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STATUTORY INSTRUMENTS

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**2018 No. 652**

**The Investigatory Powers Act 2016 (Commencement No. 5  
and Transitional and Saving Provisions) Regulations 2018**

**PART 2**

**TRANSITIONAL AND SAVING PROVISIONS**

**CHAPTER 1**

**Transitional and saving provisions regarding interception**

**Safeguards relating to retention and disclosure of material**

**15.—(1)** Until 27th June 2018—

- (a) section 19 of the 2016 Act has effect as if the references in subsections (1)(c) and (3)(c) to sections 53 and 54 included references to section 15 of RIPA <sup>M1</sup>;
- (b) section 21 of the 2016 Act has effect as if the references in subsections (1)(d) and (3)(d) to sections 53 and 54 included references to section 15 of RIPA;
- (c) section 138 of the 2016 Act has effect as if the reference in subsection (1)(e) to sections 150 and 151 included a reference to section 15 of RIPA.

(2) In its application to targeted interception warrants or bulk interception warrants by virtue of paragraph (1), section 15 of RIPA has effect as if—

- (a) references to related communications data included references to secondary data;
- (b) references to intercepted material included references to intercepted content.

(3) Until 27th December 2018—

- (a) section 150 of the 2016 Act (safeguards relating to retention and disclosure of material) has effect as if after “152”, in each place it occurs there were inserted “ of this Act or section 16 of the Regulation of Investigatory Powers Act 2000 <sup>M2</sup> ”;
- (b) section 16 of RIPA has effect as if—

- (i) references to intercepted material included references to intercepted content;
- (ii) in subsection (1)—

(aa) the reference to section 15 included a reference to section 150 of the 2016 Act;

(bb) the reference to a warrant in relation to which there is a section 8(4) certificate included a reference to a bulk interception warrant (within the meaning of section 136(1) of the 2016 Act).

(4) Until the repeal of Chapter 1 of Part 1 of RIPA by paragraph 45 of Schedule 10 to the 2016 Act is fully in force—

- (a) section 55 of the 2016 Act (additional safeguards for items subject to legal privilege) has effect as if the reference in subsection (1) to a targeted interception warrant includes a reference to a warrant under Chapter 1 of Part 1 of RIPA;
- (b) section 153 of the 2016 Act (additional safeguards for items subject to legal privilege) has effect as if the reference in subsection (1) to a bulk interception warrant includes a reference to a warrant under Chapter 1 of Part 1 of RIPA in relation to which there is a certificate issued for the purpose of section 8(4) of that Act;
- (c) section 154 of the 2016 Act (additional safeguard for confidential journalistic material) has effect as if the reference in paragraph (a) to a bulk interception warrant includes a reference to a warrant under Chapter 1 of Part 1 of RIPA in relation to which there is a certificate issued for the purpose of section 8(4) of that Act.

#### Marginal Citations

- M1** The duty imposed on the Secretary of State by section 15(1) is imposed on the Scottish Ministers by [S.I. 2003/2617](#) in relation to warrants under section 5 issued by the Scottish Ministers.
- M2** [Section 16](#) was amended by section 32(5) to (7) of the [Terrorism Act 2006 \(c. 11\)](#).

#### Transitional provisions regarding material obtained under RIPA

**16.**—(1) This regulation applies until the repeal of Chapter 1 of Part 1 of RIPA by paragraph 45 of Schedule 10 to the 2016 Act is fully in force.

(2) The reference in section 15(3) of the 2016 Act to a bulk interception warrant under Chapter 1 of Part 6 includes a reference to a warrant under Chapter 1 of Part 1 of RIPA—

- (a) which was issued on an application made by or on behalf of the head of an intelligence service, and
- (b) in relation to which there is a certificate issued for the purpose of section 8(4) of that Act.

(3) In relation to a warrant under Chapter 1 of Part 1 of RIPA issued on an application made by or on behalf of the head of an intelligence service, section 15 of RIPA (general safeguards) has effect as if—

- (a) in subsection (1), for paragraphs (a) and (b) there were substituted—

“(a) in the case of warrants in relation to which there are not section 8(4) certificates, that the requirements of subsections (2) and (3) of this section or section 53(2) and (5) of the Investigatory Powers Act 2016 are satisfied in relation to the intercepted material and any related communications data, and

- (b) in the case of warrants in relation to which there are section 8(4) certificates—

- (i) that the requirements of subsections (2) and (3) are satisfied in relation to the intercepted material and any related communications data and that the requirements of section 16 are also satisfied, or

- (ii) that the requirements of section 150(2) and (5) of the Investigatory Powers Act 2016 are satisfied in relation to the intercepted material and any related communications data and that the requirements of section 152 of that Act are also satisfied.”;

- (b) in subsection (6)(b), for “the requirements of subsection (7) are satisfied” there were substituted—

“(i) in the case of warrants in relation to which there are not section 8(4) certificates, the requirements of subsection (7) or of section 54(2) of the Investigatory Powers Act 2016 are satisfied, or

(ii) in the case of warrants in relation to which there are section 8(4) certificates, the requirements of subsection (7) or of section 151(2) of the Investigatory Powers Act 2016 are satisfied.”.

(4) In relation to a warrant under Chapter 1 of Part 1 of RIPA issued on an application made by or on behalf of the Chief of Defence Intelligence, section 15 of RIPA (general safeguards) has effect as if—

- (a) in subsection (1)(a), after “subsection (3)” there were inserted “ or of section 53(2) and (5) of the Investigatory Powers Act 2016 ”;
- (b) in subsection (6)(b), after “subsection (7)” there were inserted “ or of section 54(2) of the Investigatory Powers Act 2016 ”.

(5) In its application to warrants under Chapter 1 of Part 1 of RIPA by virtue of paragraph (3), section 152 of the 2016 Act has effect as if—

- (i) in subsection (1), after “section 150” there were inserted “ or of section 15 of the Regulation of Investigatory Powers Act 2000 ”;
- (ii) in subsection (2), for the words “warrant in accordance” to the end there were substituted “ list of operational purposes (within the meaning in section 142(4)). ”;
- (iii) references to secondary data include references to related communications data (as defined in section 20 of RIPA);
- (iv) references to intercepted content include references to intercepted material (as defined in section 20 of RIPA).

**Exclusion of matters from legal proceedings**

17.—(1) Section 56 of the 2016 Act (exclusion of matters from legal proceedings etc.) has effect as if the references in subsection (1) to “interception-related conduct” included—

- (a) conduct occurring between 27th June 2018 and 8th August 2018 that is the making of an application for a warrant under Chapter 1 of Part 1 of RIPA by or on behalf of, or the issue of such a warrant addressed to, the head of an intelligence service or the Chief of Defence Intelligence;
- (b) conduct occurring between 27th July 2018 and the day on which the repeal of Chapter 1 of Part 1 of RIPA by paragraph 45 of Schedule 10 to the 2016 Act is fully in force that is the making of an application for a warrant, or the issue of a warrant, under Chapter 1 of Part 1 of RIPA;
- (c) the imposition of any requirement on any person to provide assistance in giving effect to any such warrant.

<sup>F1</sup>(2) .....

**Textual Amendments**

**F1** Reg. 17(2) omitted (30.8.2018) by virtue of [The Investigatory Powers Act 2016 \(Commencement No. 8 and Transitional and Saving Provisions\) Regulations 2018 \(S.I. 2018/940\)](#), reg. 9(1)(2)

**Duty not to make unauthorised disclosures**

<sup>F2</sup>18. ....

### Textual Amendments

- F2** Reg. 18 omitted (30.8.2018) by virtue of [The Investigatory Powers Act 2016 \(Commencement No. 8 and Transitional and Saving Provisions\) Regulations 2018 \(S.I. 2018/940\)](#), reg. 9(1)(2)

### Other transitional and saving provision relating to interception

**19.**—(1) The following provisions of RIPA continue to have effect in relation to conduct taking place before 27th June 2018—

- (a) section 1(1) to (3) and (5) to (8) (unlawful interception);
- (b) Schedule A1 (monetary penalty notices)<sup>M3</sup>.

(2) From 30th May 2018 until section 18(1) is fully in force, section 19(1) of the 2016 Act has effect as if the reference to section 18(1)(a) to (g) were a reference to section 18(1)(a) or (g).

(3) From 27th June 2018 until the repeal of Chapter 1 of Part 1 of RIPA by paragraph 45 of Schedule 10 to the 2016 Act is fully in force—

- (a) section 6 of the 2016 Act (definition of “lawful authority”) has effect as if the reference to a targeted interception warrant in subsection (1)(a)(i) included a reference to a warrant under Chapter 1 of Part 1 of RIPA;
- (b) section 7 of the 2016 Act (monetary penalties for certain unlawful interceptions) has effect as if the reference to a targeted interception warrant in subsection (7)(a) included a reference to a warrant under Chapter 1 of Part 1 of RIPA;
- (c) section 68 of RIPA (tribunal procedure)<sup>M4</sup> has effect as if in subsection (7)(e) (duty to assist the Tribunal imposed on those required to provide assistance in giving effect to a warrant) after “2016” there were inserted “ or section 11 of this Act ”.

(4) Until paragraph 47 of Schedule 10 to the 2016 Act (amendment of section 71 of RIPA) is fully in force, section 71(10) of RIPA (codes of practice: guidance by Commissioner)<sup>M5</sup> has effect as if for the words from “interception” to the end there were substituted “ Investigatory Powers Commissioner by virtue of paragraph 11 of Schedule 1 to the Investigatory Powers Act 2016 ”.

(5) Until paragraph 49(2)(b) of Schedule 10 to the 2016 Act (amendment to the definition of “interception warrant”) is fully in force, sections 48(1)<sup>M6</sup>, 65(8)<sup>M7</sup> and 68(7)<sup>M8</sup> of RIPA have effect as if the reference to an interception warrant in those sections included a reference to—

- (a) a targeted interception warrant or mutual assistance warrant under Chapter 1 of Part 2 of the 2016 Act, or
- (b) a bulk interception warrant under Chapter 1 of Part 6 of the 2016 Act.

(6) The repeal of section 6(2)(a) to (c) and (i) of RIPA by paragraph 45 of Schedule 10 to the 2016 Act does not affect any warrant under Chapter 1 of Part 1 of RIPA in force immediately before 8th August 2018.

### Marginal Citations

- M3** Schedule A1 was added by [S.I. 2011/1340](#). Paragraph 6 of Schedule A1 was amended by paragraph 125 of Schedule 9 to the Crime and Courts Act 2013.
- M4** [Section 68](#) was amended by paragraph 97 of Schedule 8 to the Crime and Courts Act 2013, section 243(3), (4), (5)(b) and (c) and (6) of the Investigatory Powers Act 2016 (“the 2016 Act”) and [S.I. 2018/341](#).
- M5** [Section 71\(10\)](#) was amended by [S.I. 2011/1340](#).
- M6** [Section 48\(1\)](#) was amended by [S.I. 2014/892](#).

- M7** Section 68(8) was amended by section 243(1)(i) of the 2016 Act and S.I. 2018/341.
- M8** Section 68(7) was amended by paragraph 97 of Schedule 8 to the Crime and Courts Act 2013, section 243(5)(b) and (c) of the 2016 Act and S.I. 2013/602.

### Transitional and saving provisions relating to wireless telegraphy

**20.**—(1) An interception authority which has effect immediately before 8th August 2018 continues to have effect until 27th December 2018 unless revoked earlier.

(2) For the purpose of any interception authority which continues to have effect in consequence of paragraph (1)—

- (a) section 48(1) of the Wireless Telegraphy Act 2006 (offence relating to interception and disclosure of messages) <sup>M9</sup> has effect as if the amendment made by section 259(3) of the 2016 Act had not been made;
- (b) section 48(5) of the Wireless Telegraphy Act 2006 (definition of “designated person”) <sup>M10</sup>, any regulations made under that section, and section 49 of that Act (interception authorities) <sup>M11</sup> continue to have effect;
- (c) section 6 of the 2016 Act (definition of “lawful authority”) has effect as if in subsection (1) after paragraph (c) there were inserted—
- “(d) in the case of interception of a communication in the course of its transmission by means of wireless telegraphy, if it takes place with the authority of a designated person under section 48 of the Wireless Telegraphy Act 2006 (interception and disclosure of messages).”.

(3) In this regulation “interception authority” has the same meaning as in section 49(11) of the Wireless Telegraphy Act 2006.

#### Marginal Citations

- M9** 2006 c. 36. Section 48(1) is amended by section 259(2) of the Investigatory Powers Act 2016 (“the 2016 Act”); section 259 is brought into force by regulation 12(b) of these Regulations.
- M10** Section 48(5) is omitted by section 259(5) of the 2016 Act; section 259 is brought into force by regulation 12 of these Regulations.
- M11** Section 49 is omitted by section 259(6) of the 2016 Act; section 259 is brought into force by regulation 12 of these Regulations.

## CHAPTER 2

### Transitional and saving provisions regarding equipment interference

#### Mandatory use of equipment interference warrants

**21.** Until 27th December 2018 section 13 of the 2016 Act (mandatory use of equipment interference warrants) does not apply to conduct authorised by a warrant issued under section 5 of the Intelligence Services Act 1994 <sup>M12</sup>, or an authorisation given under section 7 of that Act <sup>M13</sup>, which is in force immediately before 8th August 2018.

#### Marginal Citations

- M12** 1994 c. 13. Section 5 was amended by section 2 of the Security Service Act 1995 (c. 35), section 74(1) of the Regulation of Investigatory Powers Act 2000 and section 251(3)(a) of the 2016 Act.

**M13** Section 7 was amended by paragraph 1 of Schedule 5 to the Regulation of Investigatory Powers Act 2000, section 116(1) and (2) of the *Anti-Terrorism, Crime and Security Act 2001* (c. 24) and section 31(5) and (6) of the *Terrorism Act 2006*.

### Safeguards relating to retention and disclosure of material

**22.** Until 27th June 2018—

- (a) section 102 of the 2016 Act (power to issue warrants to intelligence services: Secretary of State) has effect as if the reference in subsection (1)(c) to sections 129 and 130 includes a reference to sections 2(2)(a) or 4(2)(a) of the *Intelligence Services Act 1994* or section 2(2)(a) of the *Security Service Act 1989*<sup>M14</sup>;
- (b) section 103 of the 2016 Act (power to issue warrants to intelligence services: the Scottish Ministers) has effect as if the reference in subsection (1)(d) to sections 129 and 130 includes a reference to sections 2(2)(a) or 4(2)(a) of the *Intelligence Services Act 1994* or section 2(2)(a) of the *Security Services Act 1989*.

#### Marginal Citations

**M14** 1989 c. 5. Section 2(2)(a) was amended by paragraph 1 of Schedule 4 to the *Intelligence Services Act 1994* and paragraph 4(2) of Schedule 10 to the 2016 Act.

### Safeguards relating to examination of material etc.

**23.** Until 27th December 2018, section 193 of the 2016 Act (safeguards relating to examination of material etc.) has effect as if in subsection (3) (selection conditions for examination) at the end there were inserted—

- “(e) that the selection of the protected material for examination is authorised—
  - (i) by a warrant issued under section 5 of the *Intelligence Services Act 1994*, or
  - (ii) in accordance with arrangements in force in relation to material obtained under an authorisation given under section 7 of that Act.”

### Safeguards relating to retention and disclosure of relevant ISA material

**24.** From 27th December 2018—

- (a) sections 129 to 130 of the 2016 Act apply to relevant ISA material as they apply to material obtained under a targeted equipment interference warrant;
  - (b) section 131 of the 2016 Act applies in relation to an item subject to legal privilege which is relevant ISA material as it applies in relation to an item subject to legal privilege which has been obtained under a targeted equipment interference warrant.
- (2) In this regulation, “relevant ISA material” means material which—
- (a) consists of communications, private information or equipment data;
  - (b) was obtained as a result of conduct—
    - (i) authorised under a warrant issued under section 5 of the *Intelligence Services Act 1994*, or under an authorisation given under section 7 of that Act, and
    - (ii) which as a consequence of section 13 of the 2016 Act an intelligence service may not engage in except under the authority of an equipment interference warrant, and

- (c) was obtained before the coming into force of section 13 of that Act or under a warrant or authorisation to which section 13 did not apply as a consequence of regulation 21.

### Items subject to legal privilege

25. Until section 106 of the 2016 Act (power to issue warrants to law enforcement officers)<sup>M15</sup> is in force, section 112(6)(c) of that Act is to be read as if “or as mentioned in section 106(3)(a)” were omitted.

#### Marginal Citations

M15 Section 106 was amended by paragraph 74(3) of Schedule 9 to the Policing and Crime Act 2017.

## CHAPTER 3

### Other transitional and saving provisions

#### Transitional provision regarding the Tribunal

26. Until section 168 of the 2016 Act is in force, in section 68(7) of RIPA (persons subject to a duty to co-operate with the Tribunal), paragraph (e) has effect as if the reference to section 168 were omitted.

#### Amendment to the Investigatory Powers Act 2016 (Commencement No. 4 and Transitional and Saving Provisions) Regulations 2018

27. In regulation 6 of the Investigatory Powers Act 2016 (Commencement No. 4 and Transitional and Saving Provisions) Regulations 2018 (transitional provision regarding technical capability notices)<sup>M16</sup>—

- (a) in paragraph (1), for “19(1)” substitute “ 18(1) ”;
- (b) in paragraph (2), for “102(1)” substitute “ 106(1) ”.

#### Marginal Citations

M16 S.I. 2018/341.

**Changes to legislation:**

There are currently no known outstanding effects for the The Investigatory Powers Act 2016 (Commencement No. 5 and Transitional and Saving Provisions) Regulations 2018, PART 2.