



# 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*

#### **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,

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**Changes to legislation:** *Investigatory Powers Act 2016, Section 38 is up to date with all changes known to be in force on or before 06 September 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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“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 [<sup>F1</sup>third][<sup>F1</sup>ninth] 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).

(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

- F1** 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

- I1** S. 38 in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 8\(j\)](#)

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