Investigatory Powers Act 2016

2016 CHAPTER 25

PART 7

BULK PERSONAL DATASET WARRANTS

Further and supplementary provision

220 Initial examinations: time limits

(1) This section applies where—

(a) an intelligence service obtains a set of information otherwise than in the exercise of a power conferred by a warrant or other authorisation issued or given under this Act, and

(b) the head of the intelligence service believes that—

(i) the set includes, or may include, personal data relating to a number of individuals, and

(ii) the nature of the set is, or may be, such that the majority of the individuals are not, and are unlikely to become, of interest to the intelligence service in the exercise of its functions.

(2) The head of the intelligence service must take the following steps before the end of the permitted period.

Step 1 Carry out an initial examination of the set for the purpose of deciding whether, if the intelligence service were to retain it after that initial examination and hold it electronically for analysis for the purposes of the exercise of its functions, the intelligence service would be retaining a bulk personal dataset (see section 199).

Step 2 If the intelligence service would be retaining a bulk personal dataset as mentioned in step 1, decide whether to retain the set and hold it electronically for analysis for the purposes of the exercise of the functions of the intelligence service.

Step 3 If the head of the intelligence service decides to retain the set and hold it electronically for analysis as mentioned in step 2, apply for a specific BPD

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warrant as soon as reasonably practicable after making that decision (unless the retention of the dataset is authorised by a class BPD warrant).

(3) The permitted period begins when the head of the intelligence service first forms the beliefs mentioned in subsection (1)(b).

(4) The permitted period ends—

(a) where the set of information was created in the United Kingdom, 3 months after the day on which it begins;

(b) where the set of information was created outside the United Kingdom, 6 months after the day on which it begins.

(5) If the head of the intelligence service applies for a specific BPD warrant in accordance with step 3 (set out in subsection (2))—

(a) the intelligence service is not to be regarded as in breach of section 200(1) by virtue of retaining the bulk personal dataset during the period between the taking of the decision mentioned in step 2 and the determination of the application for the specific BPD warrant, and

(b) the intelligence service is not to be regarded as in breach of section 200(2) by virtue of examining the bulk personal dataset during that period if the examination is necessary for the purposes of the making of the application for the warrant.

Commencement Information

I1 S. 220 in force at 22.8.2018 by S.I. 2018/873, **reg. 3(c)** (with reg. 9)

221 Safeguards relating to examination of bulk personal datasets

(1) The Secretary of State must ensure, in relation to every class BPD warrant or specific BPD warrant which authorises examination of bulk personal datasets of a class described in the warrant or (as the case may be) of a bulk personal dataset described in the warrant, that arrangements are in force for securing that—

(a) any selection of data contained in the datasets (or dataset) for examination is carried out only for the specified purposes (see subsection (2)), and

(b) the selection of any such data for examination is necessary and proportionate in all the circumstances.

(2) The selection of data contained in bulk personal datasets for examination is carried out only for the specified purposes if the data is selected for examination only so far as is necessary for the operational purposes specified in the warrant in accordance with section 212.

(3) The Secretary of State must also ensure, in relation to every specific BPD warrant which specifies conditions imposed under section 207, that arrangements are in force for securing that any selection for examination of protected data on the basis of criteria which are referable to an individual known to be in the British Islands at the time of the selection is in accordance with the conditions specified in the warrant.

(4) In this section “specified in the warrant” means specified in the warrant at the time of the selection of the data for examination.

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Commencement Information

I2 S. 221 in force at 25.7.2018 by S.I. 2018/873, **reg. 2(t)** (with reg. 6(d))

222 Additional safeguards for items subject to legal privilege: examination

(1) Subsections (2) and (3) apply if, in a case where protected data retained in reliance on a specific BPD warrant is to be selected for examination—

(a) the purpose, or one of the purposes, of using the criteria to be used for the selection of the data for examination ("the relevant criteria") is to identify any items subject to legal privilege, or

(b) the use of the relevant criteria is likely to identify such items.

(2) If the relevant criteria are referable to an individual known to be in the British Islands at the time of the selection, the data may be selected for examination using the relevant criteria only if the Secretary of State has approved the use of those criteria.

(3) In any other case, the data may be selected for examination using the relevant criteria only if a senior official acting on behalf of the Secretary of State has approved the use of those criteria.

(4) The Secretary of State may give approval for the purposes of subsection (2) only with the approval of a Judicial Commissioner.

(5) Approval may be given under subsection (2) or (3) only if—

(a) the Secretary of State or (as the case may be) the senior official considers that the arrangements mentioned in section 205(6)(d) include specific arrangements in respect of items subject to legal privilege, and

(b) where subsection (1)(a) applies, the Secretary of State or (as the case may be) the senior official considers that there are exceptional and compelling circumstances that make it necessary to authorise the use of the relevant criteria.

(6) In deciding whether to give an approval under subsection (2) or (3) in a case where subsection (1)(a) applies, the Secretary of State or (as the case may be) the senior official must have regard to the public interest in the confidentiality of items subject to legal privilege.

(7) For the purposes of subsection (5)(b), there cannot be exceptional and compelling circumstances that make it necessary to authorise the use of the relevant criteria unless—

(a) the public interest in obtaining the information that would be obtained by the selection of the data for examination outweighs the public interest in the confidentiality of items subject to legal privilege,

(b) there are no other means by which the information may reasonably be obtained, and

(c) obtaining the information is necessary in the interests of national security or for the purpose of preventing death or significant injury.

(8) In deciding whether to give approval for the purposes of subsection (4), the Judicial Commissioner must—

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(a) apply the same principles as would be applied by a court on an application for judicial review, and

(b) consider the matter with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).

(9) Subsections (10) and (11) apply if, in a case where protected data retained in reliance on a specific BPD warrant is to be selected for examination—

(a) the purpose, or one of the purposes, of using the criteria to be used for the selection of the data for examination ("the relevant criteria") is to identify data that, if the data or any underlying material were not created or held with the intention of furthering a criminal purpose, would be an item subject to legal privilege, and

(b) the person to whom the warrant is addressed considers that the data ("the targeted data") or any underlying material is likely to be data or underlying material created or held with the intention of furthering a criminal purpose.

(10) If the relevant criteria are referable to an individual known to be in the British Islands at the time of the selection, the data may be selected for examination using the relevant criteria only if the Secretary of State has approved the use of those criteria.

(11) In any other case, the data may be selected for examination using the relevant criteria only if a senior official acting on behalf of the Secretary of State has approved the use of those criteria.

(12) Approval may be given under subsection (10) or (11) only if the Secretary of State or (as the case may be) the senior official considers that the targeted data or the underlying material is likely to be data or underlying material created or held with the intention of furthering a criminal purpose.

(13) In this section, "underlying material", in relation to data retained in reliance on a specific BPD warrant, means any communications or other items of information from which the data was produced.

Commencement Information

I3 S. 222 in force at 22.8.2018 by S.I. 2018/873, **reg. 3(c)**

223 Additional safeguards for items subject to legal privilege: retention following examination

(1) Where an item subject to legal privilege is retained following its examination in reliance on a specific BPD warrant, for purposes other than the destruction of the item, the person to whom the warrant is addressed must inform the Investigatory Powers Commissioner as soon as is reasonably practicable.

(2) Unless the Investigatory Powers Commissioner considers that subsection (4) applies to the item, the Commissioner must—

(a) direct that the item is destroyed, or

(b) impose one or more conditions as to the use or retention of that item.

(3) If the Investigatory Powers Commissioner considers that subsection (4) applies to the item, the Commissioner may nevertheless impose such conditions under

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subsection (2)(b) as the Commissioner considers necessary for the purpose of protecting the public interest in the confidentiality of items subject to legal privilege.

(4) This subsection applies to an item subject to legal privilege if—

(a) the public interest in retaining the item outweighs the public interest in the confidentiality of items subject to legal privilege, and

(b) retaining the item is necessary in the interests of national security or for the purpose of preventing death or significant injury.

(5) The Investigatory Powers Commissioner—

(a) may require an affected party to make representations about how the Commissioner should exercise any function under subsection (2), and

(b) must have regard to any such representations made by an affected party (whether or not as a result of a requirement imposed under paragraph (a)).

(6) Each of the following is an "affected party" for the purposes of subsection (5)—

(a) the Secretary of State;

(b) the person to whom the warrant is or was addressed.

Commencement Information

I4 S. 223 in force at 22.8.2018 by S.I. 2018/873, **reg. 3(c)**

224 Offence of breaching safeguards relating to examination of material

(1) A person commits an offence if—

(a) the person selects for examination any data contained in a bulk personal dataset retained in reliance on a class BPD warrant or a specific BPD warrant,

(b) the person knows or believes that the selection of that data is in breach of a requirement specified in subsection (2), and

(c) the person deliberately selects that data in breach of that requirement.

(2) The requirements specified in this subsection are that any selection for examination of the data—

(a) is carried out only for the specified purposes (see subsection (3)),

(b) is necessary and proportionate, and

(c) if the data is protected data, satisfies any conditions imposed under section 207.

(3) The selection for examination of the data is carried out only for the specified purposes if the data is selected for examination only so far as is necessary for the operational purposes specified in the warrant in accordance with section 212.

In this subsection, "specified in the warrant" means specified in the warrant at the time of the selection of the data for examination.

(4) A person guilty of an offence under this section is liable—

(a) on summary conviction in England and Wales—

(i) to imprisonment for a term not exceeding **[**[F1]the general limit in a magistrates' court**]** (or 6 months, if the offence was committed before **[**[F2]2 May 2022**]**), or

(ii) to a fine,

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or to both;

(b) on summary conviction in Scotland—

(i) to imprisonment for a term not exceeding 12 months, or

(ii) to a fine not exceeding the statutory maximum,

or to both;

(c) on summary conviction in Northern Ireland—

(i) to imprisonment for a term not exceeding 6 months, or

(ii) to a fine not exceeding the statutory maximum,

or to both;

(d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

(5) No proceedings for any offence which is an offence by virtue of this section may be instituted—

(a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;

(b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

Textual Amendments

F1 Words in s. 224(4)(a)(i) substituted (7.2.2023 at 12.00 p.m.) by The Judicial Review and Courts Act 2022 (Magistrates' Court Sentencing Powers) Regulations 2023 (S.I. 2023/149), regs. 1(2), 2(1), **Sch. Pt. 1**

F2 Words in s. 224(4)(a)(i) substituted (28.4.2022) by The Criminal Justice Act 2003 (Commencement No. 33) and Sentencing Act 2020 (Commencement No. 2) Regulations 2022 (S.I. 2022/500), regs. 1(2), 5(1), **Sch. Pt. 1**

Commencement Information

I5 S. 224 in force at 22.8.2018 by S.I. 2018/873, **reg. 3(c)**

225 Application of Part to bulk personal datasets obtained under this Act

(1) Subject to subsection (2), this section applies where a bulk personal dataset has been obtained by an intelligence service under a warrant or other authorisation issued or given under this Act (and, accordingly, section 200(1) and (2) do not apply by virtue of section 201(1)).

(2) This section does not apply where the bulk personal dataset was obtained by the intelligence service under a bulk acquisition warrant issued under Chapter 2 of Part 6.

(3) Where this section applies, the Secretary of State may, on the application of the head of the intelligence service, give a direction that—

(a) the intelligence service may retain, or retain and examine, the bulk personal dataset by virtue of the direction,

(b) any other power of the intelligence service to retain or examine the bulk personal dataset, and any associated regulatory provision, ceases to apply in relation to the bulk personal dataset (subject to subsection (5)), and

(c) section 201(1) also ceases to apply in relation to the bulk personal dataset.

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(4) Accordingly, where a direction is given under subsection (3), the intelligence service may exercise its power by virtue of the direction to retain, or to retain and examine, the bulk personal dataset only if authorised to do so by a class BPD warrant or a specific BPD warrant under this Part.

(5) A direction under subsection (3) may provide for any associated regulatory provision specified in the direction to continue to apply in relation to the bulk personal dataset, with or without modifications specified in the direction.

(6) The power conferred by subsection (5) must be exercised to ensure that—
   (a) where section 56 and Schedule 3 applied in relation to the bulk personal dataset immediately before the giving of the direction, they continue to apply in relation to it (without modification);
   (b) where sections 57 to 59 applied in relation to the bulk personal dataset immediately before the giving of the direction, they continue to apply in relation to it with the modification that the reference in section 58(7)(a) to the provisions of Part 2 is to be read as including a reference to the provisions of this Part.

(7) The Secretary of State may only give a direction under subsection (3) with the approval of a Judicial Commissioner.

(8) In deciding whether to give approval for the purposes of subsection (7), the Judicial Commissioner must apply the same principles as would be applied by a court on an application for judicial review.

(9) Where a Judicial Commissioner refuses to approve a decision by the Secretary of State to give a direction under subsection (3), the Judicial Commissioner must give the Secretary of State written reasons for the decision.

(10) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, refuses to approve such a decision, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision.

(11) A direction under subsection (3)—
   (a) may not be revoked;
   (b) may be varied but only for the purpose of altering or removing any provision included in the direction under subsection (5).

(12) Subsections (7) to (10) apply in relation to the variation of a direction under subsection (3) as they apply in relation to the giving of a direction under that subsection.

(13) The head of an intelligence service may, at the same time as applying for a direction under subsection (3), apply for a specific BPD warrant under section 205 (and the Secretary of State may issue such a warrant at the same time as giving the direction).

(14) In this section, "associated regulatory provision", in relation to a power of an intelligence service to retain or examine a bulk personal dataset, means any provision which—
   (a) is made by or for the purposes of this Act (other than this Part), and
   (b) applied in relation to the retention, examination, disclosure or other use of the bulk personal dataset immediately before the giving of a direction under subsection (3).

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Commencement Information

I6 S. 225 in force at 25.7.2018 for specified purposes by S.I. 2018/873, **reg. 2(u)**

I7 S. 225 in force at 22.8.2018 in so far as not already in force by S.I. 2018/873, **reg. 3(c)** (with reg. 9)

226 Part 7: interpretation

(1) In this Part—

"class BPD warrant" has the meaning given by section 200(3)(a);

"personal data" has the meaning given by section 199(2);

"senior official" means a member of the Senior Civil Service or a member of the Senior Management Structure of Her Majesty's Diplomatic Service;

"specific BPD warrant" has the meaning given by section 200(3)(b);

"the specified operational purposes" has the meaning given by section 212(12).

(2) See also—

section 263 (general definitions),

section 265 (index of defined expressions).

Commencement Information

I8 S. 226 in force at 25.7.2018 by S.I. 2018/873, **reg. 2(v)**

Changes to legislation:
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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 7A inserted by 2024 c. 9 s. 2
- Pt. 7B inserted by 2024 c. 9 s. 5
- s. 2(1)(ja)(jb) inserted by 2024 c. 9 s. 6(3)(c)
- s. 11(3A)(3B) inserted by 2024 c. 9 s. 12(3)
- s. 12(2B)-(2D) inserted by 2024 c. 9 s. 14(4)
- s. 12(5A)(5B) inserted by 2024 c. 9 s. 14(6)
- s. 26(2)(a) words renumbered as s. 26(2)(a) by 2024 c. 9 s. 22(2)(a)
- s. 26(2)(b) and word inserted by 2024 c. 9 s. 22(2)(b)
- s. 26(2A)-(2F) inserted by 2024 c. 9 s. 22(3)
- s. 62(5A)-(5C) inserted by 2024 c. 9 s. 15(4)
- s. 87(4)(aa) inserted by 2024 c. 9 s. 16(2)(c)
- s. 87(4A) inserted by 2024 c. 9 s. 16(3)
- s. 87(6A)(6B) inserted by 2024 c. 9 s. 20(2)
- s. 90(4)-(4B) substituted for s. 90(4) by 2024 c. 9 s. 18(2)(a)
- s. 90(5A) inserted by 2024 c. 9 s. 18(2)(c)
- s. 90(9A)(9B) inserted by 2024 c. 9 s. 18(2)(d)
- s. 90(11A) inserted by 2024 c. 9 s. 18(2)(f)
- s. 90(14)-(16) inserted by 2024 c. 9 s. 18(2)(g)
- s. 94A inserted by 2024 c. 9 s. 20(4)
- s. 111(3)(a) words renumbered as s. 111(3)(a) by 2024 c. 9 s. 23(2)(a)
- s. 111(3)(b) and word inserted by 2024 c. 9 s. 23(2)(b)
- s. 111(6)(a) words renumbered as s. 111(6)(a) by 2024 c. 9 s. 23(3)(a)
- s. 111(6)(b) and word inserted by 2024 c. 9 s. 23(3)(b)
- s. 111(7A)-(7E) inserted by 2024 c. 9 s. 23(4)
- s. 121(4) inserted by 2024 c. 9 s. 25
- s. 195195A substituted for s. 195 by 2024 c. 9 s. 27(2)
- s. 200(1)(a) words renumbered as s. 200(1)(a) by 2024 c. 9 s. 1(4)(a)(i)
- s. 200(1)(b) and word inserted by 2024 c. 9 s. 1(4)(a)(ii)
- s. 200(2)(a) words renumbered as s. 200(2)(a) by 2024 c. 9 s. 1(4)(b)(i)
- s. 200(2)(b) and word inserted by 2024 c. 9 s. 1(4)(b)(ii)
- s. 202(5) inserted by 2024 c. 9 s. 4(2)(c)
- s. 206(8) inserted by 2024 c. 9 s. 4(3)(b)
- s. 219(9) inserted by 2024 c. 9 s. 4(4)(c)
- s. 220(6) inserted by 2024 c. 9 s. 1(7)(b)
- s. 220(7) inserted by 2024 c. 9 s. 4(5)(b)
- s. 225(4)(a) words renumbered as s. 225(4)(a) by 2024 c. 9 s. 1(8)(a)(i)
- s. 225(4)(b) and word inserted by 2024 c. 9 s. 1(8)(a)(ii)
- s. 225(13)(a) words renumbered as s. 225(13)(a) by 2024 c. 9 s. 1(8)(b)(i)
- s. 225(13)(b) and word inserted by 2024 c. 9 s. 1(8)(b)(ii)
- s. 225(15) inserted by 2024 c. 9 s. 4(6)(c)
- s. 227(6A)(6B) inserted by 2024 c. 9 s. 7(2)
- s. 227(8)-(8D) substituted for s. 227(8)(9) by 2024 c. 9 s. 8(2)
- s. 227(10A) inserted by 2024 c. 9 s. 8(4)
- s. 227(14) inserted by 2024 c. 9 s. 8(6)
- s. 228(6) inserted by 2024 c. 9 s. 7(3)
- s. 228A inserted by 2024 c. 9 s. 9
- s. 229(3E) inserted by 2024 c. 9 s. 10(2)(b)

- s. 229(8)(fb) inserted by 2024 c. 9 s. 27(3)
- s. 230(1)(d) and word inserted by 2024 c. 9 s. 10(3)(b)
- s. 231(10) inserted by 2024 c. 9 s. 10(4)(b)
- s. 235A inserted by 2024 c. 9 s. 11(1)
- s. 255(5A)(5B) inserted by 2024 c. 9 s. 20(6)
- s. 256A inserted by 2024 c. 9 s. 20(7)
- s. 257(3)-(3B) substituted for s. 257(3) by 2024 c. 9 s. 18(5)(a)
- s. 257(4A) inserted by 2024 c. 9 s. 18(5)(c)
- s. 257(8A)(8B) inserted by 2024 c. 9 s. 18(5)(d)
- s. 257(10A) inserted by 2024 c. 9 s. 18(5)(f)
- s. 257(13)-(15) inserted by 2024 c. 9 s. 18(5)(g)
- s. 258A258B inserted by 2024 c. 9 s. 21(2)
- s. 261(5A)(5B) inserted by 2024 c. 9 s. 13(3)
- s. 261(10)(c) and word inserted by 2024 c. 9 s. 19(2)(b)
- s. 267(3)(ja) inserted by 2024 c. 9 s. 21(3)(b)
- s. 267(5)(aa) inserted by 2024 c. 9 s. 14(8)
- Sch. 2A inserted by 2024 c. 9 s. 14(9)
- Sch. 3 para. 12A and cross-heading inserted by 2024 c. 9 s. 28(2)
- Sch. 3 para. 2526 inserted by 2024 c. 9 s. 28(3)