



# Investigatory Powers Act 2016

## 2016 CHAPTER 25

### PART 1

#### GENERAL PRIVACY PROTECTIONS

##### *Overview and general privacy duties*

#### **1 Overview of Act**

- (1) This Act sets out the extent to which certain investigatory powers may be used to interfere with privacy.
- (2) This Part imposes certain duties in relation to privacy and contains other protections for privacy.
- (3) These other protections include offences and penalties in relation to—
  - (a) the unlawful interception of communications, and
  - (b) the unlawful obtaining of communications data.
- (4) This Part also abolishes and restricts various general powers to obtain communications data and restricts the circumstances in which equipment interference, and certain requests about the interception of communications, can take place.
- (5) Further protections for privacy—
  - (a) can be found, in particular, in the regimes provided for by Parts 2 to 7 and in the oversight arrangements in Part 8, and
  - (b) also exist—
    - (i) by virtue of the Human Rights Act 1998,
    - <sup>[F1]</sup>(ii) in section 170 of the Data Protection Act 2018 (unlawful obtaining etc of personal data),
    - (iii) in section 48 of the Wireless Telegraphy Act 2006 (offence of interception or disclosure of messages),
    - (iv) in sections 1 to 3A of the Computer Misuse Act 1990 (computer misuse offences),

*Status: Point in time view as at 27/06/2018.*

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- (v) in the common law offence of misconduct in public office, and
  - (vi) elsewhere in the law.
- (6) The regimes provided for by Parts 2 to 7 are as follows—
- (a) Part 2 and Chapter 1 of Part 6 set out circumstances (including under a warrant) in which the interception of communications is lawful and make further provision about the interception of communications and the treatment of material obtained in connection with it,
  - (b) Part 3 and Chapter 2 of Part 6 set out circumstances in which the obtaining of communications data is lawful in pursuance of an authorisation or under a warrant and make further provision about the obtaining and treatment of such data,
  - (c) Part 4 makes provision for the retention of certain communications data in pursuance of a notice,
  - (d) Part 5 and Chapter 3 of Part 6 deal with equipment interference warrants, and
  - (e) Part 7 deals with bulk personal dataset warrants.
- (7) As to the rest of the Act—
- (a) Part 8 deals with oversight arrangements for regimes in this Act and elsewhere, and
  - (b) Part 9 contains miscellaneous and general provisions including amendments to sections 3 and 5 of the Intelligence Services Act 1994 and provisions about national security and combined warrants and authorisations.

#### Textual Amendments

- F1** S. 1(5)(b)(ii) substituted (25.5.2018) by [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), [Sch. 19 para. 199](#) (with ss. 117, 209, 210); [S.I. 2018/625](#), reg. 2(1)(g)

#### Commencement Information

- II** S. 1 in force at 13.2.2017 by [S.I. 2017/137](#), [reg. 2\(a\)](#)

## 2 General duties in relation to privacy

- (1) Subsection (2) applies where a public authority is deciding whether—
- (a) to issue, renew or cancel a warrant under Part 2, 5, 6 or 7,
  - (b) to modify such a warrant,
  - (c) to approve a decision to issue, renew or modify such a warrant,
  - (d) to grant, approve or cancel an authorisation under Part 3,
  - (e) to give a notice in pursuance of such an authorisation or under Part 4 or section 252, 253 or 257,
  - (f) to vary or revoke such a notice,
  - (g) to approve a decision to give or vary a notice under Part 4 or section 252, 253 or 257,
  - (h) to approve the use of criteria under section 153, 194 or 222,
  - (i) to give an authorisation under section 219(3)(b),
  - (j) to approve a decision to give such an authorisation, or
  - (k) to apply for or otherwise seek any issue, grant, giving, modification, variation or renewal of a kind falling within paragraph (a), (b), (d), (e), (f) or (i).

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- (2) The public authority must have regard to—
  - (a) whether what is sought to be achieved by the warrant, authorisation or notice could reasonably be achieved by other less intrusive means,
  - (b) whether the level of protection to be applied in relation to any obtaining of information by virtue of the warrant, authorisation or notice is higher because of the particular sensitivity of that information,
  - (c) the public interest in the integrity and security of telecommunication systems and postal services, and
  - (d) any other aspects of the public interest in the protection of privacy.
- (3) The duties under subsection (2)—
  - (a) apply so far as they are relevant in the particular context, and
  - (b) are subject to the need to have regard to other considerations that are also relevant in that context.
- (4) The other considerations may, in particular, include—
  - (a) the interests of national security or of the economic well-being of the United Kingdom,
  - (b) the public interest in preventing or detecting serious crime,
  - (c) other considerations which are relevant to—
    - (i) whether the conduct authorised or required by the warrant, authorisation or notice is proportionate, or
    - (ii) whether it is necessary to act for a purpose provided for by this Act,
  - (d) the requirements of the Human Rights Act 1998, and
  - (e) other requirements of public law.
- (5) For the purposes of subsection (2)(b), examples of sensitive information include—
  - (a) items subject to legal privilege,
  - (b) any information identifying or confirming a source of journalistic information, and
  - (c) relevant confidential information within the meaning given by paragraph 2(4) of Schedule 7 (certain information held in confidence and consisting of personal records, journalistic material or communications between Members of Parliament and their constituents).
- (6) In this section “public authority” includes the relevant judicial authority (within the meaning of section 75) where the relevant judicial authority is deciding whether to approve under that section an authorisation under Part 3.

#### **Commencement Information**

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| <b>12</b> | S. 2 in force at 30.12.2016 for specified purposes by <a href="#">S.I. 2016/1233, reg. 2(a)</a> |
| <b>13</b> | S. 2 in force at 12.3.2018 for specified purposes by <a href="#">S.I. 2018/341, reg. 2(a)</a>   |
| <b>14</b> | S. 2 in force at 31.5.2018 for specified purposes by <a href="#">S.I. 2018/652, reg. 2(a)</a>   |
| <b>15</b> | S. 2 in force at 27.6.2018 for specified purposes by <a href="#">S.I. 2018/652, reg. 7(a)</a>   |

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