Investigatory Powers Act 2016

2016 CHAPTER 25

PART 2

LAWFUL INTERCEPTION OF COMMUNICATIONS

CHAPTER 1

INTERCEPTION AND EXAMINATION WITH A WARRANT

Additional safeguards

26 Members of Parliament etc.

(1) This section applies where—

(a) an application is made to the Secretary of State for the issue of a targeted interception warrant or a targeted examination warrant, and

(b) the purpose of the warrant is—

(i) in the case of a targeted interception warrant, to authorise or require the interception of communications sent by, or intended for, a person who is a member of a relevant legislature, or

(ii) in the case of a targeted examination warrant, to authorise the selection for examination of the content of such communications.

(2) The Secretary of State may not issue the warrant without the approval of the Prime Minister.

(3) In this section "member of a relevant legislature" means—

(a) a member of either House of Parliament;

(b) a member of the Scottish Parliament;

(c) a member of the National Assembly for Wales;

(d) a member of the Northern Ireland Assembly;

(e) a member of the European Parliament elected for the United Kingdom.

27 Items subject to legal privilege

(1) Subsections (2) to (5) apply if—

(a) an application is made by or on behalf of an intercepting authority for a warrant under this Chapter, and

(b) the purpose, or one of the purposes, of the warrant is—

(i) in the case of a targeted interception warrant or mutual assistance warrant, to authorise or require the interception of items subject to legal privilege, or

(ii) in the case of a targeted examination warrant, to authorise the selection of such items for examination.

(2) The application must contain a statement that the purpose, or one of the purposes, of the warrant is to authorise or require the interception, or (in the case of a targeted examination warrant) the selection for examination, of items subject to legal privilege.

(3) In deciding whether to issue the warrant, the person to whom the application is made must have regard to the public interest in the confidentiality of items subject to legal privilege.

(4) The person to whom the application is made may issue the warrant only if the person considers—

(a) that there are exceptional and compelling circumstances that make it necessary to authorise or require the interception, or (in the case of a targeted examination warrant) the selection for examination, of items subject to legal privilege, and

(b) that the arrangements made for the purposes of section 53 or (as the case may be) section 150 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of such items.

(5) But the warrant may not be issued if it is considered necessary only as mentioned in section 20(2)(c).

(6) For the purposes of subsection (4)(a), there cannot be exceptional and compelling circumstances that make it necessary to authorise or require the interception, or the selection for examination, of items subject to legal privilege unless—

(a) the public interest in obtaining the information that would be obtained by the warrant outweighs the public interest in the confidentiality of items subject to legal privilege,

(b) there are no other means by which the information may reasonably be obtained, and

(c) in the case of a warrant considered necessary as mentioned in section 20(2)(b) or (3) or (as the case may be) 21(4), obtaining the information is necessary for the purpose of preventing death or significant injury.

(7) Subsections (8) and (9) apply if—

(a) an application is made by or on behalf of an intercepting authority for a warrant under this Chapter,

(b) the intercepting authority considers that the relevant communications are likely to include items subject to legal privilege, and

(c) subsections (2) to (5) do not apply.

(8) The application must contain—

(a) a statement that the intercepting authority considers that the relevant communications are likely to include items subject to legal privilege, and

(b) an assessment of how likely it is that the relevant communications will include such items.

(9) The person to whom the application is made may issue the warrant only if the person considers that the arrangements made for the purposes of section 53 or (as the case may be) section 150 include specific arrangements for the handling, retention, use and destruction of items subject to legal privilege.

(10) In this section "relevant communications" means—

(a) in relation to a targeted interception warrant or mutual assistance warrant, any communications the interception of which is authorised or required by the warrant;

(b) in relation to a targeted examination warrant, any communications the content of which the warrant authorises to be selected for examination.

(11) Subsections (12) and (13) apply if—

(a) an application is made by or on behalf of an intercepting authority for a warrant under this Chapter,

(b) the purpose, or one of the purposes, of the warrant is—

(i) in the case of a targeted interception warrant or mutual assistance warrant, to authorise or require the interception of communications that, if they were not made with the intention of furthering a criminal purpose, would be items subject to legal privilege, or

(ii) in the case of a targeted examination warrant, to authorise the selection of such communications for examination, and

(c) the intercepting authority considers that the communications ("the targeted communications") are likely to be communications made with the intention of furthering a criminal purpose.

(12) The application must—

(a) contain a statement that the purpose, or one of the purposes, of the warrant is to authorise or require the interception, or (in the case of a targeted examination warrant) the selection for examination, of communications that, if they were not made with the intention of furthering a criminal purpose, would be items subject to legal privilege, and

(b) set out the reasons for believing that the targeted communications are likely to be communications made with the intention of furthering a criminal purpose.

(13) The person to whom the application is made may issue the warrant only if the person considers that the targeted communications are likely to be communications made with the intention of furthering a criminal purpose.

28 Confidential journalistic material

(1) This section applies if—

(a) an application is made by or on behalf of an intercepting authority for a warrant under this Chapter, and

(b) the purpose, or one of the purposes, of the warrant is—

(i) in the case of a targeted interception warrant or mutual assistance warrant, to authorise or require the interception of communications which the intercepting authority believes will be communications containing confidential journalistic material, or

(ii) in the case of a targeted examination warrant, to authorise the selection for examination of journalistic material which the intercepting authority believes is confidential journalistic material.

(2) The application must contain a statement that the purpose, or one of the purposes, of the warrant is—

(a) in the case of a targeted interception warrant or mutual assistance warrant, to authorise or require the interception of communications which the intercepting authority believes will be communications containing confidential journalistic material, or

(b) in the case of a targeted examination warrant, to authorise the selection for examination of journalistic material which the intercepting authority believes is confidential journalistic material.

(3) The person to whom the application is made may issue the warrant only if the person considers that the arrangements made for the purposes of section 53 or (as the case may be) section 150 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of communications containing confidential journalistic material.

(4) For the meaning of "journalistic material" and "confidential journalistic material", see section 264.

29 Sources of journalistic information

(1) This section applies if—

(a) an application is made by or on behalf of an intercepting authority for a warrant under this Chapter, and

(b) the purpose, or one of the purposes, of the warrant is to identify or confirm a source of journalistic information.

(For the meaning of "source of journalistic information", see section 263(1).)

(2) The application must contain a statement that the purpose, or one of the purposes, of the warrant is to identify or confirm a source of journalistic information.

(3) The person to whom the application is made may issue the warrant only if the person considers that the arrangements made for the purposes of section 53 or (as the case may be) section 150 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of communications that identify sources of journalistic information.