



Investigatory Powers Act 2016

2016 CHAPTER 25

PART 5

EQUIPMENT INTERFERENCE

Additional safeguards

111 Members of Parliament etc.

- (1) Subsection (3) applies where—
 - (a) an application is made to the Secretary of State for a targeted equipment interference warrant, and
 - (b) the purpose of the warrant is to obtain—
 - (i) communications sent by, or intended for, a person who is a member of a relevant legislature, or
 - (ii) a member of a relevant legislature's private information.
- (2) Subsection (3) also applies where—
 - (a) an application is made to the Secretary of State for a targeted examination warrant, and
 - (b) the purpose of the warrant is to authorise the selection for examination of protected material which consists of—
 - (i) communications sent by, or intended for, a person who is a member of a relevant legislature, or
 - (ii) a member of a relevant legislature's private information.
- (3) The Secretary of State may not issue the warrant without the approval of the Prime Minister.
- (4) Subsection (5) applies where—
 - (a) an application is made under section 106 to a law enforcement chief for a targeted equipment interference warrant, and
 - (b) the purpose of the warrant is to obtain—

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- (i) communications sent by, or intended for, a person who is a member of a relevant legislature, or
 - (ii) a member of a relevant legislature’s private information.
- (5) The law enforcement chief may not issue the warrant without the approval of the Secretary of State unless the law enforcement chief believes that the warrant (if issued) would authorise interference only with equipment which would be in Scotland at the time of the issue of the warrant or which the law enforcement chief believes would be in Scotland at that time.
- (6) The Secretary of State may give approval for the purposes of subsection (5) only with the approval of the Prime Minister.
- (7) In a case where the decision whether to issue a targeted equipment interference warrant is to be taken by an appropriate delegate in relation to a law enforcement chief under section 106(4), the reference in subsection (5) to the law enforcement chief is to be read as a reference to the appropriate delegate.
- (8) In this section “member of a relevant legislature” means—
- (a) a member of either House of Parliament;
 - (b) a member of the Scottish Parliament;
 - (c) a member of the National Assembly for Wales;
 - (d) a member of the Northern Ireland Assembly;
 - (e) a member of the European Parliament elected for the United Kingdom.

112 Items subject to legal privilege

- (1) Subsections (2) to (5) apply if—
- (a) an application is made for a warrant under this Part, and
 - (b) the purpose, or one of the purposes, of the warrant is—
 - (i) in the case of a targeted equipment interference warrant, to authorise or require interference with equipment for the purpose of obtaining 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 interference with equipment for the purpose of obtaining items subject to legal privilege 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—
- (a) that there are exceptional and compelling circumstances which make it necessary to authorise or require interference with equipment for the purpose of obtaining items subject to legal privilege 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 129 or (as the case may be) section 191 (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 102(5)(c).
- (6) For the purposes of subsection (4)(a), there cannot be exceptional and compelling circumstances that make it necessary to authorise or require interference with equipment for the purpose of obtaining, 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 for the purposes of preventing or detecting serious crime or as mentioned in section 106(3)(a), 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 for a warrant under this Part,
 - (b) the applicant considers that the relevant material is 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 applicant considers that the relevant material is likely to include items subject to legal privilege, and
 - (b) an assessment of how likely it is that the relevant material 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 129 or (as the case may be) section 191 include specific arrangements for the handling, retention, use and destruction of items subject to legal privilege.
- (10) In this section, “relevant material” means—
 - (a) in relation to a targeted equipment interference warrant, any material the obtaining of which is authorised or required under the warrant;
 - (b) in relation to a targeted examination warrant, any protected material which the warrant authorises to be selected for examination.
- (11) Subsections (12) and (13) apply if—
 - (a) an application is made for a warrant under this Part,
 - (b) the purpose, or one of the purposes, of the warrant is—
 - (i) in the case of a targeted equipment interference warrant, to authorise or require interference with equipment for the purpose of obtaining communications or other items of information that, if they were not communications made or (as the case may be) other items of

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- information created or held 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 or other items of information for examination, and
- (c) the applicant considers that the communications or the other items of information (“the targeted communications or other items of information”) are likely to be communications made or (as the case may be) other items of information created or held 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—
- (i) to authorise or require interference with equipment for the purpose of obtaining communications or other items of information that, if they were not communications made or (as the case may be) other items of information created or held 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 or other items of information for examination, and
- (b) set out the reasons for believing that the targeted communications or other items of information are likely to be communications made or (as the case may be) other items of information created or held 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 or other items of information are likely to be communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose.

113 Confidential journalistic material

- (1) This section applies if an application is made for a warrant under this Part and the purpose, or one of the purposes, of the warrant—
- (a) in the case of a targeted equipment interference warrant, to authorise or require interference with equipment for the purpose of obtaining communications or other items of information which the applicant for the warrant believes will be communications or other items of information containing confidential journalistic material, or
- (b) in the case of a targeted examination warrant, to authorise the selection for examination of journalistic material which the applicant for the warrant believes is confidential journalistic material.
- (2) The application must contain a statement that the purpose, or one of the purposes, of the warrant is—
- (a) in the case of a targeted equipment interference warrant, to authorise or require interference with equipment for the purpose of obtaining communications or other items of information which the applicant for the warrant believes will be communications or other items of information containing confidential journalistic material, or

- (b) in the case of a targeted examination warrant, to authorise the selection for examination of journalistic material which the applicant for the warrant believes is confidential journalistic material.
- (3) 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 129 or (as the case may be) section 191 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of communications or other items of information containing confidential journalistic material.
- (4) For the meaning of “journalistic material” and “confidential journalistic material”, see section 264.

114 Sources of journalistic information

- (1) This section applies if an application is made for a warrant under this Part and the purpose, or one of the purposes, of the warrant is to identify or confirm a source of journalistic information.
(For the meaning of “source of journalistic information”, see section 263(1).)
- (2) The application must contain a statement that the purpose, or one of the purposes, of the warrant is to identify or confirm a source of journalistic information.
- (3) 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 129 or (as the case may be) section 191 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of communications or other items of information that identify sources of journalistic information.