Investigatory Powers Act 2016

2016 CHAPTER 25

PART 7

BULK PERSONAL DATASET WARRANTS

Duration, modification and cancellation

213 Duration of warrants

(1) A class BPD warrant or a specific BPD warrant 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 214), or

(b) it is cancelled or (in the case of a specific BPD warrant) otherwise ceases to have effect before the end of that period (see sections 209 and 218).

(2) In this section, "the relevant period"—

(a) in the case of an urgent specific BPD warrant (see subsection (3)), means the period ending with the fifth working day after the day on which the warrant was issued;

(b) in any other case, means the period of 6 months beginning with—

(i) the day on which the warrant was issued, or

(ii) in the case of a warrant 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 specific BPD warrant is an "urgent specific BPD warrant" if—

(a) the warrant was issued without the approval of a Judicial Commissioner, and

(b) the Secretary of State considered that there was an urgent need to issue it.

(4) For provision about the renewal of warrants, see section 214.

214 Renewal of warrants

(1) If the renewal conditions are met, a class BPD warrant or a specific BPD warrant may be renewed, at any time during the renewal period, by an instrument issued by the Secretary of State.

(2) The renewal conditions are—

(a) that the Secretary of State considers that the warrant continues to be necessary on grounds falling within section 204(3)(a) or (as the case may be) section 205(6)(a),

(b) that the Secretary of State considers that the conduct that would be authorised by the renewed warrant continues to be proportionate to what is sought to be achieved by the conduct,

(c) where the warrant authorises examination of bulk personal datasets of a class described in the warrant or (as the case may be) of a bulk personal dataset described in the warrant, that the Secretary of State considers that—

(i) each of the specified operational purposes (see section 212) is a purpose for which the examination of bulk personal datasets of that class or (as the case may be) the bulk personal dataset continues to be, or may be, necessary, and

(ii) the examination of bulk personal datasets of that class or (as the case may be) the bulk personal dataset continues to be necessary on any of the grounds on which the Secretary of State considers that the warrant continues to be necessary, and

(d) that the decision to renew the warrant has been approved by a Judicial Commissioner.

(3) "The renewal period" means—

(a) in the case of an urgent specific BPD 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.

(4) The decision to renew a class BPD warrant or a specific BPD warrant must be taken personally by the Secretary of State, and the instrument renewing the warrant must be signed by the Secretary of State.

(5) Section 207 (protected data: power to impose conditions) applies in relation to the renewal of a specific BPD warrant as it applies in relation to the issue of such a warrant (whether or not any conditions have previously been imposed in relation to the warrant under that section).

(6) Section 208 (approval of warrants by Judicial Commissioner) applies in relation to a decision to renew a warrant as it applies in relation to a decision to issue a warrant.

(7) In this section—

"the relevant period" has the same meaning as in section 213;

"urgent specific BPD warrant" is to be read in accordance with subsection (3) of that section.

215 Modification of warrants

(1) The provisions of a class BPD warrant or a specific BPD warrant may be modified at any time by an instrument issued by the person making the modification.

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

(a) in the case of a class BPD warrant, adding, varying or removing any operational purpose specified in the warrant as a purpose for which bulk personal datasets of a class described in the warrant may be examined;

(b) in the case of a specific BPD warrant, adding, varying or removing any operational purpose specified in the warrant as a purpose for which the bulk personal dataset described in the warrant may be examined.

(3) In this section—

(a) a modification adding or varying any operational purpose is referred to as a "major modification", and

(b) a modification removing any operational purpose is referred to as a "minor modification".

(4) A major modification—

(a) must be made by the Secretary of State, and

(b) may be made only if the Secretary of State considers that it is necessary on any of the grounds on which the Secretary of State considers the warrant to be necessary (see section 204(3)(a) or (as the case may be) section 205(6)(a)).

(5) Except where the Secretary of State considers that there is an urgent need to make the modification, a major modification has effect only if the decision to make the modification is approved by a Judicial Commissioner.

(6) A minor modification may be made by—

(a) the Secretary of State, or

(b) a senior official acting on behalf of the Secretary of State.

(7) Where a minor modification is made by a senior official, the Secretary of State must be notified personally of the modification and the reasons for making it.

(8) If at any time a person mentioned in subsection (6) considers that any operational purpose specified in a warrant is no longer a purpose for which the examination of any bulk personal datasets to which the warrant relates is or may be necessary, the person must modify the warrant by removing that operational purpose.

(9) The decision to modify the provisions of a class BPD warrant or a specific BPD 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 subsection (10).

(10) If it is not reasonably practicable for an instrument making a major modification to be signed by the Secretary of State, the instrument may be signed by a senior official designated by the Secretary of State for that purpose.

(11) 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 Secretary of State, and

(b) the Secretary of State has personally and expressly authorised the making of the modification.

216 Approval of major modifications by Judicial Commissioners

(1) In deciding whether to approve a decision to make a major modification of a class BPD warrant or a specific BPD warrant, a Judicial Commissioner must review the Secretary of State's conclusions as to whether the modification is necessary on any of the grounds on which the Secretary of State considers the warrant to be necessary.

(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 matter 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) Where a Judicial Commissioner refuses to approve a decision to make a major modification under section 215, the Judicial Commissioner must give the Secretary of State written reasons for the refusal.

(4) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, refuses to approve a decision to make a major modification under section 215, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision to make the modification.

217 Approval of major modifications made in urgent cases

(1) This section applies where—

(a) the Secretary of State makes a major modification of a class BPD warrant or a specific BPD warrant without the approval of a Judicial Commissioner, and

(b) the Secretary of State considered that there was an urgent need to make the modification.

(2) The Secretary of State must inform a Judicial Commissioner that the modification has been made.

(3) The Judicial Commissioner must, before the end of the relevant period—

(a) decide whether to approve the decision to make the modification, and

(b) notify the Secretary of State of the Judicial Commissioner's decision.

"The relevant period" means the period ending with the third working day after the day on which the modification was made.

(4) If the Judicial Commissioner refuses to approve the decision to make the modification—

(a) the 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 in reliance on the warrant by virtue of that modification stops as soon as possible,

and section 216(4) does not apply in relation to the refusal to approve the decision.

(5) Nothing in this section affects the lawfulness of—

(a) anything done in reliance on the warrant by virtue of the modification before the modification ceases to have effect;

(b) if anything is in the process of being done in reliance on 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.

218 Cancellation of warrants

(1) The Secretary of State, or a senior official acting on behalf of the Secretary of State, may cancel a class BPD warrant or a specific BPD warrant at any time.

(2) If the Secretary of State, or a senior official acting on behalf of the Secretary of State, considers that any of the cancellation conditions are met in relation to a class BPD warrant or a specific BPD warrant, the person must cancel the warrant.

(3) The cancellation conditions are—

(a) that the warrant is no longer necessary on any grounds falling within section 204(3)(a) or (as the case may be) section 205(6)(a);

(b) that the conduct authorised by the warrant is no longer proportionate to what is sought to be achieved by that conduct;

(c) where the warrant authorises examination of bulk personal datasets of a class described in the warrant or (as the case may be) of a bulk personal dataset described in the warrant, that the examination of bulk personal datasets of that class or (as the case may be) of the bulk personal dataset is no longer necessary for any of the specified operational purposes (see section 212).

219 Non-renewal or cancellation of BPD warrants

(1) This section applies where a class BPD warrant or a specific BPD warrant ceases to have effect because it expires without having been renewed or because it is cancelled.

(2) The head of the intelligence service to whom the warrant was addressed may, before the end of the period of 5 working days beginning with the day on which the warrant ceases to have effect—

(a) apply for—

(i) a specific BPD warrant authorising the retention, or the retention and examination, of the whole or any part of the material retained by the intelligence service in reliance on the warrant which has ceased to have effect;

(ii) a class BPD warrant authorising the retention or (as the case may be) the retention and examination of bulk personal datasets of a class that is described in a way that would authorise the retention or (as the case may be) the retention and examination of the whole or any part of such material, or

(b) where the head of the intelligence service wishes to give further consideration to whether to apply for a warrant of a kind mentioned in paragraph (a)(i) or (ii), apply to the Secretary of State for authorisation to retain, or to retain and examine, the whole or any part of the material retained by the intelligence service in reliance on the warrant.

(3) On an application under subsection (2)(b), the Secretary of State may—

(a) direct that any of the material to which the application relates be destroyed;

(b) with the approval of a Judicial Commissioner, authorise the retention or (as the case may be) the retention and examination of any of that material, subject to such conditions as the Secretary of State considers appropriate, for a period specified by the Secretary of State which may not exceed 3 months.

(4) In deciding whether to give approval for the purposes of subsection (3)(b), 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 matter with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).

(5) Where a Judicial Commissioner refuses to approve a decision by the Secretary of State to authorise the retention or (as the case may be) the retention and examination of any material under subsection (3)(b), the Judicial Commissioner must give the Secretary of State written reasons for the decision.

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

(7) If, during the period specified by the Secretary of State under subsection (3)(b), the head of the intelligence service decides to apply for a warrant of a kind mentioned in subsection (2)(a)(i) or (ii), the head of the intelligence service must make the application as soon as reasonably practicable and before the end of the period specified by the Secretary of State.

(8) Where a class BPD warrant or a specific BPD warrant ceases to have effect because it expires without having been renewed or it is cancelled, an intelligence service is not to be regarded as in breach of section 200(1) or (2) by virtue of its retention or examination of any material to which the warrant related during any of the following periods.

First period

The period of 5 working days beginning with the day on which the warrant ceases to have effect.

Second period

The period beginning with the day on which the head of the intelligence service makes an application under subsection (2)(a) or (b) in relation to the material and ending with the determination of the application.

Third period

The period during which the retention or examination of the material is authorised under subsection (3)(b).

Fourth period

Where authorisation under subsection (3)(b) is given and the head of the intelligence service subsequently makes, in accordance with subsection (7), an application for a specific BPD warrant or a class BPD warrant in relation to the material, the period (if any) beginning with the expiry of the authorisation under

subsection (3)(b) and ending with the determination of the application for the warrant.