



# Investigatory Powers Act 2016

## 2016 CHAPTER 25

### PART 5

#### EQUIPMENT INTERFERENCE

##### *Warrants under this Part*

#### **99 Warrants under this Part: general**

- (1) There are two kinds of warrants which may be issued under this Part—
  - (a) targeted equipment interference warrants (see subsection (2));
  - (b) targeted examination warrants (see subsection (9)).
- (2) A targeted equipment interference warrant is a warrant which authorises or requires the person to whom it is addressed to secure interference with any equipment for the purpose of obtaining—
  - (a) communications (see section 135);
  - (b) equipment data (see section 100);
  - (c) any other information.
- (3) A targeted equipment interference warrant—
  - (a) must also authorise or require the person to whom it is addressed to secure the obtaining of the communications, equipment data or other information to which the warrant relates;
  - (b) may also authorise that person to secure the disclosure, in any manner described in the warrant, of anything obtained under the warrant by virtue of paragraph (a).
- (4) The reference in subsections (2) and (3) to the obtaining of communications or other information includes doing so by—
  - (a) monitoring, observing or listening to a person's communications or other activities;
  - (b) recording anything which is monitored, observed or listened to.

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- (5) A targeted equipment interference warrant also authorises the following conduct (in addition to the conduct described in the warrant)—
- (a) any conduct which it is necessary to undertake in order to do what is expressly authorised or required by the warrant, including conduct for securing the obtaining of communications, equipment data or other information;
  - (b) any conduct by any person which is conduct in pursuance of a requirement imposed by or on behalf of the person to whom the warrant is addressed to be provided with assistance in giving effect to the warrant.
- (6) A targeted equipment interference warrant may not, by virtue of subsection (3), authorise or require a person to engage in conduct, in relation to a communication other than a stored communication, which would (unless done with lawful authority) constitute an offence under section 3(1) (unlawful interception).
- (7) Subsection (5)(a) does not authorise a person to engage in conduct which could not be expressly authorised under the warrant because of the restriction imposed by subsection (6).
- (8) In subsection (6), “stored communication” means a communication stored in or by a telecommunication system (whether before or after its transmission).
- (9) A targeted examination warrant is a warrant which authorises the person to whom it is addressed to carry out the selection of protected material obtained under a bulk equipment interference warrant for examination, in breach of the prohibition in section 193(4) (prohibition on seeking to identify communications of, or private information relating to, individuals in the British Islands).
- In this Part, “protected material”, in relation to a targeted examination warrant, means any material obtained under a bulk equipment interference warrant under Chapter 3 of Part 6, other than material which is—
- (a) equipment data;
  - (b) information (other than a communication or equipment data) which is not private information.
- (10) For provision enabling the combination of targeted equipment interference warrants with certain other warrants or authorisations (including targeted examination warrants), see Schedule 8.
- (11) Any conduct which is carried out in accordance with a warrant under this Part is lawful for all purposes.

#### **Commencement Information**

**II** S. 99 in force at 31.5.2018 by S.I. 2018/652, reg. 4(a)

### **100 Meaning of “equipment data”**

- (1) In this Part, “equipment data” means—
- (a) systems data;
  - (b) data which falls within subsection (2).
- (2) The data falling within this subsection is identifying data which—

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- (a) is, for the purposes of a relevant system, comprised in, included as part of, attached to or logically associated with a communication (whether by the sender or otherwise) or any other item of information,
  - (b) is capable of being logically separated from the remainder of the communication or the item of information, and
  - (c) if it were so separated, would not reveal anything of what might reasonably be considered to be the meaning (if any) of the communication or the item of information, disregarding any meaning arising from the fact of the communication or the existence of the item of information or from any data relating to that fact.
- (3) In subsection (2), “relevant system” means any system on or by means of which the data is held.
- (4) For the meaning of “systems data” and “identifying data”, see section 263.

#### Commencement Information

**I2** S. 100 in force at 31.5.2018 by S.I. 2018/652, reg. 4(b)

## 101 Subject-matter of warrants

- (1) A targeted equipment interference warrant may relate to any one or more of the following matters—
- (a) equipment belonging to, used by or in the possession of a particular person or organisation;
  - (b) equipment belonging to, used by or in the possession of a group of persons who share a common purpose or who carry on, or may carry on, a particular activity;
  - (c) equipment belonging to, used by or in the possession of more than one person or organisation, where the interference is for the purpose of a single investigation or operation;
  - (d) equipment in a particular location;
  - (e) equipment in more than one location, where the interference is for the purpose of a single investigation or operation;
  - (f) equipment which is being, or may be, used for the purposes of a particular activity or activities of a particular description;
  - (g) equipment which is being, or may be, used to test, maintain or develop capabilities relating to interference with equipment for the purpose of obtaining communications, equipment data or other information;
  - (h) equipment which is being, or may be, used for the training of persons who carry out, or are likely to carry out, such interference with equipment.
- (2) A targeted examination warrant may relate to any one or more of the following matters—
- (a) a particular person or organisation;
  - (b) a group of persons who share a common purpose or who carry on, or may carry on, a particular activity;
  - (c) more than one person or organisation, where the conduct authorised by the warrant is for the purpose of a single investigation or operation;

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- (d) the testing, maintenance or development of capabilities relating to the selection of protected material for examination;
- (e) the training of persons who carry out, or are likely to carry out, the selection of such material for examination.

#### Commencement Information

**I3** S. 101 in force at 31.5.2018 by S.I. 2018/652, reg. 4(c)

### *Power to issue warrants*

#### **102 Power to issue warrants to intelligence services: the Secretary of State**

- (1) The Secretary of State may, on an application made by or on behalf of the head of an intelligence service, issue a targeted equipment interference warrant if—
  - (a) the Secretary of State considers that the warrant is necessary on grounds falling within subsection (5),
  - (b) the Secretary of State considers that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct,
  - (c) the Secretary of State considers that satisfactory arrangements made for the purposes of sections 129 and 130 (safeguards relating to disclosure etc.) are in force in relation to the warrant, and
  - (d) except where the Secretary of State considers that there is an urgent need to issue the warrant, the decision to issue the warrant has been approved by a Judicial Commissioner.
- (2) But the Secretary of State may not issue a targeted equipment interference warrant under subsection (1) if—
  - (a) the Secretary of State considers that the only ground for considering the warrant to be necessary is for the purpose of preventing or detecting serious crime, and
  - (b) the warrant, if issued, would authorise interference only with equipment which would be in Scotland at the time of the issue of the warrant or which the Secretary of State believes would be in Scotland at that time.

For the power of the Scottish Ministers to issue a targeted equipment interference warrant, see section 103.

- (3) The Secretary of State may, on an application made by or on behalf of the head of an intelligence service, issue a targeted examination warrant if—
  - (a) the Secretary of State considers that the warrant is necessary on grounds falling within subsection (5),
  - (b) the Secretary of State considers that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct,
  - (c) the Secretary of State considers that the warrant is or may be necessary to authorise the selection of protected material for examination in breach of the prohibition in section 193(4) (prohibition on seeking to identify communications of, or private information relating to, individuals in the British Islands), and

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- (d) except where the Secretary of State considers that there is an urgent need to issue the warrant, the decision to issue the warrant has been approved by a Judicial Commissioner.
- (4) But the Secretary of State may not issue a targeted examination warrant under subsection (3) if the warrant, if issued, would relate only to a person who would be in Scotland at the time of the issue of the warrant or whom the Secretary of State believes would be in Scotland at that time.

For the power of the Scottish Ministers to issue a targeted examination warrant, see section 103.

- (5) A warrant is necessary on grounds falling within this subsection if it is necessary—
- (a) in the interests of national security,
  - (b) for the purpose of preventing or detecting serious crime, or
  - (c) in the interests of the economic well-being of the United Kingdom so far as those interests are also relevant to the interests of national security.
- (6) A warrant may be considered necessary on the ground falling within subsection (5)(c) only if the interference with equipment which would be authorised by the warrant is considered necessary for the purpose of obtaining information relating to the acts or intentions of persons outside the British Islands.
- (7) The fact that the information which would be obtained under a warrant relates to the activities in the British Islands of a trade union is not, of itself, sufficient to establish that the warrant is necessary on grounds falling within subsection (5).
- (8) An application for the issue of a warrant under this section may only be made on behalf of the head of an intelligence service by a person holding office under the Crown.
- (9) Nothing in subsection (2) or (4) prevents the Secretary of State from doing anything under this section for the purposes specified in section 2(2) of the European Communities Act 1972.

#### Commencement Information

- I4** S. 102(1)-(3) in force at 31.5.2018 for specified purposes by S.I. 2018/652, reg. 4(d)(i) (with reg. 22(a))
- I5** S. 102(1)-(3) in force at 27.6.2018 in so far as not already in force by S.I. 2018/652, reg. 9(a)(i)
- I6** S. 102(4) in force at 31.5.2018 for specified purposes by S.I. 2018/652, reg. 4(d)(ii)
- I7** S. 102(4) in force at 27.6.2018 for specified purposes by S.I. 2018/652, reg. 9(a)(ii)
- I8** S. 102(5)-(9) in force at 31.5.2018 by S.I. 2018/652, reg. 4(d)(iii)

### 103 Power to issue warrants to intelligence services: the Scottish Ministers

- (1) The Scottish Ministers may, on an application made by or on behalf of the head of an intelligence service, issue a targeted equipment interference warrant if—
- (a) the warrant authorises interference only with equipment which is in Scotland at the time the warrant is issued or which the Scottish Ministers believe to be in Scotland at that time,
  - (b) the Scottish Ministers consider that the warrant is necessary for the purpose of preventing or detecting serious crime,

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- (c) the Scottish Ministers consider that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct,
  - (d) the Scottish Ministers consider that satisfactory arrangements made for the purposes of sections 129 and 130 (safeguards relating to disclosure etc.) are in force in relation to the warrant, and
  - (e) except where the Scottish Ministers consider that there is an urgent need to issue the warrant, the decision to issue the warrant has been approved by a Judicial Commissioner.
- (2) The Scottish Ministers may, on an application made by or on behalf of the head of an intelligence service, issue a targeted examination warrant if—
- (a) the warrant relates only to a person who is in Scotland, or whom the Scottish Ministers believe to be in Scotland, at the time of the issue of the warrant,
  - (b) the Scottish Ministers consider that the warrant is necessary for the purpose of preventing or detecting serious crime,
  - (c) the Scottish Ministers consider that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct,
  - (d) the Scottish Ministers consider that the warrant is or may be necessary to authorise the selection of protected material in breach of the prohibition in section 193(4) (prohibition on seeking to identify communications of, or private information relating to, individuals in the British Islands), and
  - (e) except where the Scottish Ministers consider that there is an urgent need to issue the warrant, the decision to issue the warrant has been approved by a Judicial Commissioner.
- (3) The fact that the information which would be obtained under a warrant relates to the activities in the British Islands of a trade union is not, of itself, sufficient to establish that the warrant is necessary as mentioned in subsection (1)(b) or (2)(b).
- (4) An application for the issue of a warrant under this section may only be made on behalf of the head of an intelligence service by a person holding office under the Crown.

#### Commencement Information

- I9** S. 103(1)(2) in force at 31.5.2018 for specified purposes by S.I. 2018/652, reg. 4(e)(i) (with reg. 22(b))
- I10** S. 103(1)(2) in force at 27.6.2018 in so far as not already in force by S.I. 2018/652, reg. 9(b)
- I11** S. 103(3)(4) in force at 31.5.2018 by S.I. 2018/652, reg. 4(e)(ii)

## 104 Power to issue warrants to the Chief of Defence Intelligence

- (1) The Secretary of State may, on an application made by or on behalf of the Chief of Defence Intelligence, issue a targeted equipment interference warrant if—
- (a) the Secretary of State considers that the warrant is necessary in the interests of national security,
  - (b) the Secretary of State considers that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct,
  - (c) the Secretary of State considers that satisfactory arrangements made for the purposes of sections 129 and 130 (safeguards relating to disclosure etc.) are in force in relation to the warrant, and

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- (d) except where the Secretary of State considers that there is an urgent need to issue the warrant, the decision to issue the warrant has been approved by a Judicial Commissioner.
- (2) The fact that the information which would be obtained under a warrant relates to the activities in the British Islands of a trade union is not, of itself, sufficient to establish that the warrant is necessary as mentioned in subsection (1)(a).
- (3) An application for the issue of a warrant under this section may only be made on behalf of the Chief of Defence Intelligence by a person holding office under the Crown.

#### Commencement Information

- I12** S. 104(1) in force at 31.5.2018 for specified purposes by S.I. 2018/652, reg. 4(f)(i)  
**I13** S. 104(1) in force at 27.6.2018 in so far as not already in force by S.I. 2018/652, reg. 9(c)  
**I14** S. 104(2)(3) in force at 31.5.2018 by S.I. 2018/652, reg. 4(f)(ii)

### 105 Decision to issue warrants under sections 102 to 104 to be taken personally by Ministers

- (1) The decision to issue a warrant under section 102 or 104 must be taken personally by the Secretary of State.
- (2) The decision to issue a warrant under section 103 must be taken personally by a member of the Scottish Government.
- (3) Before a warrant under section 102, 103 or 104 is issued, it must be signed by the person who has taken the decision to issue it (subject to subsection (4)).
- (4) If it is not reasonably practicable for a warrant to be signed by the person who has taken the decision to issue it, the warrant may be signed by a senior official designated by the Secretary of State or (as the case may be) the Scottish Ministers for that purpose.
- (5) In such a case, the warrant must contain a statement that—
  - (a) it is not reasonably practicable for the warrant to be signed by the person who took the decision to issue it, and
  - (b) the Secretary of State or (as the case may be) a member of the Scottish Government has personally and expressly authorised the issue of the warrant.

#### Commencement Information

- I15** S. 105 in force at 31.5.2018 by S.I. 2018/652, reg. 4(g)

VALID FROM 28/11/2018

### 106 Power to issue warrants to law enforcement officers

- (1) A law enforcement chief described in Part 1 or 2 of the table in Schedule 6 may, on an application made by a person who is an appropriate law enforcement officer in relation to the chief, issue a targeted equipment interference warrant if—



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- (a) the law enforcement chief considers that the warrant is necessary for the purpose of preventing or detecting serious crime,
  - (b) the law enforcement chief considers that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct,
  - (c) the law enforcement chief considers that satisfactory arrangements made for the purposes of sections 129 and 130 (safeguards relating to disclosure etc.) are in force in relation to the warrant, and
  - (d) except where the law enforcement chief considers that there is an urgent need to issue the warrant, the decision to issue the warrant has been approved by a Judicial Commissioner.
- (2) The fact that the information which would be obtained under a warrant relates to the activities in the British Islands of a trade union is not, of itself, sufficient to establish that the warrant is necessary as mentioned in subsection (1)(a).
- (3) A law enforcement chief described in Part 1 of the table in Schedule 6 may, on an application made by a person who is an appropriate law enforcement officer in relation to the chief, issue a targeted equipment interference warrant if—
  - (a) the law enforcement chief considers that the warrant is necessary for the purpose of preventing death or any injury or damage to a person's physical or mental health or of mitigating any injury or damage to a person's physical or mental health,
  - (b) the law enforcement chief considers that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct,
  - (c) the law enforcement chief considers that satisfactory arrangements made for the purposes of sections 129 and 130 (safeguards relating to disclosure etc.) are in force in relation to the warrant, and
  - (d) except where the law enforcement chief considers that there is an urgent need to issue the warrant, the decision to issue the warrant has been approved by a Judicial Commissioner.
- (4) If it is not reasonably practicable for a law enforcement chief to consider an application under this section, an appropriate delegate may, in an urgent case, exercise the power to issue a targeted equipment interference warrant.
- (5) For the purposes of this section—
  - (a) a person is a law enforcement chief if the person is listed in the first column of the table in Schedule 6;
  - (b) a person is an appropriate delegate in relation to a law enforcement chief listed in the first column if the person is listed in the corresponding entry in the second column of that table;
  - (c) a person is an appropriate law enforcement officer in relation to a law enforcement chief listed in the first column if the person is listed in the corresponding entry in the third column of that table.
- (6) Where the law enforcement chief is the Chief Constable or the Deputy Chief Constable of the Police Service of Northern Ireland, the reference in subsection (1)(a) to the purpose of preventing or detecting serious crime includes a reference to the interests of national security.
- (7) A law enforcement chief who is an immigration officer may consider that the condition in subsection (1)(a) is satisfied only if the serious crime relates to an offence



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which is an immigration or nationality offence (whether or not it also relates to other offences).

- (8) A law enforcement chief who is an officer of Revenue and Customs may consider that the condition in subsection (1)(a) is satisfied only if the serious crime relates to an assigned matter within the meaning of section 1(1) of the Customs and Excise Management Act 1979.
- (9) A law enforcement chief who is a designated customs official may consider that the condition in subsection (1)(a) is satisfied only if the serious crime relates to a matter in respect of which a designated customs official has functions.
- (10) A law enforcement chief who is the chair of the Competition and Markets Authority may consider that the condition in subsection (1)(a) is satisfied only if the offence, or all of the offences, to which the serious crime relates are offences under section 188 of the Enterprise Act 2002.
- (11) A law enforcement chief who is [<sup>F1</sup>the Director General of the Independent Office for Police Conduct] may consider that the condition in subsection (1)(a) is satisfied only if the offence, or all of the offences, to which the serious crime relates are offences that are being investigated as part of an investigation <sup>F2</sup>... under Schedule 3 to the Police Reform Act 2002.
- (12) A law enforcement chief who is the Police Investigations and Review Commissioner may consider that the condition in subsection (1)(a) is satisfied only if the offence, or all of the offences, to which the serious crime relates are offences that are being investigated under section 33A(b)(i) of the Police, Public Order and Criminal Justice (Scotland) Act 2006.
- (13) For the purpose of subsection (7), an offence is an immigration or nationality offence if conduct constituting the offence—
  - (a) relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement), or
  - (b) is undertaken for the purposes of or otherwise in relation to—
    - (i) the British Nationality Act 1981;
    - (ii) the Hong Kong Act 1985;
    - (iii) the Hong Kong (War Wives and Widows) Act 1996;
    - (iv) the British Nationality (Hong Kong) Act 1997;
    - (v) the British Overseas Territories Act 2002;
    - (vi) an instrument made under any of those Acts.
- (14) In this section—

“designated customs official” has the same meaning as in Part 1 of the Borders, Citizenship and Immigration Act 2009 (see section 14(6) of that Act);

“immigration officer” means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971.

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### Textual Amendments

- F1** Words in s. 106(11) substituted (31.1.2017 for specified purposes, 8.1.2018 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(1)(5)(e), [Sch. 9 para. 74\(3\)\(a\)](#); S.I. 2017/1249, reg. 2 (with reg. 3)
- F2** Words in s. 106(11) omitted (31.1.2017 for specified purposes, 8.1.2018 in so far as not already in force) by virtue of [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(1)(5)(e), [Sch. 9 para. 74\(3\)\(b\)](#); S.I. 2017/1249, reg. 2 (with reg. 3)

VALID FROM 28/11/2018

## 107 Restriction on issue of warrants to certain law enforcement officers

- (1) A law enforcement chief specified in subsection (2) may not issue a targeted equipment interference warrant under section 106 unless the law enforcement chief considers that there is a British Islands connection.
- (2) The law enforcement chiefs specified in this subsection are—
- (a) the Chief Constable of a police force maintained under section 2 of the Police Act 1996;
  - (b) the Commissioner, or an Assistant Commissioner, of the metropolitan police force;
  - (c) the Commissioner of Police for the City of London;
  - (d) the chief constable of the Police Service of Scotland;
  - (e) the Chief Constable or a Deputy Chief Constable of the Police Service of Northern Ireland;
  - (f) the Chief Constable of the British Transport Police Force;
  - (g) the Chief Constable of the Ministry for Defence Police;
  - [<sup>F3</sup>(h) the Director General of the Independent Office for Police Conduct;]
  - (i) the Police Investigations and Review Commissioner.
- (3) The Director General of the National Crime Agency may not issue a targeted equipment interference warrant on the application of a member of a collaborative police force unless the Director General considers that there is a British Islands connection.
- “Collaborative police force” has the meaning given by paragraph 2 of Part 3 of Schedule 6.
- (4) For the purpose of this section, there is a British Islands connection if—
- (a) any of the conduct authorised by the warrant would take place in the British Islands (regardless of the location of the equipment that would, or may, be interfered with),
  - (b) any of the equipment which would, or may, be interfered with would, or may, be in the British Islands at some time while the interference is taking place, or
  - (c) a purpose of the interference is to obtain—
    - (i) communications sent by, or to, a person who is, or whom the law enforcement officer believes to be, for the time being in the British Islands,

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- (ii) information relating to an individual who is, or whom the law enforcement officer believes to be, for the time being in the British Islands, or
  - (iii) equipment data which forms part of, or is connected with, communications or information falling within sub-paragraph (i) or (ii).
- (5) Except as provided by subsections (1) to (3), a targeted equipment interference warrant may be issued under section 106 whether or not the person who has power to issue the warrant considers that there is a British Islands connection.

#### Textual Amendments

- F3** S. 107(2)(h) substituted (31.1.2017 for specified purposes, 8.1.2018 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(1)(5)(e), [Sch. 9 para. 74\(4\)](#); S.I. 2017/1249, [reg. 2](#) (with [reg. 3](#))

### *Approval of warrants by Judicial Commissioners*

#### **108 Approval of warrants by Judicial Commissioners**

- (1) In deciding whether to approve a person's decision to issue a warrant under this Part, a Judicial Commissioner must review the person's conclusions as to the following matters—
- (a) whether the warrant is necessary on any relevant grounds (see subsection (3)), and
  - (b) whether the conduct which would be authorised by the warrant is proportionate to what is sought to be achieved by that conduct.
- (2) In doing so, the Judicial Commissioner must—
- (a) apply the same principles as would be applied by a court on an application for judicial review, and
  - (b) consider the matters referred to in subsection (1) 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).
- (3) In subsection (1)(a), “relevant grounds” means—
- (a) in the case of a decision to issue a warrant under section 102, grounds falling within section 102(5);
  - (b) in the case of a decision to issue a warrant under section 103, the purpose of preventing or detecting serious crime;
  - (c) in the case of a decision to issue a warrant under section 104, the interests of national security;
  - (d) in the case of a decision to issue a warrant under section 106(1), the purpose mentioned in section 106(1)(a);
  - (e) in the case of a decision to issue a warrant under section 106(3), the purpose mentioned in section 106(3)(a).

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- (4) Where a Judicial Commissioner refuses to approve a person's decision to issue a warrant under this Part, the Judicial Commissioner must give the person written reasons for the refusal.
- (5) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, refuses to approve a person's decision to issue a warrant under this Part, the person may ask the Investigatory Powers Commissioner to decide whether to approve the decision to issue the warrant.

#### Commencement Information

**I16** S. 108 in force at 31.5.2018 for specified purposes by S.I. 2018/652, reg. 4(h)

### 109 Approval of warrants issued in urgent cases

- (1) This section applies where—
  - (a) a warrant under this Part is issued without the approval of a Judicial Commissioner, and
  - (b) the person who issued the warrant considered that there was an urgent need to issue it.
- (2) The person who issued the warrant must inform a Judicial Commissioner that it has been issued.
- (3) The Judicial Commissioner must, before the end of the relevant period—
  - (a) decide whether to approve the decision to issue the warrant, and
  - (b) notify the person of the Judicial Commissioner's decision.

“The relevant period” means the period ending with the third working day after the day on which the warrant was issued.
- (4) If a Judicial Commissioner refuses to approve the decision to issue a warrant, the warrant—
  - (a) ceases to have effect (unless already cancelled), and
  - (b) may not be renewed,

and section 108(5) does not apply in relation to the refusal to approve the decision.
- (5) Section 110 contains further provision about what happens if a Judicial Commissioner refuses to approve the decision to issue a warrant.

#### Commencement Information

**I17** S. 109 in force at 27.6.2018 by S.I. 2018/652, reg. 9(d)

### 110 Failure to approve warrant issued in urgent case

- (1) This section applies where under section 109(3) a Judicial Commissioner refuses to approve the decision to issue a warrant.

**Status:** Point in time view as at 27/06/2018. This version of this part contains provisions that are not valid for this point in time.

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- (2) The person to whom the warrant was addressed must, so far as is reasonably practicable, secure that anything in the process of being done under the warrant stops as soon as possible.
- (3) Where the refusal relates to a targeted equipment interference warrant, the Judicial Commissioner may—
  - (a) authorise further interference with equipment for the purpose of enabling the person to whom the warrant was addressed to secure that anything in the process of being done under the warrant stops as soon as possible;
  - (b) direct that any of the material obtained under the warrant is destroyed;
  - (c) impose conditions as to the use or retention of any of that material.
- (4) Where the refusal relates to a targeted examination warrant, the Judicial Commissioner may impose conditions as to the use of any protected material selected for examination under the warrant.
- (5) The Judicial Commissioner—
  - (a) may require an affected party to make representations about how the Judicial Commissioner should exercise any function under subsection (3) or (4), 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 person who decided to issue the warrant;
  - (b) the person to whom the warrant was addressed.
- (7) The person who decided to issue the warrant may ask the Investigatory Powers Commissioner to review a decision made by any other Judicial Commissioner under subsection (3) or (4).
- (8) On a review under subsection (7), the Investigatory Powers Commissioner may—
  - (a) confirm the Judicial Commissioner's decision, or
  - (b) make a fresh determination.
- (9) Nothing in this section or section 109 affects the lawfulness of—
  - (a) anything done under the warrant before it ceases to have effect;
  - (b) if anything is in the process of being done under the warrant when it ceases to have effect—
    - (i) anything done before that thing could be stopped, or
    - (ii) anything done that it is not reasonably practicable to stop.

**Commencement Information**

**118** S. 110 in force at 27.6.2018 by S.I. 2018/652, reg. 9(e)

*Additional safeguards*

**111 Members of Parliament etc.**

- (1) Subsection (3) applies where—

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- (a) an application is made to the Secretary of State for a targeted equipment interference warrant, and
  - (b) the purpose of the warrant is to obtain—
    - (i) communications sent by, or intended for, a person who is a member of a relevant legislature, or
    - (ii) a member of a relevant legislature's private information.
- (2) Subsection (3) also applies where—
- (a) an application is made to the Secretary of State for a targeted examination warrant, and
  - (b) the purpose of the warrant is to authorise the selection for examination of protected material which consists of—
    - (i) communications sent by, or intended for, a person who is a member of a relevant legislature, or
    - (ii) a member of a relevant legislature's private information.
- (3) The Secretary of State may not issue the warrant without the approval of the Prime Minister.
- (4) Subsection (5) applies where—
- (a) an application is made under section 106 to a law enforcement chief for a targeted equipment interference warrant, and
  - (b) the purpose of the warrant is to obtain—
    - (i) communications sent by, or intended for, a person who is a member of a relevant legislature, or
    - (ii) a member of a relevant legislature's private information.
- (5) The law enforcement chief may not issue the warrant without the approval of the Secretary of State unless the law enforcement chief believes that the warrant (if issued) would authorise interference only with equipment which would be in Scotland at the time of the issue of the warrant or which the law enforcement chief believes would be in Scotland at that time.
- (6) The Secretary of State may give approval for the purposes of subsection (5) only with the approval of the Prime Minister.
- (7) In a case where the decision whether to issue a targeted equipment interference warrant is to be taken by an appropriate delegate in relation to a law enforcement chief under section 106(4), the reference in subsection (5) to the law enforcement chief is to be read as a reference to the appropriate delegate.
- (8) In this section “member of a relevant legislature” means—
- (a) a member of either House of Parliament;
  - (b) a member of the Scottish Parliament;
  - (c) a member of the National Assembly for Wales;
  - (d) a member of the Northern Ireland Assembly;
  - (e) a member of the European Parliament elected for the United Kingdom.

#### **Commencement Information**

**I19** S. 111(1)-(3)(8) in force at 31.5.2018 by [S.I. 2018/652](#), [reg. 4\(i\)](#)

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**Status:** Point in time view as at 27/06/2018. This version of this part contains provisions that are not valid for this point in time.

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## 112 Items subject to legal privilege

- (1) Subsections (2) to (5) apply if—
  - (a) an application is made for a warrant under this Part, and
  - (b) the purpose, or one of the purposes, of the warrant is—
    - (i) in the case of a targeted equipment interference warrant, to authorise or require interference with equipment for the purpose of obtaining items subject to legal privilege, or
    - (ii) in the case of a targeted examination warrant, to authorise the selection of such items for examination.
- (2) The application must contain a statement that the purpose, or one of the purposes, of the warrant is to authorise or require interference with equipment for the purpose of obtaining items subject to legal privilege or (in the case of a targeted examination warrant) the selection for examination of items subject to legal privilege.
- (3) In deciding whether to issue the warrant, the person to whom the application is made must have regard to the public interest in the confidentiality of items subject to legal privilege.
- (4) The person to whom the application is made may issue the warrant only if the person considers—
  - (a) that there are exceptional and compelling circumstances which make it necessary to authorise or require interference with equipment for the purpose of obtaining items subject to legal privilege or (in the case of a targeted examination warrant) the selection for examination of items subject to legal privilege, and
  - (b) that the arrangements made for the purposes of section 129 or (as the case may be) section 191 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of such items.
- (5) But the warrant may not be issued if it is considered necessary only as mentioned in section 102(5)(c).
- (6) For the purposes of subsection (4)(a), there cannot be exceptional and compelling circumstances that make it necessary to authorise or require interference with equipment for the purpose of obtaining, or the selection for examination of, items subject to legal privilege unless—
  - (a) the public interest in obtaining the information that would be obtained by the warrant 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) in the case of a warrant considered necessary for the purposes of preventing or detecting serious crime or as mentioned in section 106(3)(a), obtaining the information is necessary for the purpose of preventing death or significant injury.
- (7) Subsections (8) and (9) apply if—
  - (a) an application is made for a warrant under this Part,
  - (b) the applicant considers that the relevant material is likely to include items subject to legal privilege, and



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- (c) subsections (2) to (5) do not apply.
- (8) The application must contain—
  - (a) a statement that the applicant considers that the relevant material is likely to include items subject to legal privilege, and
  - (b) an assessment of how likely it is that the relevant material will include such items.
- (9) The person to whom the application is made may issue the warrant only if the person considers that the arrangements made for the purposes of section 129 or (as the case may be) section 191 include specific arrangements for the handling, retention, use and destruction of items subject to legal privilege.
- (10) In this section, “relevant material” means—
  - (a) in relation to a targeted equipment interference warrant, any material the obtaining of which is authorised or required under the warrant;
  - (b) in relation to a targeted examination warrant, any protected material which the warrant authorises to be selected for examination.
- (11) Subsections (12) and (13) apply if—
  - (a) an application is made for a warrant under this Part,
  - (b) the purpose, or one of the purposes, of the warrant is—
    - (i) in the case of a targeted equipment interference warrant, to authorise or require interference with equipment for the purpose of obtaining communications or other items of information that, if they were not communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose, would be items subject to legal privilege, or
    - (ii) in the case of a targeted examination warrant, to authorise the selection of such communications or other items of information for examination, and
  - (c) the applicant considers that the communications or the other items of information (“the targeted communications or other items of information”) are likely to be communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose.
- (12) The application must—
  - (a) contain a statement that the purpose, or one of the purposes, of the warrant is—
    - (i) to authorise or require interference with equipment for the purpose of obtaining communications or other items of information that, if they were not communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose, would be items subject to legal privilege, or
    - (ii) (in the case of a targeted examination warrant) to authorise the selection of such communications or other items of information for examination, and
  - (b) set out the reasons for believing that the targeted communications or other items of information are likely to be communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose.

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- (13) The person to whom the application is made may issue the warrant only if the person considers that the targeted communications or other items of information are likely to be communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose.

**Commencement Information**

**I20** S. 112 in force at 31.5.2018 by S.I. 2018/652, reg. 4(j) (with reg. 25)

**113 Confidential journalistic material**

- (1) This section applies if an application is made for a warrant under this Part and the purpose, or one of the purposes, of the warrant—
- (a) in the case of a targeted equipment interference warrant, to authorise or require interference with equipment for the purpose of obtaining communications or other items of information which the applicant for the warrant believes will be communications or other items of information containing confidential journalistic material, or
  - (b) in the case of a targeted examination warrant, to authorise the selection for examination of journalistic material which the applicant for the warrant believes is confidential journalistic material.
- (2) The application must contain a statement that the purpose, or one of the purposes, of the warrant is—
- (a) in the case of a targeted equipment interference warrant, to authorise or require interference with equipment for the purpose of obtaining communications or other items of information which the applicant for the warrant believes will be communications or other items of information containing confidential journalistic material, or
  - (b) in the case of a targeted examination warrant, to authorise the selection for examination of journalistic material which the applicant for the warrant believes is confidential journalistic material.
- (3) The person to whom the application is made may issue the warrant only if the person considers that the arrangements made for the purposes of section 129 or (as the case may be) section 191 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of communications or other items of information containing confidential journalistic material.
- (4) For the meaning of “journalistic material” and “confidential journalistic material”, see section 264.

**Commencement Information**

**I21** S. 113 in force at 31.5.2018 by S.I. 2018/652, reg. 4(k)

*Status: Point in time view as at 27/06/2018. This version of this part contains provisions that are not valid for this point in time.*

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## 114 Sources of journalistic information

(1) This section applies if an application is made for a warrant under this Part and the purpose, or one of the purposes, of the warrant is to identify or confirm a source of journalistic information.

(For the meaning of “source of journalistic information”, see section 263(1).)

(2) The application must contain a statement that the purpose, or one of the purposes, of the warrant is to identify or confirm a source of journalistic information.

(3) The person to whom the application is made may issue the warrant only if the person considers that the arrangements made for the purposes of section 129 or (as the case may be) section 191 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of communications or other items of information that identify sources of journalistic information.

### Commencement Information

**I22** S. 114 in force at 31.5.2018 by S.I. 2018/652, reg. 4(l)

### *Further provision about warrants*

## 115 Requirements that must be met by warrants

(1) A warrant under this Part must contain a provision stating whether it is a targeted equipment interference warrant or a targeted examination warrant.

(2) A warrant under this Part must be addressed—

(a) in the case of a warrant issued under section 102 or 103, to the head of the intelligence service by whom or on whose behalf the application for the warrant was made;

(b) in the case of a warrant issued under section 104, to the Chief of Defence Intelligence;

(c) in the case of a warrant issued under section 106 by a law enforcement chief (or by an appropriate delegate in relation to a law enforcement chief), to a person who—

(i) is an appropriate law enforcement officer in relation to the law enforcement chief, and

(ii) is named or described in the warrant.

(3) In the case of a targeted equipment interference warrant which relates to a matter described in the first column of the Table below, the warrant must include the details specified in the second column.

### *Matter*

### *Details to be included in the warrant*

Equipment belonging to, used by or in the possession of a particular person or organisation	The name of the person or organisation or a description of the person or organisation
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Equipment belonging to, used by or in the possession of persons who form a group which shares a common purpose or who carry on, or may carry on, a particular activity	A description of the purpose or activity and the name of, or a description of, as many of the persons as it is reasonably practicable to name or describe
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Equipment used by or in the possession of more than one person or organisation, where the interference is for the purpose of a single investigation or operation	A description of the nature of the investigation or operation and the name of, or a description of, as many of the persons or organisations as it is reasonably practicable to name or describe
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Equipment in a particular location	A description of the location
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Equipment in more than one location, where the interference is for the purpose of a single investigation or operation	A description of the nature of the investigation or operation and a description of as many of the locations as it is reasonably practicable to describe
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Equipment which is being, or may be, used for the purposes of a particular activity or activities of a particular description	A description of the particular activity or activities
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Equipment which is being, or may be, used to test, maintain or develop capabilities relating to interference with equipment	A description of the nature of the testing, maintenance or development of capabilities
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Equipment which is being, or may be, used for the training of persons who carry out, or are likely to carry out, interference with equipment	A description of the nature of the training
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- (4) A targeted equipment interference warrant must also describe—
- (a) the type of equipment which is to be interfered with, and
  - (b) the conduct which the person to whom the warrant is addressed is authorised to take.
- (5) In the case of a targeted examination warrant which relates to a matter described in the first column of the Table below, the warrant must include the details specified in the second column.

<b>Matter</b>	<b>Details to be included in the warrant</b>
A particular person or organisation	The name of the person or organisation or a description of the person or organisation
A group of persons who share a common purpose or who carry on or may carry on a particular activity	A description of the purpose or activity and the name of, or a description of, as many of the persons as it is reasonably practicable to name or describe
More than one person or organisation, where the interference is for the purpose of a single investigation or operation	A description of the nature of the investigation or operation and the name of, or a description of, as many

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of the persons or organisations as it is reasonably practicable to name or describe

The testing, maintenance or development of capabilities relating to the selection of protected material for examination A description of the nature of the testing, maintenance or development of capabilities

The training of persons who carry out, or are likely to carry out, the selection of protected material for examination A description of the nature of the training

#### Commencement Information

**I23** S. 115 in force at 31.5.2018 for specified purposes by S.I. 2018/652, reg. 4(m)

### 116 Duration of warrants

- (1) A warrant issued under this Part ceases to have effect at the end of the relevant period (see subsection (2)), unless—
  - (a) it is renewed before the end of that period (see section 117), or
  - (b) it is cancelled or otherwise ceases to have effect before the end of that period (see sections 109 and 125).
- (2) In this section, “the relevant period”—
  - (a) in the case of an urgent warrant which has not been renewed, means the period ending with the fifth working day after the day on which the warrant was issued;
  - (b) in any other case, means the period of 6 months beginning with—
    - (i) the day on which the warrant was issued, or
    - (ii) in the case of a warrant which has been renewed, the day after the day at the end of which the warrant would have ceased to have effect if it had not been renewed.
- (3) For the purposes of subsection (2)(a), a warrant is an “urgent warrant” if—
  - (a) the warrant was issued without the approval of a Judicial Commissioner, and
  - (b) the person who decided to issue the warrant considered that there was an urgent need to issue it.

#### Commencement Information

**I24** S. 116 in force at 27.6.2018 by S.I. 2018/652, reg. 9(f)

### 117 Renewal of warrants

- (1) If the renewal conditions are met, a warrant issued under this Part may be renewed, at any time during the renewal period, by an instrument issued by the appropriate person (see subsection (3)).
- (2) The renewal conditions are—

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- (a) that the appropriate person considers that the warrant continues to be necessary on any relevant grounds,
  - (b) that the appropriate person considers that the conduct that would be authorised by the renewed warrant continues to be proportionate to what is sought to be achieved by that conduct,
  - (c) that, in the case of a targeted examination warrant, the appropriate person considers that the warrant continues to be necessary to authorise the selection of protected material for examination in breach of the prohibition in section 193(4), and
  - (d) that the decision to renew the warrant has been approved by a Judicial Commissioner.
- (3) The appropriate person is—
  - (a) in the case of a warrant issued under section 102 or 104, the Secretary of State;
  - (b) in the case of a warrant issued under section 103, a member of the Scottish Government;
  - (c) in the case of a warrant issued under section 106 by a law enforcement chief or by an appropriate delegate in relation to the law enforcement chief, either—
    - (i) the law enforcement chief, or
    - (ii) if the warrant was issued by an appropriate delegate, that person.
- (4) In subsection (2)(a), “relevant grounds” means—
  - (a) in the case of a warrant issued under section 102, grounds falling within section 102(5),
  - (b) in the case of a warrant issued under section 103, the purpose of preventing or detecting serious crime,
  - (c) in the case of a warrant issued under section 104, the interests of national security,
  - (d) in the case of a warrant issued under section 106(1), the purpose mentioned in section 106(1)(a), or
  - (e) in the case of a warrant issued under section 106(3), the purpose mentioned in section 106(3)(a).
- (5) “The renewal period” means—
  - (a) in the case of an urgent warrant which has not been renewed, the relevant period;
  - (b) in any other case, the period of 30 days ending with the day at the end of which the warrant would otherwise cease to have effect.
- (6) The decision to renew a warrant issued under section 102 or 104 must be taken personally by the Secretary of State, and the instrument renewing the warrant must be signed by the Secretary of State.
- (7) The decision to renew a warrant issued under section 103 must be taken personally by a member of the Scottish Government, and the instrument renewing the warrant must be signed by the person who took that decision.
- (8) The instrument renewing a warrant issued under section 106 must be signed by the person who renews it.
- (9) Section 108 (approval of warrants by Judicial Commissioners) applies in relation to a decision to renew a warrant under this Part as it applies in relation to a decision to

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issue such a warrant (and accordingly any reference in that section to the person who decided to issue the warrant is to be read as a reference to the person who decided to renew it).

(10) Sections 111 to 114 (additional safeguards) apply in relation to a decision to renew a warrant under this Part as they apply in relation to a decision to issue such a warrant.

(11) In this section—

“relevant period” has the same meaning as in section 116;

“urgent warrant” is to be read in accordance with subsection (3) of that section.

#### Commencement Information

**I25** S. 117 in force at 27.6.2018 for specified purposes by S.I. 2018/652, reg. 9(g)

### 118 Modification of warrants issued by the Secretary of State or Scottish Ministers

(1) The provisions of a warrant issued under section 102, 103 or 104 may be modified at any time by an instrument issued by the person making the modification.

(2) The only modifications which may be made under this section are—

- (a) adding to the matters to which the warrant relates (see section 101(1) and (2)), by including the details required in relation to that matter by section 115(3) or (5);
- (b) removing a matter to which the warrant relates;
- (c) adding (in relation to a matter to which the warrant relates) a name or description to the names or descriptions included in the warrant in accordance with section 115(3) or (5);
- (d) varying or removing (in relation to a matter to which the warrant relates) a name or description included in the warrant in accordance with section 115(3) or (5);
- (e) adding to the descriptions of types of equipment included in the warrant in accordance with section 115(4)(a);
- (f) varying or removing a description of a type of equipment included in the warrant in accordance with section 115(4)(a).

(3) But—

- (a) where a targeted equipment interference warrant relates only to a matter specified in section 101(1)(a), only to a matter specified in section 101(1)(d), or only to both such matters, the details included in the warrant in accordance with section 115(3) may not be modified;
- (b) where a targeted examination warrant relates only to a matter specified in section 101(2)(a), the details included in the warrant in accordance with section 115(5) may not be modified.

(4) The decision to modify the provisions of a warrant must be taken personally by the person making the modification, and the instrument making the modification must be signed by that person.

This is subject to section 120(7).



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- (5) Nothing in this section applies in relation to modifying the provisions of a warrant in a way which does not affect the conduct authorised or required by it.
- (6) Sections 119 to 122 contain further provision about making modifications under this section.

#### Commencement Information

**I26** S. 118 in force at 27.6.2018 by S.I. 2018/652, reg. 9(h)

### 119 Persons who may make modifications under section 118

- (1) The persons who may make modifications under section 118 of a warrant are (subject to subsection (2))—
  - (a) in the case of a warrant issued by the Secretary of State under section 102 or 104—
    - (i) the Secretary of State, or
    - (ii) a senior official acting on behalf of the Secretary of State;
  - (b) in the case of a warrant issued by the Scottish Ministers under section 103—
    - (i) a member of the Scottish Government, or
    - (ii) a senior official acting on behalf of the Scottish Ministers.
- (2) Any of the following persons may also make modifications under section 118 of a warrant, but only where the person considers that there is an urgent need to make the modification—
  - (a) the person to whom the warrant is addressed;
  - (b) a person who holds a senior position in the same public authority as the person mentioned in paragraph (a).

Section 122 contains provision about the approval of modifications made in urgent cases.

- (3) Subsection (2) is subject to section 120(4) and (5) (special rules where any of sections 111 to 114 applies in relation to the making of a modification under section 118).
- (4) For the purposes of subsection (2)(b), a person holds a senior position in a public authority if—
  - (a) in the case of any of the intelligence services—
    - (i) the person is a member of the Senior Civil Service or a member of the Senior Management Structure of Her Majesty's Diplomatic Service, or
    - (ii) the person holds a position in the intelligence service of equivalent seniority to such a person;
  - (b) in the case of the Ministry of Defence—
    - (i) the person is a member of the Senior Civil Service, or
    - (ii) the person is of or above the rank of brigadier, commodore or air commodore.

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### Commencement Information

**I27** S. 119 in force at 27.6.2018 by S.I. 2018/652, reg. 9(i)

## 120 Further provision about modifications under section 118

- (1) A modification, other than a modification removing any matter, name or description, may be made under section 118 only if the person making the modification considers—
  - (a) that the modification is necessary on any relevant grounds (see subsection (2)), and
  - (b) that the conduct authorised by the modification is proportionate to what is sought to be achieved by that conduct.
- (2) In subsection (1)(a), “relevant grounds” means—
  - (a) in the case of a warrant issued under section 102, grounds falling within section 102(5);
  - (b) in the case of a warrant issued under section 103, the purpose of preventing or detecting serious crime;
  - (c) in the case of a warrant issued under section 104, the interests of national security.
- (3) Sections 111 to 114 (additional safeguards) apply in relation to the making of a modification to a warrant under section 118, other than a modification removing any matter, name or description, as they apply in relation to the issuing of a warrant.
- (4) Where section 111 applies in relation to the making of a modification—
  - (a) the modification must be made by the Secretary of State, and
  - (b) the modification has effect only if the decision to make the modification has been approved by a Judicial Commissioner.
- (5) Where section 112, 113 or 114 applies in relation to the making of a modification—
  - (a) the modification must be made by —
    - (i) the Secretary of State or (in the case of a warrant issued by the Scottish Ministers) a member of the Scottish Government, or
    - (ii) if a senior official acting on behalf of a person within subparagraph (i) considers that there is an urgent need to make the modification, that senior official, and
  - (b) except where the person making the modification considers that there is an urgent need to make it, the modification has effect only if the decision to make the modification has been approved by a Judicial Commissioner.
- (6) In a case where any of sections 111 to 114 applies in relation to the making of a modification, section 108 (approval of warrants by Judicial Commissioners) applies in relation to the decision to make the modification as it applies in relation to a decision to issue a warrant, but as if—
  - (a) the references in subsection (1)(a) and (b) of that section to the warrant were references to the modification, and
  - (b) any reference to the person who decided to issue the warrant were a reference to the person who decided to make the modification.

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Section 122 contains provision about the approval of modifications made in urgent cases.

- (7) If, in a case where any of sections 111 to 114 applies in relation to the making of a modification, it is not reasonably practicable for the instrument making the modification to be signed by the Secretary of State or (as the case may be) a member of the Scottish Government in accordance with section 118(4), the instrument may be signed by a senior official designated by the Secretary of State or (as the case may be) the Scottish Ministers for that purpose.
- (8) In such a case, the instrument making the modification must contain a statement that—
- (a) it is not reasonably practicable for the instrument to be signed by the person who took the decision to make the modification, and
  - (b) the Secretary of State or (as the case may be) a member of the Scottish Government has personally and expressly authorised the making of the modification.

#### Commencement Information

**I28** S. 120 in force at 27.6.2018 by S.I. 2018/652, reg. 9(j)

### 121 Notification of modifications

- (1) As soon as is reasonably practicable after a person makes a modification of a warrant under section 118, a Judicial Commissioner must be notified of the modification and the reasons for making it.
- (2) But subsection (1) does not apply where—
- (a) the modification is to remove any matter, name or description included in the warrant in accordance with section 115(3) to (5),
  - (b) the modification is made by virtue of section 119(2), or
  - (c) any of sections 111 to 114 applies in relation to the making of the modification.
- (3) Where a modification is made by a senior official in accordance with section 119(1) or section 120(5)(a)(ii), the Secretary of State or (in the case of a warrant issued by the Scottish Ministers) a member of the Scottish Government must be notified personally of the modification and the reasons for making it.

#### Commencement Information

**I29** S. 121 in force at 27.6.2018 by S.I. 2018/652, reg. 9(k)

### 122 Approval of modifications under section 118 made in urgent cases

- (1) This section applies where a person makes a modification of a warrant by virtue of section 119(2).
- (2) This section also applies where—
- (a) section 112, 113 or 114 applies in relation to the making of a modification under section 118,

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- (b) the person making the modification does so without the approval of a Judicial Commissioner, and
  - (c) the person considered that there was an urgent need to make the modification.
- (3) The person who made the modification must inform the appropriate person that it has been made.
- (4) In this section—
  - “the appropriate person” is—
    - (a) in a case falling within subsection (1), a designated senior official, and
    - (b) in a case falling within subsection (2), a Judicial Commissioner;
 “designated senior official” means a senior official who has been designated by the Secretary of State or (in the case of warrants issued by the Scottish Ministers) the Scottish Ministers for the purposes of this section.
- (5) The appropriate person must, before the end of the relevant period—
  - (a) decide whether to approve the decision to make the modification, and
  - (b) notify the person of the appropriate person's decision.

“The relevant period” means the period ending with the third working day after the day on which the modification was made.
- (6) As soon as is reasonably practicable after a designated senior official makes a decision under subsection (5)—
  - (a) a Judicial Commissioner must be notified of—
    - (i) the decision, and
    - (ii) if the senior official has decided to approve the decision to make the modification, the modification in question, and
  - (b) the Secretary of State or (in the case of a warrant issued by the Scottish Ministers) a member of the Scottish Government must be notified personally of the matters mentioned in paragraph (a)(i) and (ii).
- (7) If the appropriate person refuses to approve the decision to make the modification—
  - (a) the warrant (unless it no longer has effect) has effect as if the modification had not been made, and
  - (b) the person to whom the warrant is addressed must, so far as is reasonably practicable, secure that anything in the process of being done under the warrant by virtue of that modification stops as soon as possible;

and, in a case falling within subsection (2) above, section 108(5) does not apply in relation to the refusal to approve the decision.
- (8) In a case where the appropriate person refuses to approve a decision to make a modification of a targeted equipment interference warrant, the appropriate person may authorise further interference with equipment for the purpose of enabling the person to whom the warrant is addressed to secure that anything in the process of being done under the warrant by virtue of the modification stops as soon as possible.
- (9) If the appropriate person authorises further interference with equipment under subsection (8), the Secretary of State or (in the case of a warrant issued by the Scottish Ministers) a member of the Scottish Government must be notified personally of the authorisation.
- (10) Nothing in this section affects the lawfulness of—

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- (a) anything done under the warrant by virtue of the modification before the modification ceases to have effect;
- (b) if anything is in the process of being done under the warrant by virtue of the modification when the modification ceases to have effect—
  - (i) anything done before that thing could be stopped, or
  - (ii) anything done which it is not reasonably practicable to stop.

#### Commencement Information

**I30** S. 122 in force at 27.6.2018 by S.I. 2018/652, reg. 9(l)

VALID FROM 05/12/2018

### 123 Modification of warrants issued by law enforcement chiefs

- (1) The provisions of a warrant issued under section 106 by a law enforcement chief, or by an appropriate delegate in relation to that chief, may be modified at any time—
  - (a) by the law enforcement chief, or
  - (b) if the warrant was issued by an appropriate delegate, by that person.
- (2) The only modifications which may be made under this section are—
  - (a) adding to the matters to which the warrant relates (see section 101(1) and (2)), by including the details required in relation to that matter by section 115(3) or (5);
  - (b) removing a matter to which the warrant relates;
  - (c) adding (in relation to a matter to which the warrant relates) a name or description to the names or descriptions included in the warrant in accordance with section 115(3) or (5);
  - (d) varying or removing (in relation to a matter to which the warrant relates) a name or description included in the warrant in accordance with section 115(3) or (5);
  - (e) adding to the descriptions of types of equipment included in the warrant in accordance with section 115(4)(a);
  - (f) varying or removing a description of a type of equipment included in the warrant in accordance with section 115(4)(a).
- (3) But where a warrant relates only to a matter specified in section 101(1)(a), only to a matter specified in section 101(1)(d), or only to both such matters, the details included in the warrant in accordance with section 115(3) may not be modified.
- (4) A modification may be made only if—
  - (a) except in the case of a modification removing any matter, name or description, the person making the modification considers that—
    - (i) the modification is necessary on any relevant grounds (see subsection (5)), and
    - (ii) the conduct authorised by the modification is proportionate to what is sought to be achieved by that conduct, and

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- (b) except where the person making the modification considers that there is an urgent need to make it, the decision to make the modification has been approved by a Judicial Commissioner.
- (5) In subsection (4)(a), “relevant grounds” means—
  - (a) in the case of a warrant issued under section 106(1), the purpose mentioned in section 106(1)(a);
  - (b) in the case of a warrant issued under section 106(3), the purpose mentioned in section 106(3)(a).
- (6) The decision to make any modification must be taken personally by the person making the modification, and the instrument making the modification must be signed by that person.
- (7) Section 108 (approval of warrants by Judicial Commissioners) applies in relation to a decision to make a modification of a warrant issued under section 106 as it applies in relation to a decision to issue such a warrant, but as if—
  - (a) the references in subsection (1)(a) and (b) of that section to the warrant were references to the modification, and
  - (b) any reference to the person who decided to issue the warrant were a reference to the person who decided to make the modification.
- (8) Sections 111 to 114 (additional safeguards) apply in relation to the making of a modification to a warrant under this section, other than a modification removing any matter, name or description, as they apply in relation to the issuing of a warrant.
- (9) In the application of section 111 in accordance with subsection (8), subsection (5) is to be read as if for the words from “unless” to the end of the subsection there were substituted “ unless the law enforcement chief believes that the warrant (as modified) would authorise interference only with equipment which would be in Scotland at the time of the making of the modification or which the law enforcement chief believes would be in Scotland at that time ”.
- (10) Where section 111 applies in relation to the making of a modification to a warrant under this section, subsection (4)(b) of this section has effect in relation to the making of the modification as if the words “except where the person making the modification considers that there is an urgent need to make it” were omitted.
- (11) Nothing in this section applies in relation to modifying the provisions of a warrant in a way which does not affect the conduct authorised or required by it.

VALID FROM 05/12/2018

#### **124 Approval of modifications under section 123 in urgent cases**

- (1) This section applies where—
  - (a) a modification is made under section 123 without the approval of a Judicial Commissioner, and
  - (b) the person who made the modification considered that there was an urgent need to make it.

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- (2) The person who made the modification must inform a Judicial Commissioner that it has been made.
- (3) The Judicial Commissioner must, before the end of the relevant period—
  - (a) decide whether to approve the decision to make the modification, and
  - (b) notify the person of the Judicial Commissioner's decision.

“The relevant period” means the period ending with the third working day after the day on which the modification was made.
- (4) If the Judicial Commissioner refuses to approve the decision to make the modification—
  - (a) the person who issued the warrant must be notified of the refusal,
  - (b) the warrant (unless it no longer has effect) has effect as if the modification had not been made, and
  - (c) the person to whom the warrant is addressed must, so far as is reasonably practicable, secure that anything in the process of being done under the warrant by virtue of that modification stops as soon as possible;and section 108(5) does not apply in relation to the refusal to approve the decision.
- (5) In a case where a Judicial Commissioner refuses to approve a decision to make a modification of a targeted equipment interference warrant, the Judicial Commissioner may authorise further interference with equipment for the purpose of enabling the person to whom the warrant is addressed to secure that anything in the process of being done under the warrant by virtue of the modification stops as soon as possible.
- (6) If the Judicial Commissioner authorises further interference with equipment under subsection (5), the person who issued the warrant must be informed of the authorisation.
- (7) Nothing in this section affects the lawfulness of—
  - (a) anything done under the warrant by virtue of the modification before the modification ceases to have effect;
  - (b) if anything is in the process of being done under the warrant by virtue of the modification when the modification ceases to have effect—
    - (i) anything done before that thing could be stopped, or
    - (ii) anything done which it is not reasonably practicable to stop.

## 125 Cancellation of warrants

- (1) Any of the appropriate persons may cancel a warrant issued under this Part at any time.
- (2) If any of the appropriate persons considers that—
  - (a) a warrant issued under this Part is no longer necessary on any relevant grounds, or
  - (b) the conduct authorised by a warrant issued under this Part is no longer proportionate to what is sought to be achieved by the conduct,the person must cancel the warrant.
- (3) In subsection (2)(a), “relevant grounds” means—



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- (a) in the case of a warrant issued under section 102, grounds falling within section 102(5);
  - (b) in the case of a warrant issued under section 103, the purpose of preventing or detecting serious crime;
  - (c) in the case of a warrant issued under section 104, the interests of national security;
  - (d) in the case of a warrant issued under section 106(1), the purpose mentioned in section 106(1)(a);
  - (e) in the case of a warrant issued under section 106(3), the purpose mentioned in section 106(3)(a).
- (4) For the purposes of this section, “the appropriate persons” are—
- (a) in the case of a warrant issued by the Secretary of State under section 102 or 104, the Secretary of State or a senior official acting on behalf of the Secretary of State;
  - (b) in the case of a warrant issued by the Scottish Ministers under section 103, a member of the Scottish Government or a senior official acting on behalf of the Scottish Ministers;
  - (c) in the case of a warrant issued under section 106 by a law enforcement chief or by an appropriate delegate in relation to the law enforcement chief, either—
    - (i) the law enforcement chief, or
    - (ii) if the warrant was issued by an appropriate delegate, that person.
- (5) Where a warrant is cancelled under this section, the person to whom the warrant was addressed must, so far as is reasonably practicable, secure that anything in the process of being done under the warrant stops as soon as possible.
- (6) A warrant that has been cancelled under this section may not be renewed.

#### Commencement Information

**I31** S. 125 in force at 27.6.2018 for specified purposes by S.I. 2018/652, reg. 9(m)

### *Implementation of warrants*

#### **126 Implementation of warrants**

- (1) In giving effect to a targeted equipment interference warrant, the person to whom it is addressed (“the implementing authority”) may (in addition to acting alone) act through, or together with, such other persons as the implementing authority may require (whether under subsection (2) or otherwise) to provide the authority with assistance in giving effect to the warrant.
- (2) For the purpose of requiring any person to provide assistance in relation to a targeted equipment interference warrant, the implementing authority may—
  - (a) serve a copy of the warrant on any person whom the implementing authority considers may be able to provide such assistance, or
  - (b) make arrangements for the service of a copy of the warrant on any such person.

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- (3) A copy of a warrant may be served under subsection (2) on a person outside the United Kingdom for the purpose of requiring the person to provide such assistance in the form of conduct outside the United Kingdom.
- (4) For the purposes of this Act, the provision of assistance in giving effect to a targeted equipment interference warrant includes any disclosure to the implementing authority, or to persons acting on that person's behalf, of material obtained under the warrant.
- (5) The references in subsections (2) and (3) and sections 127 and 128 to the service of a copy of a warrant include—
  - (a) the service of a copy of one or more schedules contained in the warrant with the omission of the remainder of the warrant, and
  - (b) the service of a copy of the warrant with the omission of any schedule contained in it.

#### Commencement Information

**I32** S. 126 in force at 27.6.2018 by S.I. 2018/652, reg. 9(n)

### 127 Service of warrants

- (1) This section applies to the service of warrants under section 126(2).
- (2) A copy of the warrant must be served in such a way as to bring the contents of the warrant to the attention of the person who the implementing authority considers may be able to provide assistance in relation to it.
- (3) A copy of a warrant may be served on a person outside the United Kingdom in any of the following ways (as well as by electronic or other means of service)—
  - (a) by serving it at the person's principal office within the United Kingdom or, if the person has no such office in the United Kingdom, at any place in the United Kingdom where the person carries on business or conducts activities;
  - (b) if the person has specified an address in the United Kingdom as one at which the person, or someone on the person's behalf, will accept service of documents of the same description as a copy of a warrant, by serving it at that address;
  - (c) by making it available for inspection (whether to the person or to someone acting on the person's behalf) at a place in the United Kingdom (but this is subject to subsection (4)).
- (4) A copy of a warrant may be served on a person outside the United Kingdom in the way mentioned in subsection (3)(c) only if—
  - (a) it is not reasonably practicable for a copy to be served by any other means (whether as mentioned in subsection (3)(a) or (b) or otherwise), and
  - (b) the implementing authority takes such steps as it considers appropriate for the purpose of bringing the contents of the warrant, and the availability of a copy for inspection, to the attention of the person.
- (5) The steps mentioned in subsection (4)(b) must be taken as soon as reasonably practicable after the copy of the warrant is made available for inspection.
- (6) In this section, “the implementing authority” has the same meaning as in section 126.

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### Commencement Information

**I33** S. 127 in force at 27.6.2018 by S.I. 2018/652, reg. 9(o)

## 128 Duty of telecommunications operators to assist with implementation

- (1) A telecommunications operator that has been served with a copy of a targeted equipment interference warrant issued by the Secretary of State under section 102 or 104, or by the Scottish Ministers under section 103, must take all steps for giving effect to the warrant which are notified to the telecommunications operator by or on behalf of the person to whom the warrant is addressed.
- (2) A telecommunications operator that has been served with a copy of a targeted equipment interference warrant issued under section 106 and addressed to a law enforcement officer mentioned in subsection (3) must take all steps for giving effect to the warrant which—
  - (a) were approved by the Secretary of State or, in the case of a warrant addressed to a constable of the Police Service of Scotland, by the Scottish Ministers, before the warrant was served, and
  - (b) are notified to the telecommunications operator by or on behalf of the law enforcement officer.
- (3) The law enforcement officers mentioned in this subsection are—
  - (a) a National Crime Agency officer;
  - (b) an officer of Revenue and Customs;
  - (c) a constable of the Police Service of Scotland;
  - (d) a member of the Police Service of Northern Ireland;
  - (e) a member of the metropolitan police force.
- (4) The Secretary of State or the Scottish Ministers may give approval for the purposes of subsection (2)(a) if the Secretary of State or (as the case may be) the Scottish Ministers consider that—
  - (a) it is necessary for the telecommunications operator to be required to take the steps, and
  - (b) the steps are proportionate to what is sought to be achieved by them.
- (5) A telecommunications operator is not required to take any steps which it is not reasonably practicable for the telecommunications operator to take.
- (6) Where obligations have been imposed on a telecommunications operator (“P”) under section 253 (technical capability notices), for the purposes of subsection (5) the steps which it is reasonably practicable for P to take include every step which it would have been reasonably practicable for P to take if P had complied with all of those obligations.
- (7) The duty imposed by subsection (1) or (2) is enforceable against a person in the United Kingdom by civil proceedings by the Secretary of State for an injunction, or for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or for any other appropriate relief.

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### Commencement Information

**I34** S. 128(1)(5)-(7) in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 9\(p\)](#)

### *Supplementary provision*

## **129 Safeguards relating to retention and disclosure of material**

- (1) The issuing authority must ensure, in relation to every targeted equipment interference warrant issued by that authority, that arrangements are in force for securing that the requirements of subsections (2) and (5) are met in relation to the material obtained under the warrant.

This is subject to subsection (10).

- (2) The requirements of this subsection are met in relation to the material obtained under a warrant if each of the following is limited to the minimum that is necessary for the authorised purposes (see subsection (3))—
- (a) the number of persons to whom any of the material is disclosed or otherwise made available;
  - (b) the extent to which any of the material is disclosed or otherwise made available;
  - (c) the extent to which any of the material is copied;
  - (d) the number of copies that are made.
- (3) For the purposes of subsection (2), something is necessary for the authorised purposes if, and only if—
- (a) it is, or is likely to become, necessary on any relevant grounds (see subsection (7)),
  - (b) it is necessary for facilitating the carrying out of any functions under this Act of the Secretary of State, the Scottish Ministers or the person to whom the warrant is or was addressed,
  - (c) it is necessary for facilitating the carrying out of any functions of the Judicial Commissioners or of the Investigatory Powers Tribunal under or in relation to this Act,
  - (d) it is necessary for the purpose of legal proceedings, or
  - (e) it is necessary for the performance of the functions of any person under any enactment.
- (4) The arrangements for the time being in force under this section for securing that the requirements of subsection (2) are met in relation to the material obtained under the warrant must include arrangements for securing that every copy made of any of that material is stored, for so long as it is retained, in a secure manner.
- (5) The requirements of this subsection are met in relation to the material obtained under a warrant if every copy made of any of that material (if not destroyed earlier) is destroyed as soon as there are no longer any grounds for retaining it (see subsection (6)).
- (6) For the purposes of subsection (5), there are no longer any grounds for retaining a copy of any material if, and only if—

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- (a) its retention is not necessary, or not likely to become necessary, on any relevant grounds (see subsection (7)), and
  - (b) its retention is not necessary for any of the purposes mentioned in paragraphs (b) to (e) of subsection (3) above.
- (7) In subsections (3) and (6), “relevant grounds” means—
- (a) in relation to a warrant issued under section 102, grounds falling within section 102(5);
  - (b) in relation to a warrant issued under section 103, the purpose of preventing or detecting serious crime;
  - (c) in relation to a warrant issued under section 104, the interests of national security;
  - (d) in the case of a warrant issued under section 106(1), the purpose mentioned in section 106(1)(a);
  - (e) in the case of a warrant issued under section 106(3), the purpose mentioned in section 106(3)(a).
- (8) Where—
- (a) material obtained under a targeted equipment interference warrant is retained, following its examination, for purposes other than the destruction of the material, and
  - (b) it is material that contains confidential journalistic material or identifies a source of journalistic material,
- the person to whom the warrant is addressed must inform the Investigatory Powers Commissioner as soon as is reasonably practicable.
- (9) Subsection (10) applies if—
- (a) any material obtained under the warrant has been handed over to any overseas authorities, or
  - (b) a copy of any such material has been given to any overseas authorities.
- (10) To the extent that the requirements of subsections (2) and (5) relate to any of the material mentioned in subsection (9)(a), or to the copy mentioned in subsection (9)(b), the arrangements made for the purpose of this section are not required to secure that those requirements are met (see instead section 130).
- (11) In this section—
- “copy”, in relation to material obtained under a warrant, means any of the following (whether or not in documentary form)—
- (a) any copy, extract or summary of the material which identifies the material as having been obtained under the warrant, and
  - (b) any record which is a record of the identities of persons who owned, used or were in possession of the equipment which was interfered with to obtain that material,
- and “copied” is to be read accordingly;
- “the issuing authority” means—
- (a) in the case of a warrant issued under section 102 or 104, the Secretary of State;
  - (b) in the case of a warrant issued under section 103, the Scottish Ministers;
  - (c) in the case of a warrant issued under section 106, the law enforcement chief who issued the warrant (or on whose behalf it was issued);

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“overseas authorities” means authorities of a country or territory outside the United Kingdom.

**Commencement Information**

**I35** S. 129 in force at 31.5.2018 for specified purposes by S.I. 2018/652, reg. 4(n) (with reg. 24)

**130 Safeguards relating to disclosure of material overseas**

- (1) The issuing authority must ensure, in relation to every targeted equipment interference warrant, that arrangements are in force for securing that—
  - (a) any material obtained under the warrant is handed over to overseas authorities only if the requirements of subsection (2) are met, and
  - (b) copies of any such material are given to overseas authorities only if those requirements are met.
- (2) The requirements of this subsection are met in the case of a warrant if it appears to the issuing authority that requirements corresponding to the requirements of section 129(2) and (5) will apply, to such extent (if any) as the issuing authority considers appropriate, in relation to any of the material which is handed over, or any copy of which is given, to the authorities in question.
- (3) In this section—
  - “copy” has the same meaning as in section 129;
  - “issuing authority” also has the same meaning as in that section;
  - “overseas authorities” means authorities of a country or territory outside the United Kingdom.

**Commencement Information**

**I36** S. 130 in force at 31.5.2018 by S.I. 2018/652, reg. 4(o) (with reg. 24)

**131 Additional safeguards for items subject to legal privilege**

- (1) This section applies where an item subject to legal privilege which has been obtained under a targeted equipment interference warrant is retained, following its examination, for purposes other than the destruction of the item.
- (2) The person to whom the warrant is addressed must inform the Investigatory Powers Commissioner of the retention of the item as soon as is reasonably practicable.
- (3) Unless the Investigatory Powers Commissioner considers that subsection (5) 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.
- (4) If the Investigatory Powers Commissioner considers that subsection (5) applies to the item, the Commissioner may nevertheless impose such conditions under subsection (3)(b) as the Commissioner considers necessary for the purpose of protecting the public interest in the confidentiality of items subject to legal privilege.

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*Changes to legislation: Investigatory Powers Act 2016, Part 5 is up to date with all changes known to be in force on or before 21 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) 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.
- (6) The Investigatory Powers Commissioner—
- (a) may require an affected party to make representations about how the Commissioner should exercise any function under subsection (3), 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)).
- (7) Each of the following is an “affected party” for the purposes of subsection (6)—
- (a) the issuing authority (within the meaning given by section 129(11));
  - (b) the person to whom the warrant is or was addressed.

#### Commencement Information

**I37** S. 131 in force at 27.6.2018 by S.I. 2018/652, reg. 9(q) (with reg. 24)

### 132 Duty not to make unauthorised disclosures

- (1) A person to whom this section applies must not make an unauthorised disclosure to another person.
- (2) A person makes an unauthorised disclosure for the purposes of this section if—
- (a) the person discloses any of the matters within subsection (4) in relation to a warrant under this Part, and
  - (b) the disclosure is not an excepted disclosure (see section 133).
- (3) This section applies to the following persons—
- (a) any person who may apply for a warrant under this Part;
  - (b) any person holding office under the Crown;
  - (c) any person employed by, or for the purposes of, a police force;
  - (d) any telecommunications operator;
  - (e) any person employed or engaged for the purposes of any business of a telecommunications operator;
  - (f) any person to whom any of the matters within subsection (4) have been disclosed in relation to a warrant under this Part.
- (4) The matters referred to in subsection (2)(a) are—
- (a) the existence or contents of the warrant;
  - (b) the details of the issue of the warrant or of any renewal or modification of the warrant;
  - (c) the existence or contents of any requirement to provide assistance in giving effect to the warrant;
  - (d) the steps taken in pursuance of the warrant or of any such requirement;
  - (e) any of the material obtained under the warrant in a form which identifies it as having been obtained under a warrant under this Part.



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### Commencement Information

**I38** S. 132 in force at 27.6.2018 by S.I. 2018/652, reg. 9(r)

## 133 Section 132: meaning of “excepted disclosure”

- (1) For the purposes of section 132, a disclosure made in relation to a warrant is an excepted disclosure if it falls within any of the Heads set out in—
  - (a) subsection (2) (disclosures authorised by warrant etc.);
  - (b) subsection (3) (oversight bodies);
  - (c) subsection (4) (legal proceedings);
  - (d) subsection (6) (disclosures of a general nature).
- (2) Head 1 is—
  - (a) a disclosure authorised by the warrant;
  - (b) a disclosure authorised by the person to whom the warrant is or was addressed or under any arrangements made by that person for the purposes of this section;
  - (c) a disclosure authorised by the terms of any requirement to provide assistance in giving effect to the warrant (including any requirement for disclosure imposed by virtue of section 126(4)).
- (3) Head 2 is—
  - (a) a disclosure made to, or authorised by, a Judicial Commissioner;
  - (b) a disclosure made to [<sup>F4</sup>the Director General of the Independent Office for Police Conduct] for the purposes of facilitating the carrying out of any of [<sup>F5</sup>the Director General’s functions];
  - (c) a disclosure made to the Intelligence and Security Committee of Parliament for the purposes of facilitating the carrying out of any of its functions.
- (4) Head 3 is—
  - (a) a disclosure made—
    - (i) in contemplation of, or in connection with, any legal proceedings, and
    - (ii) for the purposes of those proceedings;
  - (b) a disclosure made—
    - (i) by a professional legal adviser (“L”) to L’s client or a representative of L’s client, or
    - (ii) by L’s client, or by a representative of L’s client, to L,in connection with the giving, by L to L’s client, of advice about the effect of the provisions of this Part.
- (5) But a disclosure within Head 3 is not an excepted disclosure if it is made with the intention of furthering a criminal purpose.
- (6) Head 4 is—
  - (a) a disclosure which—
    - (i) is made by a telecommunications operator in accordance with a requirement imposed by regulations made by the Secretary of State, and



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- (ii) consists of statistical information of a description specified in the regulations;
- (b) a disclosure of information that does not relate to any particular warrant under this Part but relates to such warrants in general.

#### Textual Amendments

- F4** Words in s. 133(3)(b) substituted (31.1.2017 for specified purposes, 8.1.2018 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(1)(5)(e), [Sch. 9 para. 74\(5\)\(b\)](#); S.I. 2017/1249, reg. 2 (with reg. 3)
- F5** Words in s. 133(3)(b) substituted (31.1.2017 for specified purposes, 8.1.2018 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(1)(5)(e), [Sch. 9 para. 74\(5\)\(a\)](#); S.I. 2017/1249, reg. 2 (with reg. 3)

#### Commencement Information

- I39** S. 133 in force at 27.6.2018 by S.I. 2018/652, reg. 9(s)

### 134 Offence of making unauthorised disclosure

- (1) A person commits an offence if—
  - (a) the person discloses any matter in breach of section 132(1), and
  - (b) the person knew that the disclosure was in breach of that section.
- (2) A person who is 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 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or
    - (ii) to a fine,
 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 5 years or to a fine, or to both.
- (3) In proceedings against any person for an offence under this section in respect of any disclosure, it is a defence for the person to show that the person could not reasonably have been expected, after first becoming aware of the matter disclosed, to take steps to prevent the disclosure.

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#### Commencement Information

**I40** S. 134 in force at 27.6.2018 by S.I. 2018/652, reg. 9(f)

### 135 Part 5: interpretation

(1) In this Part—

“communication” includes—

- (a) anything comprising speech, music, sounds, visual images or data of any description, and
- (b) signals serving either for the impartation of anything between persons, between a person and a thing or between things or for the actuation or control of any apparatus;

“equipment” means equipment producing electromagnetic, acoustic or other emissions or any device capable of being used in connection with such equipment;

“equipment data” has the meaning given by section 100;

“private information” includes information relating to a person's private or family life;

“protected material”, in relation to a targeted examination warrant, has the meaning given by section 99(9);

“senior official” means—

- (a) in the case of a targeted equipment interference warrant which is or may be issued by the Secretary of State or a law enforcement chief, or in the case of a targeted examination warrant which is or may be issued by the Secretary of State, a member of the Senior Civil Service or a member of the Senior Management Structure of Her Majesty's Diplomatic Service;
- (b) in the case of a targeted equipment interference warrant or a targeted examination warrant which is or may be issued by the Scottish Ministers, a member of the staff of the Scottish Administration who is a member of the Senior Civil Service;

“targeted examination warrant” has the meaning given by section 99(9).

(2) See also—

- section 261 (telecommunications definitions),
- section 263 (general definitions),
- section 264 (general definitions: “journalistic material” etc.),
- section 265 (index of defined expressions).

#### Commencement Information

**I41** S. 135 in force at 31.5.2018 by S.I. 2018/652, reg. 4(p)

**Status:**

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**Changes to legislation:**

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