



Investigatory Powers Act 2016

2016 CHAPTER 25

PART 2

LAWFUL INTERCEPTION OF COMMUNICATIONS

CHAPTER 1

INTERCEPTION AND EXAMINATION WITH A WARRANT

Warrants under this Chapter

15 Warrants that may be issued under this Chapter

- (1) There are three kinds of warrant that may be issued under this Chapter—
 - (a) targeted interception warrants (see subsection (2)),
 - (b) targeted examination warrants (see subsection (3)), and
 - (c) mutual assistance warrants (see subsection (4)).
- (2) A targeted interception warrant is a warrant which authorises or requires the person to whom it is addressed to secure, by any conduct described in the warrant, any one or more of the following—
 - (a) the interception, in the course of their transmission by means of a postal service or telecommunication system, of communications described in the warrant;
 - (b) the obtaining of secondary data from communications transmitted by means of a postal service or telecommunication system and described in the warrant (see section 16);
 - (c) the disclosure, in any manner described in the warrant, of anything obtained under the warrant to the person to whom the warrant is addressed or to any person acting on that person's behalf.

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- (3) A targeted examination warrant is a warrant which authorises the person to whom it is addressed to carry out the selection of relevant content for examination, in breach of the prohibition in section 152(4) (prohibition on seeking to identify communications of individuals in the British Islands).

In this Part “relevant content”, in relation to a targeted examination warrant, means any content of communications intercepted by an interception authorised or required by a bulk interception warrant under Chapter 1 of Part 6.

- (4) A mutual assistance warrant is a warrant which authorises or requires the person to whom it is addressed to secure, by any conduct described in the warrant, any one or more of the following—
- (a) the making of a request, in accordance with ^{F1}... an international mutual assistance agreement, for the provision of any assistance of a kind described in the warrant in connection with, or in the form of, an interception of communications;
 - (b) the provision to the competent authorities of a country or territory outside the United Kingdom, in accordance with such an ^{F2}... agreement, of any assistance of a kind described in the warrant in connection with, or in the form of, an interception of communications;
 - (c) the disclosure, in any manner described in the warrant, of anything obtained under the warrant to the person to whom the warrant is addressed or to any person acting on that person's behalf.
- (5) A targeted interception warrant or mutual assistance 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—
 - (i) the interception of communications not described in the warrant, and
 - (ii) conduct for obtaining secondary data from such communications;
 - (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;
 - (c) any conduct for obtaining related systems data from any postal operator or telecommunications operator.
- (6) For the purposes of subsection (5)(c)—
- “related systems data”, in relation to a warrant, means systems data relating to a relevant communication or to the sender or recipient, or intended recipient, of a relevant communication (whether or not a person), and
- “relevant communication”, in relation to a warrant, means—
- (a) any communication intercepted in accordance with the warrant in the course of its transmission by means of a postal service or telecommunication system, or
 - (b) any communication from which secondary data is obtained under the warrant.
- (7) For provision enabling the combination of targeted interception warrants with certain other warrants or authorisations (including targeted examination warrants), see Schedule 8.

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Textual Amendments

- F1** Words in s. 15(4)(a) omitted (31.12.2020) by virtue of [The Law Enforcement and Security \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/742), regs. 1, **82(3)(a)** (with reg. 83); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Words in s. 15(4)(b) omitted (31.12.2020) by virtue of [The Law Enforcement and Security \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/742), regs. 1, **82(3)(b)** (with reg. 83); 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

- C1** S. 15 modified (temp.) (20.8.2018) by [The Investigatory Powers Act 2016 \(Commencement No. 8 and Transitional and Saving Provisions\) Regulations 2018](#) (S.I. 2018/940), **reg. 6(2)**

Commencement Information

- I1** S. 15(1)-(5)(7) in force at 31.5.2018 by [S.I. 2018/652](#), **reg. 3(a)** (with reg. 16(2))
- I2** S. 15(6) in force at 1.9.2017 for specified purposes by [S.I. 2017/859](#), **reg. 2(a)**
- I3** S. 15(6) in force at 31.5.2018 in so far as not already in force by [S.I. 2018/652](#), **reg. 3(a)**

16 Obtaining secondary data

- (1) This section has effect for the purposes of this Part.
- (2) In relation to a communication transmitted by means of a postal service, references to obtaining secondary data from the communication are references to obtaining such data in the course of the transmission of the communication (as to which, see section 4(7)).
- (3) In relation to a communication transmitted by means of a telecommunication system, references to obtaining secondary data from the communication are references to obtaining such data—
 - (a) while the communication is being transmitted, or
 - (b) at any time when the communication is stored in or by the system (whether before or after its transmission).
- (4) “Secondary data”—
 - (a) in relation to a communication transmitted by means of a postal service, means any data falling within subsection (5);
 - (b) in relation to a communication transmitted by means of a telecommunication system, means any data falling within subsection (5) or (6).
- (5) The data falling within this subsection is systems data which is comprised in, included as part of, attached to or logically associated with the communication (whether by the sender or otherwise).
- (6) The data falling within this subsection is identifying data which—
 - (a) is comprised in, included as part of, attached to or logically associated with the communication (whether by the sender or otherwise),
 - (b) is capable of being logically separated from the remainder of the communication, 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, disregarding any

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meaning arising from the fact of the communication or from any data relating to the transmission of the communication.

(7) For the meaning of “systems data” and “identifying data”, see section 263.

Commencement Information

- I4** S. 16(1)-(3)(7) in force at 31.5.2018 by [S.I. 2018/652, reg. 3\(b\)](#)
- I5** S. 16(4)-(6) in force at 1.9.2017 for specified purposes by [S.I. 2017/859, reg. 2\(b\)](#)
- I6** S. 16(4)-(6) in force at 31.5.2018 in so far as not already in force by [S.I. 2018/652, reg. 3\(b\)](#)

17 Subject-matter of warrants

- (1) A warrant under this Chapter may relate to—
 - (a) a particular person or organisation, or
 - (b) a single set of premises.
- (2) In addition, a targeted interception warrant or targeted examination warrant may relate to—
 - (a) a group of persons who share a common purpose or who carry on, or may carry on, a particular activity;
 - (b) more than one person or organisation, or more than one set of premises, where the conduct authorised or required by the warrant is for the purposes of a single investigation or operation;
 - (c) testing or training activities.
- (3) In subsection (2)(c) “testing or training activities” means—
 - (a) in relation to a targeted interception warrant—
 - (i) the testing, maintenance or development of apparatus, systems or other capabilities relating to the interception of communications in the course of their transmission by means of a telecommunication system or to the obtaining of secondary data from communications transmitted by means of such a system, or
 - (ii) the training of persons who carry out, or are likely to carry out, such interception or the obtaining of such data;
 - (b) in relation to a targeted examination warrant—
 - (i) the testing, maintenance or development of apparatus, systems or other capabilities relating to the selection of relevant content for examination, or
 - (ii) the training of persons who carry out, or are likely to carry out, the selection of relevant content for examination.

Commencement Information

- I7** S. 17 in force at 31.5.2018 by [S.I. 2018/652, reg. 3\(c\)](#)

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Power to issue warrants

18 Persons who may apply for issue of a warrant

- (1) Each of the following is an “intercepting authority” for the purposes of this Part—
- (a) a person who is the head of an intelligence service;
 - (b) the Director General of the National Crime Agency;
 - (c) the Commissioner of Police of the Metropolis;
 - (d) the Chief Constable of the Police Service of Northern Ireland;
 - (e) the chief constable of the Police Service of Scotland;
 - (f) the Commissioners for Her Majesty's Revenue and Customs;
 - (g) the Chief of Defence Intelligence;
 - (h) a person who is the competent authority of a country or territory outside the United Kingdom for the purposes of ^{F3}... an international mutual assistance agreement.
- (2) For the meaning of “head of an intelligence service”, see section 263.
- (3) An application for the issue of a warrant under this Chapter may only be made on behalf of an intercepting authority by a person holding office under the Crown.

Textual Amendments

- F3** Words in s. 18(1)(h) omitted (31.12.2020) by virtue of [The Law Enforcement and Security \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/742\)](#), regs. 1, **82(4)** (with [reg. 83](#)); 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

- I8** S. 18(1)(a)(g)(2)(3) in force at 31.5.2018 by [S.I. 2018/652](#), **reg. 3(d)**
- I9** S. 18(1)(b)-(f)(h) in force at 30.8.2018 by [S.I. 2018/940](#), **reg. 2(1)(a)** (with [reg. 2\(2\)](#))

19 Power of Secretary of State to issue warrants

- (1) The Secretary of State may, on an application made by or on behalf of an intercepting authority mentioned in section 18(1)(a) to (g), issue a targeted interception warrant if—
- (a) the Secretary of State considers that the warrant is necessary on grounds falling within section 20,
 - (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 53 and 54 (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.

This is subject to subsection (4).

- (2) 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—

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- (a) the Secretary of State considers that the warrant is necessary on grounds falling within section 20,
- (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 relevant content for examination in breach of the prohibition in section 152(4) (prohibition on seeking to identify communications of individuals in the British Islands), 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.

This is subject to subsection (4).

- (3) The Secretary of State may, on an application made by or on behalf of an intercepting authority, issue a mutual assistance warrant if—
- (a) the Secretary of State considers that the warrant is necessary on grounds falling within section 20,
 - (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 53 and 54 (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.

This is subject to subsection (4).

- (4) The Secretary of State may not issue a warrant under this section if—
- (a) the application is a relevant Scottish application (see section 22), and
 - (b) in the case of an application for a targeted interception warrant or a targeted examination warrant, the Secretary of State considers that the warrant is necessary only for the purpose of preventing or detecting serious crime.

For the power of the Scottish Ministers to issue warrants under this Chapter, see section 21.

^{F4}(5)

Textual Amendments

- F4** S. 19(5) omitted (31.12.2020) by virtue of [The Law Enforcement and Security \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/742\)](#), regs. 1, **132(2)**; 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

- C2** S. 19 modified (temp.) (20.8.2018) by [The Investigatory Powers Act 2016 \(Commencement No. 8 and Transitional and Saving Provisions\) Regulations 2018 \(S.I. 2018/940\)](#), **reg. 6(1)(a)**

Commencement Information

- I10** S. 19(1)-(3) in force at 31.5.2018 for specified purposes by [S.I. 2018/652](#), **reg. 3(e)(i)** (with [regs. 15\(1\)\(a\)](#), [19\(2\)](#))
- I11** S. 19(1)-(3) in force at 27.6.2018 in so far as not already in force by [S.I. 2018/652](#), **reg. 8(a)**

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112 S. 19(4)(5) in force at 31.5.2018 by [S.I. 2018/652](#), [reg. 3\(e\)\(ii\)](#)

20 Grounds on which warrants may be issued by Secretary of State

- (1) This section has effect for the purposes of this Part.
- (2) A targeted interception warrant or targeted examination warrant is necessary on grounds falling within this section 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 (but see subsection (4)).
- (3) A mutual assistance warrant is necessary on grounds falling within this section if—
 - (a) it is necessary for the purpose of giving effect to the provisions of ^{F5}... an international mutual assistance agreement, and
 - (b) the circumstances appear to the Secretary of State to be equivalent to those in which the Secretary of State would issue a warrant by virtue of subsection (2)(b).
- (4) A warrant may be considered necessary as mentioned in subsection (2)(c) only if the information which it is considered necessary to obtain is information relating to the acts or intentions of persons outside the British Islands.
- (5) A warrant may not be considered necessary on grounds falling within this section if it is considered necessary only for the purpose of gathering evidence for use in any legal proceedings.
- (6) 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 this section.

Textual Amendments

F5 Words in [s. 20\(3\)\(a\)](#) omitted (31.12.2020) by virtue of [The Law Enforcement and Security \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/742\)](#), [regs. 1, 82\(5\)](#) (with [reg. 83](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

Commencement Information

113 S. 20 in force at 31.5.2018 by [S.I. 2018/652](#), [reg. 3\(f\)](#)

21 Power of Scottish Ministers to issue warrants

- (1) The Scottish Ministers may, on an application made by or on behalf of an intercepting authority mentioned in [section 18\(1\)\(a\)](#) to [\(g\)](#), issue a targeted interception warrant if—
 - (a) the application is a relevant Scottish application (see [section 22](#)),
 - (b) the Scottish Ministers consider that the warrant is necessary on grounds falling within [subsection \(4\)](#),

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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 53 and 54 (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 application is a relevant Scottish application,
 - (b) the Scottish Ministers consider that the warrant is necessary on grounds falling within subsection (4),
 - (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 relevant content for examination in breach of the prohibition in section 152(4) (prohibition on seeking to identify communications of 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 Scottish Ministers may, on an application made by or on behalf of an intercepting authority, issue a mutual assistance warrant if—
 - (a) the application is a relevant Scottish application,
 - (b) the Scottish Ministers consider that the warrant is necessary on grounds falling within subsection (4),
 - (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 53 and 54 (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.
- (4) A warrant is necessary on grounds falling within this subsection if—
 - (a) in the case of a targeted interception warrant or targeted examination warrant, it is necessary for the purposes of preventing or detecting serious crime, and
 - (b) in the case of a mutual assistance warrant—
 - (i) it is necessary for the purpose of giving effect to the provisions of ^{F6}... an international mutual assistance agreement, and
 - (ii) the circumstances appear to the Scottish Ministers to be equivalent to those in which the Scottish Ministers would issue a warrant by virtue of paragraph (a).
- (5) A warrant may not be considered necessary on grounds falling within subsection (4) if it is considered necessary only for the purpose of gathering evidence for use in any legal proceedings.

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- (6) 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 (4).

Textual Amendments

- F6** Words in s. 21(4)(b)(i) omitted (31.12.2020) by virtue of [The Law Enforcement and Security \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/742\)](#), regs. 1, **82(6)** (with reg. 83); 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

- I14** S. 21(1)-(3) in force at 31.5.2018 for specified purposes by [S.I. 2018/652](#), **reg. 3(g)(i)** (with [reg. 15\(1\)\(b\)](#))
- I15** S. 21(1)-(3) in force at 30.8.2018 in so far as not already in force by [S.I. 2018/940](#), **reg. 2(1)(b)** (with [regs. 2\(2\), 6\(b\)](#))
- I16** S. 21(4)-(6) in force at 31.5.2018 by [S.I. 2018/652](#), **reg. 3(g)(ii)**

22 “Relevant Scottish applications”

- (1) An application for the issue of a warrant under this Chapter is a “relevant Scottish application” for the purposes of this Chapter if any of conditions A to C is met.

In this section “the applicant” means the person by whom, or on whose behalf, the application is made.

- (2) Condition A is that—
- (a) the application is for the issue of a targeted interception warrant or a targeted examination warrant, and
 - (b) the warrant, if issued, would relate to—
 - (i) a person who is in Scotland, or is reasonably believed by the applicant to be in Scotland, at the time of the issue of the warrant, or
 - (ii) premises which are in Scotland, or are reasonably believed by the applicant to be in Scotland, at that time.
- (3) Condition B is that—
- (a) the application is for the issue of a mutual assistance warrant which, if issued, would authorise or require—
 - (i) the making of a request falling within section 15(4)(a), or
 - (ii) the making of such a request and disclosure falling within section 15(4)(c), and
 - (b) the application—
 - (i) is made by, or on behalf of, the chief constable of the Police Service of Scotland, or
 - (ii) is made by, or on behalf of, the Commissioners for Her Majesty's Revenue and Customs or the Director General of the National Crime Agency for the purpose of preventing or detecting serious crime in Scotland.
- (4) Condition C is that—
- (a) the application is for the issue of a mutual assistance warrant which, if issued, would authorise or require—

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- (i) the provision of assistance falling within section 15(4)(b), or
 - (ii) the provision of such assistance and disclosure falling within section 15(4)(c), and
- (b) the warrant, if issued, would relate to—
 - (i) a person who is in Scotland, or is reasonably believed by the applicant to be in Scotland, at the time of the issue of the warrant, or
 - (ii) premises which are in Scotland, or are reasonably believed by the applicant to be in Scotland, at that time.

Commencement Information

I17 S. 22 in force at 31.5.2018 by [S.I. 2018/652](#), [reg. 3\(h\)](#)

Approval of warrants by Judicial Commissioners

23 Approval of warrants by Judicial Commissioners

- (1) In deciding whether to approve a person's decision to issue a warrant under this Chapter, a Judicial Commissioner must review the person's conclusions as to the following matters—
 - (a) whether the warrant is necessary on relevant grounds (see subsection (3)), and
 - (b) whether the conduct that 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 of the Secretary of State to issue a warrant, grounds falling within section 20;
 - (b) in the case of a decision of the Scottish Ministers to issue a warrant, grounds falling within section 21(4).
- (4) Where a Judicial Commissioner refuses to approve a person's decision to issue a warrant under this Chapter, 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 Chapter, the person may ask the Investigatory Powers Commissioner to decide whether to approve the decision to issue the warrant.

Commencement Information

I18 S. 23 in force at 31.5.2018 by [S.I. 2018/652](#), [reg. 3\(i\)](#)

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24 Approval of warrants issued in urgent cases

- (1) This section applies where—
 - (a) a warrant under this Chapter is 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.
- (2) The person who decided to issue 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 [^{F7}ninth] 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 23(5) does not apply in relation to the refusal to approve the decision.
- (5) Section 25 contains further provision about what happens if a Judicial Commissioner refuses to approve the decision to issue a warrant.

Textual Amendments

- F7** Word in s. 24(3) substituted (temp.) (27.3.2020) by virtue of [The Investigatory Powers \(Temporary Judicial Commissioners and Modification of Time Limits\) Regulations 2020 \(S.I. 2020/360\)](#), regs. 1(2), 4(a) (with reg. 5)

Commencement Information

- I19** S. 24 in force at 27.6.2018 by [S.I. 2018/652](#), reg. 8(b)

25 Failure to approve warrant issued in urgent case

- (1) This section applies where under section 24(3) a Judicial Commissioner refuses to approve the decision to issue a warrant.
- (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) The Judicial Commissioner may—
 - (a) direct that any of the material obtained under the warrant is destroyed;
 - (b) impose conditions as to the use or retention of any of that material;
 - (c) in the case of a targeted examination warrant, impose conditions as to the use of any relevant content selected for examination under the warrant.
- (4) The Judicial Commissioner—

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- (a) may require an affected party to make representations about how the Judicial 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)).
- (5) Each of the following is an “affected party” for the purposes of subsection (4)—
 - (a) the person who decided to issue the warrant;
 - (b) the person to whom the warrant was addressed.
- (6) 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).
- (7) On a review under subsection (6), the Investigatory Powers Commissioner may—
 - (a) confirm the Judicial Commissioner's decision, or
 - (b) make a fresh determination.
- (8) Nothing in this section or section 24 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 which it is not reasonably practicable to stop.

Commencement Information

I20 [S. 25](#) in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 8\(c\)](#)

Additional safeguards

26 Members of Parliament etc.

- (1) This section applies where—
 - (a) an application is made to the Secretary of State for the issue of a targeted interception warrant or a targeted examination warrant, and
 - (b) the purpose of the warrant is—
 - (i) in the case of a targeted interception warrant, to authorise or require the interception of communications sent by, or intended for, a person who is a member of a relevant legislature, or
 - (ii) in the case of a targeted examination warrant, to authorise the selection for examination of the content of such communications.
- (2) The Secretary of State may not issue the warrant without the approval of the Prime Minister.
- (3) 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;

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F8(e)

Textual Amendments

F8 S. 26(3)(e) repealed (31.12.2020) by [The European Parliamentary Elections Etc. \(Repeal, Revocation, Amendment and Saving Provisions\) \(United Kingdom and Gibraltar\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1310\)](#), [reg. 1](#), [Sch. 1 Pt. 1](#) (as amended by [S.I. 2019/1389](#), [regs. 1, 2\(2\)](#))

Commencement Information

I21 S. 26 in force at 31.5.2018 by [S.I. 2018/652](#), [reg. 3\(j\)](#)

27 Items subject to legal privilege

- (1) Subsections (2) to (5) apply if—
 - (a) an application is made by or on behalf of an intercepting authority for a warrant under this Chapter, and
 - (b) the purpose, or one of the purposes, of the warrant is—
 - (i) in the case of a targeted interception warrant or mutual assistance warrant, to authorise or require the interception of 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 the interception, 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 that make it necessary to authorise or require the interception, 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 53 or (as the case may be) section 150 (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 20(2)(c).
- (6) For the purposes of subsection (4)(a), there cannot be exceptional and compelling circumstances that make it necessary to authorise or require the interception, 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,

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- (b) there are no other means by which the information may reasonably be obtained, and
 - (c) in the case of a warrant considered necessary as mentioned in section 20(2)(b) or (3) or (as the case may be) 21(4), 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 by or on behalf of an intercepting authority for a warrant under this Chapter,
 - (b) the intercepting authority considers that the relevant communications are likely to include items subject to legal privilege, and
 - (c) subsections (2) to (5) do not apply.
- (8) The application must contain—
 - (a) a statement that the intercepting authority considers that the relevant communications are likely to include items subject to legal privilege, and
 - (b) an assessment of how likely it is that the relevant communications 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 53 or (as the case may be) section 150 include specific arrangements for the handling, retention, use and destruction of items subject to legal privilege.
- (10) In this section “relevant communications” means—
 - (a) in relation to a targeted interception warrant or mutual assistance warrant, any communications the interception of which is authorised or required by the warrant;
 - (b) in relation to a targeted examination warrant, any communications the content of which the warrant authorises to be selected for examination.
- (11) Subsections (12) and (13) apply if—
 - (a) an application is made by or on behalf of an intercepting authority for a warrant under this Chapter,
 - (b) the purpose, or one of the purposes, of the warrant is—
 - (i) in the case of a targeted interception warrant or mutual assistance warrant, to authorise or require the interception of communications that, if they were not made 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 for examination, and
 - (c) the intercepting authority considers that the communications (“the targeted communications”) are likely to be communications made 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 to authorise or require the interception, or (in the case of a targeted examination warrant) the selection for examination, of communications that, if they were not made with the intention of furthering a criminal purpose, would be items subject to legal privilege, and

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- (b) set out the reasons for believing that the targeted communications are likely to be communications made with the intention of furthering a criminal purpose.
- (13) The person to whom the application is made may issue the warrant only if the person considers that the targeted communications are likely to be communications made with the intention of furthering a criminal purpose.

Commencement Information

I22 S. 27 in force at 31.5.2018 by [S.I. 2018/652](#), [reg. 3\(k\)](#)

28 Confidential journalistic material

- (1) This section applies if—
- (a) an application is made by or on behalf of an intercepting authority for a warrant under this Chapter, and
 - (b) the purpose, or one of the purposes, of the warrant is—
 - (i) in the case of a targeted interception warrant or mutual assistance warrant, to authorise or require the interception of communications which the intercepting authority believes will be communications containing confidential journalistic material, or
 - (ii) in the case of a targeted examination warrant, to authorise the selection for examination of journalistic material which the intercepting authority 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 interception warrant or mutual assistance warrant, to authorise or require the interception of communications which the intercepting authority believes will be communications 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 intercepting authority 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 53 or (as the case may be) section 150 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of communications containing confidential journalistic material.
- (4) For the meaning of “journalistic material” and “confidential journalistic material”, see section 264.

Commencement Information

I23 S. 28 in force at 31.5.2018 by [S.I. 2018/652](#), [reg. 3\(l\)](#)

29 Sources of journalistic information

- (1) This section applies if—

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- (a) an application is made by or on behalf of an intercepting authority for a warrant under this Chapter, and
- (b) 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 53 or (as the case may be) section 150 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of communications that identify sources of journalistic information.

Commencement Information

I24 S. 29 in force at 31.5.2018 by [S.I. 2018/652](#), reg. 3(m)

Further provision about warrants

30 Decisions to issue warrants to be taken personally by Ministers

- (1) The decision to issue a warrant under this Chapter must be taken personally by—
 - (a) the Secretary of State, or
 - (b) in the case of a warrant to be issued by the Scottish Ministers, a member of the Scottish Government.
- (2) Before a warrant under this Chapter is issued, it must be signed by the person who has taken the decision to issue it.
- (3) Subsections (1) and (2) are subject to—
 - (a) subsection (4), and
 - (b) section 40 (special rules for certain mutual assistance warrants).
- (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.
- (6) In this section “senior official” means—
 - (a) in the case of a warrant to 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;

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- (b) in the case of a warrant to be issued by the Scottish Ministers, a member of the staff of the Scottish Administration who is a member of the Senior Civil Service.

Commencement Information

I25 S. 30 in force at 31.5.2018 by [S.I. 2018/652](#), [reg. 3\(n\)](#)

31 Requirements that must be met by warrants

- (1) A warrant under this Chapter must contain a provision stating whether it is a targeted interception warrant, a targeted examination warrant or a mutual assistance warrant.
 - (2) A warrant issued under this Chapter must be addressed to the person by whom, or on whose behalf, the application for the warrant was made.
 - (3) A warrant that relates to a particular person or organisation, or to a single set of premises, must name or describe that person or organisation or those premises.
 - (4) A warrant that relates to a group of persons who share a common purpose or who carry on (or may carry on) a particular activity must—
 - (a) describe that purpose or activity, and
 - (b) name or describe as many of those persons as it is reasonably practicable to name or describe.
 - (5) A warrant that relates to more than one person or organisation, or more than one set of premises, where the conduct authorised or required by the warrant is for the purposes of a single investigation or operation, must—
 - (a) describe the investigation or operation, and
 - (b) name or describe as many of those persons or organisations, or as many of those sets of premises, as it is reasonably practicable to name or describe.
 - (6) A warrant that relates to any testing or training activities must—
 - (a) describe those activities, and
 - (b) name or describe as many of the persons within subsection (7) as it is reasonably practicable to name or describe.
- “Testing or training activities” has the meaning given by section 17(3).
- (7) A person is within this subsection if—
 - (a) in the case of a targeted interception warrant—
 - (i) communications from, or intended for, the person will or may be intercepted by an interception authorised or required by the warrant, or
 - (ii) secondary data will or may be obtained under the warrant from communications from, or intended for, the person;
 - (b) in the case of a targeted examination warrant, the content of communications from, or intended for, the person may be selected for examination under the warrant.
 - (8) Where—

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- (a) a targeted interception warrant or mutual assistance warrant authorises or requires the interception of communications described in the warrant, or the obtaining of secondary data from such communications, or
 - (b) a targeted examination warrant authorises the selection of the content of communications for examination,
- the warrant must specify the addresses, numbers, apparatus, or other factors, or combination of factors, that are to be used for identifying the communications.
- (9) Any factor, or combination of factors, specified in accordance with subsection (8) must be one that identifies communications which are likely to be or to include—
- (a) communications from, or intended for, any person or organisation named or described in the warrant, or
 - (b) communications originating on, or intended for transmission to, any premises named or described in the warrant.
- (10) In this section any reference to communications from, or intended for, a person or organisation includes communications from, or intended for, anything owned, controlled or operated by that person or organisation.

Commencement Information

I26 S. 31 in force at 31.5.2018 by [S.I. 2018/652, reg. 3\(o\)](#)

32 Duration of warrants

- (1) A warrant under this Chapter 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 33), or
 - (b) it is cancelled or otherwise ceases to have effect before the end of that period (see sections 24 and 39).
- (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 [^{F9}12th] 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 that 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.

Textual Amendments

F9 Word in [s. 32\(2\)\(a\)](#) substituted (temp.) (27.3.2020) by virtue of [The Investigatory Powers \(Temporary Judicial Commissioners and Modification of Time Limits\) Regulations 2020 \(S.I. 2020/360\)](#), regs. [1\(2\)](#), [4\(b\)](#) (with [reg. 5](#))

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Commencement Information

I27 S. 32 in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 8\(d\)](#)

33 Renewal of warrants

- (1) If the renewal conditions are met, a warrant issued under this Chapter 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—
 - (a) that the appropriate person considers that the warrant continues to be necessary on any relevant grounds (see subsection (4)),
 - (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 relevant content for examination in breach of the prohibition in section 152(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 by the Secretary of State, the Secretary of State;
 - (b) in the case of a warrant issued by the Scottish Ministers, a member of the Scottish Government.
- (4) “Relevant grounds” means—
 - (a) in the case of a warrant issued by the Secretary of State, grounds falling within section 20;
 - (b) in the case of a warrant issued by the Scottish Ministers, grounds falling within section 21(4).
- (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 must be taken personally by the appropriate person, and the instrument renewing the warrant must be signed by that person.
- (7) Section 23 (approval of warrants by Judicial Commissioners) applies in relation to a decision to renew a warrant as it applies in relation to a decision to issue 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).
- (8) Sections 26 to 29 (additional safeguards) apply in relation to a decision to renew a warrant as they apply in relation to a decision to issue a warrant.
- (9) In this section—

“the relevant period” has the same meaning as in section 32;

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

- (10) This section is subject to section 40 (special rules for certain mutual assistance warrants).

Commencement Information

I28 [S. 33](#) in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 8\(e\)](#)

34 Modification of warrants

- (1) The provisions of a warrant issued under this Chapter may be modified at any time by an instrument issued by the person making the modification.
- (2) The only modifications that may be made under this section are—
 - (a) adding, varying or removing the name or description of a person, organisation or set of premises to which the warrant relates, and
 - (b) adding, varying or removing any factor specified in the warrant in accordance with section 31(8).
- (3) But a warrant may not be modified as mentioned in subsection (2)(a) if it relates only to a particular person or organisation, or to a single set of premises, as mentioned in section 17(1).
- (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 36(8).

- (5) In this Chapter—
 - (a) a modification adding or varying a name or description as mentioned in paragraph (a) of subsection (2) is referred to as a “major modification”, and
 - (b) any other modification within that subsection is referred to as a “minor modification”.
- (6) 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.
- (7) Sections 35 to 38 contain further provision about making modifications under this section.

Commencement Information

I29 [S. 34](#) in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 8\(f\)](#)

35 Persons who may make modifications

- (1) A major modification may be made by—
 - (a) the Secretary of State, in the case of a warrant issued by the Secretary of State,

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- (b) a member of the Scottish Government, in the case of a warrant issued by the Scottish Ministers, or
 - (c) a senior official acting on behalf of the Secretary of State or (as the case may be) the Scottish Ministers.
- (2) A minor modification may be made by—
 - (a) the Secretary of State, in the case of a warrant issued by the Secretary of State,
 - (b) a member of the Scottish Government, in the case of a warrant issued by the Scottish Ministers,
 - (c) a senior official acting on behalf of the Secretary of State or (as the case may be) the Scottish Ministers,
 - (d) the person to whom the warrant is addressed, or
 - (e) a person who holds a senior position in the same public authority as the person mentioned in paragraph (d).
- (3) But if a person within subsection (2)(d) or (e) considers that there is an urgent need to make a major modification, that person (as well as a person within subsection (1)) may do so.

Section 38 contains provision about the approval of major modifications made in urgent cases.
- (4) Subsections (1) and (3) are subject to section 36(5) and (6) (special rules where any of sections 26 to 29 applies in relation to the making of a major modification).
- (5) Subsections (2)(d) and (e) and (3) do not apply in the case of a mutual assistance warrant addressed to a person falling within section 18(1)(h) (competent authorities of overseas countries or territories).
- (6) For the purposes of subsection (2)(e) 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 National Crime Agency, the person is a National Crime Agency officer of grade 2 or above;
 - (c) in the case of the metropolitan police force, the Police Service of Northern Ireland or the Police Service of Scotland, a person is of or above the rank of superintendent;
 - (d) in the case of Her Majesty's Revenue and Customs, the person is a member of the Senior Civil Service;
 - (e) 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.
- (7) In this section “senior official” means—

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- (a) in the case of a warrant 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 warrant issued by the Scottish Ministers, a member of the staff of the Scottish Administration who is a member of the Senior Civil Service.

Commencement Information

I30 S. 35(1)-(5)(6)(a)(e)(7) in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 8\(g\)](#)

I31 S. 35(6)(b)-(d) in force at 26.9.2018 by [S.I. 2018/940](#), [reg. 3\(c\)](#)

36 Further provision about modifications

- (1) A person may make a modification within subsection (2) only if the person considers—
 - (a) that the modification is necessary on any relevant grounds (see subsection (3)), and
 - (b) that the conduct authorised by the modification is proportionate to what is sought to be achieved by that conduct.
- (2) The modifications within this subsection are—
 - (a) a major modification adding the name or description of a person, organisation or set of premises to which the warrant relates, and
 - (b) a minor modification adding any factor specified in the warrant in accordance with section 31(8).
- (3) In subsection (1)(a) “relevant grounds” means—
 - (a) in the case of a warrant issued by the Secretary of State, grounds falling within section 20;
 - (b) in the case of a warrant issued by the Scottish Ministers, grounds falling within section 21(4);

and for the purposes of subsection (1) any reference to the Secretary of State in section 20(3)(b) or the Scottish Ministers in section 21(4)(b) is to be read as a reference to the person making the modification.
- (4) Sections 26 to 29 (additional safeguards) apply in relation to the making of a major modification within subsection (2)(a) above as they apply in relation to the issuing of a warrant.
- (5) Where section 26 applies in relation to the making of a major 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.
- (6) Where section 27, 28 or 29 applies in relation to the making of a major 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

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- (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.
- (7) In a case where any of sections 26 to 29 applies in relation to the making of a major modification, section 23 (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,
 - (b) any reference to the person who decided to issue the warrant were a reference to the person who decided to make the modification, and
 - (c) subsection (3) of this section applied for the purposes of subsection (1) of that section as it applies for the purposes of subsection (1) of this section.

Section 38 contains provision about the approval of major modifications made in urgent cases.

- (8) If, in a case where any of sections 26 to 29 applies in relation to the making of a major 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 34(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.
- (9) 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.
- (10) If at any time a person mentioned in section 35(2) considers that any factor specified in a warrant in accordance with section 31(8) is no longer relevant for identifying communications which, in the case of that warrant, are likely to be, or to include, communications falling within section 31(9)(a) or (b), the person must modify the warrant by removing that factor.
- (11) In this section “senior official” has the same meaning as in section 35.

Commencement Information

I32 S. 36 in force at 27.6.2018 by S.I. 2018/652, reg. 8(h)

37 Notification of major modifications

- (1) As soon as is reasonably practicable after a person makes a major modification of a warrant under this Chapter, 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 made by virtue of section 35(3), or
 - (b) any of sections 26 to 29 applies in relation to the making of the modification.

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- (3) Where a major modification is made by a senior official in accordance with section 35(1) or section 36(6)(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.
- (4) In this section “senior official” has the same meaning as in section 35.

Commencement Information

I33 S. 37 in force at 27.6.2018 by S.I. 2018/652, reg. 8(i)

38 Approval of major modifications made in urgent cases

- (1) This section applies where a person makes a major modification of a warrant under this Chapter by virtue of section 35(3).
- (2) This section also applies where—
 - (a) section 27, 28 or 29 applies in relation to the making of a major modification of a warrant under this Chapter,
 - (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, and

“senior official” has the same meaning as in section 35.
- (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 [F10ninth] 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).

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- (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 23(5) does not apply in relation to the refusal to approve the decision.
- (8) 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.

Textual Amendments

F10 Word in [s. 38\(5\)](#) substituted (temp.) (27.3.2020) by virtue of [The Investigatory Powers \(Temporary Judicial Commissioners and Modification of Time Limits\) Regulations 2020 \(S.I. 2020/360\)](#), [regs. 1\(2\), 4\(c\)](#) (with [reg. 5](#))

Commencement Information

I34 S. 38 in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 8\(j\)](#)

39 Cancellation of warrants

- (1) Any of the appropriate persons may cancel a warrant issued under this Chapter at any time.
- (2) If any of the appropriate persons considers that—
- (a) a warrant issued under this Chapter is no longer necessary on any relevant grounds, or
 - (b) the conduct authorised by the warrant is no longer proportionate to what is sought to be achieved by that conduct,
- the person must cancel the warrant.
- (3) In subsection (2)(a) “relevant grounds” means—
- (a) in the case of a warrant issued by the Secretary of State, grounds falling within section 20;
 - (b) in the case of a warrant issued by the Scottish Ministers, grounds falling within section 21(4).
- (4) For the purpose of this section “the appropriate persons” are—
- (a) in the case of a warrant issued by the Secretary of State, 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, a member of the Scottish Government or a senior official acting on behalf of the Scottish Ministers.

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- (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.
- (7) In this section “senior official” means—
 - (a) in the case of a warrant 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 warrant issued by the Scottish Ministers, a member of the staff of the Scottish Administration who is a member of the Senior Civil Service.
- (8) See also section 40 (which imposes a duty to cancel mutual assistance warrants in certain circumstances).

Commencement Information

I35 S. 39 in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 8\(k\)](#)

40 Special rules for certain mutual assistance warrants

- (1) For the purposes of this section a warrant is a “relevant mutual assistance warrant” if—
 - (a) the warrant is for the purposes of a request for assistance made under ^{F11}... an international mutual assistance agreement by the competent authorities of a country or territory outside the United Kingdom, and
 - (b) either—
 - (i) it appears that the interception subject is outside the United Kingdom, or
 - (ii) the interception authorised or required by the warrant is to take place in relation only to premises outside the United Kingdom.
- (2) The decision to issue a relevant mutual assistance warrant may be taken by a senior official designated by the Secretary of State for that purpose.
- (3) In such a case, the warrant must contain—
 - (a) a statement that the warrant is issued for the purposes of a request for assistance made under ^{F12}... an international mutual assistance agreement ^{F12}... by the competent authorities of a country or territory outside the United Kingdom, and
 - (b) whichever of the following statements is applicable—
 - (i) a statement that the interception subject appears to be outside the United Kingdom;
 - (ii) a statement that the interception authorised or required by the warrant is to take place in relation only to premises outside the United Kingdom.
- (4) A relevant mutual assistance warrant may be renewed by a senior official designated by the Secretary of State for that purpose; and references in section 33 to the appropriate person include, in the case of such a warrant, references to that senior official.

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- (5) Where a senior official renews a relevant mutual assistance warrant in accordance with subsection (4), the instrument renewing the warrant must contain—
- (a) a statement that the renewal is for the purposes of a request for assistance made under ^{F13}... an international mutual assistance agreement ^{F13}... by the competent authorities of a country or territory outside the United Kingdom, and
 - (b) whichever of the following statements is applicable—
 - (i) a statement that the interception subject appears to be outside the United Kingdom;
 - (ii) a statement that the interception authorised or required by the warrant is to take place in relation only to premises outside the United Kingdom.
- (6) Subsection (7) applies in a case where—
- (a) a relevant mutual assistance warrant—
 - (i) was issued containing the statement set out in subsection (3)(b)(i), or
 - (ii) has been renewed by an instrument containing the statement set out in subsection (5)(b)(i), and
 - (b) the last renewal (if any) of the warrant was a renewal by a senior official in accordance with subsection (4).
- (7) If the Secretary of State, or a senior official acting on behalf of the Secretary of State, believes that the person, group or organisation named or described in the warrant as the interception subject is in the United Kingdom, that person must cancel the warrant under section 39.
- (8) In this section—
- “the interception subject”, in relation to a warrant, means the person, group of persons or organisation to which the warrant relates;
 - “senior official” means a member of the Senior Civil Service or a member of the Senior Management Structure of Her Majesty's Diplomatic Service.

Textual Amendments

- F11** Words in s. 40(1)(a) omitted (31.12.2020) by virtue of [The Law Enforcement and Security \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/742\)](#), regs. 1, **82(7)(a)** (with reg. 83); 2020 c. 1, Sch. 5 para. 1(1)
- F12** Words in s. 40(3)(a) omitted (31.12.2020) by virtue of [The Law Enforcement and Security \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/742\)](#), regs. 1, **82(7)(b)** (with reg. 83); 2020 c. 1, Sch. 5 para. 1(1)
- F13** Words in s. 40(5)(a) omitted (31.12.2020) by virtue of [The Law Enforcement and Security \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/742\)](#), regs. 1, **82(7)(b)** (with reg. 83); 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

- I36** S. 40(1)-(3)(8) in force at 31.5.2018 by [S.I. 2018/652](#), **reg. 3(p)**
- I37** S. 40(4)-(7) in force at 27.6.2018 by [S.I. 2018/652](#), **reg. 8(l)**

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Implementation of warrants

41 Implementation of warrants

- (1) This section applies to targeted interception warrants and mutual assistance warrants.
- (2) In giving effect to a warrant to which this section applies, the person to whom it is addressed (“the intercepting authority”) may (in addition to acting alone) act through, or together with, such other persons as the intercepting authority may require (whether under subsection (3) or otherwise) to provide the authority with assistance in giving effect to the warrant.
- (3) For the purpose of requiring any person to provide assistance in relation to a warrant to which this section applies, the intercepting authority may—
 - (a) serve a copy of the warrant on any person who the intercepting 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.
- (4) A copy of a warrant may be served under subsection (3) 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.
- (5) For the purposes of this Act, the provision of assistance in giving effect to a warrant to which this section applies includes any disclosure to the intercepting authority, or to persons acting on behalf of the intercepting authority, of anything obtained under the warrant.
- (6) References in this section and sections 42 and 43 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 the warrant.

Commencement Information

I38 [S. 41](#) in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 8\(m\)](#)

42 Service of warrants

- (1) This section applies to the service of warrants under section 41(3).
- (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 intercepting 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

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- 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 intercepting authority takes such steps as the authority 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 intercepting authority” has the same meaning as in section 41.

Commencement Information

I39 S. 42 in force at 27.6.2018 by S.I. 2018/652, reg. 8(n)

43 Duty of operators to assist with implementation

- (1) A relevant operator that has been served with a copy of a warrant to which section 41 applies by (or on behalf of) the intercepting authority must take all steps for giving effect to the warrant that are notified to the relevant operator by (or on behalf of) the intercepting authority.

This is subject to subsection (4).

- (2) In this section—
- “relevant operator” means a postal operator or a telecommunications operator;
- “the intercepting authority” has the same meaning as in section 41.
- (3) Subsection (1) applies whether or not the relevant operator is in the United Kingdom.
- (4) The relevant operator is not required to take any steps which it is not reasonably practicable for the relevant operator to take.
- (5) In determining for the purposes of subsection (4) whether it is reasonably practicable for a relevant operator outside the United Kingdom to take any steps in a country or territory outside the United Kingdom for giving effect to a warrant, the matters to be taken into account include the following—
- (a) any requirements or restrictions under the law of that country or territory that are relevant to the taking of those steps, and
- (b) the extent to which it is reasonably practicable to give effect to the warrant in a way that does not breach any of those requirements or restrictions.
- (6) Where obligations have been imposed on a relevant operator (“P”) under section 253 (technical capability notices), for the purposes of subsection (4) the steps which it

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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) A person who knowingly fails to comply with subsection (1) is guilty of an offence and liable—
- (a) on summary conviction in England and Wales—
 - (i) to imprisonment for a term not exceeding [^{F14}the general limit in a magistrates’ court] (or 6 months, if the offence was committed before [^{F15}2 May 2022]), 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 2 years or to a fine, or to both.
- (8) The duty imposed by subsection (1) is enforceable (whether or not the person is 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.

Textual Amendments

F14 Words in s. 43(7)(a)(i) substituted (7.2.2023 at 12.00 p.m.) by [The Judicial Review and Courts Act 2022 \(Magistrates’ Court Sentencing Powers\) Regulations 2023 \(S.I. 2023/149\)](#), regs. 1(2), 2(1), **Sch. Pt. 1**

F15 Words in s. 43(7)(a)(i) substituted (28.4.2022) by [The Criminal Justice Act 2003 \(Commencement No. 33\) and Sentencing Act 2020 \(Commencement No. 2\) Regulations 2022 \(S.I. 2022/500\)](#), regs. 1(2), 5(1), **Sch. Pt. 1**

Commencement Information

I40 S. 43 in force at 27.6.2018 by [S.I. 2018/652](#), **reg. 8(o)**

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CHAPTER 2

OTHER FORMS OF LAWFUL INTERCEPTION

Interception with consent

44 Interception with the consent of the sender or recipient

- (1) The interception of a communication is authorised by this section if the sender and the intended recipient of the communication have each consented to its interception.
- (2) The interception of a communication is authorised by this section if—
 - (a) the communication is one sent by, or intended for, a person who has consented to the interception, and
 - (b) surveillance by means of that interception has been authorised under—
 - (i) Part 2 of the Regulation of Investigatory Powers Act 2000, or
 - (ii) the Regulation of Investigatory Powers (Scotland) Act 2000 (2000 asp 11).

Commencement Information

I41 S. 44 in force at 27.6.2018 by S.I. 2018/652, reg. 8(p)

Interception for administrative or enforcement purposes

45 Interception by providers of postal or telecommunications services

- (1) The interception of a communication is authorised by this section if the interception is carried out—
 - (a) by, or on behalf of, a person who provides a postal service or a telecommunications service, and
 - (b) for any of the purposes in subsection (2).
- (2) The purposes referred to in subsection (1) are—
 - (a) purposes relating to the provision or operation of the service;
 - (b) purposes relating to the enforcement, in relation to the service, of any enactment relating to—
 - (i) the use of postal or telecommunications services, or
 - (ii) the content of communications transmitted by means of such services;
 - (c) purposes relating to the provision of services or facilities aimed at preventing or restricting the viewing or publication of the content of communications transmitted by means of postal or telecommunications services.
- (3) A reference in this section to anything carried out for purposes relating to the provision or operation of a telecommunications service includes, among other things, a reference to anything done for the purposes of identifying, combating or preventing anything which could affect—
 - (a) any telecommunication system by means of which the service is provided, or
 - (b) any apparatus attached to such a system.

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Commencement Information

I42 S. 45 in force at 27.6.2018 by S.I. 2018/652, reg. 8(p)

46 Interception by businesses etc. for monitoring and record-keeping purposes

- (1) Conduct is authorised by this section if it is authorised by regulations made under subsection (2).
- (2) The Secretary of State may by regulations authorise conduct of a description specified in the regulations if that conduct appears to the Secretary of State to constitute a legitimate practice reasonably required for the purpose, in connection with the carrying on of any relevant activities (see subsection (4)), of monitoring or keeping a record of—
 - (a) communications by means of which transactions are entered into in the course of the relevant activities, or
 - (b) other communications relating to the relevant activities or taking place in the course of the carrying on of those activities.
- (3) But nothing in any regulations under subsection (2) may authorise the interception of any communication except in the course of its transmission using apparatus or services provided by or to the person carrying on the relevant activities for use (whether wholly or partly) in connection with those activities.
- (4) In this section “relevant activities” means—
 - (a) any business,
 - (b) any activities of a government department, the Welsh Government, a Northern Ireland department or any part of the Scottish Administration,
 - (c) any activities of a public authority, and
 - (d) any activities of any person or office holder on whom functions are conferred by or under any enactment.

Commencement Information

I43 S. 46 in force at 27.6.2018 by S.I. 2018/652, reg. 8(p)

47 Postal services: interception for enforcement purposes

- (1) The interception of a communication in the course of its transmission by means of a public postal service is authorised by this section if it is carried out by an officer of Revenue and Customs under section 159 of the Customs and Excise Management Act 1979, as applied by virtue of—
 - (a) section 105 of the Postal Services Act 2000 (power to open postal items etc.), or
 - (b) that section and another enactment.
- (2) The interception of a communication in the course of its transmission by means of a public postal service is authorised by this section if it is carried out under paragraph 9 of Schedule 7 to the Terrorism Act 2000 (port and border controls) ^{F16} or under

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paragraph 9 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019 (border security)] .

Textual Amendments

F16 Words in [s. 47\(2\)](#) inserted (13.8.2020) by [Counter-Terrorism and Border Security Act 2019 \(c. 3\)](#), [s. 27\(2\)\(d\)](#), [Sch. 4 para. 33](#); [S.I. 2020/792](#), [reg. 2\(i\)](#)

Commencement Information

I44 S. 47 in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 8\(p\)](#)

48 Interception by OFCOM in connection with wireless telegraphy

(1) Conduct falling within subsection (2) is authorised by this section if it is carried out by OFCOM for purposes connected with a relevant matter (see subsection (3)).

(2) The conduct referred to in subsection (1) is—

- (a) the interception of a communication in the course of its transmission by means of a telecommunication system;
- (b) the obtaining, by or in connection with the interception, of information about the sender or recipient, or intended recipient, of the communication (whether or not a person);
- (c) the disclosure of anything obtained by conduct falling within paragraph (a) or (b).

(3) Each of the following is a relevant matter for the purposes of subsection (1)—

- (a) the grant of wireless telegraphy licences under the Wireless Telegraphy Act 2006 (“the 2006 Act”);
- (b) the prevention or detection of anything which constitutes interference with wireless telegraphy;
- (c) the enforcement of—
 - (i) any provision of Part 2 (other than Chapter 2 and sections 27 to 31) or Part 3 of the 2006 Act, or
 - (ii) any enactment not falling within sub-paragraph (i) that relates to interference with wireless telegraphy.

(4) In this section—

“interference”, in relation to wireless telegraphy, has the same meaning as in the Wireless Telegraphy Act 2006 (see section 115(3) of that Act);

“OFCOM” means the Office of Communications established by section 1 of the Office of Communications Act 2002;

“wireless telegraphy” has the same meaning as in the Wireless Telegraphy Act 2006 (see section 116 of that Act).

Commencement Information

I45 [S. 48](#) in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 8\(p\)](#)

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Interception taking place in certain institutions

49 Interception in prisons

- (1) Conduct taking place in a prison is authorised by this section if it is conduct in exercise of any power conferred by or under prison rules.
- (2) In this section “prison rules” means any rules made under—
 - (a) section 47 of the Prison Act 1952,
 - (b) section 39 of the Prisons (Scotland) Act 1989, or
 - (c) section 13 of the Prison Act (Northern Ireland) 1953.
- (3) In this section “prison” means—
 - (a) any prison, young offender institution, young offenders centre, secure training centre, secure college or remand centre which—
 - (i) is under the general superintendence of, or is provided by, the Secretary of State under the Prison Act 1952, or
 - (ii) is under the general superintendence of, or is provided by, the Department of Justice in Northern Ireland under the Prison Act (Northern Ireland) 1953, or
 - (b) any prison, young offenders institution or remand centre which is under the general superintendence of the Scottish Ministers under the Prisons (Scotland) Act 1989,

and includes any contracted out prison, within the meaning of Part 4 of the Criminal Justice Act 1991 or section 106(4) of the Criminal Justice and Public Order Act 1994, and any legalised police cells within the meaning of section 14 of the Prisons (Scotland) Act 1989.

Commencement Information

I46 [S. 49](#) in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 8\(p\)](#)

50 Interception in psychiatric hospitals etc.

- (1) Conduct is authorised by this section if—
 - (a) it takes place in any hospital premises where high security psychiatric services are provided, and
 - (b) it is conduct in pursuance of, and in accordance with, any relevant direction given to the body providing those services at those premises.
- (2) “Relevant direction” means—
 - (a) a direction under section 4(3A)(a) of the National Health Service Act 2006, or
 - (b) a direction under section 19 or 23 of the National Health Service (Wales) Act 2006.
- (3) Conduct is authorised by this section if—
 - (a) it takes place in a state hospital, and
 - (b) it is conduct in pursuance of, and in accordance with, any direction given to the State Hospitals Board for Scotland under section 2(5) of the National Health Service (Scotland) Act 1978 (regulations and directions as to the exercise of their functions by health boards).

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The reference to section 2(5) of that Act is to that provision as applied by Article 5(1) of, and the Schedule to, the State Hospitals Board for Scotland Order 1995 (which applies certain provisions of that Act to the State Hospitals Board).

- (4) Conduct is authorised by this section if it is conduct in exercise of any power conferred by or under—
- (a) section 281 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (2003 asp 13) (power to withhold correspondence of certain persons detained in hospital), or
 - (b) section 284 of that Act (powers relating to the use of telephones by certain persons detained in hospital).
- (5) In this section—
- “high security psychiatric services” has the same meaning as in section 4 of the National Health Service Act 2006;
 - “hospital premises” has the same meaning as in section 4(3) of that Act;
 - “state hospital” has the same meaning as in the National Health Service (Scotland) Act 1978.

Commencement Information

I47 [S. 50](#) in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 8\(p\)](#)

51 Interception in immigration detention facilities

- (1) Conduct taking place in immigration detention facilities is authorised by this section if it is conduct in exercise of any power conferred by or under relevant rules.
- (2) In this section—
- “immigration detention facilities” means any removal centre, short-term holding facility or pre-departure accommodation;
 - “removal centre”, “short-term holding facility” and “pre-departure accommodation” have the meaning given by section 147 of the Immigration and Asylum Act 1999;
 - “relevant rules” means—
 - (a) in the case of a removal centre, rules made under section 153 of that Act;
 - (b) in the case of a short-term holding facility, rules made under, or having effect by virtue of, section 157 of that Act;
 - (c) in the case of pre-departure accommodation, rules made under, or having effect by virtue of, section 157A of that Act.

Commencement Information

I48 [S. 51](#) in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 8\(p\)](#)

Changes to legislation: *Investigatory Powers Act 2016, Part 2 is up to date with all changes known to be in force on or before 14 August 2023. 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) View outstanding changes*

Interception in accordance with overseas requests

52 Interception in accordance with overseas requests

- (1) The interception of a communication in the course of its transmission by means of a telecommunication system is authorised by this section if conditions A to D are met.
- (2) Condition A is that the interception—
 - (a) is carried out by or on behalf of a telecommunications operator, and
 - (b) relates to the use of a telecommunications service provided by the telecommunications operator.
- (3) Condition B is that the interception is carried out in response to a request made in accordance with a relevant international agreement by the competent authorities of a country or territory outside the United Kingdom.

In this subsection “relevant international agreement” means an international agreement to which the United Kingdom is a party and which is designated as a relevant international agreement by regulations made by the Secretary of State [^{F17}(see further subsections (6) and (7))].

- (4) Condition C is that the interception is carried out for the purpose of obtaining information about the communications of an individual—
 - (a) who is outside the United Kingdom, or
 - (b) who each of the following persons believes is outside the United Kingdom—
 - (i) the person making the request;
 - (ii) the person carrying out the interception.
- (5) Condition D is that any further conditions specified in regulations made by the Secretary of State for the purposes of this section are met.

- [^{F18}(6) Subsection (7) applies where an international agreement provides for requests for the interception of a communication to be made by the competent authorities of a country or territory, or of more than one country or territory, in which a person found guilty of a criminal offence may be sentenced to death for the offence under the general criminal law of the country or territory concerned.

Such an offence is referred to in subsection (7) as a “death penalty offence”.

- (7) Where this subsection applies, the Secretary of State may not designate the agreement as a relevant international agreement unless the Secretary of State has sought, in respect of each country or territory referred to in subsection (6), a written assurance, or written assurances, relating to the non-use of information obtained by virtue of the agreement in connection with proceedings for a death penalty offence in the country or territory.]

Textual Amendments

F17 Words in s. 52(3) inserted (9.10.2019) by [Crime \(Overseas Production Orders\) Act 2019 \(c. 5\)](#), ss. 16(2), 20(1); S.I. 2019/1318, reg. 2(1)(c)

F18 S. 52(6)(7) inserted (9.10.2019) by [Crime \(Overseas Production Orders\) Act 2019 \(c. 5\)](#), ss. 16(3), 20(1); S.I. 2019/1318, reg. 2(1)(c)

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Commencement Information

I49 S. 52 in force at 27.6.2018 by [S.I. 2018/652](#), reg. 8(q)

CHAPTER 3

OTHER PROVISIONS ABOUT INTERCEPTION

Restrictions on use or disclosure of material obtained under warrants etc.

53 Safeguards relating to retention and disclosure of material

- (1) The issuing authority must ensure, in relation to every targeted interception warrant or mutual assistance 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 (9).

- (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 this section something is necessary for the authorised purposes if, and only if—

- (a) it is, or is likely to become, necessary on any of the grounds falling within section 20 on which a warrant under Chapter 1 of this Part may be necessary,
- (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 the Investigatory Powers Tribunal under or in relation to this Act,
- (d) it is necessary to ensure that a person (“P”) who is conducting a criminal prosecution has the information P needs to determine what is required of P by P's duty to secure the fairness of the prosecution, or
- (e) it is necessary for the performance of any duty imposed on any person by the Public Records Act 1958 or the Public Records Act (Northern Ireland) 1923.

- (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.

Changes to legislation: *Investigatory Powers Act 2016, Part 2 is up to date with all changes known to be in force on or before 14 August 2023. 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) View outstanding changes*

- (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 relevant grounds for retaining it (see subsection (6)).
- (6) For the purposes of subsection (5), there are no longer any relevant grounds for retaining a copy of any material if, and only if—
 - (a) its retention is not necessary, or not likely to become necessary, on any of the grounds falling within section 20 on which a warrant under Chapter 1 of this Part may be necessary, and
 - (b) its retention is not necessary for any of the purposes mentioned in paragraphs (b) to (e) of subsection (3) above.
- (7) Where—
 - (a) a communication which has been intercepted in accordance with a targeted interception warrant or mutual assistance warrant is retained, following its examination, for purposes other than the destruction of the communication, and
 - (b) it is a communication that contains confidential journalistic material or identifies a source of journalistic information,
 the person to whom the warrant is addressed must inform the Investigatory Powers Commissioner as soon as is reasonably practicable.
- (8) Subsection (9) 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.
- (9) To the extent that the requirements of subsections (2) and (5) relate to any of the material mentioned in subsection (8)(a), or to the copy mentioned in subsection (8)(b), the arrangements made for the purposes of this section are not required to secure that those requirements are met (see instead section 54).
- (10) 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—
 - (i) refers to any interception or to the obtaining of any material, and
 - (ii) is a record of the identities of the persons to or by whom the material was sent, or to whom the material relates,
 - and “copied” is to be read accordingly;
 - “the issuing authority” means—
 - (a) the Secretary of State, in the case of warrants issued by the Secretary of State;
 - (b) the Scottish Ministers, in the case of warrants issued by the Scottish Ministers;
 - “overseas authorities” means authorities of a country or territory outside the United Kingdom.

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Commencement Information

I50 S. 53 in force at 31.5.2018 by [S.I. 2018/652](#), [reg. 3\(q\)](#)

54 Safeguards relating to disclosure of material overseas

- (1) The issuing authority must ensure, in relation to every targeted interception warrant or mutual assistance warrant issued by that authority, 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—
 - (a) that requirements corresponding to the requirements of section 53(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, and
 - (b) that restrictions are in force which would prevent, to such extent (if any) as the issuing authority considers appropriate, the doing of anything in, for the purposes of or in connection with any proceedings outside the United Kingdom which would result in a prohibited disclosure.
- (3) In subsection (2)(b) “prohibited disclosure” means a disclosure which, if made in the United Kingdom, would breach the prohibition in section 56(1).
- (4) In this section—
 - “copy” has the same meaning as in section 53;
 - “the issuing authority” means—
 - (a) the Secretary of State, in the case of warrants issued by the Secretary of State;
 - (b) the Scottish Ministers, in the case of warrants issued by the Scottish Ministers;
 - “overseas authorities” means authorities of a country or territory outside the United Kingdom.

Commencement Information

I51 S. 54 in force at 31.5.2018 by [S.I. 2018/652](#), [reg. 3\(r\)](#)

55 Additional safeguards for items subject to legal privilege

- (1) This section applies where an item subject to legal privilege which has been intercepted in accordance with a targeted interception warrant or mutual assistance warrant is retained, following its examination, for purposes other than the destruction of the item.

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- (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.
- (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 person who decided to issue the warrant;
 - (b) the person to whom the warrant is or was addressed.

Commencement Information

I52 S. 55 in force at 27.6.2018 by S.I. 2018/652, reg. 8(r) (with reg. 15(4)(a))

56 Exclusion of matters from legal proceedings etc.

- (1) No evidence may be adduced, question asked, assertion or disclosure made or other thing done in, for the purposes of or in connection with any legal proceedings or Inquiries Act proceedings which (in any manner)—
 - (a) discloses, in circumstances from which its origin in interception-related conduct may be inferred—
 - (i) any content of an intercepted communication, or
 - (ii) any secondary data obtained from a communication, or
 - (b) tends to suggest that any interception-related conduct has or may have occurred or may be going to occur.

This is subject to Schedule 3 (exceptions).

- (2) “Interception-related conduct” means—
 - (a) conduct by a person within subsection (3) that is, or in the absence of any lawful authority would be, an offence under section 3(1) (offence of unlawful interception);

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- (b) a breach of the prohibition imposed by section 9 (restriction on requesting interception by overseas authorities);
 - (c) a breach of the prohibition imposed by section 10 (restriction on requesting assistance under mutual assistance agreements etc.);
 - (d) the making of an application by any person for a warrant, or the issue of a warrant, under Chapter 1 of this Part;
 - (e) the imposition of any requirement on any person to provide assistance in giving effect to a targeted interception warrant or mutual assistance warrant.
- (3) The persons referred to in subsection (2)(a) are—
 - (a) any person who is an intercepting authority (see section 18);
 - (b) any person holding office under the Crown;
 - (c) any person deemed to be the proper officer of Revenue and Customs by virtue of section 8(2) of the Customs and Excise Management Act 1979;
 - (d) any person employed by, or for the purposes of, a police force [^{F19}or the tri-service serious crime unit];
 - (e) any postal operator or telecommunications operator;
 - (f) any person employed or engaged for the purposes of the business of a postal operator or telecommunications operator.
- (4) Any reference in subsection (1) to interception-related conduct also includes any conduct taking place before the coming into force of this section and consisting of—
 - (a) conduct by a person within subsection (3) that—
 - (i) was an offence under section 1(1) or (2) of the Regulation of Investigatory Powers Act 2000 (“RIPA”), or
 - (ii) would have been such an offence in the absence of any lawful authority (within the meaning of section 1(5) of RIPA);
 - (b) conduct by a person within subsection (3) that—
 - (i) was an offence under section 1 of the Interception of Communications Act 1985, or
 - (ii) would have been such an offence in the absence of subsections (2) and (3) of that section;
 - (c) a breach by the Secretary of State of the duty under section 1(4) of RIPA (restriction on requesting assistance under mutual assistance agreements);
 - (d) the making of an application by any person for a warrant, or the issue of a warrant, under—
 - (i) Chapter 1 of Part 1 of RIPA, or
 - (ii) the Interception of Communications Act 1985;
 - (e) the imposition of any requirement on any person to provide assistance in giving effect to a warrant under Chapter 1 of Part 1 of RIPA.
- (5) In this section—
 - “Inquiries Act proceedings” means proceedings of an inquiry under the Inquiries Act 2005;
 - “intercepted communication” means any communication intercepted in the course of its transmission by means of a postal service or telecommunication system.

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Textual Amendments

F19 Words in [s. 56\(3\)\(d\)](#) inserted (1.5.2022 for specified purposes, 5.12.2022 in so far as not already in force) by [Armed Forces Act 2021 \(c. 35\)](#), s. 24(1), [Sch. 5 para. 44](#); [S.I. 2022/471](#), reg. 2(e); [S.I. 2022/1095](#), reg. 4

Commencement Information

I53 [S. 56](#) in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 8\(s\)](#) (with [reg. 17](#))

57 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—
 - (i) a warrant under Chapter 1 of this Part, or
 - (ii) a warrant under Chapter 1 of Part 1 of the Regulation of Investigatory Powers Act 2000, and
 - (b) the disclosure is not an excepted disclosure (see section 58).
- (3) This section applies to the following persons—
 - (a) any person who is an intercepting authority (see section 18);
 - (b) any person holding office under the Crown;
 - (c) any person employed by, or for the purposes of, a police force [^{F20}or the tri-service serious crime unit];
 - (d) any postal operator or telecommunications operator;
 - (e) any person employed or engaged for the purposes of the business of a postal operator or telecommunications operator;
 - (f) any person to whom any of the matters within subsection (4) have been disclosed in relation to a warrant mentioned in subsection (2)(a).
- (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.

Textual Amendments

F20 Words in [s. 57\(3\)\(c\)](#) inserted (1.5.2022 for specified purposes, 5.12.2022 in so far as not already in force) by [Armed Forces Act 2021 \(c. 35\)](#), s. 24(1), [Sch. 5 para. 45](#); [S.I. 2022/471](#), reg. 2(e); [S.I. 2022/1095](#), reg. 4

Commencement Information

I54 [S. 57](#) in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 8\(t\)](#) (with [reg. 18](#))

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58 Section 57: meaning of “excepted disclosure”

- (1) For the purposes of section 57 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 (4) (oversight bodies);
 - (c) subsection (5) (legal advisers);
 - (d) subsection (8) (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 41(5) or, in the case of a warrant under Chapter 1 of Part 1 of the Regulation of Investigatory Powers Act 2000 (“RIPA”), section 11(9) of RIPA).
- (3) But subsection (2)(b) does not apply in the case of a mutual assistance warrant that is or was addressed to a person falling within section 18(1)(h) (competent authorities of overseas countries or territories).
- (4) Head 2 is—
 - (a) in the case of a warrant under Chapter 1 of this Part, a disclosure made to, or authorised by, a Judicial Commissioner;
 - (b) in the case of a warrant under Chapter 1 of Part 1 of RIPA, a disclosure made to, or authorised by, the Interception of Communications Commissioner or a Judicial Commissioner;
 - (c) a disclosure made to [^{F21}the Director General of the Independent Office for Police Conduct] for the purposes of facilitating the carrying out of any of [^{F22}the Director General’s functions];
 - [^{F23}(ca) a disclosure made to the Service Police Complaints Commissioner for the purposes of facilitating the carrying out of any of the Commissioner’s functions;]
 - (d) a disclosure made to the Intelligence and Security Committee of Parliament for the purposes of facilitating the carrying out of any of its functions.
- (5) Head 3 is—
 - (a) a disclosure made by a legal adviser—
 - (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 relevant provisions (see subsection (7)).
- (6) But a disclosure within Head 3 is not an excepted disclosure if it is made with the intention of furthering a criminal purpose.

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- (7) In subsection (5)(b) “the relevant provisions” means—
- (a) in the case of a warrant under Chapter 1 of this Part, the provisions of this Part;
 - (b) in the case of a warrant under Chapter 1 of Part 1 of RIPA, the provisions of that Chapter.
- (8) Head 4 is—
- (a) a disclosure that—
 - (i) is made by a postal operator or a telecommunications operator in accordance with a requirement imposed by regulations made by the Secretary of State, and
 - (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 Chapter 1 of this Part or under Chapter 1 of Part 1 of RIPA but relates to any such warrants in general.
- (9) Nothing in this section affects the operation of section 56 (which, among other things, prohibits the making of certain disclosures in, for the purposes of or in connection with legal proceedings).

Textual Amendments

- F21** Words in s. 58(4)(c) 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\(2\)\(a\)](#); S.I. 2017/1249, reg. 2 (with reg. 3)
- F22** Words in s. 58(4)(c) 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\(2\)\(b\)](#); S.I. 2017/1249, reg. 2 (with reg. 3)
- F23** [S. 58\(4\)\(ca\)](#) inserted (1.11.2022 for specified purposes, 19.6.2023 in so far as not already in force) by [Armed Forces Act 2021](#) (c. 35), s. 24(1), [Sch. 4 para. 2\(2\)](#); S.I. 2022/1095, reg. 3; S.I. 2023/621, reg. 2

Commencement Information

- I55** S. 58(1)(2)(4)-(9) in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 8\(u\)](#)
- I56** [S. 58\(3\)](#) in force at 26.9.2018 by [S.I. 2018/940](#), [reg. 3\(d\)](#)

59 Offence of making unauthorised disclosures

- (1) A person who fails to comply with section 57(1) commits an offence.
- (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 [^{F24}the general limit in a magistrates’ court] (or 6 months, if the offence was committed before [^{F25}2 May 2022]), 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,

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- 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.

Textual Amendments

- F24** Words in s. 59(2)(a)(i) substituted (7.2.2023 at 12.00 p.m.) by [The Judicial Review and Courts Act 2022 \(Magistrates' Court Sentencing Powers\) Regulations 2023 \(S.I. 2023/149\)](#), regs. 1(2), 2(1), [Sch. Pt. 1](#)
- F25** Words in s. 59(2)(a)(i) substituted (28.4.2022) by [The Criminal Justice Act 2003 \(Commencement No. 33\) and Sentencing Act 2020 \(Commencement No. 2\) Regulations 2022 \(S.I. 2022/500\)](#), regs. 1(2), 5(1), [Sch. Pt. 1](#)

Commencement Information

- I57** S. 59 in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 8\(v\)](#)

Interpretation

60 Part 2: interpretation

- (1) In this Part—

F26 ...

- “intercepting authority” is to be read in accordance with section 18;
- “international mutual assistance agreement” has the meaning given by section 10(3);
- “mutual assistance warrant” has the meaning given by section 15(4);
- “police force” means any of the following—
 - (a) any police force maintained under section 2 of the Police Act 1996;
 - (b) the metropolitan police force;
 - (c) the City of London police force;
 - (d) the Police Service of Scotland;
 - (e) the Police Service of Northern Ireland;
 - (f) the Ministry of Defence Police;
 - (g) the Royal Navy Police;
 - (h) the Royal Military Police;
 - (i) the Royal Air Force Police;
 - (j) the British Transport Police Force;
- “relevant content”, in relation to a targeted examination warrant, has the meaning given by section 15(3);

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“relevant Scottish application” has the meaning given by section 22;

“secondary data” has the meaning given by section 16, and references to obtaining secondary data from a communication are to be read in accordance with that section;

“targeted examination warrant” has the meaning given by section 15(3).

(2) In this Part references to a member of a police force, in relation to the Royal Navy Police, the Royal Military Police or the Royal Air Force Police, do not include any member of that force who is not for the time being attached to, or serving with, that force or another of those police forces.

(3) See also—

section 261 (telecommunications definitions),
 section 262 (postal definitions),
 section 263 (general definitions),
 section 264 (general definitions: “journalistic material” etc.),
 section 265 (index of defined expressions).

Textual Amendments

F26 Words in [s. 60\(1\)](#) omitted (31.12.2020) by virtue of [The Law Enforcement and Security \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/742\)](#), [regs. 1, 82\(8\)](#) (with [reg. 83](#)); 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

I58 S. 60(1) in force at 13.2.2017 for specified purposes by [S.I. 2017/137](#), [reg. 2\(e\)](#)

I59 S. 60(1) in force at 31.5.2018 in so far as not already in force by [S.I. 2018/652](#), [reg. 3\(s\)](#)

I60 S. 60(2)(3) in force at 31.5.2018 by [S.I. 2018/652](#), [reg. 3\(s\)](#)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 3 para. 8A and cross-heading inserted by [2023 c. 32 Sch. 18 para. 10\(2\)](#)
- Sch. 3 para. 20(2)(ha)(hb) inserted by [2023 c. 32 Sch. 18 para. 10\(3\)\(a\)](#)