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.

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 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.