

Part 1 Investigatory Powers Draft Bill - Review of drafting provenance – Investigatory Powers Research Group. This working document may be subject to change, following further assessment. For abbreviations and full source list go to bit.ly/ipbillsources. Comments/suggestions to: ipbillresearchgroup@gmail.com.

IPB reference	Description of content	IPB extract	Source	Description in legislation / reviews	Issues/comments
1	Overview				Presumably this is an attempt to write in non-technical language suggested by Anderson Rec. 3 Does statement actually match up with reality? Does it reaffirm 'the privacy of communications' Anderson Rec 1(a).
2(1)	Re-jigged re-iteration of offence in RIPA	A person commits an offence if (a) the person intentionally intercepts any communication in the course of its transmission by means of (i) a public telecommunications system; (ii) a private telecommunication system (iii) a public postal service	RIPA, s 1(1) and s. 1(2)	It shall be an offence for a person intentionally and without lawful authority to intercept, at any place in the United Kingdom, any communication in the course of its transmission by means of (a) a public postal service; or (b) a public telecommunications service	ref to 'lawful authority found in IPB s. 2(1) c) and to 'in the United Kingdom is found in IPB s. 2(1)(b). Cl. 2(1)(a)(ii) reflects RIPA s. 1(2) While wording is the same, scope will have changed due to changes in definitions. See also Explanatory memo.
2(2)	Consent of owner of private system to interception	But it is not an offence under subsection (1) for a person to intercept a communication in the course of its transmission by means of a private	RIPA s. 1(6) and 1(3)	The circumstances in which a person makes an interception of a communication in the course of its transmission by means of a private telecommunications system are	IPB refs to cl2(1) in toto but because of limitation to private telecommunications system, effectively this is just 1(a)(ii) thus matching the

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		telecommunication system if the person...		such that his conduct is excluded from criminal liability under subsection (2)...	scope of RIPA 1(6) (save for changes in scope due to definitions) The right of action under s. 1(3) has gone.
2(3) - (5)	Cross-reference to definitions				
2(6) - (7)	Offence under ss(2)(1)	A person who is guilty of an offence under subsection (1) is liable - (a) on summary conviction in England and Wales, to a fine; (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum; (c) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both	s. 1(7) RIPA		NB difference in re Scotland and NI
2(7)	Requirement for consent of DPP for prosecution		s. 1(8) RIPA		
3(1)		For the purposes of this Act, a person intercepts a communication in the course of its transmission by means of a	s.2(2) RIPA	For the purposes of this Act, but subject to the following provisions of this section, a person intercepts a communication in the course of its	

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		telecommunication system if, and only if,- (a) the person does a relevant act in relation to the system, and (b) the effect of the relevant act is to make some or all of the content of the communication available at a relevant time to a person who is not the sender of intended recipient of the communication.		transmission by means of a telecommunications system if, and only if, he- (a) so modifies or interferes with the system, or its operation, (b) so monitors transmissions made by means of the system, or (c) so monitors transmission made by wireless telegraphy to or from apparatus comprised in the system, as to make some or all of the contents of the communication available, while being transmitted, to a person other than the sender or intended recipient of the communication.	
3(2)	'Relevant act'	In this section "relevant act", in relation to a telecommunication system, means - (a) modifying, or interfering with, the system or its operation; (b) monitoring transmissions made by means of the system; (c) monitoring transmissions made by wireless telegraphy to or from apparatus that is part of the system.	s. 2(2) RIPA	See above	

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3(3)	Modification of a telecommunications system		s.(2)6 RIPA		
3(4)	Extension of 'time when in course of transmission' definition	'any time when the communication is stored in or by the system (whether before or after its transmission)' 3(4)(b)	RIPA	Any time when the system by means of which the communication is being, or has been, transmitted is used for storing it in a manner that enables the intended recipient to collect it or otherwise to have access to it 2(7)	'Sent' items covered in interception? Also those in draft folder? See Explanatory Memo for further examples. NB: re-jigged formulation again. It clarifies the remaining uncertainty over RIPA, s. 2(7), following <i>Edmondson & ors v R</i> [2013] EWCA Crim 1026.
3(5)	When is content available	is taken to be made available to a person at a relevant time include...'	s. 2(8) RIPA	are taken to be made available to a person while being transmitted shall include...'	Follows through on extension to ss.3(4) by inclusion of (b)
3(5)	Recorded conversations		s. 2 (8) RIPA		No change.
3(6)	Definitions for interference with wireless telegraphy		ss 115-177 Wireless Telegraph y Act 2006		
3(7)	Interception in re postal services in transmission	section 125(3) of the Postal Services Act 2000 applies			

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3(8)	Interception in the UK		s 2(4) RIPA		
					Structure different - relevant definitions found in s. 3(2) and 3(4) IPB. Note deletion of 'while being transmitted' and note comments re ss 3(4). Nb extension NB change in definition for 'telecommunications system' (s. 193)
4(1)	Receiving broadcasting is not interception		s.2(3) RIPA		
4(2)	Using 'postal data'	References in this Act to the interception of a communication in the course of its transmission by means of a postal service do not include references to...	s. 2(5) RIPA	References in this Act to the interception of a communication in the course of its transmission by means of a postal service or telecommunications system do not include....'	RIPA refers to 'traffic data' (defined s. 2(9), (10) and (11) RIPA); IPB excludes t/comc system and refers to 'postal data' (defined s 194)
5	'Lawful authority'	.. A person has lawful authority to carry out an interception if, and only if...	s3 RIPA		Different phraseology - RIPA refers to the ss authorising conduct; the list of lawful conduct is different. NB under IPB conduct lawful under s. 5 is to be lawful for all purposes.

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7	Requests for interception to overseas authorities	The Secretary of State must ensure that no request to which this section applies is made on behalf of a person in the United Kingdom to the competent authorities of a country or territory outside the United Kingdom unless a mutual assistance warrant has been issued	See Anderson Rec. 8, 76-78	Receipt/transfer of intercepted material should be subject to clearly defined safeguards	Applies to EU mutual assistance warrants or action under an international mutual assistance agreement. See further Part 2
8	Offence of obtaining communications data	A relevant person who knowingly or recklessly obtains communications data from a telecommunications operator or postal operator without lawful authority is guilty of an offence.			This is new. According to the Expl. Memo it is to act as a deterrent. Offence only applies to 'relevant person' - that is someone within a 'relevant public authority' within the meaning of Part 3 IPB. Part 3 then takes you to Schedule 4! Mens Rea is easier to satisfy than for s. 2 offence
9	abolition of 'general information powers'	(2) Any general information power which- (a) would (apart from this subsection) enable a public authority to secure the disclosure		Anderson Report recommended that existing legislation should be replaced by single framework - see Rec. 1, 6 & 7. See list in Annex 6.	ss(1) x-ref Sch 2. Note power of SoS to modify 'any enactment in consequence of subsection (2)'. 'General

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		... of communications data ... is to be read as not enabling the public authority to secure such a disclosure			information power' defined s(9)(5). Note there is no complete repeal; there are other parts of the bill where existing statute remains too. This brings the Code of Practice obligation (at 1.3) into the statute
10	Circumstances in which 'relevant services' may hack	..may not.. Engage in conduct that could be authorised by a targeted interference warrant or a bulk equipment interference warrant except under the authority of such a warrant if- (a) ... the conduct would..constitute one or more offences under sections 1 to 3A of the Computer Misuse Act 1990... and (b) there is a British Islands connection'	Anderson Report Rec 6(b)	"The following should be brought into the new law and/or made subject to equivalent conditions to those recommended here (b) equipment interference (or CNE) pursuant to ISA 1994 ss 5 and 7, so far as it is conducted for the purpose of obtaining electronic communications..."	The provisions aims to exclude reliance on ISA when matter IPB. Application of IPB subject to 2 conditions: existence of an offence under Computer Misuse Act (ss 1-3A), which are broadly defined; and a connection to the British Islands (defined ss(2)). Absent both conditions, a warrant is not required. There is no offence for misuse.
11	Restriction on use of s. 93 Police Act			Note Anderson Report, Rec 2: changes required to Part III Police Act (s. 93 authorisations to interfere with property)	