



What are the rules about recording and monitoring telephone calls or e-mails?

A general overview of interception, recording and monitoring of communications

The interception, recording and monitoring of telephone calls is governed by a number of different pieces of UK legislation. The requirements of all relevant legislation must be complied with. The main ones are:

Regulation of Investigatory Powers Act 2000 ("RIPA").
Telecommunications (Lawful Business Practice)(Interception of Communications) Regulations 2000 ("LBP Regulations").
Data Protection Act 1998.
Telecommunications (Data Protection and Privacy) Regulations 1999.
Human Rights Act 1998.

It is not possible to provide comprehensive detail of the above legislation here. Any person considering interception, recording or monitoring of telephone calls or e-mails is strongly advised to seek his/her own independent legal advice and should not seek to rely on the general information provided below. It should be borne in mind that criminal offences and civil actions may occur when the relevant legislation is not complied with. Accordingly, Papillon Technology accepts no liability for reliance by any person on the following information.

Can I record telephone conversations on my home phone?

Yes. The relevant law, RIPA, does not prohibit individuals from recording their own communications provided that the recording is for their own use. Recording or monitoring are only prohibited where some of the contents of the communication - which can be a phone conversation or an e-mail - are made available to a third party, i.e. someone who was neither the caller or sender nor the intended recipient of the original communication. For further information see the Home Office website where RIPA is posted.

Do I have to let people know that I intend to record their telephone conversations with me?

No, provided you are not intending to make the contents of the communication available to a third party. If you are you will need the consent of the person you are recording.

Can a free helpline record my calls?

No. If you phone an anonymous helpline that offers its services for free your conversation may be monitored but not recorded.

Can a business or other organisation record or monitor phone calls or e-mail correspondence with them?

Yes they can, but only in a limited set of circumstances relevant for that business which have been defined by the LBP Regulations. The main ones are:

- to provide evidence of a business transaction
- to ensure that a business complies with regulatory procedures
- to see that quality standards or targets are being met
- in the interests of national security
- to prevent or detect crime
- to investigate the unauthorised use of a telecom system
- to secure the effective operation of the telecom system.

In addition, businesses can monitor, but not record, phone calls or e-mails that have been received to see whether they are relevant to the business (i.e. open an employee's voicemail or mailbox systems while they are away to see if there are any business communications stored there). For further information see the DTI website where the LBP Regulations are posted.

However any interception of employees' communications must be proportionate and in accordance with Data Protection principles. The Data Protection Commissioner is consulting on a Code of Practice on The use of personal data in employer/employee relationships. It is proposed that where the standards in the Code of Practice are, in the Commissioner's opinion, necessary for compliance with the Data Protection Act 1998 they may be directly enforceable as a breach of the Data Protection principles. Accordingly this Code of Practice and the Data Protection Act must also be considered by any business before it intercepts employees' communications. For further information see the Data Protection Commissioner's website where the draft Code of Practice is posted.

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