



Isle of Man

Ellan Vannin

AT 18 of 1988

**INTERCEPTION OF COMMUNICATIONS
ACT 1988**



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**Isle of Man***Ellan Vannin*

INTERCEPTION OF COMMUNICATIONS ACT 1988

Received Royal Assent: 29 November 1988

Passed: 13 December 1988

Commenced: 1 April 1989

AN ACT to make new provision for and in connection with the interception of communications sent by post or by means of public telecommunication systems; and for connected purposes.

GENERAL NOTE: The maximum fines in this Act are as increased by the *Criminal Justice (Penalties, Etc.) Act 1993* s 1.

Interception of communications

1 Prohibition on interception

[P1985/56/1]

- (1) Subject to the following provisions of this section, a person who intentionally intercepts a communication in the course of its transmission by post or by means of a courier service or a public telecommunication system shall be guilty of an offence and liable —
 - (a) on summary conviction, to a fine not exceeding £5,000;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.¹
- (2) A person shall not be guilty of an offence under this section if —
 - (a) the communication is intercepted in obedience to a warrant issued under section 2; or
 - (b) that person has reasonable grounds for believing that the person to whom, or the person by whom, the communication is sent has consented to the interception.
- (3) A person shall not be guilty of an offence under this section if —
 - (a) the communication is intercepted for purposes connected with the provision of postal or public telecommunication services or with

the enforcement of any enactment relating to the use of those services; or

- (b) the communication is being transmitted by wireless telegraphy and is intercepted, with the authority of the Chief Minister, for purposes connected with the issue of licences under the Wireless Telegraphy Act 1949 (an Act of Parliament) or the prevention or detection of interference with wireless telegraphy.
- (4) No proceedings in respect of an offence under this section shall be instituted except by or with the consent of the Attorney General.

2 Warrants for interception

[P1985/56/2]

- (1) Subject to the provisions of this section and section 3, the Chief Minister may issue a warrant requiring the person to whom it is addressed to intercept, in the course of their transmission by post or by means of a courier service or a public telecommunication system, such communications as are described in the warrant; and such a warrant may also require the person to whom it is addressed to disclose the intercepted material to such persons and in such manner as are described in the warrant.²
- (2) The Chief Minister shall not issue a warrant under this section unless he considers that the warrant is necessary —
 - (a) in the interests of national security;
 - (b) for the purpose of preventing or detecting serious crime.
- (3) The matters to be taken into account in considering whether a warrant is necessary as mentioned in subsection (2) shall include whether the information which it is considered necessary to acquire could reasonably be acquired by other means.

3 Scope of warrants

- (1) Subject to subsection (2), the interception required by a warrant shall be the interception of —
 - (a) communications described in the warrant which are likely to be, or to include, communications from, or intended for, one particular person named or described in the warrant, or
 - (b) communications described in the warrant which are likely to be or to include, communications originating on, or intended for transmission to, a single set of premises named or described in the warrant,

and such other communications (if any) as it is necessary to intercept in order to intercept communications falling within paragraph (a) or (b).

- (2) The warrant shall describe the communications the interception of which is required by it by reference to addresses, numbers, apparatus or other factors specified in the warrant as the factors or combination of factors to be used for identifying those communications.
- (3) Subsections (1) and (2) do not apply to a warrant if —
 - (a) the interception required by the warrant is the interception, in the course of their transmission by means of a public telecommunication system, of —
 - (i) such external communications as are described in the warrant; and
 - (ii) such other communications (if any) as it is necessary to intercept in order to intercept such external communications as are so described; and
 - (b) at the time when the warrant is issued, the Chief Minister issues a certificate —
 - (i) specifying the descriptions of intercepted material the examination of which he considers necessary, and
 - (ii) certifying that he considers the examination of material of those descriptions necessary as mentioned in section 2(2).
- (4) A certificate shall not name or describe a person who is known to be for the time being in the British Islands for the purpose of including in the specified descriptions of material communications from him or intended for him unless —
 - (a) the Chief Minister considers that the examination of material selected according to factors referable to that person is necessary for the purpose of preventing or detecting acts of terrorism; and
 - (b) the material relates only to communications sent during a period not exceeding 3 months specified in the certificate.
- (5) A certificate shall not be issued except under the hand of the Chief Minister.³

4 Issue and duration of warrants

[P1985/56/4]

- (1) A warrant shall not be issued except under the hand of the Chief Minister.
- (2) A warrant shall, unless renewed under subsection (3), cease to have effect at the end of the relevant period.
- (3) The Chief Minister may, at any time before the end of the relevant period, renew a warrant if he considers that the warrant continues to be necessary as mentioned in section 2(2).

- (4) If, at any time before the end of the relevant period, the Chief Minister considers that a warrant is no longer necessary as mentioned in section 2(2) he shall cancel the warrant.
- (5) A warrant shall not be renewed except by an instrument under the hand of the Chief Minister.
- (6) In this section “the relevant period” —
 - (a) in relation to a warrant which has not been renewed, means the period of 2 months beginning with the day on which it was issued;
 - (b) in relation to a warrant which has been renewed means the period of one month beginning with the day on which it was so renewed.

5 Amendment of warrants etc

[P1985/56/5]

- (1) The Chief Minister may at any time —
 - (a) amend a warrant; or⁴
 - (b) amend a certificate so as to include in the certified material any material the examination of which he considers necessary as mentioned in section 2(2).
- (2) A warrant or a certificate shall not be amended under subsection (1) except by an instrument under the hand of the Chief Minister.
- (3) If at any time the Chief Minister considers that any factor specified in a warrant under section 3(2) is no longer relevant for identifying the communications the interception of which is required by the warrant, he shall amend the warrant by the deletion of that factor.⁵
- (4) If at any time the Chief Minister considers that the descriptions of material specified in a certificate include any description of material the examination of which is no longer necessary as mentioned in section 2(2), he shall amend the certificate so as to exclude that description of material from the descriptions so specified.⁶

6 Safeguards

[P1985/56/6]

- (1) Where the Chief Minister issues a warrant he shall, unless such arrangements have already been made, make such arrangements as he considers necessary for the purpose of securing —
 - (a) that the requirements of subsections (2) and (3) are satisfied in relation to the intercepted material; and
 - (b) where a certificate is issued in relation to the warrant, that so much of the intercepted material as is not certified by the certificate is not read, looked at or listened to by any person.

- (2) The requirements of this subsection are satisfied in relation to any intercepted material if each of the following, namely —
 - (a) the extent to which the material is disclosed;
 - (b) the number of persons to whom any of the material is disclosed;
 - (c) the extent to which the material is copied; and
 - (d) the number of copies made of any of the material,is limited to the minimum that is necessary as mentioned in section 2(2).
- (3) The requirements of this subsection are satisfied in relation to any intercepted material if each copy made of any of that material is destroyed as soon as its retention is no longer necessary as mentioned in section 2(2).
- (4) Before issuing or renewing a warrant, or as soon as possible thereafter, the Chief Minister shall consult the Attorney General.
- (5) The Chief Registrar shall maintain a register of warrants, and the Chief Minister shall cause to be entered in the register —
 - (a) particulars of every warrant and certificate, and of every amendment, renewal and cancellation thereof, and
 - (b) particulars of every consultation under subsection (4).

7 Exercise of functions in Chief Minister's absence

- (1) If the Chief Minister is ill or absent, or is unable to act, any of his functions under the foregoing provisions of this Act may be exercised on his behalf by the Minister for Home Affairs or another Minister authorised in writing by the Chief Minister under section 20 of the *Interpretation Act 1976*.⁷
- (2) Accordingly, any reference to the Chief Minister in those provisions or in section 9 includes a reference to the Minister for Home Affairs or other Minister acting by virtue of this section.⁸

The Tribunal

8 The Tribunal

[P1985/56/7]

- (1) There shall be a tribunal (in this Act referred to as “**the Tribunal**”) in relation to which the provisions of Schedule 1 shall apply.
- (2) Any person who believes that communications sent to or by him have been intercepted in the course of their transmission by post or by means of a courier service or a public telecommunication system may apply to the Tribunal for an investigation under this section.⁹

- (3) On such an application (other than one appearing to the Tribunal to be frivolous or vexatious), the Tribunal shall investigate —
- (a) whether there is or has been a relevant warrant or a relevant certificate; and
 - (b) where there is or has been such a warrant or certificate, whether there has been any contravention of sections 2 to 5 in relation to that warrant or certificate.
- (4) If, on an investigation, the Tribunal conclude that there has been a contravention of sections 2 to 5 in relation to a relevant warrant or a relevant certificate, they shall —
- (a) give notice to the applicant stating that conclusion;
 - (b) make a report of their findings to the Governor in Council; and
 - (c) if they think fit, make an order under subsection (5).
- (5) An order under this subsection may do one or more of the following, namely —
- (a) quash the relevant warrant or the relevant certificate;
 - (b) direct the destruction of copies of the intercepted material or, as the case may be, so much of it as is certified by the relevant certificate;
 - (c) direct the Treasury to pay to the applicant such sum by way of compensation as may be specified in the order.
- (6) A notice or report under subsection (4) shall state the effect of any order under subsection (5) made in the case in question.
- (7) If, on an investigation, the Tribunal come to any conclusion other than that mentioned in subsection (4) they shall give notice to the applicant stating that there has been no contravention of sections 2 to 5 in relation to a relevant warrant or a relevant certificate.
- (8) The decisions of the Tribunal (including any decisions as to their jurisdiction) shall not be subject to appeal or liable to be questioned in any court.
- (9) For the purposes of this section —
- (a) a warrant is a relevant warrant in relation to an applicant if —
 - (i) he is named or described in the warrant, or
 - (ii) the communications described in the warrant are likely to be, or to include, communications from him or intended for him;
 - (b) a certificate is a relevant certificate in relation to an applicant if and to the extent that it names or describes him as mentioned in section 3(4).¹⁰

9 The commissioner

[P1985/56/8]

- (1) The Governor shall appoint a fit and proper person (in this section referred to as “the commissioner”) to carry out the following functions —
 - (a) to keep under review the carrying out by the Chief Minister of the functions conferred on him by sections 2 to 5 and the adequacy of any arrangements made for the purposes of section 6; and
 - (b) to give to the Tribunal all such assistance as the Tribunal may require for the purpose of enabling them to carry out their functions under this Act.
- (2) The commissioner shall hold office in accordance with the terms of his appointment, and there shall be paid to him out of money provided by Tynwald such allowances as the Treasury may direct.
- (3) It shall be the duty of every person holding office under the Crown or engaged in the business of the Post Office or in the running of a courier service or a public telecommunications system to disclose or give to the commissioner such documents or information as he may require for the purpose of enabling him to carry out his functions under this section.¹¹
- (4) The Tribunal shall send to the commissioner a copy of every report made by them under section 8(4).
- (5) If at any time it appears to the commissioner —
 - (a) that there has been a contravention of sections 2 to 5 which has not been the subject of a report made by the Tribunal under section 8(4); or
 - (b) that any arrangements made for the purposes of section 6 have proved inadequate,he shall make a report to the Governor in Council with respect to that contravention or those arrangements.
- (6) As soon as practicable after the end of each year, the commissioner shall make a report to the Governor in Council with respect to the carrying out of his functions under this section.
- (7) A copy of every annual report under subsection (6) shall be laid before Tynwald, and every such copy shall include a statement as to whether any matter has been excluded from it in pursuance of subsection (8).
- (8) If it appears to the Governor in Council, after consultation with the commissioner, that the publication of any matter in an annual report under subsection (6) would be prejudicial to national security or to the prevention or detection of crime, the Governor in Council may exclude that matter from the copy of the report as laid before Tynwald.

*Miscellaneous and supplemental***10 Exclusion of evidence**

[P1985/56/9]

- (1) In any proceedings before any court or tribunal no evidence shall be adduced and no question in cross-examination shall be asked which (in either case) tends to suggest —
 - (a) that an offence under section 1 has been or is to be committed by any of the persons mentioned in subsection (2); or
 - (b) that a warrant has been or is to be issued to any of those persons.
- (2) The persons referred to in subsection (1) above are —
 - (a) any person holding office under the Crown;
 - (b) the Post Office and any person engaged in the business of the Post Office;¹²
 - (ba) any person running, or engaged in the running of, a courier service; and¹³
 - (c) any public telecommunications operator and any person engaged in the running of a public telecommunication system.
- (3) Subsection (1) does not apply in relation to proceedings for a relevant offence or proceedings before the Tribunal and subsection (1)(a) does not apply where a person has been convicted of an offence under section 1.
- (4) In this section “relevant offence” means —
 - (a) an offence under section 1, or under section 39 of the *Post Office Act 1993* or section 31 of the *Telecommunications Act 1984*;¹⁴
 - (b) an offence under section 1 or 2 of the Official Secrets Act 1911 (an Act of Parliament) relating to any sketch, plan, model, article, note, document or information which tends to suggest as mentioned in subsection (1);
 - (c) perjury committed in the course of proceedings for a relevant offence;
 - (d) attempting or conspiring to commit, or aiding, abetting, counselling or procuring the commission of, an offence falling within paragraph (a), (b) or (c); and
 - (e) contempt of court committed in the course of, or in relation to, proceedings for a relevant offence.

11 Interpretation

[P1985/56/10]

- (1) In this Act —

“**address**” means any postal or telecommunication address;

- “**certificate**” means a certificate under section 3(3)(b);¹⁵
- “**copy**”, in relation to intercepted material, means any of the following, whether or not in documentary form —
- (a) any copy, extract or summary of the material; and
 - (b) any record of the identities of the persons to or by whom the material was sent,
- and cognate expressions shall be construed accordingly;
- “**courier service**” means any service (other than a postal service provided by the Post Office) for the collection, sorting, conveyance, distribution or delivery of letters or packets, which is offered or provided to, or to a substantial section of, the public in the Island;¹⁶
- “**external communication**” means a communication sent or received outside the British Islands;
- “**intercepted material**”, in relation to a warrant, means the communication intercepted in obedience to that warrant;
- “**person**” includes any organisation and any association or combination of persons;
- “**the Post Office**” means the Isle of Man Post Office;¹⁷
- “**public telecommunications operator**” and “**public telecommunication system**” have the same meanings as in the *Telecommunications Act 1984*;
- “**public telecommunication services**” means a telecommunication service provided by means of a public telecommunication system;
- “**telecommunication service**” has the same meaning as in the said Act of 1984;
- “**the Tribunal**” means the tribunal established under section 8;
- “**warrant**” means a warrant issued under section 2;
- “**wireless telegraphy**” has the same meaning as in the Wireless Telegraphy Act 1949 (an Act of Parliament).
- (2) For the purposes of this Act a communication which is in the course of its transmission otherwise than by means of a public telecommunication system shall be deemed to be in the course of its transmission by means of such a system if its mode of transmission identifies it as a communication which —
 - (a) is to be or has been transmitted by means of such a system; and
 - (b) has been sent from, or is to be sent to, a country or territory outside the British Islands.
 - (3) For the purpose of this Act conduct which constitutes or, if it took place in the Island, would constitute one or more offences shall be regarded as serious crime if, and only if —

- (a) it 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; or
- (b) the offence or one of the offences is an offence for which a person who has attained the age of 21 and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of 3 years or more.

12 Amendments and saving

[P1985/56/11]

- (1) For section 31 of the *Telecommunications Act 1984* (interception and disclosure of messages etc.) there shall be substituted the section set out in Schedule 2.
- (2) [Repealed]¹⁸
- (3) For the avoidance of doubt it is hereby declared that nothing in this Act affects any power conferred on the Post Office by or under any enactment to open, detain or delay any postal packet or to deliver any such packet to a person other than the person to whom it is addressed.¹⁹

13 Short title and commencement

- (1) This Act may be cited as the Interception of Communications Act 1988.
- (2) This Act shall come into force on such day as the Governor in Council may by order appoint.²⁰

SCHEDULE 1**THE TRIBUNAL**

Section 8

Constitution of Tribunal

1. (1) The Tribunal shall consist of 3 members appointed by the Governor.
- (2) The Governor shall appoint one member of the Tribunal, being an advocate of not less than 10 years' standing, to be chairman of the Tribunal.
- (3) The members of the Tribunal shall, subject to sub-paragraphs (4) to (6), hold office during good behaviour.
- (4) A member of the Tribunal shall vacate office at the end of the period of 5 years beginning with the day of his appointment but shall be eligible for reappointment.
- (5) A member of the Tribunal may be relieved of office by the Governor at his own request.
- (6) A member of the Tribunal may be removed from office by the Governor in pursuance of a resolution of Tynwald.

Procedure of Tribunal

2. The quorum of the Tribunal shall be 2 members, of whom one shall be the chairman of the Tribunal.
3. (1) It shall be the duty of every person holding office under the Crown or engaged in the business of the Post Office or in the running of a courier service or a public telecommunication system to disclose or give to the Tribunal such documents or information as they may require for the purpose of enabling them to carry out their functions under this Act.²¹
- (2) Subject to paragraph 5(2), the Tribunal shall carry out their functions under this Act (except their functions in relation to reports under section 8(4)) in such a way as to secure that no document or information which is disclosed or given to the Tribunal is disclosed or given to any person (including an applicant to the Tribunal or a person holding office under the Crown) without the consent of the person who disclosed or gave it to the Tribunal; and accordingly the Tribunal shall not, except in reports under section 8(4), give reasons for any decision made by them.
- (3) Subject to sub-paragraph (2) the Tribunal may determine their own procedure.
4. (1) [Repealed]²²

(2) Such expenses of the Tribunal as the Treasury may determine shall be defrayed out of money provided by Tynwald.

Officers

5. (1) The Public Services Commission shall, after consultation with the Tribunal, provide the Tribunal with such officers as the Commission think necessary for the proper discharge of their functions.²³

(2) The Tribunal may authorise any officer provided under this paragraph to obtain any documents or information on the Tribunal's behalf.

SCHEDULE 2

SECTION SUBSTITUTED FOR SECTION 31 OF 1984 ACT

Section 12(1)

[Sch 2 amends the following Act —

Telecommunications Act 1984 q.v.]

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement

Table of Renumbered Provisions

Original	Current

Table of Endnote References

-
- ¹ Subs (1) amended by Interception of Communications Act 2001 Sch.
- ² Subs (1) amended by Interception of Communications Act 2001 Sch.
- ³ S 3 substituted by Interception of Communications Act 2001 s 1.
- ⁴ Para (a) amended by Interception of Communications Act 2001 Sch.
- ⁵ Subs (3) substituted by Interception of Communications Act 2001 Sch.
- ⁶ Subs (4) substituted by Interception of Communications Act 2001 Sch.
- ⁷ Subs (1) amended by Statute Law Revision Act 2017 s 37.
- ⁸ Subs (2) amended by Statute Law Revision Act 2017 s 37.
- ⁹ Subs (2) amended by Interception of Communications Act 2001 Sch.
- ¹⁰ Subs (9) substituted by Interception of Communications Act 2001 Sch.
- ¹¹ Subs (3) amended by Interception of Communications Act 2001 Sch.
- ¹² Para (b) substituted by Interception of Communications Act 2001 Sch.
- ¹³ Para (ba) inserted by Interception of Communications Act 2001 Sch.
- ¹⁴ Para (a) amended by Interception of Communications Act 2001 Sch.
- ¹⁵ Definition of “certificate” amended by Interception of Communications Act 2001 Sch.
- ¹⁶ Definition of “courier service” inserted by Interception of Communications Act 2001 Sch.
- ¹⁷ Definition of “the Post Office” substituted for definition of “the Post Office Authority” by Interception of Communications Act 2001 Sch.
- ¹⁸ Subs (2) repealed by Post Office Act 1993 Sch 3.
- ¹⁹ Subs (3) amended by Post Office Act 1993 Sch 3 and by Interception of Communications Act 2001 Sch.
- ²⁰ ADO (whole Act) 1/4/1989 (GC95/89).

²¹ Subpara (1) amended by Interception of Communications Act 2001 Sch.

²² Subpara (1) repealed by Interception of Communications Act 2001 Sch.

²³ Subpara (1) amended by Public Services Commission Act 2015 Sch.