transmitted by means of a telecommunication system, means—
- (a) any time while the communication is being transmitted, and
  - (b) any time when the communication is stored in or by the system (whether before or after its transmission).
- (5) For the purposes of this section, the cases in which any content of a communication is to be taken to be made available to a person at a relevant time include any case in

which any of the communication is diverted or recorded at a relevant time so as to make any content of the communication available to a person after that time.

- (6) In this section “wireless telegraphy” and “wireless telegraphy apparatus” have the same meaning as in the Wireless Telegraphy Act 2006 (see sections 116 and 117 of that Act).

*Interception in relation to postal services*

- (7) Section 125(3) of the Postal Services Act 2000 applies for the purposes of determining for the purposes of this Act whether a postal item is in the course of its transmission by means of a postal service as it applies for the purposes of determining for the purposes of that Act whether a postal packet is in course of transmission by post.

*Interception carried out in the United Kingdom*

- (8) For the purposes of this Act the interception of a communication is carried out in the United Kingdom if, and only if—
- (a) the relevant act or, in the case of a postal item, the interception is carried out by conduct within the United Kingdom, and
  - (b) the communication is intercepted—
    - (i) in the course of its transmission by means of a public telecommunication system or a public postal service, or
    - (ii) in the course of its transmission by means of a private telecommunication system in a case where the sender or intended recipient of the communication is in the United Kingdom.

## **5 Conduct that is not interception**

- (1) References in this Act to the interception of a communication do not include references to the interception of any communication broadcast for general reception.
- (2) References in this Act to the interception of a communication in the course of its transmission by means of a postal service do not include references to—
- (a) any conduct that takes place in relation only to so much of the communication as consists of any postal data comprised in, included as part of, attached to, or logically associated with a communication (whether by the sender or otherwise) for the purposes of any postal service by means of which it is being or may be transmitted, or
  - (b) any conduct, in connection with conduct falling within paragraph (a), that gives a person who is neither the sender nor the intended recipient only so much access to a communication as is necessary for the purpose of identifying such postal data.

For the meaning of “postal data”, see section 262.

## **6 Definition of “lawful authority”**

- (1) For the purposes of this Act, a person has lawful authority to carry out an interception if, and only if—
- (a) the interception is carried out in accordance with—
    - (i) a targeted interception warrant or mutual assistance warrant under Chapter 1 of Part 2, or

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- (ii) a bulk interception warrant under Chapter 1 of Part 6,
  - (b) the interception is authorised by any of sections 44 to 52, or
  - (c) in the case of a communication stored in or by a telecommunication system, the interception—
    - (i) is carried out in accordance with a targeted equipment interference warrant under Part 5 or a bulk equipment interference warrant under Chapter 3 of Part 6,
    - (ii) is in the exercise of any statutory power that is exercised for the purpose of obtaining information or taking possession of any document or other property, or
    - (iii) is carried out in accordance with a court order made for that purpose.
- (2) Conduct which has lawful authority for the purposes of this Act by virtue of subsection (1)(a) or (b) is to be treated as lawful for all other purposes.
- (3) Any other conduct which—
- (a) is carried out in accordance with a warrant under Chapter 1 of Part 2 or a bulk interception warrant, or
  - (b) is authorised by any of sections 44 to 52,
- is to be treated as lawful for all purposes.

## **7 Monetary penalties for certain unlawful interceptions**

- (1) The Investigatory Powers Commissioner may serve a monetary penalty notice on a person if conditions A and B are met.
- (2) A monetary penalty notice is a notice requiring the person on whom it is served to pay to the Investigatory Powers Commissioner (“the Commissioner”) a monetary penalty of an amount determined by the Commissioner and specified in the notice.
- (3) Condition A is that the Commissioner considers that—
- (a) the person has intercepted, in the United Kingdom, any communication in the course of its transmission by means of a public telecommunication system,
  - (b) the person did not have lawful authority to carry out the interception, and
  - (c) the person was not, at the time of the interception, making an attempt to act in accordance with an interception warrant which might, in the opinion of the Commissioner, explain the interception.
- (4) Condition B is that the Commissioner does not consider that the person has committed an offence under section 3(1).
- (5) The amount of a monetary penalty determined by the Commissioner under this section must not exceed £50,000.
- (6) Schedule 1 (which makes further provision about monetary penalty notices) has effect.
- (7) In this section “interception warrant” means—
- (a) a targeted interception warrant or mutual assistance warrant under Chapter 1 of Part 2, or
  - (b) a bulk interception warrant under Chapter 1 of Part 6.
- (8) For the meaning of “interception” and other key expressions used in this section, see sections 4 to 6.

## **8 Civil liability for certain unlawful interceptions**

- (1) An interception of a communication is actionable at the suit or instance of—
  - (a) the sender of the communication, or
  - (b) the recipient, or intended recipient, of the communication,if conditions A to D are met.
- (2) Condition A is that the interception is carried out in the United Kingdom.
- (3) Condition B is that the communication is intercepted—
  - (a) in the course of its transmission by means of a private telecommunication system, or
  - (b) in the course of its transmission, by means of a public telecommunication system, to or from apparatus that is part of a private telecommunication system.
- (4) Condition C is that the interception is carried out by, or with the express or implied consent of, a person who has the right to control the operation or use of the private telecommunication system.
- (5) Condition D is that the interception is carried out without lawful authority.
- (6) For the meaning of “interception” and other key expressions used in this section, see sections 4 to 6.

## **9 Restriction on requesting interception by overseas authorities**

- (1) This section applies to a request for any authorities of a country or territory outside the United Kingdom to carry out the interception of communications sent by, or intended for, an individual who the person making the request believes will be in the British Islands at the time of the interception.
- (2) A request to which this section applies may not be made by or on behalf of a person in the United Kingdom unless—
  - (a) a targeted interception warrant has been issued under Chapter 1 of Part 2 authorising the person to whom it is addressed to secure the interception of communications sent by, or intended for, that individual, or
  - (b) a targeted examination warrant has been issued under that Chapter authorising the person to whom it is addressed to carry out the selection of the content of such communications for examination.

## **10 Restriction on requesting assistance under mutual assistance agreements etc.**

- (1) This section applies to—
  - (a) a request for assistance under an EU mutual assistance instrument, and
  - (b) a request for assistance in accordance with an international mutual assistance agreement.
- (2) A request to which this section applies may not be made by or on behalf of a person in the United Kingdom to the competent authorities of a country or territory outside the United Kingdom unless a mutual assistance warrant has been issued under Chapter 1 of Part 2 authorising the making of the request.
- (3) In this section—

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“EU mutual assistance instrument” means an EU instrument which—

- (a) relates to the provision of mutual assistance in connection with, or in the form of, the interception of communications,
- (b) requires the issue of a warrant, order or equivalent instrument in cases in which assistance is given, and
- (c) is designated as an EU mutual assistance instrument by regulations made by the Secretary of State;

“international mutual assistance agreement” means an international agreement which—

- (a) relates to the provision of mutual assistance in connection with, or in the form of, the interception of communications,
- (b) requires the issue of a warrant, order or equivalent instrument in cases in which assistance is given, and
- (c) is designated as an international mutual assistance agreement by regulations made by the Secretary of State.