



# Investigatory Powers Act 2016

## 2016 CHAPTER 25

### PART 3

#### AUTHORISATIONS FOR OBTAINING COMMUNICATIONS DATA

##### *Further and supplementary provision*

#### **81 Lawfulness of conduct authorised by this Part**

- (1) Conduct is lawful for all purposes if—
  - (a) it is conduct in which any person is authorised to engage by an authorisation or required to undertake by virtue of a notice given in pursuance of an authorisation, and
  - (b) the conduct is in accordance with, or in pursuance of, the authorisation or notice.
- (2) A person (whether or not the person so authorised or required) is not to be subject to any civil liability in respect of conduct that—
  - (a) is incidental to, or is reasonably undertaken in connection with, conduct that is lawful by virtue of subsection (1), and
  - (b) is not itself conduct for which an authorisation or warrant—
    - (i) is capable of being granted under any of the enactments mentioned in subsection (3), and
    - (ii) might reasonably have been expected to have been sought in the case in question.
- (3) The enactments referred to in subsection (2)(b)(i) are—
  - (a) an enactment contained in this Act,
  - (b) an enactment contained in the Regulation of Investigatory Powers Act 2000,
  - (c) an enactment contained in Part 3 of the Police Act 1997 (powers of the police and of customs officers), or
  - (d) section 5 of the Intelligence Services Act 1994 (warrants for the intelligence services).

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### Commencement Information

**II** S. 81 in force at 5.2.2019 by S.I. 2019/174, reg. 2(d)

## 82 Offence of making unauthorised disclosure

- (1) It is an offence for a telecommunications operator, or any person employed or engaged for the purposes of the business of a telecommunications operator, to disclose, without reasonable excuse, to any person the existence of—
- (a) any requirement imposed on the operator by virtue of this Part to disclose communications data relating to that person, or
  - (b) any request made in pursuance of an authorisation for the operator to disclose such data.
- (2) For the purposes of subsection (1), it is, in particular, a reasonable excuse if the disclosure is made with the permission of the relevant public authority which is seeking to obtain the data from the operator (whether the permission is contained in any notice requiring the operator to disclose the data or otherwise).
- (3) 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 [<sup>F1</sup>the general limit in a magistrates' court] (or 6 months, if the offence was committed before [<sup>F2</sup>2 May 2022]), 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.

### Textual Amendments

- F1** Words in s. 82(3)(a)(i) substituted (7.2.2023 at 12.00 p.m.) by The Judicial Review and Courts Act 2022 (Magistrates' Court Sentencing Powers) Regulations 2023 (S.I. 2023/149), regs. 1(2), 2(1), **Sch. Pt. 1**
- F2** Words in s. 82(3)(a)(i) substituted (28.4.2022) by The Criminal Justice Act 2003 (Commencement No. 33) and Sentencing Act 2020 (Commencement No. 2) Regulations 2022 (S.I. 2022/500), regs. 1(2), 5(1), **Sch. Pt. 1**

### Commencement Information

**I2** S. 82 in force at 5.2.2019 by S.I. 2019/174, reg. 2(d)

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### 83 Certain transfer and agency arrangements with public authorities

- (1) The Secretary of State may by regulations provide for—
  - (a) any function under sections 67 to 69 which is exercisable by the Secretary of State to be exercisable instead by another public authority, or
  - (b) any function under sections 67 to 69 which is exercisable by a public authority by virtue of paragraph (a) to be exercisable instead by the Secretary of State.
- (2) The Secretary of State may by regulations modify any enactment about a public authority for the purpose of enabling or otherwise facilitating any function exercisable by the Secretary of State under this Part to be exercisable on behalf of the Secretary of State by the authority concerned.
- (3) Regulations under subsection (2) do not affect the Secretary of State's responsibility for the exercise of the functions concerned.
- (4) Subsection (2) does not apply in relation to any function of the Secretary of State of making regulations.
- (5) Schedule 5 (which contains further safeguards and provisions supplementing this section) has effect.

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#### Commencement Information

**I3** S. 83 in force at 5.2.2019 by [S.I. 2019/174](#), [reg. 2\(d\)](#)

### 84 Application of Part 3 to postal operators and postal services

- (1) This Part applies to postal operators and postal services as it applies to telecommunications operators and telecommunications services.
- (2) In its application by virtue of subsection (1), this Part has effect as if—
  - (a) any reference to a telecommunications operator were a reference to a postal operator,
  - (b) any reference to a telecommunications service were a reference to a postal service,
  - (c) any reference to a telecommunication system were a reference to a postal service,
  - (d) sections 61(3)(a) and 62 were omitted, <sup>F3</sup>...
  - <sup>F4</sup>(da) the reference in sections 60A(8)(a), 61(7A)(a) and 61A(8)(a) to events data were a reference to anything within paragraph (a) or (b) of the definition of “communications data” in section 262(3), and]
  - (e) in Part 2 of Schedule 4, for “which is entity data” there were substituted “ within paragraph (c) of the definition of “communications data” in section 262(3) ”.

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#### Textual Amendments

**F3** Word in s. 84(2)(d) omitted (5.2.2019) by virtue of [The Data Retention and Acquisition Regulations 2018 \(S.I. 2018/1123\)](#), [reg. 1\(4\)\(d\)\(5\)](#), [Sch. 1 para. 20\(a\)](#) (see [S.I. 2019/174](#), [reg. 2\(c\)](#))

**F4** S. 84(2)(da) inserted (5.2.2019) by [The Data Retention and Acquisition Regulations 2018 \(S.I. 2018/1123\)](#), [reg. 1\(4\)\(d\)\(5\)](#), [Sch. 1 para. 20\(b\)](#) (see [S.I. 2019/174](#), [reg. 2\(c\)](#))

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**Commencement Information**

**I4** S. 84 in force at 5.2.2019 by [S.I. 2019/174](#), [reg. 2\(d\)](#)

**85 Extra-territorial application of Part 3**

- (1) An authorisation may relate to conduct outside the United Kingdom and persons outside the United Kingdom.
- (2) A notice given in pursuance of an authorisation may relate to conduct outside the United Kingdom and persons outside the United Kingdom.
- (3) Where such a notice is to be given to a person outside the United Kingdom, the notice may be given to the person in any of the following ways (as well as by electronic or other means of service)—
  - (a) by delivering it to the person's principal office within the United Kingdom or, if the person has no such office in the United Kingdom, to any place in the United Kingdom where the person carries on business or conducts activities,
  - (b) if the person has specified an address in the United Kingdom as one at which the person, or someone on the person's behalf, will accept documents of the same description as a notice, by delivering it to that address,
  - (c) by notifying the person by such other means as the authorised officer considers appropriate (which may include notifying the person orally).
- (4) In determining for the purposes of subsection (3) of section 66 whether it is reasonably practicable for a telecommunications operator outside the United Kingdom to take any steps in a country or territory outside the United Kingdom for the purpose of complying with a duty imposed by virtue of subsection (1) or (2) of that section, the matters to be taken into account include the following—
  - (a) any requirements or restrictions under the law of that country or territory that are relevant to the taking of those steps, and
  - (b) the extent to which it is reasonably practicable to comply with the duty in a way that does not breach any of those requirements or restrictions.
- (5) Nothing in the definition of “telecommunications operator” limits the type of communications data in relation to which an authorisation, or a request or requirement of a kind which gives rise to a duty under section 66(1) or (2), may apply.

**Commencement Information**

**I5** S. 85 in force at 5.2.2019 by [S.I. 2019/174](#), [reg. 2\(d\)](#)

**86 Part 3: interpretation**

- (1) In this Part—
 

“authorisation” means an authorisation [<sup>F5</sup>under section 60A, 61 or 61A]<sup>F6</sup>(including sections 61 and 61A as modified by sections 78 and 80)], “designated senior officer”—

  - (a) <sup>F7</sup>...
  - (b) in relation to any <sup>F8</sup>... relevant public authority, has the meaning given by section 70(3),

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“filtering arrangements” means any arrangements under section 67(1),  
“officer”, in relation to a relevant public authority, means a person holding an office, rank or position with that authority,  
“relevant public authority” means a public authority which is a relevant public authority for the purposes of this Part by virtue of section 70(2) or 73(1).

(2) In this Part “local authority” means—

- (a) a district or county council in England,
- (b) a London borough council,
- (c) the Common Council of the City of London in its capacity as a local authority,
- (d) the Council of the Isles of Scilly,
- (e) a county council or county borough council in Wales,
- (f) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994, and
- (g) a district council in Northern Ireland.

[<sup>F9</sup>(2A) In this Part, “serious crime” means, in addition to crime which falls within paragraph (a) or (b) of the definition of “serious crime” in section 263(1), crime where the offence, or one of the offences, which is or would be constituted by the conduct concerned is—

- (a) an offence for which an individual who has reached the age of 18 (or, in relation to Scotland or Northern Ireland, 21) is capable of being sentenced to imprisonment for a term of 12 months or more (disregarding any enactment prohibiting or restricting the imprisonment of individuals who have no previous convictions), or
- (b) an offence—
  - (i) by a person who is not an individual, or
  - (ii) which involves, as an integral part of it, the sending of a communication or a breach of a person’s privacy.]

(3) See also—

section 261 (telecommunications definitions),  
section 262 (postal definitions),  
section 263 (general definitions),  
section 265 (index of defined expressions).

#### Textual Amendments

- F5** Words in s. 86(1) substituted (5.2.2019) by [The Data Retention and Acquisition Regulations 2018 \(S.I. 2018/1123\)](#), reg. 1(4)(d)(5), [Sch. 1 para. 21\(2\)\(a\)](#) (see S.I. 2019/174, reg. 2(c))
- F6** Words in s. 86(1) inserted (17.5.2019) by [The Communications Data Acquisition Regulations 2019 \(S.I. 2019/939\)](#), regs. 1(2), 5
- F7** Words in s. 86(1) omitted (5.2.2019) by virtue of [The Data Retention and Acquisition Regulations 2018 \(S.I. 2018/1123\)](#), reg. 1(4)(d)(5), [Sch. 1 para. 21\(2\)\(b\)\(i\)](#) (see S.I. 2019/174, reg. 2(c))
- F8** Word in s. 86(1) omitted (5.2.2019) by virtue of [The Data Retention and Acquisition Regulations 2018 \(S.I. 2018/1123\)](#), reg. 1(4)(d)(5), [Sch. 1 para. 21\(2\)\(b\)\(ii\)](#) (see S.I. 2019/174, reg. 2(c))
- F9** S. 86(2A) inserted (5.2.2019) by [The Data Retention and Acquisition Regulations 2018 \(S.I. 2018/1123\)](#), reg. 1(4)(d)(5), [Sch. 1 para. 21\(3\)](#) (see S.I. 2019/174, reg. 2(c))

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#### Commencement Information

**16** S. 86 in force at 5.2.2019 by [S.I. 2019/174](#), **reg. 2(d)**

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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):

- s. 58(4)(e) inserted by [2023 c. 41 Sch. 13 para. 9](#)