



Investigatory Powers Act 2016

2016 CHAPTER 25

PART 6

BULK WARRANTS

CHAPTER 3

BULK EQUIPMENT INTERFERENCE WARRANTS

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

191 Safeguards relating to retention and disclosure of material

- (1) The Secretary of State must ensure, in relation to every bulk equipment interference warrant, that arrangements are in force for securing—
 - (a) that the requirements of subsections (2) and (5) are met in relation to the material obtained under the warrant, and
 - (b) that the requirements of section 193 are met in relation to that material.

This is subject to subsection (8).

- (2) The requirements of this subsection are met in relation to the material obtained under the 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 subsection (2) something is necessary for the authorised purposes if, and only if—

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- (a) it is, or is likely to become, necessary in the interests of national security or on any other grounds falling within section 178(2),
 - (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 head of the intelligence service 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 of the Investigatory Powers Tribunal under or in relation to this Act,
 - (d) it is necessary for the purpose of legal proceedings, or
 - (e) it is necessary for the performance of the functions of any person under any enactment.
- (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 the 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, in the interests of national security or on any other grounds falling within section 178(2), and
 - (b) its retention is not necessary for any of the purposes mentioned in paragraphs (b) to (e) of subsection (3) above.
- (7) Subsection (8) 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.
- (8) To the extent that the requirements of subsections (2) and (5) and section 193 relate to any of the material mentioned in subsection (7)(a), or to the copy mentioned in subsection (7)(b), the arrangements made for the purpose of this section are not required to secure that those requirements are met (see instead section 192).
- (9) In this section—
- “copy”, in relation to any 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 is a record of the identities of persons who owned, used or were in possession of the equipment which was interfered with to obtain that material,
- and “copied” is to be read accordingly;
- “overseas authorities” means authorities of a country or territory outside the United Kingdom.

192 Safeguards relating to disclosure of material overseas

- (1) The Secretary of State must ensure, in relation to every bulk equipment interference warrant, 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 Secretary of State that requirements corresponding to the requirements of section 191(2) and (5) and section 193 will apply, to such extent (if any) as the Secretary of State 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.
- (3) In this section—
 - “copy” has the same meaning as in section 191;
 - “overseas authorities” means authorities of a country or territory outside the United Kingdom.

193 Safeguards relating to examination of material etc.

- (1) For the purposes of section 191, the requirements of this section are met in relation to the material obtained under a warrant if—
 - (a) the selection of any of the material obtained under the warrant for examination is carried out only for the specified purposes (see subsection (2)),
 - (b) the selection of any of the material for examination is necessary and proportionate in all the circumstances, and
 - (c) where any such material is protected material, the selection of the material for examination meets any of the selection conditions (see subsection (3)).
- (2) The selection of material obtained under the warrant for examination is carried out only for the specified purposes if the material is selected for examination only so far as is necessary for the operational purposes specified in the warrant in accordance with section 183.

In this subsection “specified in the warrant” means specified in the warrant at the time of the selection of the material for examination.
- (3) The selection conditions referred to in subsection (1)(c) are—
 - (a) that the selection of the protected material for examination does not breach the prohibition in subsection (4);
 - (b) that the person to whom the warrant is addressed reasonably considers that the selection of the protected material for examination would not breach that prohibition;
 - (c) that the selection of the protected material for examination in breach of that prohibition is authorised by subsection (5);
 - (d) that the selection of the protected material for examination in breach of that prohibition is authorised by a targeted examination warrant issued under Part 5.
- (4) The prohibition referred to in subsection (3)(a) is that the protected material may not at any time be selected for examination if—

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- (a) any criteria used for the selection of the material for examination are referable to an individual known to be in the British Islands at that time, and
- (b) the purpose of using those criteria is to identify protected material consisting of communications sent by, or intended for, that individual or private information relating to that individual.

It does not matter for the purposes of this subsection whether the identity of the individual is known.

- (5) The selection of protected material (“the relevant material”) for examination is authorised by this subsection if—
- (a) criteria referable to an individual have been, or are being, used for the selection of material for examination in circumstances falling within subsection (3)(a) or (b),
 - (b) at any time it appears to the person to whom the warrant is addressed that there has been a relevant change of circumstances in relation to the individual (see subsection (6)) which would mean that the selection of the relevant material for examination would breach the prohibition in subsection (4),
 - (c) since that time, a written authorisation to examine the relevant material using those criteria has been given by a senior officer, and
 - (d) the selection of the relevant material for examination is made before the end of the permitted period (see subsection (7)).
- (6) For the purposes of subsection (5)(b) there is a relevant change of circumstances in relation to an individual if—
- (a) the individual has entered the British Islands, or
 - (b) a belief by the person to whom the warrant is addressed that the individual was outside the British Islands was in fact mistaken.
- (7) In subsection (5)—
- “senior officer”, in relation to a warrant addressed to the head of an intelligence service, means a member of the intelligence service who—
- (a) is a member of the Senior Civil Service or a member of the Senior Management Structure of Her Majesty’s Diplomatic Service, or
 - (b) holds a position in the intelligence service of equivalent seniority to such a member;
- “the permitted period” means the period ending with the fifth working day after the time mentioned in subsection (5)(b).
- (8) In a case where the selection of protected material for examination is authorised by subsection (5), the person to whom the warrant is addressed must notify the Secretary of State that the selection is being carried out.
- (9) In this Part, “protected material” means any material obtained under the warrant other than material which is—
- (a) equipment data;
 - (b) information (other than a communication or equipment data) which is not private information.

194 Additional safeguards for items subject to legal privilege

- (1) Subsection (2) applies if, in a case where protected material obtained under a bulk equipment interference warrant is to be selected for examination—
 - (a) the selection of the material for examination meets any of the selection conditions in section 193(3)(a) to (c), and
 - (b) either—
 - (i) the purpose, or one of the purposes, of using the criteria to be used for the selection of the material for examination (“the relevant criteria”) is to identify any items subject to legal privilege, or
 - (ii) the use of the relevant criteria is likely to identify such items.
- (2) The material may be selected for examination using the relevant criteria only if a senior official acting on behalf of the Secretary of State has approved the use of those criteria.
- (3) In deciding whether to give an approval under subsection (2) in a case where subsection (1)(b)(i) applies, a senior official must have regard to the public interest in the confidentiality of items subject to legal privilege.
- (4) A senior official may give an approval under subsection (2) only if—
 - (a) the official considers that the arrangements made for the purposes of section 191 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of items subject to legal privilege, and
 - (b) where subsection (1)(b)(i) applies, the official considers that there are exceptional and compelling circumstances that make it necessary to authorise the use of the relevant criteria.
- (5) For the purposes of subsection (4)(b), there cannot be exceptional and compelling circumstances that make it necessary to authorise the use of the relevant criteria unless—
 - (a) the public interest in obtaining the information that would be obtained by the selection of the material for examination 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) obtaining the information is necessary in the interests of national security or for the purpose of preventing death or significant injury.
- (6) Subsection (7) applies if, in a case where protected material obtained under a bulk equipment interference warrant is to be selected for examination—
 - (a) the selection of the material for examination meets any of the selection conditions in section 193(3)(a) to (c),
 - (b) the purpose, or one of the purposes, of using the criteria to be used for the selection of the material for examination (“the relevant criteria”) is to identify communications or other items of information that, if they were not communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose, would be items subject to legal privilege, and
 - (c) the person to whom the warrant is addressed considers that the communications or other items of information (“the targeted communications or other items of information”) are likely to be communications made or (as

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the case may be) other items of information created or held with the intention of furthering a criminal purpose.

- (7) The material may be selected for examination using the relevant criteria only if a senior official acting on behalf of the Secretary of State has approved the use of those criteria.
- (8) A senior official may give an approval under subsection (7) only if the official considers that the targeted communications or other items of information are likely to be communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose.
- (9) Where an item subject to legal privilege which has been obtained under a bulk equipment interference warrant is retained following its examination, for purposes other than the destruction of the item, the person to whom the warrant is addressed must inform the Investigatory Powers Commissioner as soon as is reasonably practicable.
 (For provision about the grounds for retaining material obtained under a bulk equipment interference warrant, see section 191.)
- (10) Unless the Investigatory Powers Commissioner considers that subsection (12) 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.
- (11) If the Investigatory Powers Commissioner considers that subsection (12) applies to the item, the Commissioner may nevertheless impose such conditions under subsection (10)(b) as the Commissioner considers necessary for the purpose of protecting the public interest in the confidentiality of items subject to legal privilege.
- (12) 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.
- (13) The Investigatory Powers Commissioner—
 - (a) may require an affected party to make representations about how the Commissioner should exercise any function under subsection (10), 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)).
- (14) Each of the following is an “affected party” for the purposes of subsection (13)—
 - (a) the Secretary of State;
 - (b) the person to whom the warrant is or was addressed.

195 Additional safeguard for confidential journalistic material

Where—

- (a) material obtained under a bulk equipment interference warrant is retained, following its examination, for purposes other than the destruction of the material, and
- (b) it is material containing confidential journalistic material,

the person to whom the warrant is addressed must inform the Investigatory Powers Commissioner as soon as is reasonably practicable.

196 Offence of breaching safeguards relating to examination of material

- (1) A person commits an offence if—
 - (a) the person selects for examination any material obtained under a bulk equipment interference warrant,
 - (b) the person knows or believes that the selection of that material does not comply with a requirement imposed by section 193 or 194, and
 - (c) the person deliberately selects that material in breach of that requirement.
- (2) A person 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 2 years or to a fine, or to both.
- (3) 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.

197 Application of other restrictions in relation to warrants

Sections 132 to 134 (duty not to make unauthorised disclosures) apply in relation to bulk equipment interference warrants as they apply in relation to targeted equipment interference warrants, but as if the reference in section 133(2)(c) to a requirement for disclosure imposed by virtue of section 126(4) were a reference to such a requirement imposed by virtue of section 190(4).