



# Investigatory Powers Act 2016

## 2016 CHAPTER 25

### PART 5

#### EQUIPMENT INTERFERENCE

##### *Supplementary provision*

#### **129 Safeguards relating to retention and disclosure of material**

- (1) The issuing authority must ensure, in relation to every targeted equipment interference warrant issued by that authority, that arrangements are in force for securing that the requirements of subsections (2) and (5) are met in relation to the material obtained under the warrant.

This is subject to subsection (10).

- (2) The requirements of this subsection are met in relation to the material obtained under a 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—
- (a) it is, or is likely to become, necessary on any relevant grounds (see subsection (7)),
  - (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 person to whom the warrant is or was addressed,

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- (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 a warrant if every copy made of any of that material (if not destroyed earlier) is destroyed as soon as there are no longer any grounds for retaining it (see subsection (6)).
- (6) For the purposes of subsection (5), there are no longer any grounds for retaining a copy of any material if, and only if—
- (a) its retention is not necessary, or not likely to become necessary, on any relevant grounds (see subsection (7)), and
  - (b) its retention is not necessary for any of the purposes mentioned in paragraphs (b) to (e) of subsection (3) above.
- (7) In subsections (3) and (6), “relevant grounds” means—
- (a) in relation to a warrant issued under section 102, grounds falling within section 102(5);
  - (b) in relation to a warrant issued under section 103, the purpose of preventing or detecting serious crime;
  - (c) in relation to a warrant issued under section 104, the interests of national security;
  - (d) in the case of a warrant issued under section 106(1), the purpose mentioned in section 106(1)(a);
  - (e) in the case of a warrant issued under section 106(3), the purpose mentioned in section 106(3)(a).
- (8) Where—
- (a) material obtained under a targeted equipment interference warrant is retained, following its examination, for purposes other than the destruction of the material, and
  - (b) it is material that contains confidential journalistic material or identifies a source of journalistic material,
- the person to whom the warrant is addressed must inform the Investigatory Powers Commissioner as soon as is reasonably practicable.
- (9) Subsection (10) 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.
- (10) To the extent that the requirements of subsections (2) and (5) relate to any of the material mentioned in subsection (9)(a), or to the copy mentioned in subsection (9)(b), the arrangements made for the purpose of this section are not required to secure that those requirements are met (see instead section 130).

(11) In this section—

“copy”, in relation to 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;

“the issuing authority” means—

- (a) in the case of a warrant issued under section 102 or 104, the Secretary of State;
- (b) in the case of a warrant issued under section 103, the Scottish Ministers;
- (c) in the case of a warrant issued under section 106, the law enforcement chief who issued the warrant (or on whose behalf it was issued);

“overseas authorities” means authorities of a country or territory outside the United Kingdom.

### **130 Safeguards relating to disclosure of material overseas**

(1) The issuing authority must ensure, in relation to every targeted 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 issuing authority that requirements corresponding to the requirements of section 129(2) and (5) will apply, to such extent (if any) as the issuing authority 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 129;

“issuing authority” also has the same meaning as in that section;

“overseas authorities” means authorities of a country or territory outside the United Kingdom.

### **131 Additional safeguards for items subject to legal privilege**

(1) This section applies where an item subject to legal privilege which has been obtained under a targeted equipment interference warrant is retained, following its examination, for purposes other than the destruction of the item.

(2) The person to whom the warrant is addressed must inform the Investigatory Powers Commissioner of the retention of the item as soon as is reasonably practicable.

(3) Unless the Investigatory Powers Commissioner considers that subsection (5) applies to the item, the Commissioner must—

- (a) direct that the item is destroyed, or

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- (b) impose one or more conditions as to the use or retention of that item.
- (4) If the Investigatory Powers Commissioner considers that subsection (5) applies to the item, the Commissioner may nevertheless impose such conditions under subsection (3)(b) as the Commissioner considers necessary for the purpose of protecting the public interest in the confidentiality of items subject to legal privilege.
- (5) 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.
- (6) The Investigatory Powers Commissioner—
  - (a) may require an affected party to make representations about how the Commissioner should exercise any function under subsection (3), 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)).
- (7) Each of the following is an “affected party” for the purposes of subsection (6)—
  - (a) the issuing authority (within the meaning given by section 129(11));
  - (b) the person to whom the warrant is or was addressed.

### **132 Duty not to make unauthorised disclosures**

- (1) A person to whom this section applies must not make an unauthorised disclosure to another person.
- (2) A person makes an unauthorised disclosure for the purposes of this section if—
  - (a) the person discloses any of the matters within subsection (4) in relation to a warrant under this Part, and
  - (b) the disclosure is not an excepted disclosure (see section 133).
- (3) This section applies to the following persons—
  - (a) any person who may apply for a warrant under this Part;
  - (b) any person holding office under the Crown;
  - (c) any person employed by, or for the purposes of, a police force;
  - (d) any telecommunications operator;
  - (e) any person employed or engaged for the purposes of any business of a telecommunications operator;
  - (f) any person to whom any of the matters within subsection (4) have been disclosed in relation to a warrant under this Part.
- (4) The matters referred to in subsection (2)(a) are—
  - (a) the existence or contents of the warrant;
  - (b) the details of the issue of the warrant or of any renewal or modification of the warrant;
  - (c) the existence or contents of any requirement to provide assistance in giving effect to the warrant;
  - (d) the steps taken in pursuance of the warrant or of any such requirement;
  - (e) any of the material obtained under the warrant in a form which identifies it as having been obtained under a warrant under this Part.

### **133 Section 132: meaning of “excepted disclosure”**

- (1) For the purposes of section 132, a disclosure made in relation to a warrant is an excepted disclosure if it falls within any of the Heads set out in—
  - (a) subsection (2) (disclosures authorised by warrant etc.);
  - (b) subsection (3) (oversight bodies);
  - (c) subsection (4) (legal proceedings);
  - (d) subsection (6) (disclosures of a general nature).
- (2) Head 1 is—
  - (a) a disclosure authorised by the warrant;
  - (b) a disclosure authorised by the person to whom the warrant is or was addressed or under any arrangements made by that person for the purposes of this section;
  - (c) a disclosure authorised by the terms of any requirement to provide assistance in giving effect to the warrant (including any requirement for disclosure imposed by virtue of section 126(4)).
- (3) Head 2 is—
  - (a) a disclosure made to, or authorised by, a Judicial Commissioner;
  - (b) a disclosure made to the Independent Police Complaints Commission for the purposes of facilitating the carrying out of any of its functions;
  - (c) a disclosure made to the Intelligence and Security Committee of Parliament for the purposes of facilitating the carrying out of any of its functions.
- (4) Head 3 is—
  - (a) a disclosure made—
    - (i) in contemplation of, or in connection with, any legal proceedings, and
    - (ii) for the purposes of those proceedings;
  - (b) a disclosure made—
    - (i) by a professional legal adviser (“L”) to L’s client or a representative of L’s client, or
    - (ii) by L’s client, or by a representative of L’s client, to L,in connection with the giving, by L to L’s client, of advice about the effect of the provisions of this Part.
- (5) But a disclosure within Head 3 is not an excepted disclosure if it is made with the intention of furthering a criminal purpose.
- (6) Head 4 is—
  - (a) a disclosure which—
    - (i) is made by a telecommunications operator in accordance with a requirement imposed by regulations made by the Secretary of State, and
    - (ii) consists of statistical information of a description specified in the regulations;
  - (b) a disclosure of information that does not relate to any particular warrant under this Part but relates to such warrants in general.

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### 134 Offence of making unauthorised disclosure

- (1) A person commits an offence if—
- (a) the person discloses any matter in breach of section 132(1), and
  - (b) the person knew that the disclosure was in breach of that section.
- (2) A person who is 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 5 years or to a fine, or to both.
- (3) In proceedings against any person for an offence under this section in respect of any disclosure, it is a defence for the person to show that the person could not reasonably have been expected, after first becoming aware of the matter disclosed, to take steps to prevent the disclosure.

### 135 Part 5: interpretation

- (1) In this Part—
- “communication” includes—
- (a) anything comprising speech, music, sounds, visual images or data of any description, and
  - (b) signals serving either for the impartation of anything between persons, between a person and a thing or between things or for the actuation or control of any apparatus;
- “equipment” means equipment producing electromagnetic, acoustic or other emissions or any device capable of being used in connection with such equipment;
- “equipment data” has the meaning given by section 100;
- “private information” includes information relating to a person’s private or family life;
- “protected material”, in relation to a targeted examination warrant, has the meaning given by section 99(9);
- “senior official” means—
- (a) in the case of a targeted equipment interference warrant which is or may be issued by the Secretary of State or a law enforcement chief, or in the

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- case of a targeted examination warrant which is or may be issued by the Secretary of State, a member of the Senior Civil Service or a member of the Senior Management Structure of Her Majesty’s Diplomatic Service;
- (b) in the case of a targeted equipment interference warrant or a targeted examination warrant which is or may be issued by the Scottish Ministers, a member of the staff of the Scottish Administration who is a member of the Senior Civil Service;

“targeted examination warrant” has the meaning given by section 99(9).

(2) See also—

- section 261 (telecommunications definitions),
- section 263 (general definitions),
- section 264 (general definitions: “journalistic material” etc.),
- section 265 (index of defined expressions).