



# Investigatory Powers Act 2016

## 2016 CHAPTER 25

### PART 2

#### LAWFUL INTERCEPTION OF COMMUNICATIONS

### CHAPTER 1

#### INTERCEPTION AND EXAMINATION WITH A WARRANT

##### *Additional safeguards*

#### **27 Items subject to legal privilege**

- (1) Subsections (2) to (5) apply if—
  - (a) an application is made by or on behalf of an intercepting authority for a warrant under this Chapter, and
  - (b) the purpose, or one of the purposes, of the warrant is—
    - (i) in the case of a targeted interception warrant or mutual assistance warrant, to authorise or require the interception of items subject to legal privilege, or
    - (ii) in the case of a targeted examination warrant, to authorise the selection of such items for examination.
- (2) The application must contain a statement that the purpose, or one of the purposes, of the warrant is to authorise or require the interception, or (in the case of a targeted examination warrant) the selection for examination, of items subject to legal privilege.
- (3) In deciding whether to issue the warrant, the person to whom the application is made must have regard to the public interest in the confidentiality of items subject to legal privilege.
- (4) The person to whom the application is made may issue the warrant only if the person considers—

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**Changes to legislation:** *Investigatory Powers Act 2016, Section 27 is up to date with all changes known to be in force on or before 24 April 2024. 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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- (a) that there are exceptional and compelling circumstances that make it necessary to authorise or require the interception, or (in the case of a targeted examination warrant) the selection for examination, of items subject to legal privilege, and
  - (b) that the arrangements made for the purposes of section 53 or (as the case may be) section 150 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of such items.
- (5) But the warrant may not be issued if it is considered necessary only as mentioned in section 20(2)(c).
- (6) For the purposes of subsection (4)(a), there cannot be exceptional and compelling circumstances that make it necessary to authorise or require the interception, or the selection for examination, of items subject to legal privilege unless—
- (a) the public interest in obtaining the information that would be obtained by the warrant 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) in the case of a warrant considered necessary as mentioned in section 20(2)(b) or (3) or (as the case may be) 21(4), obtaining the information is necessary for the purpose of preventing death or significant injury.
- (7) Subsections (8) and (9) apply if—
- (a) an application is made by or on behalf of an intercepting authority for a warrant under this Chapter,
  - (b) the intercepting authority considers that the relevant communications are likely to include items subject to legal privilege, and
  - (c) subsections (2) to (5) do not apply.
- (8) The application must contain—
- (a) a statement that the intercepting authority considers that the relevant communications are likely to include items subject to legal privilege, and
  - (b) an assessment of how likely it is that the relevant communications will include such items.
- (9) The person to whom the application is made may issue the warrant only if the person considers that the arrangements made for the purposes of section 53 or (as the case may be) section 150 include specific arrangements for the handling, retention, use and destruction of items subject to legal privilege.
- (10) In this section “relevant communications” means—
- (a) in relation to a targeted interception warrant or mutual assistance warrant, any communications the interception of which is authorised or required by the warrant;
  - (b) in relation to a targeted examination warrant, any communications the content of which the warrant authorises to be selected for examination.
- (11) Subsections (12) and (13) apply if—
- (a) an application is made by or on behalf of an intercepting authority for a warrant under this Chapter,
  - (b) the purpose, or one of the purposes, of the warrant is—

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- (i) in the case of a targeted interception warrant or mutual assistance warrant, to authorise or require the interception of communications that, if they were not made with the intention of furthering a criminal purpose, would be items subject to legal privilege, or
    - (ii) in the case of a targeted examination warrant, to authorise the selection of such communications for examination, and
  - (c) the intercepting authority considers that the communications (“the targeted communications”) are likely to be communications made with the intention of furthering a criminal purpose.
- (12) The application must—
- (a) contain a statement that the purpose, or one of the purposes, of the warrant is to authorise or require the interception, or (in the case of a targeted examination warrant) the selection for examination, of communications that, if they were not made with the intention of furthering a criminal purpose, would be items subject to legal privilege, and
  - (b) set out the reasons for believing that the targeted communications are likely to be communications made with the intention of furthering a criminal purpose.
- (13) The person to whom the application is made may issue the warrant only if the person considers that the targeted communications are likely to be communications made with the intention of furthering a criminal purpose.

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**Commencement Information**

**II** S. 27 in force at 31.5.2018 by [S.I. 2018/652](#), [reg. 3\(k\)](#)

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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](#)