

INVESTIGATORY POWERS BILL: EQUIPMENT INTERFERENCE

What is it?

Equipment interference allows the security and intelligence agencies, law enforcement and the armed forces to interfere with electronic equipment, such as computers and smartphones, in order to obtain data, such as communications, from a device. Equipment interference encompasses a wide range of activity, from remote access to computers to downloading covertly the contents of a mobile phone during a search.

Why do we need it?

Where necessary and proportionate the security and intelligence agencies, law enforcement and the armed forces need to be able to access communications or other information held on computers, in order to gain valuable intelligence in national security and serious crime investigations and to help gather evidence for use in criminal prosecutions. Equipment interference plays an important role in mitigating the loss of intelligence that may no longer be obtained through other techniques, such as interception, as a result of sophisticated encryption. It can sometimes be the only method by which to acquire the data. The armed forces use this technique in some situations to gather data in support of military operations.

What happens now?

Equipment interference is currently used by law enforcement agencies and the security and intelligence agencies; more sensitive and intrusive techniques are generally available only to the security and intelligence agencies and a small number of law enforcement agencies, including the National Crime Agency. Equipment interference is currently provided for under property interference powers in the Intelligence Services Act 1994 and covert use of the power is provided to law enforcement agencies in the Police Act 1997. A draft Code of Practice was published last year and governs the use of equipment interference powers by the security and intelligence agencies.

What will happen in the future?

Building on recommendations made by David Anderson QC, the ISC, the Joint Committee on the draft Investigatory Powers Bill and the Science and Technology Committee, the Bill will provide for a new, more explicit equipment interference regime that will govern the use of these techniques by law enforcement agencies, the security and intelligence agencies and the armed forces. The use of this power will be limited to the same statutory purposes as interception. Law enforcement agencies will be able to apply for a warrant for the prevention and detection of serious crime. A more limited number of law enforcement agencies will be able to seek a warrant in exceptional circumstances, where it is necessary for the prevention of death or injury.

What safeguards are there?

Use of these powers by the security and intelligence agencies or the armed forces currently requires a warrant to be issued by the Secretary of State. Property interference authorisations for law enforcement agencies may be issued by an appropriate law enforcement chief. The Investigatory Powers Bill will strengthen authorisation safeguards so that the issue of warrants will in future also be subject to approval by a Judicial Commissioner.

The IPC will oversee the use of equipment interference powers by law enforcement agencies, the security and intelligence agencies, and the armed forces. They will ensure that the detailed safeguards set out in the legislation and accompanying Code of Practice are stringently applied and that appropriate arrangements are in place to handle the sensitive material obtained. The Commissioner will audit how the authorities use the power and publish the findings.

What are the key provisions in the Bill?

- **The Bill will build on the recommendations made by David Anderson QC, the ISC, the Joint Committee on the draft Investigatory Powers Bill and the Science and Technology Committee by creating a new, specific equipment interference regime**
- **It will strengthen the authorisation regime so that warrants will be subject to the double-lock authorisation safeguard**
- **It will limit the use of this technique to the same statutory purposes as interception; law enforcement agency warrants will only be issued for serious crime or when there is an urgent threat to life that may be prevented**
- **As some equipment interference techniques are used by all law enforcement agencies, the Bill will permit all police forces to undertake equipment interference; a Code of Practice will outline the limitations and regulate the use of more sensitive and intrusive techniques**
- **The Bill will create a new obligation on domestic Communications Service Providers (CSPs) to assist in giving effect to equipment interference warrants**