



# Investigatory Powers Act 2016

## 2016 CHAPTER 25

### PART 9 **U.K.**

#### MISCELLANEOUS AND GENERAL PROVISIONS

### CHAPTER 1 **U.K.**

#### MISCELLANEOUS

VALID FROM 31/05/2018

#### *Combined warrants and authorisations*

#### **248** **Combination of warrants and authorisations** **U.K.**

Schedule 8 (which makes provision for the combination of certain warrants and authorisations in a single instrument) has effect.

#### *Compliance with Act*

#### **249** **Payments towards certain compliance costs** **U.K.**

- (1) The Secretary of State must ensure that arrangements are in force for securing that telecommunications operators and postal operators receive an appropriate contribution in respect of such of their relevant costs as the Secretary of State considers appropriate.
- (2) In subsection (1) “relevant costs” means costs incurred, or likely to be incurred, by telecommunications operators and postal operators in complying with this Act.
- (3) The arrangements may provide for payment of a contribution to be subject to terms and conditions determined by the Secretary of State.

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- (4) Such terms and conditions may, in particular, include a condition on the operator concerned to comply with any audit that may reasonably be required to monitor the claim for costs.
- (5) The arrangements may provide for the Secretary of State to determine—
  - (a) the scope and extent of the arrangements, and
  - (b) the appropriate level of contribution which should be made in each case.
- (6) Different levels of contribution may apply for different cases or descriptions of case but the appropriate contribution must never be nil.
- (7) A retention notice under Part 4 given to a telecommunications operator or a postal operator, or a national security notice under section 252 given to a telecommunications operator, must specify the level or levels of contribution which the Secretary of State has determined should be made in respect of the costs incurred, or likely to be incurred, by the operator as a result of the notice in complying with that Part or (as the case may be) with the national security notice.
- (8) For the purpose of complying with this section the Secretary of State may make, or arrange for the making of, payments out of money provided by Parliament.

#### Commencement Information

**II** S. 249 in force at 30.12.2016 for specified purposes by S.I. 2016/1233, reg. 2(o)

VALID FROM 13/02/2017

#### **250 Power to develop compliance systems etc. U.K.**

- (1) The Secretary of State may—
  - (a) develop, provide, maintain or improve, or
  - (b) enter into financial or other arrangements with any person for the development, provision, maintenance or improvement of,
 such apparatus, systems or other facilities or services as the Secretary of State considers appropriate for enabling or otherwise facilitating compliance by the Secretary of State, another public authority or any other person with this Act.
- (2) Arrangements falling within subsection (1)(b) may, in particular, include arrangements consisting of the giving of financial assistance by the Secretary of State.
- (3) Such financial assistance—
  - (a) may, in particular, be given by way of—
    - (i) grant,
    - (ii) loan,
    - (iii) guarantee or indemnity,
    - (iv) investment, or
    - (v) incurring expenditure for the benefit of the person assisted, and
  - (b) may be given subject to terms and conditions determined by the Secretary of State.

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- (4) Terms and conditions imposed by virtue of subsection (3)(b) may include terms and conditions as to repayment with or without interest.

VALID FROM 13/02/2017

### *Additional powers*

#### **251 Amendments of the Intelligence Services Act 1994** **U.K.**

- (1) The Intelligence Services Act 1994 is amended as follows.
- (2) In section 3 (the Government Communications Headquarters)—
- (a) in subsection (1)(a), after “monitor” insert “, make use of”, and
  - (b) in the words following subsection (1)(b)(ii), for the words from “or to any other organisation” to the end substitute “ or, in such cases as it considers appropriate, to other organisations or persons, or to the general public, in the United Kingdom or elsewhere. ”
- (3) In section 5 (warrants: general)—
- (a) in subsection (2), omit “, subject to subsection (3) below”,
  - (b) omit subsection (3), and
  - (c) in subsection (3A), after “1989” insert “, or on the application of the Intelligence Service or GCHQ for the purposes of the exercise of their functions by virtue of section 1(2)(c) or 3(2)(c), ”.

VALID FROM 12/03/2018

#### **252 National security notices** **U.K.**

- (1) The Secretary of State may give any telecommunications operator in the United Kingdom a national security notice under this section if—
- (a) the Secretary of State considers that the notice is necessary in the interests of national security,
  - (b) the Secretary of State considers that the conduct required by the notice is proportionate to what is sought to be achieved by that conduct, and
  - (c) the decision to give the notice has been approved by a Judicial Commissioner.
- (2) A “national security notice” is a notice requiring the operator to take such specified steps as the Secretary of State considers necessary in the interests of national security.
- (3) A national security notice may, in particular, require the operator to whom it is given—
- (a) to carry out any conduct, including the provision of services or facilities, for the purpose of—
    - (i) facilitating anything done by an intelligence service under any enactment other than this Act, or

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- (ii) dealing with an emergency (within the meaning of Part 1 of the Civil Contingencies Act 2004);
- (b) to provide services or facilities for the purpose of assisting an intelligence service to carry out its functions more securely or more effectively.
- (4) In a case where—
  - (a) a national security notice would require the taking of any steps, and
  - (b) in the absence of such a notice requiring the taking of those steps, the taking of those steps would be lawful only if a warrant or authorisation under a relevant enactment had been obtained,
 the notice may require the taking of those steps only if such a warrant or authorisation has been obtained.
- (5) But the Secretary of State may not give any telecommunications operator a national security notice the main purpose of which is to require the operator to do something for which a warrant or authorisation under a relevant enactment is required.
- (6) In this section “relevant enactment” means—
  - (a) this Act;
  - (b) the Intelligence Services Act 1994;
  - (c) the Regulation of Investigatory Powers Act 2000;
  - (d) the Regulation of Investigatory Powers (Scotland) Act 2000 (2000 asp 11).
- (7) A national security notice must specify such period as appears to the Secretary of State to be reasonable as the period within which the steps specified in the notice are to be taken.
- (8) Conduct required by a national security notice is to be treated as lawful for all purposes (to the extent that it would not otherwise be so treated).
- (9) Sections 254 to 258 contain further provision about national security notices.

### **253 Technical capability notices** U.K.

- (1) The Secretary of State may give a relevant operator a technical capability notice under this section if—
  - (a) the Secretary of State considers that the notice is necessary for securing that the operator has the capability to provide any assistance which the operator may be required to provide in relation to any relevant authorisation,
  - (b) the Secretary of State considers that the conduct required by the notice is proportionate to what is sought to be achieved by that conduct, and
  - (c) the decision to give the notice has been approved by a Judicial Commissioner.
- (2) A “technical capability notice” is a notice—
  - (a) imposing on the relevant operator any applicable obligations specified in the notice, and
  - (b) requiring the person to take all the steps specified in the notice for the purpose of complying with those obligations.
- (3) In this section—

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“applicable obligation”, in relation to a relevant operator of a particular description, means an obligation specified by the Secretary of State in regulations as an obligation that may be imposed on relevant operators, or on relevant operators of that description;

“relevant authorisation” means—

- (a) any warrant issued under Part 2, 5 or 6, or
- (b) any authorisation or notice given under Part 3;

“relevant operator” means—

- (a) a postal operator,
- (b) a telecommunications operator, or
- (c) a person who is proposing to become a postal operator or a telecommunications operator.

(4) Regulations under this section may specify an obligation that may be imposed on any relevant operators only if the Secretary of State considers it is reasonable to do so for the purpose of securing—

- (a) that it is (and remains) practicable to impose requirements on those relevant operators to provide assistance in relation to relevant authorisations, and
- (b) that it is (and remains) practicable for those relevant operators to comply with those requirements.

(5) The obligations that may be specified in regulations under this section include, among other things—

- (a) obligations to provide facilities or services of a specified description;
- (b) obligations relating to apparatus owned or operated by a relevant operator;
- (c) obligations relating to the removal by a relevant operator of electronic protection applied by or on behalf of that operator to any communications or data;
- (d) obligations relating to the security of any postal or telecommunications services provided by a relevant operator;
- (e) obligations relating to the handling or disclosure of any information.

(6) Before making any regulations under this section, the Secretary of State must consult the following persons—

- (a) the Technical Advisory Board,
- (b) persons appearing to the Secretary of State to be likely to be subject to any obligations specified in the regulations,
- (c) persons representing persons falling within paragraph (b), and
- (d) persons with statutory functions in relation to persons falling within that paragraph.

(7) A technical capability notice—

- (a) must specify such period as appears to the Secretary of State to be reasonable as the period within which the steps specified in the notice are to be taken, and
- (b) may specify different periods in relation to different steps.

(8) A technical capability notice may be given to persons outside the United Kingdom (and may require things to be done, or not to be done, outside the United Kingdom).

(9) Sections 254 to 258 contain further provision about technical capability notices.

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VALID FROM 12/03/2018

## **254 Approval of notices by Judicial Commissioners** **U.K.**

- (1) In this section “relevant notice” means—
  - (a) a national security notice under section 252, or
  - (b) a technical capability notice under section 253.
- (2) In deciding whether to approve a decision to give a relevant notice, a Judicial Commissioner must review the Secretary of State's conclusions as to the following matters—
  - (a) whether the notice is necessary as mentioned in section 252(1)(a) or (as the case may be) section 253(1)(a), and
  - (b) whether the conduct that would be required by the notice is proportionate to what is sought to be achieved by that conduct.
- (3) In doing so, the Judicial Commissioner must—
  - (a) apply the same principles as would be applied by a court on an application for judicial review, and
  - (b) consider the matters referred to in subsection (2) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).
- (4) Where a Judicial Commissioner refuses to approve a decision to give a relevant notice, the Judicial Commissioner must give the Secretary of State written reasons for the refusal.
- (5) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, refuses to approve a decision to give a relevant notice, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision to give the notice.

VALID FROM 12/03/2018

## **255 Further provision about notices under section 252 or 253** **U.K.**

- (1) In this section “relevant notice” means—
  - (a) a national security notice under section 252, or
  - (b) a technical capability notice under section 253.
- (2) Before giving a relevant notice to a person, the Secretary of State must consult that person.
- (3) Before giving a relevant notice, the Secretary of State must, among other matters, take into account—
  - (a) the likely benefits of the notice,
  - (b) the likely number of users (if known) of any postal or telecommunications service to which the notice relates,
  - (c) the technical feasibility of complying with the notice,
  - (d) the likely cost of complying with the notice, and

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- (e) any other effect of the notice on the person (or description of person) to whom it relates.
- (4) In the case of a technical capability notice that would impose any obligations relating to the removal by a person of electronic protection applied by or on behalf of that person to any communications or data, in complying with subsection (3) the Secretary of State must in particular take into account the technical feasibility, and likely cost, of complying with those obligations.
- (5) A relevant notice must be in writing.
- (6) A technical capability notice may be given to a person outside the United Kingdom in any of the following ways (as well as by electronic or other means of giving a notice)—
  - (a) by delivering it to the person's principal office within the United Kingdom or, if the person has no such office in the United Kingdom, to any place in the United Kingdom where the person carries on business or conducts activities;
  - (b) if the person has specified an address in the United Kingdom as one at which the person, or someone on the person's behalf, will accept documents of the same description as a notice, by delivering it to that address.
- (7) The Secretary of State may by regulations make further provision about the giving of relevant notices.
- (8) A person to whom a relevant notice is given, or any person employed or engaged for the purposes of that person's business, must not disclose the existence or contents of the notice to any other person without the permission of the Secretary of State.
- (9) A person to whom a relevant notice is given must comply with the notice.
- (10) The duty imposed by subsection (9) is enforceable—
  - (a) in relation to a person in the United Kingdom, and
  - (b) so far as relating to a technical capability notice within subsection (11), in relation to a person outside the United Kingdom,by civil proceedings by the Secretary of State for an injunction, or for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or for any other appropriate relief.
- (11) A technical capability notice is within this subsection if it relates to any of the following—
  - (a) a targeted interception warrant or mutual assistance warrant under Chapter 1 of Part 2;
  - (b) a bulk interception warrant;
  - (c) an authorisation or notice given under Part 3.
- (12) Subsection (9) applies to a person to whom a national security notice is given despite any other duty imposed on the person by or under Part 1, or Chapter 1 of Part 2, of the Communications Act 2003.



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VALID FROM 12/03/2018

## 256 Variation and revocation of notices **U.K.**

- (1) In this section “relevant notice” means—
  - (a) a national security notice under section 252, or
  - (b) a technical capability notice under section 253.
- (2) The Secretary of State must keep each relevant notice under review.
- (3) The Secretary of State may—
  - (a) vary a relevant notice;
  - (b) revoke a relevant notice (whether wholly or in part).
- (4) The Secretary of State may vary a national security notice given to a person only if—
  - (a) the Secretary of State considers that the variation is necessary in the interests of national security,
  - (b) the Secretary of State considers that the conduct required by the notice as varied is proportionate to what is sought to be achieved by that conduct, and
  - (c) if the variation would impose further requirements on the person, the decision to vary the notice has been approved by a Judicial Commissioner (but see subsection (6)).
- (5) The Secretary of State may vary a technical capability notice given to a person only if—
  - (a) the Secretary of State considers that the variation is necessary for securing that the person has the capability to provide any assistance which the person may be required to provide in relation to any relevant authorisation (within the meaning of section 253),
  - (b) the Secretary of State considers that the conduct required by the notice as varied is proportionate to what is sought to be achieved by that conduct, and
  - (c) if the variation would impose further requirements on the person, the decision to vary the notice has been approved by a Judicial Commissioner (but see subsection (6)).
- (6) The condition in subsection (4)(c) or (as the case may be) subsection (5)(c) does not apply in the case of a variation to which section 257(10) applies.
- (7) If the Secretary of State varies or revokes a relevant notice given to any person, the Secretary of State must give that person notice of the variation or revocation.
- (8) Section 254 (approval of notices by Judicial Commissioners) applies in relation to a decision to vary a relevant notice (other than a decision to which section 257(10) applies) as it applies in relation to a decision to give a relevant notice, but as if—
  - (a) the reference in section 254(2)(a) to the notice were to the variation, and
  - (b) the reference in section 254(2)(b) to the notice were to the notice as varied.
- (9) Subsections (2) to (4) and (7) of section 255 apply in relation to varying or revoking a relevant notice as they apply in relation to giving a relevant notice (and in the application of section 255(3) and (4) in relation to varying a relevant notice, references to the notice are to be read as references to the notice as varied).



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- (10) Subsections (5) and (6) of section 255 apply to any notice of the variation or revocation of a relevant notice as they apply to a relevant notice.
- (11) The fact that a relevant notice has been revoked in relation to a particular person (or description of persons) does not prevent the giving of another relevant notice of the same kind in relation to the same person (or description of persons).
- (12) Any reference in this section or section 255(8) to (12) to a notice given under section 252 or 253 includes a reference to such a notice as varied under this section.

VALID FROM 12/03/2018

## 257 Review of notices by the Secretary of State **U.K.**

- (1) A person who is given a notice under section 252 or 253 may, within such period or circumstances as may be provided for by regulations made by the Secretary of State, refer the notice back to the Secretary of State.
- (2) Such a reference may be in relation to the whole of a notice or any aspect of it.
- (3) There is no requirement for a person who has referred a notice under subsection (1) to comply with the notice, so far as referred, until the Secretary of State has reviewed the notice in accordance with subsection (4).
- (4) The Secretary of State must review any notice so far as referred to the Secretary of State under subsection (1).
- (5) Before deciding the review, the Secretary of State must consult—
  - (a) the Technical Advisory Board, and
  - (b) a Judicial Commissioner.
- (6) The Board must consider the technical requirements and the financial consequences, for the person who has made the reference, of the notice so far as referred.
- (7) The Commissioner must consider whether the notice so far as referred is proportionate.
- (8) The Board and the Commissioner must—
  - (a) give the person concerned and the Secretary of State the opportunity to provide evidence, or make representations, to them before reaching their conclusions, and
  - (b) report their conclusions to—
    - (i) the person, and
    - (ii) the Secretary of State.
- (9) The Secretary of State may, after considering the conclusions of the Board and the Commissioner—
  - (a) vary or revoke the notice under section 256, or
  - (b) give a notice under this section to the person confirming its effect.

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- (10) But the Secretary of State may vary the notice, or give a notice under subsection (9)(b) confirming its effect, only if the Secretary of State's decision to do so has been approved by the Investigatory Powers Commissioner.
- (11) Subsections (5) to (8) of section 255 apply in relation to a notice under subsection (9)(b) above as they apply in relation to a notice under section 252 or 253.
- (12) Any reference in this section or section 258 to a notice under section 252 or 253 includes such a notice as varied under section 256, but only so far as the variation is concerned.
- But it does not include a notice varied as mentioned in subsection (9)(a) above.

VALID FROM 12/03/2018

**258 Approval of notices following review under section 257** **U.K.**

- (1) In this section “relevant notice” means—
- (a) a national security notice under section 252, or
  - (b) a technical capability notice under section 253.
- (2) In deciding whether to approve a decision to vary a relevant notice as mentioned in section 257(9)(a), or to give a notice under section 257(9)(b) confirming the effect of a relevant notice, the Investigatory Powers Commissioner must review the Secretary of State's conclusions as to the following matters—
- (a) whether the relevant notice as varied or confirmed is necessary as mentioned in section 252(1)(a) or (as the case may be) section 253(1)(a), and
  - (b) whether the conduct required by the relevant notice, as varied or confirmed, is proportionate to what is sought to be achieved by that conduct.
- (3) In doing so, the Investigatory Powers Commissioner must—
- (a) apply the same principles as would be applied by a court on an application for judicial review, and
  - (b) consider the matters referred to in subsection (2) with a sufficient degree of care as to ensure that the Investigatory Powers Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).
- (4) Where the Investigatory Powers Commissioner refuses to approve a decision to vary a relevant notice as mentioned in section 257(9)(a), or to give a notice under section 257(9)(b) confirming the effect of a relevant notice, the Investigatory Powers Commissioner must give the Secretary of State written reasons for the refusal.

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VALID FROM 27/06/2018

### *Wireless telegraphy*

#### **259 Amendments of the Wireless Telegraphy Act 2006 U.K.**

- (1) The Wireless Telegraphy Act 2006 is amended as follows.
- (2) Section 48 (interception and disclosure of messages) is amended as follows.
- (3) In subsection (1), for “otherwise than under the authority of a designated person” substitute “without lawful authority”.
- (4) After subsection (3) insert—
  - “(3A) A person does not commit an offence under this section consisting in any conduct if the conduct—
    - (a) constitutes an offence under section 3(1) of the Investigatory Powers Act 2016 (offence of unlawful interception), or
    - (b) would do so in the absence of any lawful authority (within the meaning of section 6 of that Act).”
- (5) Omit subsection (5).
- (6) Omit section 49 (interception authorities).
- (7) In consequence of the repeal made by subsection (6)—
  - (a) in sections 50(5) and 119(2)(a), for “49” substitute “48”;
  - (b) in section 121(2), omit paragraph (b).

## **CHAPTER 2 U.K.**

### GENERAL

#### *Review of operation of Act*

#### **260 Review of operation of Act U.K.**

- (1) The Secretary of State must, within the period of 6 months beginning with the end of the initial period, prepare a report on the operation of this Act.
- (2) In subsection (1) “the initial period” is the period of 5 years and 6 months beginning with the day on which this Act is passed.
- (3) In preparing the report under subsection (1), the Secretary of State must, in particular, take account of any report on the operation of this Act made by a Select Committee of either House of Parliament (whether acting alone or jointly).
- (4) The Secretary of State must—
  - (a) publish the report prepared under subsection (1), and
  - (b) lay a copy of it before Parliament.

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### *Interpretation*

## 261 Telecommunications definitions U.K.

- (1) The definitions in this section have effect for the purposes of this Act.

#### *Communication*

- (2) “Communication”, in relation to a telecommunications operator, telecommunications service or telecommunication system, 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.

#### *Entity data*

- (3) “Entity data” means any data which—
- (a) is about—
    - (i) an entity,
    - (ii) an association between a telecommunications service and an entity, or
    - (iii) an association between any part of a telecommunication system and an entity,
  - (b) consists of, or includes, data which identifies or describes the entity (whether or not by reference to the entity's location), and
  - (c) is not events data.

#### *Events data*

- (4) “Events data” means any data which identifies or describes an event (whether or not by reference to its location) on, in or by means of a telecommunication system where the event consists of one or more entities engaging in a specific activity at a specific time.

#### *Communications data*

- (5) “Communications data”, in relation to a telecommunications operator, telecommunications service or telecommunication system, means entity data or events data—
- (a) which is (or is to be or is capable of being) held or obtained by, or on behalf of, a telecommunications operator and—
    - (i) is about an entity to which a telecommunications service is provided and relates to the provision of the service,
    - (ii) is comprised in, included as part of, attached to or logically associated with a communication (whether by the sender or otherwise) for the purposes of a telecommunication system by means of which the communication is being or may be transmitted, or
    - (iii) does not fall within sub-paragraph (i) or (ii) but does relate to the use of a telecommunications service or a telecommunication system,
  - (b) which is available directly from a telecommunication system and falls within sub-paragraph (ii) of paragraph (a), or
  - (c) which—

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- (i) is (or is to be or is capable of being) held or obtained by, or on behalf of, a telecommunications operator,
- (ii) is about the architecture of a telecommunication system, and
- (iii) is not about a specific person,

but does not include any content of a communication or anything which, in the absence of subsection (6)(b), would be content of a communication.

#### *Content of a communication*

- (6) “Content”, in relation to a communication and a telecommunications operator, telecommunications service or telecommunication system, means any element of the communication, or any data attached to or logically associated with the communication, which reveals anything of what might reasonably be considered to be the meaning (if any) of the communication, but—
- (a) any meaning arising from the fact of the communication or from any data relating to the transmission of the communication is to be disregarded, and
  - (b) anything which is systems data is not content.

#### *Other definitions*

- (7) “Entity” means a person or thing.
- (8) “Public telecommunications service” means any telecommunications service which is offered or provided to the public, or a substantial section of the public, in any one or more parts of the United Kingdom.
- (9) “Public telecommunication system” means a telecommunication system located in the United Kingdom—
- (a) by means of which any public telecommunications service is provided, or
  - (b) which consists of parts of any other telecommunication system by means of which any such service is provided.
- (10) “Telecommunications operator” means a person who—
- (a) offers or provides a telecommunications service to persons in the United Kingdom, or
  - (b) controls or provides a telecommunication system which is (wholly or partly)  
—
    - (i) in the United Kingdom, or
    - (ii) controlled from the United Kingdom.
- (11) “Telecommunications service” means any service that consists in the provision of access to, and of facilities for making use of, any telecommunication system (whether or not one provided by the person providing the service).
- (12) For the purposes of subsection (11), the cases in which a service is to be taken to consist in the provision of access to, and of facilities for making use of, a telecommunication system include any case where a service consists in or includes facilitating the creation, management or storage of communications transmitted, or that may be transmitted, by means of such a system.
- (13) “Telecommunication system” means a system (including the apparatus comprised in it) that exists (whether wholly or partly in the United Kingdom or elsewhere) for the

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purpose of facilitating the transmission of communications by any means involving the use of electrical or electromagnetic energy.

- (14) “Private telecommunication system” means any telecommunication system which—
- (a) is not a public telecommunication system,
  - (b) is attached, directly or indirectly, to a public telecommunication system (whether or not for the purposes of the communication in question), and
  - (c) includes apparatus which is both located in the United Kingdom and used (with or without other apparatus) for making the attachment to that public telecommunication system.

## 262 Postal definitions **U.K.**

- (1) The definitions in this section have effect for the purposes of this Act.

### *Communication*

- (2) “Communication”, in relation to a postal operator or postal service (but not in the definition of “postal service” in this section), includes anything transmitted by a postal service.

### *Communications data*

- (3) “Communications data”, in relation to a postal operator or postal service, means—
- (a) postal data comprised in, included as part of, attached to or logically associated with a communication (whether by the sender or otherwise) for the purposes of a postal service by means of which it is being or may be transmitted,
  - (b) information about the use made by any person of a postal service (but excluding any content of a communication (apart from information within paragraph (a)), or
  - (c) information not within paragraph (a) or (b) that is (or is to be or is capable of being) held or obtained by or on behalf of a person providing a postal service, is about those to whom the service is provided by that person and relates to the service so provided.

### *Postal data*

- (4) “Postal data” means data which—
- (a) identifies, or purports to identify, any person, apparatus or location to or from which a communication is or may be transmitted,
  - (b) identifies or selects, or purports to identify or select, apparatus through which, or by means of which, a communication is or may be transmitted,
  - (c) identifies, or purports to identify, the time at which an event relating to a communication occurs, or
  - (d) identifies the data or other data as data comprised in, included as part of, attached to or logically associated with a particular communication.

For the purposes of this definition “data”, in relation to a postal item, includes anything written on the outside of the item.

### *Other definitions*

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- (5) “Postal item” means—
- (a) any letter, postcard or other such thing in writing as may be used by the sender for imparting information to the recipient, or
  - (b) any packet or parcel.
- (6) “Postal operator” means a person providing a postal service to persons in the United Kingdom.
- (7) “Postal service” means a service that—
- (a) consists in the following, or in any one or more of them, namely, the collection, sorting, conveyance, distribution and delivery (whether in the United Kingdom or elsewhere) of postal items, and
  - (b) has as its main purpose, or one of its main purposes, to make available, or to facilitate, a means of transmission from place to place of postal items containing communications.
- (8) “Public postal service” means a postal service that is offered or provided to the public, or a substantial section of the public, in any one or more parts of the United Kingdom.

## 263 General definitions **U.K.**

- (1) In this Act—
- “apparatus” includes any equipment, machinery or device (whether physical or logical) and any wire or cable,
  - “civil proceedings” means any proceedings in or before any court or tribunal that are not criminal proceedings,
  - “crime” means conduct which—
    - (a) constitutes one or more criminal offences, or
    - (b) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences,
  - “criminal proceedings” includes proceedings before a court in respect of a service offence within the meaning of the Armed Forces Act 2006 (and references to criminal prosecutions are to be read accordingly),
  - “data” includes data which is not electronic data and any information (whether or not electronic),
  - “destroy”, in relation to electronic data, means delete the data in such a way as to make access to the data impossible (and related expressions are to be read accordingly),
  - “enactment” means an enactment whenever passed or made; and includes—
    - (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978,
    - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
    - (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales, and
    - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation,



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“enhanced affirmative procedure” is to be read in accordance with section 268,

“functions” includes powers and duties,

“GCHQ” has the same meaning as in the Intelligence Services Act 1994,

“head”, in relation to an intelligence service, means—

- (a) in relation to the Security Service, the Director-General,
- (b) in relation to the Secret Intelligence Service, the Chief, and
- (c) in relation to GCHQ, the Director,

“Her Majesty's forces” has the same meaning as in the Armed Forces Act 2006,

“identifying data” has the meaning given by subsection (2),

“intelligence service” means the Security Service, the Secret Intelligence Service or GCHQ,

“the Investigatory Powers Commissioner” means the person appointed under section 227(1)(a) (and the expression is also to be read in accordance with section 227(13)(b)),

“the Investigatory Powers Tribunal” means the tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000,

“items subject to legal privilege”—

- (a) in relation to England and Wales, has the same meaning as in the Police and Criminal Evidence Act 1984 (see section 10 of that Act),
- (b) in relation to Scotland, means—
  - (i) communications between a professional legal adviser and the adviser's client, or
  - (ii) communications made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings,

which would, by virtue of any rule of law relating to the confidentiality of communications, be protected in legal proceedings from disclosure, and

- (c) in relation to Northern Ireland, has the same meaning as in the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (see Article 12 of that Order),

“Judicial Commissioner” means a person appointed under section 227(1)(a) or (b) (and the expression is therefore to be read in accordance with section 227(13)(a)),

“legal proceedings” means—

- (a) civil or criminal proceedings in or before a court or tribunal, or
- (b) proceedings before an officer in respect of a service offence within the meaning of the Armed Forces Act 2006,

“modify” includes amend, repeal or revoke (and related expressions are to be read accordingly),

“person holding office under the Crown” includes any servant of the Crown and any member of Her Majesty's forces,

“premises” includes any land, movable structure, vehicle, vessel, aircraft or hovercraft (and “set of premises” is to be read accordingly),

“primary legislation” means—

- (a) an Act of Parliament,

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- (b) an Act of the Scottish Parliament,
- (c) a Measure or Act of the National Assembly for Wales, or
- (d) Northern Ireland legislation,

“public authority” means a public authority within the meaning of section 6 of the Human Rights Act 1998, other than a court or tribunal,

“serious crime” means crime where—

- (a) the offence, or one of the offences, which is or would be constituted by the conduct concerned is an offence for which a person who has reached the age of 18 (or, in relation to Scotland or Northern Ireland, 21) and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of 3 years or more, or
- (b) the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose,

“source of journalistic information” means an individual who provides material intending the recipient to use it for the purposes of journalism or knowing that it is likely to be so used,

“specified”, in relation to an authorisation, warrant, notice or regulations, means specified or described in the authorisation, warrant, notice or (as the case may be) regulations (and “specify” is to be read accordingly),

“statutory”, in relation to any function, means conferred by virtue of this Act or any other enactment,

“subordinate legislation” means—

- (a) subordinate legislation within the meaning of the Interpretation Act 1978, or
- (b) an instrument made under an Act of the Scottish Parliament, Northern Ireland legislation or a Measure or Act of the National Assembly for Wales,

“systems data” has the meaning given by subsection (4),

“the Technical Advisory Board” means the Board provided for by section 245,

“the Technology Advisory Panel” means the panel established in accordance with section 246(1),

“working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

- (2) In this Act “identifying data” means—
  - (a) data which may be used to identify, or assist in identifying, any person, apparatus, system or service,
  - (b) data which may be used to identify, or assist in identifying, any event, or
  - (c) data which may be used to identify, or assist in identifying, the location of any person, event or thing.
- (3) For the purposes of subsection (2), the reference to data which may be used to identify, or assist in identifying, any event includes—
  - (a) data relating to the fact of the event;
  - (b) data relating to the type, method or pattern of event;
  - (c) data relating to the time or duration of the event.

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- (4) In this Act “systems data” means any data that enables or facilitates, or identifies or describes anything connected with enabling or facilitating, the functioning of any of the following—
- (a) a postal service;
  - (b) a telecommunication system (including any apparatus forming part of the system);
  - (c) any telecommunications service provided by means of a telecommunication system;
  - (d) a relevant system (including any apparatus forming part of the system);
  - (e) any service provided by means of a relevant system.
- (5) For the purposes of subsection (4), a system is a “relevant system” if any communications or other information are held on or by means of the system.
- (6) For the purposes of this Act detecting crime or serious crime is to be taken to include—
- (a) establishing by whom, for what purpose, by what means and generally in what circumstances any crime or (as the case may be) serious crime was committed, and
  - (b) the apprehension of the person by whom any crime or (as the case may be) serious crime was committed.
- (7) References in this Act to the examination of material obtained under a warrant are references to the material being read, looked at or listened to by the persons to whom it becomes available as a result of the warrant.

## 264 General definitions: “journalistic material” etc. U.K.

- (1) The definitions in this section have effect for the purposes of this Act.

### *Journalistic material*

- (2) “Journalistic material” means material created or acquired for the purposes of journalism.
- (3) For the purposes of this section, where—
- (a) a person (“R”) receives material from another person (“S”), and
  - (b) S intends R to use the material for the purposes of journalism,
- R is to be taken to have acquired it for those purposes.

Accordingly, a communication sent by S to R containing such material is to be regarded as a communication containing journalistic material.

- (4) For the purposes of determining whether a communication contains material acquired for the purposes of journalism, it does not matter whether the material has been acquired for those purposes by the sender or recipient of the communication or by some other person.
- (5) For the purposes of this section—
- (a) material is not to be regarded as created or acquired for the purposes of journalism if it is created or acquired with the intention of furthering a criminal purpose, and
  - (b) material which a person intends to be used to further such a purpose is not to be regarded as intended to be used for the purposes of journalism.

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### *Confidential journalistic material*

- (6) “Confidential journalistic material” means—
- (a) in the case of material contained in a communication, journalistic material which the sender of the communication—
    - (i) holds in confidence, or
    - (ii) intends the recipient, or intended recipient, of the communication to hold in confidence;
  - (b) in any other case, journalistic material which a person holds in confidence.
- (7) A person holds material in confidence for the purposes of this section if—
- (a) the person holds it subject to an express or implied undertaking to hold it in confidence, or
  - (b) the person holds it subject to a restriction on disclosure or an obligation of secrecy contained in an enactment.

## 265 Index of defined expressions **U.K.**

In this Act, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

<i>Expression</i>	<i>Provision</i>
Apparatus	Section 263(1)
Bulk equipment interference warrant	Section 176(1)
Bulk interception warrant	Section 136(1)
Civil proceedings	Section 263(1)
Communication	Sections 261(2) and 262(2)
Communications data	Sections 261(5) and 262(3)
Confidential journalistic material	Section 264(6) and (7)
Content of a communication (in relation to a telecommunications operator, telecommunications service or telecommunication system)	Section 261(6)
Crime	Section 263(1)
Criminal proceedings	Section 263(1)
Criminal prosecution	Section 263(1)
Data	Section 263(1)
Destroy (in relation to electronic data) and related expressions	Section 263(1)
Detecting crime or serious crime	Section 263(6)
Enactment	Section 263(1)
Enhanced affirmative procedure	Section 263(1)

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Entity	Section 261(7)
Entity data	Section 261(3)
Events data	Section 261(4)
Examination (in relation to material obtained under a warrant)	Section 263(7)
Functions	Section 263(1)
GCHQ	Section 263(1)
Head (in relation to an intelligence service)	Section 263(1)
Her Majesty's forces	Section 263(1)
Identifying data	Section 263(2) and (3)
Intelligence service	Section 263(1)
Interception of communication (postal service)	Sections 4(7) and 5
Interception of communication (telecommunication system)	Sections 4(1) to (6) and 5(1)
Interception of communication in the United Kingdom	Section 4(8)
Internet connection record	Section 62(7)
Investigatory Powers Commissioner	Section 263(1)
Investigatory Powers Tribunal	Section 263(1)
Items subject to legal privilege	Section 263(1)
Journalistic material	Section 264(2) to (5)
Judicial Commissioner	Section 263(1)
Judicial Commissioners	Section 227(7)
Lawful authority (in relation to interception of communication)	Section 6
Legal proceedings	Section 263(1)
Modify (and related expressions)	Section 263(1)
Person holding office under the Crown	Section 263(1)
Postal data	Section 262(4)
Postal item	Section 262(5)
Postal item in course of transmission by postal service	Section 4(7)
Postal operator	Section 262(6)
Postal service	Section 262(7)
Premises	Section 263(1)
Primary legislation	Section 263(1)
Private telecommunication system	Section 261(14)
Public authority	Section 263(1)

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Public postal service	Section 262(8)
Public telecommunications service	Section 261(8)
Public telecommunication system	Section 261(9)
Serious crime	Section 263(1) (and paragraph 6 of Schedule 9)
Source of journalistic information	Section 263(1)
Specified and specify (in relation to an authorisation, warrant, notice or regulations)	Section 263(1)
Statutory (in relation to any function)	Section 263(1)
Subordinate legislation	Section 263(1)
Systems data	Section 263(4) and (5)
Technical Advisory Board	Section 263(1)
Technology Advisory Panel	Section 263(1)
Telecommunications operator	Section 261(10)
Telecommunications service	Section 261(11) and (12)
Telecommunication system	Section 261(13)
Working day	Section 263(1)

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### *Supplementary provision*

#### **266 Offences by bodies corporate etc. U.K.**

- (1) This section applies if an offence under this Act is committed by a body corporate or a Scottish partnership.
- (2) If the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) a senior officer of the body corporate or Scottish partnership, or
  - (b) a person purporting to act in such a capacity,the senior officer or person (as well as the body corporate or partnership) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) In this section—

“director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate,

“senior officer” means—

  - (a) in relation to a body corporate, a director, manager, secretary or other similar officer of the body corporate, and
  - (b) in relation to a Scottish partnership, a partner in the partnership.

#### **267 Regulations U.K.**

- (1) Any power of the Secretary of State or the Treasury to make regulations under this Act—

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- (a) is exercisable by statutory instrument,
  - (b) may be exercised so as to make different provision for different purposes or different areas, and
  - (c) includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision.
- (2) See sections 72(3) and 73(6) for the procedure for a statutory instrument containing regulations under section 71 to which section 72 applies or (as the case may be) regulations under section 73(4) to which section 73(5) applies (enhanced affirmative procedure).
- (3) A statutory instrument containing regulations under—
- (a) section 12(4) or 271(2) which amend or repeal any provision of primary legislation,
  - (b) section 46(2),
  - (c) section 52(5),
  - (d) section 83,
  - (e) section 90(1),
  - (f) section 239,
  - (g) section 240(3),
  - (h) section 245,
  - (i) section 253,
  - (j) section 257(1), or
  - (k) paragraph 33 of Schedule 8,
- may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) A statutory instrument containing—
- (a) regulations under section 12(4) or 271(2) to which subsection (3) does not apply,
  - (b) regulations under section 65(5), or
  - (c) regulations under paragraph 2(1)(b) of Schedule 5,
- is (if a draft of the instrument has not been laid before, and approved by a resolution of, each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) A statutory instrument containing—
- (a) regulations under section 10(3),
  - (b) regulations under section 52(3),
  - (c) regulations under section 58(8)(a),
  - (d) regulations under section 71 to which section 72 does not apply,
  - (e) regulations under section 73(4) to which section 73(5) does not apply,
  - (f) regulations under section 133(6)(a), or
  - (g) regulations under section 255(7),
- is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A statutory instrument containing regulations under paragraph 4 of Schedule 5 is subject to annulment in pursuance of a resolution of the House of Commons.



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- (7) See paragraphs 4(4) and 5(5) of Schedule 7 for the procedure for a statutory instrument containing regulations about the coming into force of a code of practice under that Schedule or of any revisions to such a code of practice (affirmative procedure or, in the case of the coming into force of revisions, a choice between that procedure and laying before Parliament after being made).
- (8) A statutory instrument containing regulations which are subject to a particular parliamentary procedure under this Act may also include regulations which are subject to a different or no parliamentary procedure under this Act (but this subsection does not apply to regulations mentioned in subsection (2), (4), (6) or (7)).
- (9) A statutory instrument which, by virtue of subsection (8), contains regulations which are subject to different parliamentary procedures, or one or more parliamentary procedure and no parliamentary procedure, is subject to whichever procedure is the higher procedure; and the order is as follows (the highest first)—
  - (a) the procedure set out in subsection (3) (the affirmative procedure),
  - (b) the procedure set out in subsection (5) above (the negative procedure),
  - (c) no procedure.
- (10) Provision is not prevented from being included in regulations made under this Act merely because the provision could have been included in other regulations made under this Act which would have been subject to a different or no parliamentary procedure.

## **268 Enhanced affirmative procedure** **U.K.**

- (1) For the purposes of regulations under section 71 to which section 72 applies and regulations under section 73(4) to which section 73(5) applies, the enhanced affirmative procedure is as follows.
- (2) Subsection (3) applies if—
  - (a) the Secretary of State has consulted under section 72(2) or (as the case may be) 73(5) in relation to making such regulations,
  - (b) a period of at least 12 weeks, beginning with the day on which any such consultation first began, has elapsed, and
  - (c) the Secretary of State considers it appropriate to proceed with making such regulations.
- (3) The Secretary of State must lay before Parliament—
  - (a) draft regulations, and
  - (b) a document which explains the regulations.
- (4) The Secretary of State may make regulations in the terms of the draft regulations laid under subsection (3) if, after the end of the 40-day period, the draft regulations are approved by a resolution of each House of Parliament.
- (5) But subsections (6) to (9) apply instead of subsection (4) if—
  - (a) either House of Parliament so resolves within the 30-day period, or
  - (b) a committee of either House charged with reporting on the draft regulations so recommends within the 30-day period and the House to which the recommendation is made does not by resolution reject the recommendation within that period.

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- (6) The Secretary of State must have regard to—
- (a) any representations,
  - (b) any resolution of either House of Parliament, and
  - (c) any recommendations of a committee of either House of Parliament charged with reporting on the draft regulations,
- made during the 60-day period with regard to the draft regulations.
- (7) If after the end of the 60-day period the draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the draft regulations.
- (8) If after the end of the 60-day period the Secretary of State wishes to proceed with the draft regulations but with material changes, the Secretary of State may lay before Parliament—
- (a) revised draft regulations, and
  - (b) a statement giving a summary of the changes proposed.
- (9) If the revised draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the revised draft regulations.
- (10) For the purposes of this section regulations are made in the terms of draft regulations or revised draft regulations if they contain no material changes to the provisions of the draft, or revised draft, regulations.
- (11) References in this section to the “30-day”, “40-day” and “60-day” periods in relation to any draft regulations are to the periods of 30, 40 and 60 days beginning with the day on which the draft regulations were laid before Parliament; and, for this purpose, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.

## 269 Financial provisions **U.K.**

There is to be paid out of money provided by Parliament—

- (a) any expenditure incurred by a Minister of the Crown or government department by virtue of this Act, and
- (b) any increase attributable to this Act in the sums payable by virtue of any other Act out of money so provided.

## 270 Transitional, transitory or saving provision **U.K.**

- (1) Schedule 9 (which contains transitional, transitory and saving provision including a general saving for lawful conduct) has effect.
- (2) The Secretary of State may by regulations make such transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act.

### Commencement Information

**I2** [S. 270\(2\)](#) in force at Royal Assent, see [s. 272\(2\)](#)

**I3** [S. 270\(1\)](#) in force at 30.12.2016 for specified purposes by [S.I. 2016/1233, reg. 2\(p\)](#)

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## 271 Minor and consequential provision **U.K.**

- (1) Schedule 10 (which contains minor and consequential provision) has effect.
- (2) The Secretary of State may by regulations make such provision as the Secretary of State considers appropriate in consequence of this Act.
- (3) The power to make regulations under subsection (2) may, in particular, be exercised by modifying any provision made by or under an enactment.
- (4) In subsection (3) “enactment” does not include any primary legislation passed or made after the end of the Session in which this Act is passed.

### Commencement Information

- I4** S. 271(2)-(4) in force at Royal Assent, see s. 272(2)  
**I5** S. 271(1) in force at 30.12.2016 for specified purposes by [S.I. 2016/1233, reg. 2\(q\)\(r\)](#)

### *Final provision*

## 272 Commencement, extent and short title **U.K.**

- (1) Subject to subsections (2) and (3), this Act comes into force on such day as the Secretary of State may by regulations appoint; and different days may be appointed for different purposes.
- (2) Sections 260 to 269, 270(2), 271(2) to (4) and this section come into force on the day on which this Act is passed.
- (3) Sections 227 and 228 come into force at the end of the period of two months beginning with the day on which this Act is passed.
- (4) Subject to subsections (5) to (7), this Act extends to England and Wales, Scotland and Northern Ireland.
- (5) An amendment, repeal or revocation made by this Act of an enactment has the same extent within the United Kingdom as the enactment amended, repealed or revoked.
- (6) Her Majesty may by Order in Council provide for any of the provisions of this Act to extend, with or without modifications, to the Isle of Man or any of the British overseas territories.
- (7) Any power under an Act to extend any provision of that Act by Order in Council to any of the Channel Islands may be exercised so as to extend there (with or without modifications) any amendment or repeal of that provision which is made by or under this Act.
- (8) This Act may be cited as the Investigatory Powers Act 2016.

**Status:**

Point in time view as at 30/12/2016. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

Investigatory Powers Act 2016, Part 9 is up to date with all changes known to be in force on or before 12 June 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.