



Investigatory Powers Act 2016

2016 CHAPTER 25

PART 5

EQUIPMENT INTERFERENCE

Additional safeguards

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

Status: Point in time view as at 22/07/2020.

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- (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.

Commencement Information

II S. 112 in force at 31.5.2018 by S.I. 2018/652, reg. 4(j) (with reg. 25)

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