



# 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*

#### **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);

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**Changes to legislation:** *Investigatory Powers Act 2016, Section 36 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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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
  - (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.

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(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.

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#### Commencement Information

**II** [S. 36](#) in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 8\(h\)](#)

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