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STATUTORY INSTRUMENTS

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**2000 No. 2699**

**INVESTIGATORY POWERS**

The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000

<i>Made</i>	<i>2nd October 2000</i>
<i>Laid before Parliament</i>	<i>3rd October 2000</i>
<i>Coming into force</i>	<i>24th October 2000</i>

The Secretary of State, in exercise of the powers conferred on him by sections 4(2) and 78(5) of the Regulation of Investigatory Powers Act 2000<sup>[1]</sup> ("the Act"), hereby makes the following Regulations: -

**Citation and commencement**

1. These Regulations may be cited as the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 and shall come into force on 24th October 2000.

**Interpretation**

2. In these Regulations -

- (a) references to a business include references to activities of a government department, of any public authority or of any person or office holder on whom functions are conferred by or under any enactment;
- (b) a reference to a communication as relevant to a business is a reference to -
  - (i) a communication -
    - (aa) by means of which a transaction is entered into in the course of that business, or
    - (bb) which otherwise relates to that business, or
  - (ii) a communication which otherwise takes place in the course of the carrying on of that business;

(c) "regulatory or self-regulatory practices or procedures" means practices or procedures -

(i) compliance with which is required or recommended by, under or by virtue of -

(aa) any provision of the law of a member state or other state within the European Economic Area, or

(bb) any standard or code of practice published by or on behalf of a body established in a member state or other state within the European Economic Area which includes amongst its objectives the publication of standards or codes of practice for the conduct of business, or

(ii) which are otherwise applied for the purpose of ensuring compliance with anything so required or recommended;

(d) "system controller" means, in relation to a particular telecommunication system, a person with a right to control its operation or use.

### **Lawful interception of a communication**

**3.** - (1) For the purpose of section 1(5)(a) of the Act, conduct is authorised, subject to paragraphs (2) and (3) below, if it consists of interception of a communication, in the course of its transmission by means of a telecommunication system, which is effected by or with the express or implied consent of the system controller for the purpose of -

(a) monitoring or keeping a record of communications -

(i) in order to -

(aa) establish the existence of facts, or

(bb) ascertain compliance with regulatory or self-regulatory practices or procedures which are -

applicable to the system controller in the carrying on of his business or

applicable to another person in the carrying on of his business where that person is supervised by the system controller in respect of those practices or procedures, or

(cc) ascertain or demonstrate the standards which are achieved or ought to be achieved by persons using the system in the course of their duties, or

(ii) in the interests of national security, or

(iii) for the purpose of preventing or detecting crime, or

(iv) for the purpose of investigating or detecting the unauthorised use of that or any other telecommunication system, or

(v) where that is undertaken -

(aa) in order to secure, or

(bb) as an inherent part of,

the effective operation of the system (including any monitoring or keeping of a record which would be authorised by section 3(3) of the Act if the conditions in paragraphs (a) and (b) thereof were satisfied); or

(b) monitoring communications for the purpose of determining whether they are communications relevant to the system controller's business which fall within regulation 2(b)(i) above; or

(c) monitoring communications made to a confidential voice-telephony counselling or support service which is free of charge (other than the cost, if any, of making a telephone call) and operated in such a way that users may remain anonymous if they so choose.

(2) Conduct is authorised by paragraph (1) of this regulation only if -

(a) the interception in question is effected solely for the purpose of monitoring or (where appropriate) keeping a record of communications relevant to the system controller's business;

(b) the telecommunication system in question is provided for use wholly or partly in connection with that business;

(c) the system controller has made all reasonable efforts to inform every person who may use the telecommunication system in question that communications transmitted by means thereof may be intercepted; and

(d) in a case falling within -

(i) paragraph (1)(a)(ii) above, the person by or on whose behalf the interception is effected is a person specified in section 6(2)(a) to (i) of the Act;

(ii) paragraph (1)(b) above, the communication is one which is intended to be received (whether or not it has been actually received) by a person using the telecommunication system in question.

(3) Conduct falling within paragraph (1)(a)(i) above is authorised only to the extent that Article 5 of Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector<sup>[2]</sup> so permits.

*Patricia Hewitt,*

Minister for Small Business and E-Commerce, Department of Trade and Industry

2nd October 2000

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations authorise certain interceptions of telecommunication communications which would otherwise be prohibited by section 1 of the Regulation of Investigatory Powers Act 2000. To the extent that the interceptions are also prohibited by Article 5.1 of Directive 97/66/EC, the authorisation does not exceed that permitted by Articles 5.2 and 14.1 of the Directive.

The interception has to be by or with the consent of a person carrying on a business (which includes the activities of government departments, public authorities and others exercising statutory functions) for purposes relevant to that person's business and using that business's own telecommunication system.

Interceptions are authorised for -

- monitoring or recording communications -
  - to establish the existence of facts, to ascertain compliance with regulatory or self-regulatory practices or procedures or to ascertain or demonstrate standards which are or ought to be achieved (quality control and training),
  - in the interests of national security (in which case only certain specified public officials may make the interception),
  - to prevent or detect crime,
  - to investigate or detect unauthorised use of telecommunication systems or,
  - to secure, or as an inherent part of, effective system operation;
- monitoring received communications to determine whether they are business or personal communications;
- monitoring communications made to anonymous telephone helplines.

Interceptions are authorised only if the controller of the telecommunications system on which they are effected has made all reasonable efforts to inform potential users that interceptions may be made.

The Regulations do not authorise interceptions to which the persons making and receiving the communications have consented: they are not prohibited by the Act.

A regulatory impact assessment is available and can be obtained from Communications and Information Industries Directorate, Department of Trade and Industry, 151 Buckingham Palace Road, London SW1W 9SS. Copies have been placed in the libraries of both Houses of Parliament.