

instructions, since it is the provision of sufficiently precise guidance to enable individuals to regulate their conduct, rather than the source of that guidance, which is of relevance.

- 1 464 HL Official Report col 879.
- 2 (1993) 78-A DR 119.

Proportionality

6.20 In considering whether a warrant was necessary, account must be given to whether the material could be acquired by other means.¹

- 1 IOCA 1985, s 2(3).

Scrutiny

6.21 IOCA 1985 also provided for the appointment of an Interception Commissioner who holds, or has held, high judicial office. His function was to oversee the exercise of the Secretary of State's power to issue warrants. It also set up a tribunal whose function was to determine complaints by members of the public who believe they may have been victims of unlawful interception. It could not investigate an interception which was not authorised by warrant. It has now been superseded by the Investigatory Powers Tribunal set up by RIPA 2000, s 65 (see Chapter 10).

6.22 Since 1985 there have been challenges to IOCA 1985 in the ECt HR, none of which have been successful. In *Christie v United Kingdom*¹ the applicant was General Secretary of the Scottish Trades Union Congress. The case concerned the alleged interception by GCHQ of telexes to the applicant from East European trade unions. The Commission held that the scope and manner of the exercise of the powers to intercept and make use of the product were indicated with the required degree of clarity to comply with art 8.

In *Preston v United Kingdom*² the product of interceptions had been destroyed pursuant to IOCA 1985, s 6. It was held that there was no breach of the equality of arms principle under art 6.

- 1 (1993) 18 EHRR 188, 78A DR 119.
- 2 [1997] EHRLR 695.

Table of interception warrants issued under IOCA 1985

6.23 See para 1.44 for the figures from 2000 Interception Commissioners Report.

In line with established practice based on para 121 of the Birkett Report, no figures are published regarding the number of warrants issued by the Foreign Secretary or the Secretary of State for Northern Ireland.

According to the Report of the Commissioner for the year to end of 2000 the great majority of warrants issued remain related to the prevention and detection of serious crime. The position remains the same under RIPA 2000, see Report of the Commissioner for 2002.