



# Investigatory Powers Act 2016

## 2016 CHAPTER 25

### PART 2

#### LAWFUL INTERCEPTION OF COMMUNICATIONS

### CHAPTER 1

#### INTERCEPTION AND EXAMINATION WITH A WARRANT

##### *Further provision about warrants*

#### **40 Special rules for certain mutual assistance warrants**

- (1) For the purposes of this section a warrant is a “relevant mutual assistance warrant” if—
  - (a) the warrant is for the purposes of a request for assistance made under <sup>F1</sup>... an international mutual assistance agreement by the competent authorities of a country or territory outside the United Kingdom, and
  - (b) either—
    - (i) it appears that the interception subject is outside the United Kingdom, or
    - (ii) the interception authorised or required by the warrant is to take place in relation only to premises outside the United Kingdom.
- (2) The decision to issue a relevant mutual assistance warrant may be taken by a senior official designated by the Secretary of State for that purpose.
- (3) In such a case, the warrant must contain—
  - (a) a statement that the warrant is issued for the purposes of a request for assistance made under <sup>F2</sup>... an international mutual assistance agreement <sup>F2</sup>... by the competent authorities of a country or territory outside the United Kingdom, and
  - (b) whichever of the following statements is applicable—

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**Changes to legislation:** *Investigatory Powers Act 2016, Section 40 is up to date with all changes known to be in force on or before 14 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (i) a statement that the interception subject appears to be outside the United Kingdom;
  - (ii) a statement that the interception authorised or required by the warrant is to take place in relation only to premises outside the United Kingdom.
- (4) A relevant mutual assistance warrant may be renewed by a senior official designated by the Secretary of State for that purpose; and references in section 33 to the appropriate person include, in the case of such a warrant, references to that senior official.
- (5) Where a senior official renews a relevant mutual assistance warrant in accordance with subsection (4), the instrument renewing the warrant must contain—
  - (a) a statement that the renewal is for the purposes of a request for assistance made under <sup>F3</sup>... an international mutual assistance agreement <sup>F3</sup>... by the competent authorities of a country or territory outside the United Kingdom, and
  - (b) whichever of the following statements is applicable—
    - (i) a statement that the interception subject appears to be outside the United Kingdom;
    - (ii) a statement that the interception authorised or required by the warrant is to take place in relation only to premises outside the United Kingdom.
- (6) Subsection (7) applies in a case where—
  - (a) a relevant mutual assistance warrant—
    - (i) was issued containing the statement set out in subsection (3)(b)(i), or
    - (ii) has been renewed by an instrument containing the statement set out in subsection (5)(b)(i), and
  - (b) the last renewal (if any) of the warrant was a renewal by a senior official in accordance with subsection (4).
- (7) If the Secretary of State, or a senior official acting on behalf of the Secretary of State, believes that the person, group or organisation named or described in the warrant as the interception subject is in the United Kingdom, that person must cancel the warrant under section 39.
- (8) In this section—
  - “the interception subject”, in relation to a warrant, means the person, group of persons or organisation to which the warrant relates;
  - “senior official” means a member of the Senior Civil Service or a member of the Senior Management Structure of Her Majesty's Diplomatic Service.

#### Textual Amendments

- F1** Words in s. 40(1)(a) omitted (31.12.2020) by virtue of [The Law Enforcement and Security \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/742\)](#), regs. 1, **82(7)(a)** (with reg. 83); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Words in s. 40(3)(a) omitted (31.12.2020) by virtue of [The Law Enforcement and Security \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/742\)](#), regs. 1, **82(7)(b)** (with reg. 83); 2020 c. 1, Sch. 5 para. 1(1)

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**F3** Words in s. 40(5)(a) omitted (31.12.2020) by virtue of [The Law Enforcement and Security \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/742\)](#), regs. 1, **82(7)(b)** (with reg. 83); 2020 c. 1, Sch. 5 para. 1(1)

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**Commencement Information**

- I1** S. 40(1)-(3)(8) in force at 31.5.2018 by [S.I. 2018/652](#), **reg. 3(p)**  
**I2** S. 40(4)-(7) in force at 27.6.2018 by [S.I. 2018/652](#), **reg. 8(l)**

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 3 para. 8A and cross-heading inserted by [2023 c. 32 Sch. 18 para. 10\(2\)](#)
- Sch. 3 para. 20(2)(ha)(hb) inserted by [2023 c. 32 Sch. 18 para. 10\(3\)\(a\)](#)