



Interception of Communications Act 1985

1985 CHAPTER 56

An Act to make new provision for and in connection with the interception of communications sent by post or by means of public telecommunication systems and to amend section 45 of the Telecommunications Act 1984. [25th July 1985]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Prohibition on interception

- (1) Subject to the following provisions of this section, a person who intentionally intercepts a communication in the course of its transmission by post or by means of a public telecommunication system shall be guilty of an offence and liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (2) A person shall not be guilty of an offence under this section if—
 - (a) the communication is intercepted in obedience to a warrant issued by the Secretary of State under section 2 below; or
 - (b) that person has reasonable grounds for believing that the person to whom, or the person by whom, the communication is sent has consented to the interception.
- (3) A person shall not be guilty of an offence under this section if—
 - (a) the communication is intercepted for purposes connected with the provision of postal or public telecommunication services or with the enforcement of any enactment relating to the use of those services ; or
 - (b) the communication is being transmitted by wireless telegraphy and is intercepted, with the authority of the Secretary of State, for purposes connected with the issue of licences under the Wireless Telegraphy Act 1949 or the prevention or detection of interference with wireless telegraphy,

- (4) No proceedings in respect of an offence under this section shall 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.

2 Warrants for interception

- (1) Subject to the provisions of this section and section 3 below, the Secretary of State may issue a warrant requiring the person to whom it is addressed to intercept, in the course of their transmission by post or by means of a public telecommunication system, such communications as are described in the warrant; and such a warrant may also require the person to whom it is addressed to disclose the intercepted material to such persons and in such manner as are described in the warrant.
- (2) The Secretary of State shall not issue a warrant under this section unless he considers that the warrant is necessary—
- (a) in the interests of national security ;
 - (b) for the purpose of preventing or detecting serious crime ; or
 - (c) for the purpose of safeguarding the economic well-being of the United Kingdom.
- (3) The matters to be taken into account in considering whether a warrant is necessary as mentioned in subsection (2) above shall include whether the information which it is considered necessary to acquire could reasonably be acquired by other means.
- (4) A warrant shall not be considered necessary as mentioned in subsection (2)(c) above unless the information which it is considered necessary to acquire is information relating to the acts or intentions of persons outside the British Islands.
- (5) References in the following provisions of this Act to a warrant are references to a warrant under this section.

3 Scope of warrants

- (1) Subject to subsection (2) below, the interception required by a warrant shall be the interception of—
- (a) such communications as are sent to or from one or more addresses specified in the warrant, being an address or addresses likely to be used for the transmission of communications to or from—
 - (i) one particular person specified or described in the warrant; or
 - (ii) one particular set of premises so specified or described; and
 - (b) such other communications (if any) as it is necessary to intercept in order to intercept communications falling within paragraph (a) above.
- (2) Subsection (1) above shall not apply to a warrant if—
- (a) the interception required by the warrant is the interception, in the course of their transmission by means of a public telecommunication system, of—
 - (i) such external communications as are described in the warrant; and

- (ii) such other communications (if any) as it is necessary to intercept in order to intercept such external communications as are so described; and
 - (b) at the time when the warrant is issued, the Secretary of State issues a certificate certifying the descriptions of intercepted material the examination of which he considers necessary as mentioned in section 2(2) above.
- (3) A certificate such as is mentioned in subsection (2) above shall not specify an address in the British Islands for the purpose of including communications sent to or from that address in the certified material unless—
 - (a) the Secretary of State considers that the examination of communications sent to or from that address is necessary for the purpose of preventing or detecting acts of terrorism ; and
 - (b) communications sent to or from that address are included in the certified material only in so far as they are sent within such a period, not exceeding three months, as is specified in the certificate.
- (4) A certificate such as is mentioned in subsection (2) above shall not be issued except under the hand of the Secretary of State.
- (5) References in the following provisions of this Act to a certificate are references to a certificate such as is mentioned in subsection (2) above.

4 Issue and duration of warrants

- (1) A warrant shall not be issued except—
 - (a) under the hand of the Secretary of State ; or
 - (b) in an urgent case where the Secretary of State has expressly authorised its issue and a statement of that fact is endorsed thereon, under the hand of an official of his department of or above the rank of Assistant Under Secretary of State.
- (2) A warrant shall, unless renewed under subsection (3) below, cease to have effect at the end of the relevant period.
- (3) The Secretary of State may, at any time before the end of the relevant period, renew a warrant if he considers that the warrant continues to be necessary as mentioned in section 2(2) above.
- (4) If, at any time before the end of the relevant period, the Secretary of State considers that a warrant is no longer necessary as mentioned in section 2(2) above, he shall cancel the warrant.
- (5) A warrant shall not be renewed except by an instrument under the hand of the Secretary of State.
- (6) In this section " the relevant period "—
 - (a) in relation to a warrant which has not been renewed, means—
 - (i) if the warrant was issued under subsection (1)(a) above, the period of two months beginning with the day on which it was issued ; and
 - (ii) if the warrant was issued under subsection (1)(b) above, the period ending with the second working day following that day ;
 - (b) in relation to a warrant which was last renewed within the period mentioned in paragraph (a)(ii) above, means the period of two months beginning with the day on which it was so renewed; and

- (c) in relation to a warrant which was last renewed at any other time, means—
 - (i) if the instrument by which it was so renewed is endorsed with a statement that the renewal is considered necessary as mentioned in section 2(2)(a) or (c) above, the period of six months beginning with the day on which it was so renewed ; and
 - (ii) if that instrument is not so endorsed, the period of one month beginning with that day.

5 Modification of warrants etc.

- (1) The Secretary of State may at any time—
 - (a) modify a warrant by the insertion of any address which he considers likely to be used as mentioned in section 3(1)(a) above; or
 - (b) modify a certificate so as to include in the certified material any material the examination of which he considers necessary as mentioned in section 2(2) above.
- (2) If at any time the Secretary of State considers that any address specified in a warrant is no longer likely to be used as mentioned in section 3(1)(a) above, he shall modify the warrant by the deletion of that address.
- (3) If at any time the Secretary of State considers that the material certified by a certificate includes any material the examination of which is no longer necessary as mentioned in section 2(2) above, he shall modify the certificate so as to exclude that material from the certified material.
- (4) A warrant or certificate shall not be modified under subsection (1) above except by an instrument under the hand of the Secretary of State or, in an urgent case
 - (a) under the hand of a person holding office under the Crown who is expressly authorised by the warrant or certificate to modify it on the Secretary of State's behalf; or
 - (b) where the Secretary of State has expressly authorised the modification and a statement of that fact is endorsed on the instrument, under the hand of such an officer as is mentioned in section 4(1)(b) above.
- (5) An instrument made under subsection (4) (a) or (b) above shall cease to have effect at the end of the fifth working day following the day on which it was issued.

6 Safeguards

- (1) Where the Secretary of State issues a warrant he shall, unless such arrangements have already been made, make such arrangements as he considers necessary for the purpose of securing—
 - (a) that the requirements of subsections (2) and (3) below are satisfied in relation to the intercepted material; and
 - (b) where a certificate is issued in relation to the warrant, that so much of the intercepted material as is not certified by the certificate is not read, looked at or listened to by any person.
- (2) The requirements of this subsection are satisfied in relation to any intercepted material if each of the following, namely—
 - (a) the extent to which the material is disclosed;

- (b) the number of persons to whom any of the material is disclosed;
 - (c) the extent to which the material is copied ; and
 - (d) the number of copies made of any of the material,
- is limited to the minimum that is necessary as mentioned in section 2(2) above.
- (3) The requirements of this subsection are satisfied in relation to any intercepted material if each copy made of any of that material is destroyed as soon as its retention is no longer necessary as mentioned in section 2(2) above.

7 The Tribunal

- (1) There shall be a tribunal (in this Act referred to as " the Tribunal ") in relation to which the provisions of Schedule 1 to this Act shall apply.
- (2) Any person who believes that communications sent to or by him have been intercepted in the course of their transmission by post or by means of a public telecommunication system may apply to the Tribunal for an investigation under this section.
- (3) On such an application (other than one appearing to the Tribunal to be frivolous or vexatious), the Tribunal shall investigate—
- (a) whether there is or has been a relevant warrant or a relevant certificate; and
 - (b) where there is or has been such a warrant or certificate, whether there has been any contravention of sections 2 to 5 above in relation to that warrant or certificate.
- (4) If, on an investigation, the Tribunal, applying the principles applicable by a court on an application for judicial review, conclude that there has been a contravention of sections 2 to 5 above in relation to a relevant warrant or a relevant certificate, they shall—
- (a) give notice to the applicant stating that conclusion ;
 - (b) make a report of their findings to the Prime Minister; and
 - (c) if they think fit, make an order under subsection (5) below.
- (5) An order under this subsection may do one or more of the following, namely—
- (a) quash the relevant warrant or the relevant certificate;
 - (b) direct the destruction of copies of the intercepted material or, as the case may be, so much of it as is certified by the relevant certificate ;
 - (c) direct the Secretary of State to pay to the applicant such sum by way of compensation as may be specified in the order.
- (6) A notice given or report made under subsection (4) above shall state the effect of any order under subsection (5) above made in the case in question.
- (7) If, on an investigation, the Tribunal come to any conclusion other than that mentioned in subsection (4) above, they shall give notice to the applicant stating that there has been no contravention of sections 2 to 5 above in relation to a relevant warrant or a relevant certificate.
- (8) The decisions of the Tribunal (including any decisions as to their jurisdiction) shall not be subject to appeal or liable to be questioned in any court.
- (9) For the purposes of this section—
- (a) a warrant is a relevant warrant in relation to an applicant if—
 - (i) the applicant is specified or described in the warrant; or

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- (ii) an address used for the transmission of communications to or from a set of premises in the British Islands where the applicant resides or works is so specified;
- (b) a certificate is a relevant certificate in relation to an applicant if and to the extent that an address used as mentioned in paragraph (a)(ii) above is specified in the certificate for the purpose of including communications sent to or from that address in the certified material.

8 The Commissioner

- (1) The Prime Minister shall appoint a person who holds or has held a high judicial office (in this section referred to as "the Commissioner") to carry out the following functions, namely—
 - (a) to keep under review the carrying out by the Secretary of State of the functions conferred on him by sections 2 to 5 above and the adequacy of any arrangements made for the purposes of section 6 above ; and
 - (b) to give to the Tribunal all such assistance as the Tribunal may require for the purpose of enabling them to carry out their functions under this Act.
- (2) The Commissioner shall hold office in accordance with the terms of his appointment and there shall be paid to him out of money provided by Parliament such allowances as the Treasury may determine.
- (3) It shall be the duty of every person holding office under the Crown or engaged in the business of the Post Office or in the running of a public telecommunication system to disclose or give to the Commissioner such documents or information as he may require for the purpose of enabling him to carry out his functions under this section.
- (4) It shall be the duty of the Tribunal to send to the Commissioner a copy of every report made by them under section 7(4) above.
- (5) If at any time it appears to the Commissioner—
 - (a) that there has been a contravention of sections 2 to 5 above which has not been the subject of a report made by the Tribunal under section 7(4) above ; or
 - (b) that any arrangements made for the purposes of section 6 above have proved inadequate,he shall make a report to the Prime Minister with respect to that contravention or those arrangements.
- (6) As soon as practicable after the end of each calendar year, the Commissioner shall make a report to the Prime Minister with respect to the carrying out of his functions under this section.
- (7) The Prime Minister shall lay before each House of Parliament a copy of every annual report made by the Commissioner under subsection (6) above together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (8) below.
- (8) If it appears to the Prime Minister, after consultation with the Commissioner, that the publication of any matter in an annual report would be prejudicial to national security, to the prevention or detection of serious crime or to the economic well-being of the United Kingdom, the Prime Minister may exclude that matter from the copy of the report as laid before each House of Parliament.

9 Exclusion of evidence

- (1) In any proceedings before any court or tribunal no evidence shall be adduced and no question in cross-examination shall be asked which (in either case) tends to suggest—
- (a) that an offence under section 1 above has been or is to be committed by any of the persons mentioned in subsection (2) below ; or
 - (b) that a warrant has been or is to be issued to any of those persons.
- (2) The persons referred to in subsection (1) above are—
- (a) any person holding office under the Crown ;
 - (b) the Post Office and any person engaged in the business of the Post Office; and
 - (c) any public telecommunications operator and any person engaged in the running of a public telecommunication system.
- (3) Subsection (1) above does not apply—
- (a) in relation to proceedings for a relevant offence or proceedings before the Tribunal; or
 - (b) where the evidence is adduced or the question in cross examination is asked for the purpose of establishing the fairness or unfairness of a dismissal on grounds of an offence under section 1 above or of conduct from which such an offence might be inferred;
- and paragraph (a) of that subsection does not apply where a person has been convicted of the offence under that section.
- (4) In this section " relevant offence " means—
- (a) an offence under section 1 above or under section 45 of the Telegraph Act 1863, section 20 of the Telegraph Act 1868, section 58 of the Post Office Act 1953 or section 45 of the 1984 Act;
 - (b) an offence under section 1 or 2 of the Official Secrets Act 1911 relating to any sketch, plan, model, article, note, document or information which tends to suggest as mentioned in subsection (1) above ;
 - (c) perjury committed in the course of proceedings for a relevant offence;
 - (d) attempting or conspiring to commit, or aiding, abetting counselling or procuring the commission of, an offence falling within any of the preceding paragraphs; and
 - (e) contempt of court committed in the course of, or in relation to, proceedings for a relevant offence.

10 Interpretation

- (1) In this Act, unless the context otherwise requires—
- "the 1984 Act" means the Telecommunications Act 1984;
 - "address" means any postal or telecommunication address ;
 - " copy ", in relation to intercepted material, means any of the following, whether or not in documentary form—
 - (a) any copy, extract or summary of the material; and
 - (b) any record of the identities of the persons to or by whom the material was sent,
- and cognate expressions shall be construed accordingly ;

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" external communication " means a communication sent or received outside the British Islands;

" high judicial office " has the same meaning as in the Appellate Jurisdiction Act 1876 ;

" intercepted material", in relation to a warrant, means the communications intercepted in obedience to that warrant;

" person " includes any organisation and any association or combination of persons ;

" public telecommunications operator " and " public telecommunication system " have the same meanings as in the 1984 Act;

" public telecommunication service" means a telecommunication service provided by means of a public telecommunication system;

" statutory maximum " has the meaning given by section 74 of the Criminal Justice Act 1982 ;

" telecommunication service " has the same meaning as in the 1984 Act;

" the Tribunal" means the tribunal established under section 7 above;

" wireless telegraphy" has the same meaning as in the Wireless Telegraphy Act 1949 ;

" working day " means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

- (2) For the purposes of this Act a communication which is in the course of its transmission otherwise than by means of a public telecommunication system shall be deemed to be in the course of its transmission by means of such a system if its mode of transmission identifies it as a communication which—
- (a) is to be or has been transmitted by means of such a system; and
 - (b) has been sent from, or is to be sent to, a country or territory outside the British Islands.
- (3) For the purposes of this Act conduct which constitutes or, if it took place in the United Kingdom, would constitute one or more offences shall be regarded as serious crime if, and only if—
- (a) it involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose ; or
 - (b) the offence or one of the offences is an offence for which a person who has attained the age of twenty-one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more.

11 Amendments, saving and repeal

- (1) For section 45 of the 1984 Act (interception and disclosure of messages etc.) there shall be substituted the section set out in Schedule 2 to this Act.
- (2) In section 58 of the Post Office Act 1953 (opening or delaying of postal packets by officers of Post Office)—
 - (a) for the words " an express warrant in writing under the hand of a Secretary of State " in subsection (1); and
 - (b) for the words " a warrant in writing under the hand of a Secretary of State " in subsection (2),

there shall be substituted the words " a warrant issued by the Secretary of State under section 2 of the Interception of Communications Act 1985".

- (3) In paragraph 1(1) of Schedule 5 to the Post Office Act 1969 (repair of minor deficiencies in certain Acts) for the words " in obedience to a warrant under the hand of a Secretary of State " there shall be substituted the words " in obedience to a warrant issued by the Secretary of State under section 2 of the Interception of Communications Act 1985 or in pursuance of a requirement imposed by the Commissioner under section 8(3) of that Act".
- (4) For the avoidance of doubt it is hereby declared that nothing in this Act (except subsections (2) and (3) above) affects any power conferred on the Post Office by or under any enactment to open, detain or delay any postal packet or to deliver any such packet to a person other than the person to whom it is addressed.
- (5) Section 4 of the Official Secrets Act 1920 (power to require the production of telegrams) is hereby repealed.

12 Short title, commencement and extent

- (1) This Act may be cited as the Interception of Communications Act 1985.
- (2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (3) This Act extends to Northern Ireland.
- (4) Her Majesty may by Order in Council direct that any of the provisions of this Act specified in the Order shall extend to the Isle of Man or any of the Channel Islands with such exceptions, adaptations and modifications as may be so specified.

SCHEDULES

SCHEDULE 1

Section 7.

THE TRIBUNAL

Constitution of Tribunal

- 1 (1) The Tribunal shall consist of five members each of whom shall be a barrister, advocate or solicitor of not less than ten years' standing.
- (2) The members of the Tribunal shall be such persons as Her Majesty may by Letters Patent appoint and shall, subject to the following sub-paragraphs, hold office during good behaviour.
- (3) A member of the Tribunal shall vacate office at the end of the period of five years beginning with the day of his appointment but shall be eligible for reappointment.
- (4) A member of the Tribunal may be relieved of office by Her Majesty at his own request.
- (5) A member of the Tribunal may be removed from office by Her Majesty on an Address presented to Her by both Houses of Parliament.

President and Vice-President

- 2 (1) Her Majesty may by Letters Patent appoint as President or Vice-President of the Tribunal a person who is, or by virtue of those Letters will be, a member of the Tribunal.
- (2) If at any time the President of the Tribunal is temporarily unable to carry out the functions of the President under this Schedule, the Vice-President shall carry out those functions.
- (3) A person shall cease to be President or Vice-President of the Tribunal if he ceases to be a member of the Tribunal.

Procedure of Tribunal

- 3 The functions of the Tribunal in relation to any application made to them shall be capable of being carried out, in any place in the United Kingdom, by any two or more members of the Tribunal designated for the purpose by their President; and different members of the Tribunal may carry out functions in relation to different applications at the same time.
- 4 (1) It shall be the duty of every person holding office under the Crown or engaged in the business of the Post Office or in the running of a public telecommunications system to disclose or give to the Tribunal such documents or information as they may require for the purpose of enabling them to carry out their functions under this Act.

(2) Subject to paragraph 6(2) below, the Tribunal shall carry out their functions under this Act (except their functions in relation to reports under section 7(4) of this Act) in such a way as to secure that no document or information which is disclosed or given to the Tribunal is disclosed or given to any person (including an applicant to the Tribunal or a person holding office under the Crown) without the consent of the person who disclosed or gave it to the Tribunal; and accordingly the Tribunal shall not, except in reports under section 7(4) of this Act, give reasons for any decision made by them.

(3) Subject to sub-paragraph (2) above, the Tribunal may determine their own procedure.

Salaries and expenses

5 (1) The Secretary of State shall pay to the members of the Tribunal out of money provided by Parliament such remuneration and allowances as he may with the approval of the Treasury determine.

(2) Such expenses of the Tribunal as the Secretary of State may with the approval of the Treasury determine shall be defrayed by him out of money provided by Parliament.

Officers

6 (1) The Secretary of State may, after consultation with the Tribunal and with the approval of the Treasury as to numbers, provide the Tribunal with such officers as he thinks necessary for the proper discharge of their functions.

(2) The Tribunal may authorise any officer provided under this paragraph to obtain any documents or information on the Tribunal's behalf.

Parliamentary disqualification

7 (1) In Part II of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies whose members are disqualified) there shall be inserted (at the appropriate place) the following entry—

“The Tribunal established under the Interception of Communications Act 1985”;

and the like insertion shall be made in Part II of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.

SCHEDULE 2

Section 11.

SECTION SUBSTITUTED FOR SECTION 45 OF 1984 ACT

“45 Disclosure of messages etc.

(1) A person engaged in the running of a public telecommunication system who otherwise than in the course of his duty intentionally discloses to any person—

(a) the contents of any message which has been intercepted in the course of its transmission by means of that system ; or

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- (b) any information concerning the use made of telecommunication services provided for any other person by means of that system, shall be guilty of an offence.
- (2) Subsection (1) above does not apply to—
- (a) any disclosure which is made for the prevention or detection of crime or for the purposes of any criminal proceedings;
 - (b) any disclosure of matter falling within paragraph (a) of that subsection which is made in obedience to a warrant issued by the Secretary of State under section 2 of the Interception of Communications Act 1985 or in pursuance of a requirement imposed by the Commissioner under section 8(3) of that Act; or
 - (c) any disclosure of matter falling within paragraph (b) of that subsection which is made in the interests of national security or in pursuance of the order of a court.
- (3) For the purposes of subsection (2)(c) above a certificate signed by a Minister of the Crown who is a member of the Cabinet, or by the Attorney General or the Lord Advocate, certifying that a disclosure was made in the interests of national security shall be conclusive evidence of that fact; and a document purporting to be such a certificate shall be received in evidence and deemed to be such a certificate unless the contrary is proved.
- (4) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.”