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STATUTORY INSTRUMENTS

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**2024 No. 514**

**The Investigatory Powers Act 2016 (Remedial) Order 2024**

**Substitution of section 154 of the Investigatory Powers Act 2016**

**2. For section 154 of the Investigatory Powers Act 2016, substitute—**

**“154 Additional safeguards for confidential journalistic material etc**

(1) Subsection (2) applies if, in a case where intercepted content or secondary data obtained under a bulk interception warrant is to be selected for examination—

- (a) the purpose, or one of the purposes, of using those criteria to be used for the selection of the intercepted content or secondary data for examination (“the relevant criteria”) is to identify any confidential journalistic material or to identify or confirm a source of journalistic information, or
- (b) the use of the relevant criteria is highly likely to identify such material or identify or confirm such a source.

(2) The intercepted content or secondary data may be selected for examination using the relevant criteria only if the use of those criteria has been approved by—

- (a) the Investigatory Powers Commissioner; or
- (b) in a case where a senior official acting on behalf of the Secretary of State considers there is an urgent need to do so, the senior official.

(3) The Investigatory Powers Commissioner or a senior official may give an approval under subsection (2) only if the Commissioner or official considers that—

- (a) the public interest in obtaining the information that would be obtained by the selection of the intercepted content or secondary data for examination outweighs the public interest in the confidentiality of confidential journalistic material or sources of journalistic information, and
- (b) there are no less intrusive means by which the information may reasonably be obtained.

(4) Subsection (5) applies where—

- (a) intercepted content or secondary data obtained under a bulk interception warrant (“the relevant material”) is retained, following its examination, for purposes other than the destruction of the relevant material, and
- (b) the person to whom the warrant is addressed considers that the relevant material contains confidential journalistic material or material that would identify or confirm a source of journalistic information.

(5) The person to whom the warrant is addressed must inform the Investigatory Powers Commissioner of the retention of the relevant material as soon as reasonably practicable.

(6) Unless the Investigatory Powers Commissioner considers that subsection (8) applies to the relevant material, the Commissioner must direct that the relevant material is destroyed.

(7) If the Investigatory Powers Commissioner considers that subsection (8) applies to the relevant material, the Commissioner may impose such conditions as to the use or retention of the relevant material as the Commissioner considers necessary for the purpose of protecting the public interest in the confidentiality of confidential journalistic material or sources of journalistic information.

(8) This subsection applies to material containing—

- (a) confidential journalistic material, or
- (b) material identifying or confirming a source of journalistic information,

if the public interest in retaining the material outweighs the public interest in the confidentiality of confidential journalistic material or sources of journalistic information.

(9) The Investigatory Powers Commissioner—

- (a) may require an affected party to make representations about how the Commissioner should exercise any function under subsections (6) and (7), and
- (b) must have regard to any such representations made by an affected party (whether or not as a result of a requirement imposed under paragraph (a)).

(10) “Affected party” has the meaning given by section 153(14).

(For provision about the grounds for retaining material obtained under a warrant, see section 150.)

#### **154A Section 154: procedure where use of criteria approved by senior official**

(1) This section applies where intercepted content or secondary data is selected for examination using criteria the use of which was approved by a senior official under section 154(2).

(2) The Secretary of State must, as soon as reasonably practicable, inform the Investigatory Powers Commissioner that the approval has been given.

(3) The Investigatory Powers Commissioner must, as soon as reasonably practicable—

- (a) consider whether the relevant condition is met as regards the use of the criteria for the selection of the intercepted content or secondary data for examination, and
- (b) notify the Secretary of State of their decision.

(4) For this purpose, “the relevant condition” is that—

- (a) the public interest in obtaining the information that would be obtained by the selection of the intercepted content or secondary data for examination outweighs the public interest in the confidentiality of confidential journalistic material or sources of journalistic information, and
- (b) there are no less intrusive means by which the information may reasonably be obtained.

(5) On the giving of a notification of a decision that the relevant condition is not met, the senior official’s approval ceases to have effect.

(6) Nothing in subsection (5) affects the lawfulness of—

- (a) anything done by virtue of the approval before it ceases to have effect, or
- (b) if anything is in the process of being done by virtue of the approval when it ceases to have effect—
  - (i) anything done before that thing could be stopped, or
  - (ii) anything done which it is not reasonably practicable to stop.”.