



# Investigatory Powers Act 2016

## 2016 CHAPTER 25

### PART 5

#### EQUIPMENT INTERFERENCE

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

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

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

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**Changes to legislation:** *Investigatory Powers Act 2016, Section 108 is up to date with all changes known to be in force on or before 16 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*

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- (e) in the case of a decision to issue a warrant under section 106(3), the purpose mentioned in section 106(3)(a).
- (4) Where a Judicial Commissioner refuses to approve a person's decision to issue a warrant under this Part, the Judicial Commissioner must give the person written reasons for the refusal.
- (5) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, refuses to approve a person's decision to issue a warrant under this Part, the person may ask the Investigatory Powers Commissioner to decide whether to approve the decision to issue the warrant.

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#### **Commencement Information**

- I1** [S. 108](#) in force at 31.5.2018 for specified purposes by [S.I. 2018/652](#), **reg. 4(h)**
- I2** [S. 108](#) in force at 28.11.2018 in so far as not already in force by [S.I. 2018/1246](#), **reg. 2(c)**

**Changes to legislation:**

Investigatory Powers Act 2016, Section 108 is up to date with all changes known to be in force on or before 16 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.

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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\(3\)\(a\)](#)