



Investigatory Powers Act 2016

2016 CHAPTER 25

PART 2

LAWFUL INTERCEPTION OF COMMUNICATIONS

CHAPTER 1

INTERCEPTION AND EXAMINATION WITH A WARRANT

Power to issue warrants

18 Persons who may apply for issue of a warrant

- (1) Each of the following is an “intercepting authority” for the purposes of this Part—
 - (a) a person who is the head of an intelligence service;
 - (b) the Director General of the National Crime Agency;
 - (c) the Commissioner of Police of the Metropolis;
 - (d) the Chief Constable of the Police Service of Northern Ireland;
 - (e) the chief constable of the Police Service of Scotland;
 - (f) the Commissioners for Her Majesty’s Revenue and Customs;
 - (g) the Chief of Defence Intelligence;
 - (h) a person who is the competent authority of a country or territory outside the United Kingdom for the purposes of an EU mutual assistance instrument or an international mutual assistance agreement.
- (2) For the meaning of “head of an intelligence service”, see section 263.
- (3) An application for the issue of a warrant under this Chapter may only be made on behalf of an intercepting authority by a person holding office under the Crown.

19 Power of Secretary of State to issue warrants

- (1) The Secretary of State may, on an application made by or on behalf of an intercepting authority mentioned in section 18(1)(a) to (g), issue a targeted interception warrant if—
- (a) the Secretary of State considers that the warrant is necessary on grounds falling within section 20,
 - (b) the Secretary of State considers that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct,
 - (c) the Secretary of State considers that satisfactory arrangements made for the purposes of sections 53 and 54 (safeguards relating to disclosure etc.) are in force in relation to the warrant, and
 - (d) except where the Secretary of State considers that there is an urgent need to issue the warrant, the decision to issue the warrant has been approved by a Judicial Commissioner.

This is subject to subsection (4).

- (2) The Secretary of State may, on an application made by or on behalf of the head of an intelligence service, issue a targeted examination warrant if—
- (a) the Secretary of State considers that the warrant is necessary on grounds falling within section 20,
 - (b) the Secretary of State considers that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct,
 - (c) the Secretary of State considers that the warrant is or may be necessary to authorise the selection of relevant content for examination in breach of the prohibition in section 152(4) (prohibition on seeking to identify communications of individuals in the British Islands), and
 - (d) except where the Secretary of State considers that there is an urgent need to issue the warrant, the decision to issue the warrant has been approved by a Judicial Commissioner.

This is subject to subsection (4).

- (3) The Secretary of State may, on an application made by or on behalf of an intercepting authority, issue a mutual assistance warrant if—
- (a) the Secretary of State considers that the warrant is necessary on grounds falling within section 20,
 - (b) the Secretary of State considers that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct,
 - (c) the Secretary of State considers that satisfactory arrangements made for the purposes of sections 53 and 54 (safeguards relating to disclosure etc.) are in force in relation to the warrant, and
 - (d) except where the Secretary of State considers that there is an urgent need to issue the warrant, the decision to issue the warrant has been approved by a Judicial Commissioner.

This is subject to subsection (4).

- (4) The Secretary of State may not issue a warrant under this section if—
- (a) the application is a relevant Scottish application (see section 22), and

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- (b) in the case of an application for a targeted interception warrant or a targeted examination warrant, the Secretary of State considers that the warrant is necessary only for the purpose of preventing or detecting serious crime.

For the power of the Scottish Ministers to issue warrants under this Chapter, see section 21.

- (5) But subsection (4) does not prevent the Secretary of State from doing anything under this section for the purposes specified in section 2(2) of the European Communities Act 1972.

20 Grounds on which warrants may be issued by Secretary of State

- (1) This section has effect for the purposes of this Part.
- (2) A targeted interception warrant or targeted examination warrant is necessary on grounds falling within this section if it is necessary—
 - (a) in the interests of national security,
 - (b) for the purpose of preventing or detecting serious crime, or
 - (c) in the interests of the economic well-being of the United Kingdom so far as those interests are also relevant to the interests of national security (but see subsection (4)).
- (3) A mutual assistance warrant is necessary on grounds falling within this section if—
 - (a) it is necessary for the purpose of giving effect to the provisions of an EU mutual assistance instrument or an international mutual assistance agreement, and
 - (b) the circumstances appear to the Secretary of State to be equivalent to those in which the Secretary of State would issue a warrant by virtue of subsection (2)(b).
- (4) A warrant may be considered necessary as mentioned in subsection (2)(c) only if the information which it is considered necessary to obtain is information relating to the acts or intentions of persons outside the British Islands.
- (5) A warrant may not be considered necessary on grounds falling within this section if it is considered necessary only for the purpose of gathering evidence for use in any legal proceedings.
- (6) The fact that the information which would be obtained under a warrant relates to the activities in the British Islands of a trade union is not, of itself, sufficient to establish that the warrant is necessary on grounds falling within this section.

21 Power of Scottish Ministers to issue warrants

- (1) The Scottish Ministers may, on an application made by or on behalf of an intercepting authority mentioned in section 18(1)(a) to (g), issue a targeted interception warrant if—
 - (a) the application is a relevant Scottish application (see section 22),
 - (b) the Scottish Ministers consider that the warrant is necessary on grounds falling within subsection (4),
 - (c) the Scottish Ministers consider that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct,

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- (d) the Scottish Ministers consider that satisfactory arrangements made for the purposes of sections 53 and 54 (safeguards relating to disclosure etc.) are in force in relation to the warrant, and
 - (e) except where the Scottish Ministers consider that there is an urgent need to issue the warrant, the decision to issue the warrant has been approved by a Judicial Commissioner.
- (2) The Scottish Ministers may, on an application made by or on behalf of the head of an intelligence service, issue a targeted examination warrant if—
- (a) the application is a relevant Scottish application,
 - (b) the Scottish Ministers consider that the warrant is necessary on grounds falling within subsection (4),
 - (c) the Scottish Ministers consider that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct,
 - (d) the Scottish Ministers consider that the warrant is or may be necessary to authorise the selection of relevant content for examination in breach of the prohibition in section 152(4) (prohibition on seeking to identify communications of individuals in the British Islands), and
 - (e) except where the Scottish Ministers consider that there is an urgent need to issue the warrant, the decision to issue the warrant has been approved by a Judicial Commissioner.
- (3) The Scottish Ministers may, on an application made by or on behalf of an intercepting authority, issue a mutual assistance warrant if—
- (a) the application is a relevant Scottish application,
 - (b) the Scottish Ministers consider that the warrant is necessary on grounds falling within subsection (4),
 - (c) the Scottish Ministers consider that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct,
 - (d) the Scottish Ministers consider that satisfactory arrangements made for the purposes of sections 53 and 54 (safeguards relating to disclosure etc.) are in force in relation to the warrant, and
 - (e) except where the Scottish Ministers consider that there is an urgent need to issue the warrant, the decision to issue the warrant has been approved by a Judicial Commissioner.
- (4) A warrant is necessary on grounds falling within this subsection if—
- (a) in the case of a targeted interception warrant or targeted examination warrant, it is necessary for the purposes of preventing or detecting serious crime, and
 - (b) in the case of a mutual assistance warrant—
 - (i) it is necessary for the purpose of giving effect to the provisions of an EU mutual assistance instrument or an international mutual assistance agreement, and
 - (ii) the circumstances appear to the Scottish Ministers to be equivalent to those in which the Scottish Ministers would issue a warrant by virtue of paragraph (a).
- (5) A warrant may not be considered necessary on grounds falling within subsection (4) if it is considered necessary only for the purpose of gathering evidence for use in any legal proceedings.

- (6) The fact that the information which would be obtained under a warrant relates to the activities in the British Islands of a trade union is not, of itself, sufficient to establish that the warrant is necessary on grounds falling within subsection (4).

22 “Relevant Scottish applications”

- (1) An application for the issue of a warrant under this Chapter is a “relevant Scottish application” for the purposes of this Chapter if any of conditions A to C is met.

In this section “the applicant” means the person by whom, or on whose behalf, the application is made.

- (2) Condition A is that—
- (a) the application is for the issue of a targeted interception warrant or a targeted examination warrant, and
 - (b) the warrant, if issued, would relate to—
 - (i) a person who is in Scotland, or is reasonably believed by the applicant to be in Scotland, at the time of the issue of the warrant, or
 - (ii) premises which are in Scotland, or are reasonably believed by the applicant to be in Scotland, at that time.
- (3) Condition B is that—
- (a) the application is for the issue of a mutual assistance warrant which, if issued, would authorise or require—
 - (i) the making of a request falling within section 15(4)(a), or
 - (ii) the making of such a request and disclosure falling within section 15(4)(c), and
 - (b) the application—
 - (i) is made by, or on behalf of, the chief constable of the Police Service of Scotland, or
 - (ii) is made by, or on behalf of, the Commissioners for Her Majesty’s Revenue and Customs or the Director General of the National Crime Agency for the purpose of preventing or detecting serious crime in Scotland.
- (4) Condition C is that—
- (a) the application is for the issue of a mutual assistance warrant which, if issued, would authorise or require—
 - (i) the provision of assistance falling within section 15(4)(b), or
 - (ii) the provision of such assistance and disclosure falling within section 15(4)(c), and
 - (b) the warrant, if issued, would relate to—
 - (i) a person who is in Scotland, or is reasonably believed by the applicant to be in Scotland, at the time of the issue of the warrant, or
 - (ii) premises which are in Scotland, or are reasonably believed by the applicant to be in Scotland, at that time.