



# Investigatory Powers Act 2016

## 2016 CHAPTER 25

### PART 2

#### LAWFUL INTERCEPTION OF COMMUNICATIONS

### CHAPTER 1

#### INTERCEPTION AND EXAMINATION WITH A WARRANT

##### *Further provision about warrants*

#### **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,
  - (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).

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**Changes to legislation:** *Investigatory Powers Act 2016, Section 35 is up to date with all changes known to be in force on or before 17 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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- (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—
- (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**

**I1** S. 35(1)-(5)(6)(a)(e)(7) in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 8\(g\)](#)

**I2** [S. 35\(6\)\(b\)-\(d\)](#) in force at 26.9.2018 by [S.I. 2018/940](#), [reg. 3\(c\)](#)

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