



Investigatory Powers Act 2016

2016 CHAPTER 25

PART 6

BULK WARRANTS

CHAPTER 1

BULK INTERCEPTION WARRANTS

Bulk interception warrants

136 Bulk interception warrants

- (1) For the purposes of this Act a “bulk interception warrant” is a warrant issued under this Chapter which meets conditions A and B.
- (2) Condition A is that the main purpose of the warrant is one or more of the following—
 - (a) the interception of overseas-related communications (see subsection (3));
 - (b) the obtaining of secondary data from such communications (see section 137).
- (3) In this Chapter “overseas-related communications” means—
 - (a) communications sent by individuals who are outside the British Islands, or
 - (b) communications received by individuals who are outside the British Islands.
- (4) Condition B is that the warrant authorises or requires the person to whom it is addressed to secure, by any conduct described in the warrant, any one or more of the following activities—
 - (a) the interception, in the course of their transmission by means of a telecommunication system, of communications described in the warrant;
 - (b) the obtaining of secondary data from communications transmitted by means of such a system and described in the warrant;

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- (c) the selection for examination, in any manner described in the warrant, of intercepted content or secondary data obtained under the warrant;
 - (d) the disclosure, in any manner described in the warrant, of anything obtained under the warrant to the person to whom the warrant is addressed or to any person acting on that person's behalf.
- (5) A bulk interception warrant also authorises the following conduct (in addition to the conduct described in the warrant)—
- (a) any conduct which it is necessary to undertake in order to do what is expressly authorised or required by the warrant, including—
 - (i) the interception of communications not described in the warrant, and
 - (ii) conduct for obtaining secondary data from such communications;
 - (b) conduct by any person which is conduct in pursuance of a requirement imposed by or on behalf of the person to whom the warrant is addressed to be provided with assistance in giving effect to the warrant;
 - (c) any conduct for obtaining related systems data from any telecommunications operator.
- (6) For the purposes of subsection (5)(c)—
- “related systems data”, in relation to a warrant, means systems data relating to a relevant communication or to the sender or recipient, or intended recipient, of a relevant communication (whether or not a person), and
- “relevant communication”, in relation to a warrant, means—
- (a) any communication intercepted in accordance with the warrant in the course of its transmission by means of a telecommunication system, or
 - (b) any communication from which secondary data is obtained under the warrant.

Commencement Information

II S. 136 in force at 31.5.2018 by S.I. 2018/652, reg. 5(a)

137 Obtaining secondary data

- (1) This section has effect for the purposes of this Chapter.
- (2) References to obtaining secondary data from a communication transmitted by means of a telecommunication system are references to obtaining such data—
 - (a) while the communication is being transmitted, or
 - (b) at any time when the communication is stored in or by the system (whether before or after its transmission),
 and references to secondary data obtained under a bulk interception warrant are to be read accordingly.
- (3) “Secondary data”, in relation to a communication transmitted by means of a telecommunication system, means any data falling within subsection (4) or (5).
- (4) The data falling within this subsection is systems data which is comprised in, included as part of, attached to or logically associated with the communication (whether by the sender or otherwise).

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- (5) The data falling within this subsection is identifying data which—
- (a) is comprised in, included as part of, attached to or logically associated with the communication (whether by the sender or otherwise),
 - (b) is capable of being logically separated from the remainder of the communication, and
 - (c) if it were so separated, would not reveal anything of what might reasonably be considered to be the meaning (if any) of the communication, disregarding any meaning arising from the fact of the communication or from any data relating to the transmission of the communication.
- (6) For the meaning of “systems data” and “identifying data”, see section 263.

Commencement Information

I2 S. 137 in force at 31.5.2018 by S.I. 2018/652, reg. 5(b)

138 Power to issue bulk interception warrants

- (1) The Secretary of State may, on an application made by or on behalf of the head of an intelligence service, issue a bulk interception warrant if—
- (a) the Secretary of State considers that the main purpose of the warrant is one or more of the following—
 - (i) the interception of overseas-related communications, and
 - (ii) the obtaining of secondary data from such communications,
 - (b) the Secretary of State considers that the warrant is necessary—
 - (i) in the interests of national security, or
 - (ii) on that ground and on any other grounds falling within subsection (2),
 - (c) the Secretary of State considers that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct,
 - (d) the Secretary of State considers that—
 - (i) each of the specified operational purposes (see section 142) is a purpose for which the examination of intercepted content or secondary data obtained under the warrant is or may be necessary, and
 - (ii) the examination of intercepted content or secondary data for each such purpose is necessary on any of the grounds on which the Secretary of State considers the warrant to be necessary,
 - (e) the Secretary of State considers that satisfactory arrangements made for the purposes of sections 150 and 151 (safeguards relating to disclosure etc.) are in force in relation to the warrant,
 - (f) in a case where the Secretary of State considers that a telecommunications operator outside the United Kingdom is likely to be required to provide assistance in giving effect to the warrant if it is issued, the Secretary of State has complied with section 139, and
 - (g) the decision to issue the warrant has been approved by a Judicial Commissioner.

For the meaning of “head of an intelligence service”, see section 263.

- (2) A warrant is necessary on grounds falling within this subsection if it is necessary—

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- (a) for the purpose of preventing or detecting serious crime, or
 - (b) in the interests of the economic well-being of the United Kingdom so far as those interests are also relevant to the interests of national security (but see subsection (3)).
- (3) A warrant may be considered necessary on the ground falling within subsection (2) (b) only if the information which it is considered necessary to obtain is information relating to the acts or intentions of persons outside the British Islands.
- (4) A warrant may not be considered necessary in the interests of national security or on any other grounds falling within subsection (2) if it is considered necessary only for the purpose of gathering evidence for use in any legal proceedings.
- (5) An application for the issue of a bulk interception warrant may only be made on behalf of the head of an intelligence service by a person holding office under the Crown.

Commencement Information

- I3** S. 138 in force at 31.5.2018 for specified purposes by S.I. 2018/652, reg. 5(c) (with reg. 15(1)(c))
- I4** S. 138 in force at 27.6.2018 in so far as not already in force by S.I. 2018/652, reg. 10(a)

139 Additional requirements in respect of warrants affecting overseas operators

- (1) This section applies where—
- (a) an application for a bulk interception warrant has been made, and
 - (b) the Secretary of State considers that a telecommunications operator outside the United Kingdom is likely to be required to provide assistance in giving effect to the warrant if it is issued.
- (2) Before issuing the warrant, the Secretary of State must consult the operator.
- (3) Before issuing the warrant, the Secretary of State must, among other matters, take into account—
- (a) the likely benefits of the warrant,
 - (b) the likely number of users (if known) of any telecommunications service which is provided by the operator and to which the warrant relates,
 - (c) the technical feasibility of complying with any requirement that may be imposed on the operator to provide assistance in giving effect to the warrant,
 - (d) the likely cost of complying with any such requirement, and
 - (e) any other effect of the warrant on the operator.

Commencement Information

- I5** S. 139 in force at 31.5.2018 by S.I. 2018/652, reg. 5(d)

140 Approval of warrants by Judicial Commissioners

- (1) In deciding whether to approve a decision to issue a warrant under section 138, a Judicial Commissioner must review the Secretary of State's conclusions as to the following matters—

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- (a) whether the warrant is necessary as mentioned in subsection (1)(b) of that section,
 - (b) whether the conduct that would be authorised by the warrant is proportionate to what is sought to be achieved by that conduct,
 - (c) whether—
 - (i) each of the specified operational purposes (see section 142) is a purpose for which the examination of intercepted content or secondary data obtained under the warrant is or may be necessary, and
 - (ii) the examination of intercepted content or secondary data for each such purpose is necessary as mentioned in section 138(1)(d)(ii), and
 - (d) any matters taken into account in accordance with section 139.
- (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) Where a Judicial Commissioner refuses to approve a decision to issue a warrant under section 138, 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 issue a warrant under section 138, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision to issue the warrant.

Commencement Information

I6 S. 140 in force at 31.5.2018 by S.I. 2018/652, reg. 5(e)

141 Decisions to issue warrants to be taken personally by Secretary of State

- (1) The decision to issue a bulk interception warrant must be taken personally by the Secretary of State.
- (2) Before a bulk interception warrant is issued, it must be signed by the Secretary of State.

Commencement Information

I7 S. 141 in force at 31.5.2018 by S.I. 2018/652, reg. 5(f)

142 Requirements that must be met by warrants

- (1) A bulk interception warrant must contain a provision stating that it is a bulk interception warrant.
- (2) A bulk interception warrant must be addressed to the head of the intelligence service by whom, or on whose behalf, the application for the warrant was made.

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- (3) A bulk interception warrant must specify the operational purposes for which any intercepted content or secondary data obtained under the warrant may be selected for examination.
- (4) The operational purposes specified in the warrant must be ones specified, in a list maintained by the heads of the intelligence services (“the list of operational purposes”), as purposes which they consider are operational purposes for which intercepted content or secondary data obtained under bulk interception warrants may be selected for examination.
- (5) The warrant may, in particular, specify all of the operational purposes which, at the time the warrant is issued, are specified in the list of operational purposes.
- (6) An operational purpose may be specified in the list of operational purposes only with the approval of the Secretary of State.
- (7) The Secretary of State may give such approval only if satisfied that the operational purpose is specified in a greater level of detail than the descriptions contained in section 138(1)(b) or (2).
- (8) At the end of each relevant three-month period the Secretary of State must give a copy of the list of operational purposes to the Intelligence and Security Committee of Parliament.
- (9) In subsection (8) “relevant three-month period” means—
 - (a) the period of three months beginning with the day on which this section comes into force, and
 - (b) each successive period of three months.
- (10) The Prime Minister must review the list of operational purposes at least once a year.
- (11) In this Chapter “the specified operational purposes”, in relation to a bulk interception warrant, means the operational purposes specified in the warrant in accordance with this section.

Commencement Information

18 S. 142 in force at 31.5.2018 by S.I. 2018/652, reg. 5(g)

Duration, modification and cancellation of warrants

143 Duration of warrants

- (1) A bulk interception warrant (unless already cancelled) ceases to have effect at the end of the period of 6 months beginning with—
 - (a) the day on which the warrant was issued, or
 - (b) 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.
- (2) For provision about the renewal of warrants, see section 144.

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Commencement Information

19 S. 143 in force at 27.6.2018 by S.I. 2018/652, reg. 10(a)

144 Renewal of warrants

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

This is subject to subsection (6).

- (2) The renewal conditions are—
- (a) that the Secretary of State considers that the warrant continues to be necessary—
 - (i) in the interests of national security, or
 - (ii) on that ground and on any other grounds falling within section 138(2),
 - (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 that conduct,
 - (c) that the Secretary of State considers that—
 - (i) each of the specified operational purposes (see section 142) is a purpose for which the examination of intercepted content or secondary data obtained under the warrant continues to be, or may be, necessary, and
 - (ii) the examination of intercepted content or secondary data for each such purpose 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 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 bulk interception 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 140 (approval of warrants by Judicial Commissioners) applies in relation to a decision to renew a bulk interception warrant as it applies in relation to a decision to issue a bulk interception warrant, but with the omission of paragraph (d) of subsection (1).

This is subject to subsection (6).

- (6) In the case of the renewal of a bulk interception warrant that has been modified so that it no longer authorises or requires the interception of communications or the obtaining of secondary data—
- (a) the renewal condition in subsection (2)(a) is to be disregarded,
 - (b) the reference in subsection (2)(c)(ii) to the grounds on which the Secretary of State considers the warrant to be necessary is to be read as a reference to any grounds falling within section 138(1)(b) or (2), and

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- (c) section 140 has effect as if—
 - (i) paragraph (a) of subsection (1) were omitted, and
 - (ii) the reference in subsection (1)(c)(ii) to the grounds on which the Secretary of State considers the warrant to be necessary were a reference to any grounds falling within section 138(1)(b) or (2).

Commencement Information

I10 S. 144 in force at 27.6.2018 by S.I. 2018/652, reg. 10(a)

145 Modification of warrants

- (1) The provisions of a bulk interception warrant may be modified at any time by an instrument issued by the person making the modification.
- (2) The only modifications that may be made under this section are—
 - (a) adding, varying or removing any operational purpose specified in the warrant as a purpose for which any intercepted content or secondary data obtained under the warrant may be selected for examination, and
 - (b) providing that the warrant no longer authorises or requires (to the extent that it did so previously)—
 - (i) the interception of any communications in the course of their transmission by means of a telecommunication system, or
 - (ii) the obtaining of any secondary data from communications transmitted by means of such a system.
- (3) In this section—
 - (a) a modification adding or varying any operational purpose as mentioned in paragraph (a) of subsection (2) is referred to as a “major modification”, and
 - (b) any other modification within that subsection 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 138(1)(b)).
- (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

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of intercepted content or secondary data obtained under the warrant 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 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.
- (12) Despite section 136(2), the modification of a bulk interception warrant as mentioned in subsection (2)(b) above does not prevent the warrant from being a bulk interception warrant.
- (13) Nothing in this section applies in relation to modifying the provisions of a warrant in a way which does not affect the conduct authorised or required by it.

Commencement Information

III S. 145 in force at 27.6.2018 by S.I. 2018/652, reg. 10(a)

146 Approval of major modifications by Judicial Commissioners

- (1) In deciding whether to approve a decision to make a major modification of a bulk interception 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 145, 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 145, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision to make the modification.

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Commencement Information

I12 S. 146 in force at 27.6.2018 by S.I. 2018/652, reg. 10(a)

147 Approval of major modifications made in urgent cases

- (1) This section applies where—
 - (a) the Secretary of State makes a major modification of a bulk interception 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 under the warrant by virtue of that modification stops as soon as possible,

and section 146(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 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.

Commencement Information

I13 S. 147 in force at 27.6.2018 by S.I. 2018/652, reg. 10(a)

148 Cancellation of warrants

- (1) The Secretary of State, or a senior official acting on behalf of the Secretary of State, may cancel a bulk interception 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 bulk interception warrant, the person must cancel the warrant.

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- (3) The cancellation conditions are—
 - (a) that the warrant is no longer necessary in the interests of national security;
 - (b) that the conduct authorised by the warrant is no longer proportionate to what is sought to be achieved by that conduct;
 - (c) that the examination of intercepted content or secondary data obtained under the warrant is no longer necessary for any of the specified operational purposes (see section 142).
- (4) But the condition in subsection (3)(a) does not apply where the warrant has been modified so that it no longer authorises or requires the interception of communications or the obtaining of secondary data.
- (5) Where a warrant is cancelled under this section, the person to whom the warrant was addressed must, so far as is reasonably practicable, secure that anything in the process of being done under the warrant stops as soon as possible.
- (6) A warrant that has been cancelled under this section may not be renewed.

Commencement Information

I14 S. 148 in force at 27.6.2018 by S.I. 2018/652, reg. 10(a)

Implementation of warrants

149 Implementation of warrants

- (1) In giving effect to a bulk interception warrant, the person to whom it is addressed (“the implementing authority”) may (in addition to acting alone) act through, or together with, such other persons as the implementing authority may require (whether under subsection (2) or otherwise) to provide the authority with assistance in giving effect to the warrant.
- (2) For the purpose of requiring any person to provide assistance in relation to a bulk interception warrant, the implementing authority may—
 - (a) serve a copy of the warrant on any person who the implementing authority considers may be able to provide such assistance, or
 - (b) make arrangements for the service of a copy of the warrant on any such person.
- (3) A copy of a warrant may be served under subsection (2) on a person outside the United Kingdom for the purpose of requiring the person to provide such assistance in the form of conduct outside the United Kingdom.
- (4) For the purposes of this Act, the provision of assistance in giving effect to a bulk interception warrant includes any disclosure to the implementing authority, or to persons acting on behalf of the implementing authority, of anything obtained under the warrant.
- (5) Sections 42 (service of warrants) and 43 (duty of operators to assist with implementation) apply in relation to a bulk interception warrant as they apply in relation to a targeted interception warrant.

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- (6) References in this section (and in sections 42 and 43 as they apply in relation to bulk interception warrants) to the service of a copy of a warrant include—
- (a) the service of a copy of one or more schedules contained in the warrant with the omission of the remainder of the warrant, and
 - (b) the service of a copy of the warrant with the omission of any schedule contained in the warrant.

Commencement Information

I15 S. 149 in force at 27.6.2018 by S.I. 2018/652, reg. 10(a)

Restrictions on use or disclosure of material obtained under warrants etc.

150 Safeguards relating to retention and disclosure of material

- (1) The Secretary of State must ensure, in relation to every bulk interception warrant, that arrangements are in force for securing—
- (a) that the requirements of subsections (2) and (5) are met in relation to the material obtained under the warrant, and
 - (b) that the requirements of section 152 are met in relation to the intercepted content or secondary data obtained under the warrant.

This is subject to subsection (8).

- (2) The requirements of this subsection are met in relation to the material obtained under a warrant if each of the following is limited to the minimum that is necessary for the authorised purposes (see subsection (3))—
- (a) the number of persons to whom any of the material is disclosed or otherwise made available;
 - (b) the extent to which any of the material is disclosed or otherwise made available;
 - (c) the extent to which any of the material is copied;
 - (d) the number of copies that are made.
- (3) For the purposes of subsection (2) something is necessary for the authorised purposes if, and only if—
- (a) it is, or is likely to become, necessary in the interests of national security or on any other grounds falling within section 138(2),
 - (b) it is necessary for facilitating the carrying out of any functions under this Act of the Secretary of State, the Scottish Ministers or the head of the intelligence service to whom the warrant is or was addressed,
 - (c) it is necessary for facilitating the carrying out of any functions of the Judicial Commissioners or the Investigatory Powers Tribunal under or in relation to this Act,
 - (d) it is necessary to ensure that a person (“P”) who is conducting a criminal prosecution has the information P needs to determine what is required of P by P's duty to secure the fairness of the prosecution, or
 - (e) it is necessary for the performance of any duty imposed on any person by the Public Records Act 1958 or the Public Records Act (Northern Ireland) 1923.

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- (4) The arrangements for the time being in force under this section for securing that the requirements of subsection (2) are met in relation to the material obtained under the warrant must include arrangements for securing that every copy made of any of that material is stored, for so long as it is retained, in a secure manner.
- (5) The requirements of this subsection are met in relation to the material obtained under a warrant if every copy made of any of that material (if not destroyed earlier) is destroyed as soon as there are no longer any relevant grounds for retaining it (see subsection (6)).
- (6) For the purposes of subsection (5), there are no longer any relevant grounds for retaining a copy of any material if, and only if—
 - (a) its retention is not necessary, or not likely to become necessary, in the interests of national security or on any other grounds falling within section 138(2), and
 - (b) its retention is not necessary for any of the purposes mentioned in paragraphs (b) to (e) of subsection (3) above.
- (7) Subsection (8) applies if—
 - (a) any material obtained under the warrant has been handed over to any overseas authorities, or
 - (b) a copy of any such material has been given to any overseas authorities.
- (8) To the extent that the requirements of subsections (2) and (5) and section 152 relate to any of the material mentioned in subsection (7)(a), or to the copy mentioned in subsection (7)(b), the arrangements made for the purposes of this section are not required to secure that those requirements are met (see instead section 151).
- (9) In this section—

“copy”, in relation to material obtained under a warrant, means any of the following (whether or not in documentary form)—

 - (a) any copy, extract or summary of the material which identifies the material as having been obtained under the warrant, and
 - (b) any record which—
 - (i) refers to any interception or to the obtaining of any material, and
 - (ii) is a record of the identities of the persons to or by whom the material was sent, or to whom the material relates,

and “copied” is to be read accordingly;

“overseas authorities” means authorities of a country or territory outside the United Kingdom.

Commencement Information

I16 S. 150 in force at 31.5.2018 by S.I. 2018/652, reg. 5(h) (with reg. 15(3)(a))

151 Safeguards relating to disclosure of material overseas

- (1) The Secretary of State must ensure, in relation to every bulk interception warrant, that arrangements are in force for securing that—
 - (a) any material obtained under the warrant is handed over to overseas authorities only if the requirements of subsection (2) are met, and

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Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Investigatory Powers Act 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (b) copies of any such material are given to overseas authorities only if those requirements are met.
- (2) The requirements of this subsection are met in the case of a warrant if it appears to the Secretary of State—
- (a) that requirements corresponding to the requirements of section 150(2) and (5) and section 152 will apply, to such extent (if any) as the Secretary of State considers appropriate, in relation to any of the material which is handed over, or any copy of which is given, to the authorities in question, and
 - (b) that restrictions are in force which would prevent, to such extent (if any) as the Secretary of State considers appropriate, the doing of anything in, for the purposes of or in connection with any proceedings outside the United Kingdom which would result in a prohibited disclosure.
- (3) In subsection (2)(b) “prohibited disclosure” means a disclosure which, if made in the United Kingdom, would breach the prohibition in section 56(1) (see section 156).
- (4) In this section—
- “copy” has the same meaning as in section 150;
 - “overseas authorities” means authorities of a country or territory outside the United Kingdom.

Commencement Information

I17 S. 151 in force at 31.5.2018 by S.I. 2018/652, reg. 5(i)

152 Safeguards relating to examination of material

- (1) For the purposes of section 150 the requirements of this section are met in relation to the intercepted content and secondary data obtained under a warrant if—
- (a) the selection of any of the intercepted content or secondary data for examination is carried out only for the specified purposes (see subsection (2)),
 - (b) the selection of any of the intercepted content or secondary data for examination is necessary and proportionate in all the circumstances, and
 - (c) the selection of any of the intercepted content for examination meets any of the selection conditions (see subsection (3)).
- (2) The selection of intercepted content or secondary data for examination is carried out only for the specified purposes if the intercepted content or secondary data is selected for examination only so far as is necessary for the operational purposes specified in the warrant in accordance with section 142.

In this subsection “specified in the warrant” means specified in the warrant at the time of the selection of the intercepted content or secondary data for examination.

- (3) The selection conditions referred to in subsection (1)(c) are—
- (a) that the selection of the intercepted content for examination does not breach the prohibition in subsection (4);
 - (b) that the person to whom the warrant is addressed considers that the selection of the intercepted content for examination would not breach that prohibition;
 - (c) that the selection of the intercepted content for examination in breach of that prohibition is authorised by subsection (5);

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- (d) that the selection of the intercepted content for examination in breach of that prohibition is authorised by a targeted examination warrant issued under Chapter 1 of Part 2.
- (4) The prohibition referred to in subsection (3)(a) is that intercepted content may not at any time be selected for examination if—
- (a) any criteria used for the selection of the intercepted content for examination are referable to an individual known to be in the British Islands at that time, and
 - (b) the purpose of using those criteria is to identify the content of communications sent by, or intended for, that individual.

It does not matter for the purposes of this subsection whether the identity of the individual is known.

- (5) The selection of intercepted content (“the relevant content”) for examination is authorised by this subsection if—
- (a) criteria referable to an individual have been, or are being, used for the selection of intercepted content for examination in circumstances falling within subsection (3)(a) or (b),
 - (b) at any time it appears to the person to whom the warrant is addressed that there has been a relevant change of circumstances in relation to the individual (see subsection (6)) which would mean that the selection of the relevant content for examination would breach the prohibition in subsection (4),
 - (c) since that time, a written authorisation to examine the relevant content using those criteria has been given by a senior officer, and
 - (d) the selection of the relevant content for examination is made before the end of the permitted period (see subsection (7)).
- (6) For the purposes of subsection (5)(b) there is a relevant change of circumstances in relation to an individual if—
- (a) the individual has entered the British Islands, or
 - (b) a belief by the person to whom the warrant is addressed that the individual was outside the British Islands was in fact mistaken.

- (7) In subsection (5)—

“senior officer”, in relation to a warrant addressed to the head of an intelligence service, means a member of the intelligence service who—

- (a) is a member of the Senior Civil Service or a member of the Senior Management Structure of Her Majesty's Diplomatic Service, or
- (b) holds a position in the intelligence service of equivalent seniority to such a member;

“the permitted period” means the period ending with the fifth working day after the time mentioned in subsection (5)(b).

- (8) In a case where the selection of intercepted content for examination is authorised by subsection (5), the person to whom the warrant is addressed must notify the Secretary of State that the selection is being carried out.

Commencement Information

118 S. 152 in force at 27.6.2018 by S.I. 2018/652, reg. 10(a) (with reg. 16(5))

Status: Point in time view as at 22/08/2018.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Investigatory Powers Act 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

153 Additional safeguards for items subject to legal privilege

- (1) Subsection (2) applies if, in a case where intercepted content obtained under a bulk interception warrant is to be selected for examination—
 - (a) the selection of the intercepted content for examination meets any of the selection conditions in section 152(3)(a) to (c), and
 - (b) either—
 - (i) the purpose, or one of the purposes, of using the criteria to be used for the selection of the intercepted content for examination (“the relevant criteria”) is to identify any items subject to legal privilege, or
 - (ii) the use of the relevant criteria is likely to identify such items.
- (2) The intercepted content may be selected for examination using the relevant criteria only if a senior official acting on behalf of the Secretary of State has approved the use of those criteria.
- (3) In deciding whether to give an approval under subsection (2) in a case where subsection (1)(b)(i) applies, a senior official must have regard to the public interest in the confidentiality of items subject to legal privilege.
- (4) A senior official may give an approval under subsection (2) only if—
 - (a) the official considers that the arrangements made for the purposes of section 150 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of items subject to legal privilege, and
 - (b) where subsection (1)(b)(i) applies, the official considers that there are exceptional and compelling circumstances that make it necessary to authorise the use of the relevant criteria.
- (5) For the purposes of subsection (4)(b), there cannot be exceptional and compelling circumstances that make it necessary to authorise the use of the relevant criteria unless—
 - (a) the public interest in obtaining the information that would be obtained by the selection of the intercepted content for examination outweighs the public interest in the confidentiality of items subject to legal privilege,
 - (b) there are no other means by which the information may reasonably be obtained, and
 - (c) obtaining the information is necessary in the interests of national security or for the purpose of preventing death or significant injury.
- (6) Subsection (7) applies if, in a case where intercepted content obtained under a bulk interception warrant is to be selected for examination—
 - (a) the selection of the intercepted content for examination meets any of the selection conditions in section 152(3)(a) to (c),
 - (b) the purpose, or one of the purposes, of using the criteria to be used for the selection of the intercepted content for examination (“the relevant criteria”) is to identify communications that, if they were not made with the intention of furthering a criminal purpose, would be items subject to legal privilege, and
 - (c) the person to whom the warrant is addressed considers that the communications (“the targeted communications”) are likely to be communications made with the intention of furthering a criminal purpose.

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- (7) The intercepted content may be selected for examination using the relevant criteria only if a senior official acting on behalf of the Secretary of State has approved the use of those criteria.
- (8) A senior official may give an approval under subsection (7) only if the official considers that the targeted communications are likely to be communications made with the intention of furthering a criminal purpose.
- (9) Where an item subject to legal privilege which has been intercepted in accordance with a bulk interception warrant is retained following its examination, for purposes other than the destruction of the item, the person to whom the warrant is addressed must inform the Investigatory Powers Commissioner as soon as is reasonably practicable.
- (For provision about the grounds for retaining material obtained under a warrant, see section 150.)
- (10) Unless the Investigatory Powers Commissioner considers that subsection (12) applies to the item, the Commissioner must—
- (a) direct that the item is destroyed, or
 - (b) impose one or more conditions as to the use or retention of that item.
- (11) If the Investigatory Powers Commissioner considers that subsection (12) applies to the item, the Commissioner may nevertheless impose such conditions under subsection (10)(b) as the Commissioner considers necessary for the purpose of protecting the public interest in the confidentiality of items subject to legal privilege.
- (12) This subsection applies to an item subject to legal privilege if—
- (a) the public interest in retaining the item outweighs the public interest in the confidentiality of items subject to legal privilege, and
 - (b) retaining the item is necessary in the interests of national security or for the purpose of preventing death or significant injury.
- (13) The Investigatory Powers Commissioner—
- (a) may require an affected party to make representations about how the Commissioner should exercise any function under subsection (10), and
 - (b) must have regard to any such representations made by an affected party (whether or not as a result of a requirement imposed under paragraph (a)).
- (14) Each of the following is an “affected party” for the purposes of subsection (13)—
- (a) the Secretary of State;
 - (b) the person to whom the warrant is or was addressed.

Commencement Information

I19 S. 153 in force at 27.6.2018 by S.I. 2018/652, reg. 10(a) (with reg. 15(4)(b))

154 Additional safeguard for confidential journalistic material

Where—

- (a) a communication which has been intercepted in accordance with a bulk interception warrant is retained, following its examination, for purposes other than the destruction of the communication, and

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(b) it is a communication containing confidential journalistic material, the person to whom the warrant is addressed must inform the Investigatory Powers Commissioner as soon as is reasonably practicable.

(For provision about the grounds for retaining material obtained under a warrant, see section 150.)

Commencement Information

I20 S. 154 in force at 27.6.2018 by S.I. 2018/652, reg. 10(a) (with reg. 15(4)(c))

155 Offence of breaching safeguards relating to examination of material

- (1) A person commits an offence if—
- (a) the person selects for examination any intercepted content or secondary data obtained under a bulk interception warrant,
 - (b) the person knows or believes that the selection of that intercepted content or secondary data for examination does not comply with a requirement imposed by section 152 or 153, and
 - (c) the person deliberately selects that intercepted content or secondary data for examination in breach of that requirement.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction in England and Wales—
 - (i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or
 - (ii) to a fine,
 or to both;
 - (b) on summary conviction in Scotland—
 - (i) to imprisonment for a term not exceeding 12 months, or
 - (ii) to a fine not exceeding the statutory maximum,
 or to both;
 - (c) on summary conviction in Northern Ireland—
 - (i) to imprisonment for a term not exceeding 6 months, or
 - (ii) to a fine not exceeding the statutory maximum,
 or to both;
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.
- (3) No proceedings for any offence which is an offence by virtue of this section may be instituted—
- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;
 - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

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Commencement Information

I21 S. 155 in force at 27.6.2018 by S.I. 2018/652, reg. 10(a)

156 Application of other restrictions in relation to warrants

- (1) Section 56 and Schedule 3 (exclusion of matters from legal proceedings etc.) apply in relation to bulk interception warrants as they apply in relation to targeted interception warrants.
- (2) Sections 57 to 59 (duty not to make unauthorised disclosures) apply in relation to bulk interception warrants as they apply in relation to targeted interception warrants, but as if the reference in section 58(2)(c) to a requirement for disclosure imposed by virtue of section 41(5) were a reference to such a requirement imposed by virtue of section 149(4).

Commencement Information

I22 S. 156 in force at 27.6.2018 by S.I. 2018/652, reg. 10(a)

Interpretation

157 Chapter 1: interpretation

- (1) In this Chapter—
 - “intercepted content”, in relation to a bulk interception warrant, means any content of communications intercepted by an interception authorised or required by the warrant;
 - “overseas-related communications” has the meaning given by section 136;
 - “secondary data” has the meaning given by section 137, and references to obtaining secondary data from a communication are to be read in accordance with that section;
 - “senior official” means a member of the Senior Civil Service or a member of the Senior Management Structure of Her Majesty's Diplomatic Service;
 - “the specified operational purposes” has the meaning given by section 142(11).
- (2) See also—
 - section 261 (telecommunications definitions),
 - section 263 (general definitions),
 - section 264 (general definitions: “journalistic material” etc.),
 - section 265 (index of defined expressions).

Commencement Information

I23 S. 157 in force at 31.5.2018 by S.I. 2018/652, reg. 5(j)

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CHAPTER 2

BULK ACQUISITION WARRANTS

Bulk acquisition warrants

158 Power to issue bulk acquisition warrants

- (1) The Secretary of State may, on an application made by or on behalf of the head of an intelligence service, issue a bulk acquisition warrant if—
- (a) the Secretary of State considers that the warrant is necessary—
 - (i) in the interests of national security, or
 - (ii) on that ground and on any other grounds falling within subsection (2),
 - (b) the Secretary of State considers that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct,
 - (c) the Secretary of State considers that—
 - (i) each of the specified operational purposes (see section 161) is a purpose for which the examination of communications data obtained under the warrant is or may be necessary, and
 - (ii) the examination of such data for each such purpose is necessary on any of the grounds on which the Secretary of State considers the warrant to be necessary,
 - (d) the Secretary of State considers that satisfactory arrangements made for the purposes of section 171 (safeguards relating to the retention and disclosure of data) are in force in relation to the warrant, and
 - (e) the decision to issue the warrant has been approved by a Judicial Commissioner.

For the meaning of “head of an intelligence service”, see section 263.

- (2) A warrant is necessary on grounds falling within this subsection if it is necessary—
 - (a) for the purpose of preventing or detecting serious crime, or
 - (b) in the interests of the economic well-being of the United Kingdom so far as those interests are also relevant to the interests of national security (but see subsection (3)).
- (3) A warrant may be considered necessary on the ground falling within subsection (2) (b) only if the communications data which it is considered necessary to obtain is communications data relating to the acts or intentions of persons outside the British Islands.
- (4) The fact that the communications data which would be obtained under a warrant relates to the activities in the British Islands of a trade union is not, of itself, sufficient to establish that the warrant is necessary in the interests of national security or on that ground and a ground falling within subsection (2).
- (5) A bulk acquisition warrant is a warrant which authorises or requires the person to whom it is addressed to secure, by any conduct described in the warrant, any one or more of the activities in subsection (6).
- (6) The activities are—
 - (a) requiring a telecommunications operator specified in the warrant—

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- (i) to disclose to a person specified in the warrant any communications data which is specified in the warrant and is in the possession of the operator,
 - (ii) to obtain any communications data specified in the warrant which is not in the possession of the operator but which the operator is capable of obtaining, or
 - (iii) to disclose to a person specified in the warrant any data obtained as mentioned in sub-paragraph (ii),
 - (b) the selection for examination, in any manner described in the warrant, of communications data obtained under the warrant,
 - (c) the disclosure, in any manner described in the warrant, of communications data obtained under the warrant to the person to whom the warrant is addressed or to any person acting on that person's behalf.
- (7) A bulk acquisition warrant also authorises the following conduct (in addition to the conduct described in the warrant)—
- (a) any conduct which it is necessary to undertake in order to do what is expressly authorised or required by the warrant, and
 - (b) conduct by any person which is conduct in pursuance of a requirement imposed by or on behalf of the person to whom the warrant is addressed to be provided with assistance in giving effect to the warrant.
- (8) A bulk acquisition warrant may relate to data whether or not in existence at the time of the issuing of the warrant.
- (9) An application for the issue of a bulk acquisition warrant may only be made on behalf of the head of an intelligence service by a person holding office under the Crown.

Commencement Information

- I24** S. 158 in force at 25.7.2018 for specified purposes by S.I. 2018/873, **reg. 2(b)** (with **reg. 6(a)**)
I25 S. 158 in force at 22.8.2018 in so far as not already in force by S.I. 2018/873, **reg. 3(b)**

159 Approval of warrants by Judicial Commissioners

- (1) In deciding whether to approve a decision to issue a warrant under section 158, a Judicial Commissioner must review the Secretary of State's conclusions as to the following matters—
- (a) whether the warrant is necessary as mentioned in subsection (1)(a) of that section,
 - (b) whether the conduct that would be authorised by the warrant is proportionate to what is sought to be achieved by that conduct, and
 - (c) whether—
 - (i) each of the specified operational purposes (see section 161) is a purpose for which the examination of communications data obtained under the warrant is or may be necessary, and
 - (ii) the examination of such data for each such purpose is necessary as mentioned in section 158(1)(c)(ii).
- (2) In doing so, the Judicial Commissioner must—

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- (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) Where a Judicial Commissioner refuses to approve a decision to issue a warrant under section 158, 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 issue a warrant under section 158, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision to issue the warrant.

Commencement Information

I26 S. 159 in force at 25.7.2018 by S.I. 2018/873, reg. 2(c)

160 Decisions to issue warrants to be taken personally by Secretary of State

- (1) The decision to issue a bulk acquisition warrant must be taken personally by the Secretary of State.
- (2) Before a bulk acquisition warrant is issued, it must be signed by the Secretary of State.

Commencement Information

I27 S. 160 in force at 25.7.2018 by S.I. 2018/873, reg. 2(d)

161 Requirements that must be met by warrants

- (1) A bulk acquisition warrant must contain a provision stating that it is a bulk acquisition warrant.
- (2) A bulk acquisition warrant must be addressed to the head of the intelligence service by whom, or on whose behalf, the application for the warrant was made.
- (3) A bulk acquisition warrant must specify the operational purposes for which any communications data obtained under the warrant may be selected for examination.
- (4) The operational purposes specified in the warrant must be ones specified, in a list maintained by the heads of the intelligence services (“the list of operational purposes”), as purposes which they consider are operational purposes for which communications data obtained under bulk acquisition warrants may be selected for examination.
- (5) The warrant may, in particular, specify all of the operational purposes which, at the time the warrant is issued, are specified in the list of operational purposes.
- (6) An operational purpose may be specified in the list of operational purposes only with the approval of the Secretary of State.

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- (7) The Secretary of State may give such approval only if satisfied that the operational purpose is specified in a greater level of detail than the descriptions contained in section 158(1)(a) or (2).
- (8) At the end of each relevant three-month period the Secretary of State must give a copy of the list of operational purposes to the Intelligence and Security Committee of Parliament.
- (9) In subsection (8) “relevant three-month period” means—
 - (a) the period of three months beginning with the day on which this section comes into force, and
 - (b) each successive period of three months.
- (10) The Prime Minister must review the list of operational purposes at least once a year.
- (11) In this Chapter “the specified operational purposes”, in relation to a bulk acquisition warrant, means the operational purposes specified in the warrant in accordance with this section.

Commencement Information

I28 [S. 161](#) in force at 25.7.2018 by [S.I. 2018/873](#), [reg. 2\(e\)](#)

Duration, modification and cancellation of warrants

162 Duration of warrants

- (1) A bulk acquisition warrant (unless already cancelled) ceases to have effect at the end of the period of 6 months beginning with—
 - (a) the day on which the warrant was issued, or
 - (b) 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.
- (2) For provision about the renewal of warrants, see section 163.

Commencement Information

I29 [S. 162](#) in force at 22.8.2018 by [S.I. 2018/873](#), [reg. 3\(b\)](#)

163 Renewal of warrants

- (1) If the renewal conditions are met, a bulk acquisition warrant may be renewed, at any time during the renewal period, by an instrument issued by the Secretary of State.
This is subject to subsection (6).
- (2) The renewal conditions are—
 - (a) that the Secretary of State considers that the warrant continues to be necessary—
 - (i) in the interests of national security, or

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- (ii) on that ground and on any other grounds falling within section 158(2),
 - (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 that conduct,
 - (c) that the Secretary of State considers that—
 - (i) each of the specified operational purposes (see section 161) is a purpose for which the examination of communications data obtained under the warrant continues to be, or may be, necessary, and
 - (ii) the examination of such data for each such purpose 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 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 bulk acquisition 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 159 (approval of warrants by Judicial Commissioners) applies in relation to a decision to renew a bulk acquisition warrant as it applies in relation to a decision to issue a bulk acquisition warrant.
- This is subject to subsection (6).
- (6) In the case of the renewal of a bulk acquisition warrant that has been modified so that it no longer authorises or requires the carrying out of activities falling within section 158(6)(a)—
- (a) the renewal condition in subsection (2)(a) is to be disregarded,
 - (b) the reference in subsection (2)(c)(ii) to the grounds on which the Secretary of State considers the warrant to be necessary is to be read as a reference to any grounds falling within section 158(1)(a) or (2), and
 - (c) section 159 has effect as if—
 - (i) paragraph (a) of subsection (1) were omitted, and
 - (ii) the reference in subsection (1)(c)(ii) to the grounds on which the Secretary of State considers the warrant to be necessary were a reference to any grounds falling within section 158(1)(a) or (2).

Commencement Information

I30 S. 163 in force at 22.8.2018 by S.I. 2018/873, reg. 3(b)

164 Modification of warrants

- (1) The provisions of a bulk acquisition warrant may be modified at any time by an instrument issued by the person making the modification.
- (2) The only modifications that may be made under this section are—

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- (a) adding, varying or removing any operational purpose specified in the warrant as a purpose for which any communications data obtained under the warrant may be selected for examination, and
 - (b) providing that the warrant no longer authorises or requires the carrying out of activities falling within section 158(6)(a).
- (3) In this section—
- (a) a modification adding or varying any operational purpose as mentioned in paragraph (a) of subsection (2) is referred to as a “major modification”, and
 - (b) any other modification within that subsection 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 158(1)(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 communications data obtained under the warrant 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 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.
- (12) Nothing in this section applies in relation to modifying the provisions of a warrant in a way which does not affect the conduct authorised or required by it.

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Commencement Information

I31 S. 164 in force at 22.8.2018 by S.I. 2018/873, reg. 3(b)

165 Approval of major modifications by Judicial Commissioners

- (1) In deciding whether to approve a decision to make a major modification of a bulk acquisition 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 164, 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 164, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision to make the modification.

Commencement Information

I32 S. 165 in force at 22.8.2018 by S.I. 2018/873, reg. 3(b)

166 Approval of major modifications made in urgent cases

- (1) This section applies where—
 - (a) the Secretary of State makes a major modification of a bulk acquisition 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—

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Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Investigatory Powers Act 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (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 section 165(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 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.

Commencement Information

I33 S. 166 in force at 22.8.2018 by S.I. 2018/873, reg. 3(b)

167 Cancellation of warrants

- (1) The Secretary of State, or a senior official acting on behalf of the Secretary of State, may cancel a bulk acquisition 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 bulk acquisition warrant, the person must cancel the warrant.
- (3) The cancellation conditions are—
 - (a) that the warrant is no longer necessary in the interests of national security,
 - (b) that the conduct authorised by the warrant is no longer proportionate to what is sought to be achieved by that conduct,
 - (c) that the examination of communications data obtained under the warrant is no longer necessary for any of the specified operational purposes (see section 161).
- (4) But the condition in subsection (3)(a) does not apply where the warrant has been modified so that it no longer authorises or requires the carrying out of activities falling within section 158(6)(a).
- (5) Where a warrant is cancelled under this section, the person to whom the warrant was addressed must, so far as is reasonably practicable, secure that anything in the process of being done under the warrant stops as soon as possible.
- (6) A warrant that has been cancelled under this section may not be renewed.

Commencement Information

I34 S. 167 in force at 22.8.2018 by S.I. 2018/873, reg. 3(b)

Status: Point in time view as at 22/08/2018.

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Implementation of warrants

168 Implementation of warrants

- (1) In giving effect to a bulk acquisition warrant, the person to whom it is addressed (“the implementing authority”) may (in addition to acting alone) act through, or together with, such other persons as the implementing authority may require (whether under subsection (2) or otherwise) to provide the authority with assistance in giving effect to the warrant.
- (2) For the purpose of requiring any person to provide assistance in relation to a bulk acquisition warrant, the implementing authority may—
 - (a) serve a copy of the warrant on any person whom the implementing authority considers may be able to provide such assistance, or
 - (b) make arrangements for the service of a copy of the warrant on any such person.
- (3) A copy of a warrant may be served under subsection (2) on a person outside the United Kingdom for the purpose of requiring the person to provide such assistance in the form of conduct outside the United Kingdom.
- (4) For the purposes of this Act, the provision of assistance in giving effect to a bulk acquisition warrant includes any disclosure to the implementing authority, or to persons acting on behalf of the implementing authority, of communications data as authorised or required under the warrant.
- (5) References in this section and in sections 169 and 170 to the service of a copy of a warrant include—
 - (a) the service of a copy of one or more schedules contained in the warrant with the omission of the remainder of the warrant, and
 - (b) the service of a copy of the warrant with the omission of any schedule contained in the warrant.

Commencement Information

I35 S. 168 in force at 22.8.2018 by S.I. 2018/873, reg. 3(b)

169 Service of warrants

- (1) This section applies to the service of bulk acquisition warrants under section 168(2).
- (2) A copy of the warrant must be served in such a way as to bring the contents of the warrant to the attention of the person whom the implementing authority considers may be able to provide assistance in relation to it.
- (3) A copy of a warrant may be served on a person outside the United Kingdom in any of the following ways (as well as by electronic or other means of service)—
 - (a) by serving it at the person's principal office within the United Kingdom or, if the person has no such office in the United Kingdom, at any place in the United Kingdom where the person carries on business or conducts activities;
 - (b) if the person has specified an address in the United Kingdom as one at which the person, or someone on the person's behalf, will accept service of documents of the same description as a copy of a warrant, by serving it at that address;

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- (c) by making it available for inspection (whether to the person or to someone acting on the person's behalf) at a place in the United Kingdom (but this is subject to subsection (4)).
- (4) A copy of a warrant may be served on a person outside the United Kingdom in the way mentioned in subsection (3)(c) only if—
 - (a) it is not reasonably practicable for a copy to be served by any other means (whether as mentioned in subsection (3)(a) or (b) or otherwise), and
 - (b) the implementing authority takes such steps as the authority considers appropriate for the purpose of bringing the contents of the warrant, and the availability of a copy for inspection, to the attention of the person.
- (5) The steps mentioned in subsection (4)(b) must be taken as soon as reasonably practicable after the copy of the warrant is made available for inspection.
- (6) In this section “the implementing authority” has the same meaning as in section 168.

Commencement Information

I36 S. 169 in force at 22.8.2018 by S.I. 2018/873, reg. 3(b)

170 Duty of operators to assist with implementation

- (1) A telecommunications operator that has been served with a copy of a bulk acquisition warrant by (or on behalf of) the implementing authority must take all steps for giving effect to the warrant that are notified to the operator by (or on behalf of) the implementing authority.

This is subject to subsection (3).
- (2) Subsection (1) applies whether or not the operator is in the United Kingdom.
- (3) The operator is not required to take any steps which it is not reasonably practicable for the operator to take.
- (4) Where obligations have been imposed on a telecommunications operator (“P”) under section 253 (technical capability notices), for the purposes of subsection (3) the steps which it is reasonably practicable for P to take include every step which it would have been reasonably practicable for P to take if P had complied with all of those obligations.
- (5) The duty imposed by subsection (1) is enforceable against a person in the United Kingdom by civil proceedings by the Secretary of State for an injunction, or for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or for any other appropriate relief.
- (6) In this section “the implementing authority” has the same meaning as in section 168.

Commencement Information

I37 S. 170 in force at 22.8.2018 by S.I. 2018/873, reg. 3(b)

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Restrictions on use or disclosure of data obtained under warrants etc.

171 Safeguards relating to the retention and disclosure of data

(1) The Secretary of State must ensure, in relation to every bulk acquisition warrant, that arrangements are in force for securing—

- (a) that the requirements of subsections (2) and (5) are met in relation to the communications data obtained under the warrant, and
- (b) that the requirements of section 172 are met in relation to that data.

This is subject to subsection (8).

(2) The requirements of this subsection are met in relation to the communications data obtained under a warrant if each of the following is limited to the minimum that is necessary for the authorised purposes (see subsection (3))—

- (a) the number of persons to whom any of the data is disclosed or otherwise made available,
- (b) the extent to which any of the data is disclosed or otherwise made available,
- (c) the extent to which any of the data is copied,
- (d) the number of copies that are made.

(3) For the purposes of subsection (2) something is necessary for the authorised purposes if, and only if—

- (a) it is, or is likely to become, necessary in the interests of national security or on any other grounds falling within section 158(2),
- (b) it is necessary for facilitating the carrying out of any functions under this Act of the Secretary of State, the Scottish Ministers or the head of the intelligence service to whom the warrant is or was addressed,
- (c) it is necessary for facilitating the carrying out of any functions of the Judicial Commissioners or the Investigatory Powers Tribunal under or in relation to this Act,
- (d) it is necessary to ensure that a person (“P”) who is conducting a criminal prosecution has the information P needs to determine what is required of P by P’s duty to secure the fairness of the prosecution,
- (e) it is necessary for use as evidence in legal proceedings, or
- (f) it is necessary for the performance of any duty imposed on any person by the Public Records Act 1958 or the Public Records Act (Northern Ireland) 1923.

(4) The arrangements for the time being in force under subsection (1) for securing that the requirements of subsection (2) are met in relation to the communications data obtained under the warrant must include arrangements for securing that every copy made of any of that data is stored, for so long as it is retained, in a secure manner.

(5) The requirements of this subsection are met in relation to the communications data obtained under a warrant if every copy made of any of that data (if not destroyed earlier) is destroyed as soon as there are no longer any relevant grounds for retaining it (see subsection (6)).

(6) For the purposes of subsection (5), there are no longer any relevant grounds for retaining a copy of any data if, and only if—

- (a) its retention is not necessary, or not likely to become necessary, in the interests of national security or on any other grounds falling within section 158(2), and

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- (b) its retention is not necessary for any of the purposes mentioned in paragraphs (b) to (f) of subsection (3) above.
- (7) Subsection (8) applies if—
- (a) any communications data obtained under the warrant has been handed over to any overseas authorities, or
 - (b) a copy of any such data has been given to any overseas authorities.
- (8) To the extent that the requirements of subsections (2) and (5) and section 172 relate to any of the data mentioned in subsection (7)(a), or to the copy mentioned in subsection (7)(b), the arrangements made for the purposes of subsection (1) are not required to secure that those requirements are met.
- (9) But the Secretary of State must instead ensure that arrangements are in force for securing that communications data obtained under a bulk acquisition warrant, or any copy of such data, is handed over or given to an overseas authority only if the Secretary of State considers that requirements corresponding to the requirements of subsections (2) and (5) and section 172 will apply, to such extent (if any) as the Secretary of State considers appropriate, in relation to such data or copy.
- (10) In this section—
- “copy”, in relation to communications data obtained under a warrant, means any of the following (whether or not in documentary form)—
 - (a) any copy, extract or summary of the data which identifies the data as having been obtained under the warrant, and
 - (b) any record referring to the obtaining of the data which is a record of the identities of the persons to whom the data relates,
- and “copied” is to be read accordingly,
- “overseas authorities” means authorities of a country or territory outside the United Kingdom.

Commencement Information

I38 S. 171 in force at 25.7.2018 by S.I. 2018/873, reg. 2(f)

172 Safeguards relating to examination of data

- (1) For the purposes of section 171 the requirements of this section are met in relation to the communications data obtained under a warrant if—
- (a) any selection of the data for examination is carried out only for the specified purposes (see subsection (2)), and
 - (b) the selection of any of the data for examination is necessary and proportionate in all the circumstances.
- (2) The selection of communications data for examination is carried out only for the specified purposes if the data is selected for examination only so far as is necessary for the operational purposes specified in the warrant in accordance with section 161.
- (3) In subsection (2) “specified in the warrant” means specified in the warrant at the time of the selection of the data for examination.

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Commencement Information

I39 S. 172 in force at 25.7.2018 by S.I. 2018/873, reg. 2(g) (with reg. 7)

173 Offence of breaching safeguards relating to examination of data

- (1) A person commits an offence if—
- (a) the person selects for examination any communications data obtained under a bulk acquisition warrant,
 - (b) the person knows or believes that the selection of that data for examination does not comply with a requirement imposed by section 172, and
 - (c) the person deliberately selects that data for examination in breach of that requirement.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction in England and Wales—
 - (i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or
 - (ii) to a fine,
 or to both;
 - (b) on summary conviction in Scotland—
 - (i) to imprisonment for a term not exceeding 12 months, or
 - (ii) to a fine not exceeding the statutory maximum,
 or to both;
 - (c) on summary conviction in Northern Ireland—
 - (i) to imprisonment for a term not exceeding 6 months, or
 - (ii) to a fine not exceeding the statutory maximum,
 or to both;
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.
- (3) No proceedings for any offence which is an offence by virtue of this section may be instituted—
- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;
 - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

Commencement Information

I40 S. 173 in force at 22.8.2018 by S.I. 2018/873, reg. 3(b) (with reg. 7)

Status: Point in time view as at 22/08/2018.

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Supplementary provision

174 Offence of making unauthorised disclosure

- (1) It is an offence for—
- (a) a telecommunications operator who is under a duty by virtue of section 170 to assist in giving effect to a bulk acquisition warrant, or
 - (b) any person employed or engaged for the purposes of the business of such an operator,
- to disclose to any person, without reasonable excuse, the existence or contents of the warrant.
- (2) For the purposes of subsection (1), it is, in particular, a reasonable excuse if the disclosure is made with the permission of the Secretary of State.
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction in England and Wales—
 - (i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or
 - (ii) to a fine,or to both;
 - (b) on summary conviction in Scotland—
 - (i) to imprisonment for a term not exceeding 12 months, or
 - (ii) to a fine not exceeding the statutory maximum,or to both;
 - (c) on summary conviction in Northern Ireland—
 - (i) to imprisonment for a term not exceeding 6 months, or
 - (ii) to a fine not exceeding the statutory maximum,or to both;
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

Commencement Information

I41 S. 174 in force at 22.8.2018 by S.I. 2018/873, reg. 3(b)

175 Chapter 2: interpretation

- (1) In this Chapter—
- “communications data” does not include communications data within the meaning given by section 262(3),
 - “senior official” means—
 - (a) a member of the Senior Civil Service, or
 - (b) a member of the Senior Management Structure of Her Majesty's Diplomatic Service,
 - “the specified operational purposes” has the meaning given by section 161(11).

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- (2) See also—
- section 261 (telecommunications definitions),
 - section 263 (general definitions),
 - section 265 (index of defined expressions).

Commencement Information

I42 S. 175 in force at 25.7.2018 by S.I. 2018/873, reg. 2(h)

CHAPTER 3

BULK EQUIPMENT INTERFERENCE WARRANTS

Bulk equipment interference warrants

176 Bulk equipment interference warrants: general

- (1) For the purposes of this Act, a warrant is a “bulk equipment interference warrant” if—
- (a) it is issued under this Chapter;
 - (b) it authorises or requires the person to whom it is addressed to secure interference with any equipment for the purpose of obtaining—
 - (i) communications (see section 198);
 - (ii) equipment data (see section 177);
 - (iii) any other information; and
 - (c) the main purpose of the warrant is to obtain one or more of the following—
 - (i) overseas-related communications;
 - (ii) overseas-related information;
 - (iii) overseas-related equipment data.
- (2) In this Chapter—
- “overseas-related communications” means—
 - (a) communications sent by individuals who are outside the British Islands,
 - or
 - (b) communications received by individuals who are outside the British Islands;
 - “overseas-related information” means information of individuals who are outside the British Islands.
- (3) For the purpose of this Chapter, equipment data is “overseas-related equipment data” if—
- (a) it forms part of, or is connected with, overseas-related communications or overseas-related information;
 - (b) it would or may assist in establishing the existence of overseas-related communications or overseas-related information or in obtaining such communications or information;
 - (c) it would or may assist in developing capabilities in relation to obtaining overseas-related communications or overseas-related information.

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- (4) A bulk equipment interference warrant—
 - (a) must authorise or require the person to whom it is addressed to secure the obtaining of the communications, equipment data or other information to which the warrant relates;
 - (b) may also authorise or require the person to whom it is addressed to secure—
 - (i) the selection for examination, in any manner described in the warrant, of any material obtained under the warrant by virtue of paragraph (a);
 - (ii) the disclosure, in any manner described in the warrant, of any such material to the person to whom the warrant is addressed or to any person acting on that person's behalf.
- (5) A bulk equipment interference warrant also authorises the following conduct (in addition to the conduct described in the warrant)—
 - (a) any conduct which it is necessary to undertake in order to do what is expressly authorised or required by the warrant, including conduct for securing the obtaining of communications, equipment data or other information;
 - (b) any conduct by any person which is conduct in pursuance of a requirement imposed by or on behalf of the person to whom the warrant is addressed to be provided with assistance in giving effect to the warrant.
- (6) A bulk equipment interference warrant may not, by virtue of subsection (4)(a), authorise a person to engage in conduct, in relation to a communication other than a stored communication, which would (unless done with lawful authority) constitute an offence under section 3(1) (unlawful interception).
- (7) Subsection (5)(a) does not authorise a person to engage in conduct which could not be expressly authorised under the warrant because of the restriction imposed by subsection (6).
- (8) In subsection (6), “stored communication” means a communication stored in or by a telecommunication system (whether before or after its transmission).
- (9) Any conduct which is carried out in accordance with a bulk equipment interference warrant is lawful for all purposes.

Commencement Information

I43 S. 176 in force at 31.5.2018 by S.I. 2018/652, reg. 5(k)

177 Meaning of “equipment data”

- (1) In this Chapter, “equipment data” means—
 - (a) systems data;
 - (b) data which falls within subsection (2).
- (2) The data falling within this subsection is identifying data which—
 - (a) is, for the purposes of a relevant system, comprised in, included as part of, attached to or logically associated with a communication (whether by the sender or otherwise) or any other item of information,
 - (b) is capable of being logically separated from the remainder of the communication or the item of information, and

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- (c) if it were so separated, would not reveal anything of what might reasonably be considered to be the meaning (if any) of the communication or the item of information, disregarding any meaning arising from the fact of the communication or the existence of the item of information or from any data relating to that fact.
- (3) In subsection (2), “relevant system” means any system on or by means of which the data is held.
- (4) For the meaning of “systems data” and “identifying data”, see section 263.

Commencement Information

I44 S. 177 in force at 31.5.2018 by S.I. 2018/652, reg. 5(I)

178 Power to issue bulk equipment interference warrants

- (1) The Secretary of State may, on an application made by or on behalf of the head of an intelligence service, issue a bulk equipment interference warrant if—
- (a) the Secretary of State considers that the main purpose of the warrant is to obtain overseas-related communications, overseas-related information or overseas-related equipment data,
 - (b) the Secretary of State considers that the warrant is necessary—
 - (i) in the interests of national security, or
 - (ii) on that ground and on any other grounds falling within subsection (2),
 - (c) the Secretary of State considers that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct,
 - (d) the Secretary of State considers that—
 - (i) each of the specified operational purposes (see section 183) is a purpose for which the examination of material obtained under the warrant is or may be necessary, and
 - (ii) the examination of such material for each such purpose is necessary on any of the grounds on which the Secretary of State considers the warrant to be necessary,
 - (e) the Secretary of State considers that satisfactory arrangements made for the purposes of sections 191 and 192 (safeguards relating to disclosure etc.) are in force in relation to the warrant, and
 - (f) except where the Secretary of State considers that there is an urgent need to issue the warrant, the decision to issue the warrant has been approved by a Judicial Commissioner.

For the meaning of “head of an intelligence service”, see section 263.

- (2) A warrant is necessary on grounds falling within this subsection if it is necessary—
- (a) for the purpose of preventing or detecting serious crime, or
 - (b) in the interests of the economic well-being of the United Kingdom so far as those interests are also relevant to the interests of national security (but see subsection (3)).
- (3) A warrant may be considered necessary on the ground falling within subsection (2)(b) only if the interference with equipment which would be authorised by the warrant is

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considered necessary for the purpose of obtaining information relating to the acts or intentions of persons outside the British Islands.

- (4) An application for the issue of a bulk equipment interference warrant may only be made on behalf of the head of an intelligence service by a person holding office under the Crown.

Commencement Information

I45 S. 178 in force at 31.5.2018 for specified purposes by S.I. 2018/652, reg. 5(m)

I46 S. 178 in force at 27.6.2018 in so far as not already in force by S.I. 2018/652, reg. 10(b)

179 Approval of warrants by Judicial Commissioners

- (1) In deciding whether to approve a decision to issue a warrant under section 178, a Judicial Commissioner must review the Secretary of State's conclusions as to the following matters—
- (a) whether the warrant is necessary as mentioned in subsection (1)(b) of that section,
 - (b) whether the conduct that would be authorised by the warrant is proportionate to what is sought to be achieved by that conduct, and
 - (c) whether—
 - (i) each of the specified operational purposes (see section 183) is a purpose for which the examination of material obtained under the warrant is or may be necessary, and
 - (ii) the examination of such material for each such purpose is necessary as mentioned in section 178(1)(d)(ii).
- (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) Where a Judicial Commissioner refuses to approve a decision to issue a warrant under section 178, 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 issue a warrant under section 178, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision to issue the warrant.

Commencement Information

I47 S. 179 in force at 31.5.2018 by S.I. 2018/652, reg. 5(n)

180 Approval of warrants issued in urgent cases

- (1) This section applies where—

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- (a) a warrant under section 178 is issued without the approval of a Judicial Commissioner, and
 - (b) the Secretary of State considered that there was an urgent need to issue it.
- (2) The Secretary of State must inform a Judicial Commissioner that it has been issued.
- (3) The Judicial Commissioner must, before the end of the relevant period—
- (a) decide whether to approve the decision to issue the warrant, 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 warrant was issued.
- (4) If a Judicial Commissioner refuses to approve the decision to issue a warrant, the warrant—
- (a) ceases to have effect (unless already cancelled), and
 - (b) may not be renewed,
- and section 179(4) does not apply in relation to the refusal to approve the decision.
- (5) Section 181 contains further provision about what happens if a Judicial Commissioner refuses to approve a decision to issue a warrant.

Commencement Information

I48 S. 180 in force at 27.6.2018 by S.I. 2018/652, reg. 10(b)

181 Failure to approve warrant issued in urgent case

- (1) This section applies where under section 180(3) a Judicial Commissioner refuses to approve a decision to issue a warrant.
- (2) The person to whom the warrant was addressed must, so far as is reasonably practicable, secure that anything in the process of being done under the warrant stops as soon as possible.
- (3) The Judicial Commissioner may—
 - (a) authorise further interference with equipment for the purpose of enabling the person to whom the warrant was addressed to secure that anything in the process of being done under the warrant stops as soon as possible;
 - (b) direct that any material obtained under the warrant is destroyed;
 - (c) impose conditions as to the use or retention of any of that material.
- (4) The Judicial Commissioner—
 - (a) may require an affected party to make representations about how the Judicial Commissioner should exercise any function under subsection (3), and
 - (b) must have regard to any such representations made by an affected party (whether or not as a result of a requirement imposed under paragraph (a)).
- (5) Each of the following is an “affected party” for the purposes of subsection (4)—
 - (a) the Secretary of State;
 - (b) the person to whom the warrant was addressed.

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- (6) The Secretary of State may ask the Investigatory Powers Commissioner to review a decision made by any other Judicial Commissioner under subsection (3).
- (7) On a review under subsection (6), the Investigatory Powers Commissioner may—
 - (a) confirm the Judicial Commissioner's decision, or
 - (b) make a fresh determination.
- (8) Nothing in this section or section 180 affects the lawfulness of—
 - (a) anything done under the warrant before it ceases to have effect;
 - (b) if anything is in the process of being done under the warrant when it ceases to have effect—
 - (i) anything done before that thing could be stopped, or
 - (ii) anything done that it is not reasonably practicable to stop.

Commencement Information

149 S. 181 in force at 27.6.2018 by S.I. 2018/652, reg. 10(b)

182 Decisions to issue warrants to be taken personally by Secretary of State

- (1) The decision to issue a bulk equipment interference warrant must be taken personally by the Secretary of State.
- (2) Before a bulk equipment interference warrant is issued, it must be signed by the Secretary of State.
- (3) If it is not reasonably practicable for a warrant to be signed by the Secretary of State, the warrant may be signed by a senior official designated by the Secretary of State for that purpose.
- (4) In such a case, the warrant must contain a statement that—
 - (a) it is not reasonably practicable for the warrant to be signed by the Secretary of State, and
 - (b) the Secretary of State has personally and expressly authorised the issue of the warrant.

Commencement Information

150 S. 182 in force at 31.5.2018 by S.I. 2018/652, reg. 5(o)

183 Requirements that must be met by warrants

- (1) A bulk equipment interference warrant must contain a provision stating that it is a bulk equipment interference warrant.
- (2) A bulk equipment interference warrant must be addressed to the head of the intelligence service by whom, or on whose behalf, the application for the warrant was made.
- (3) A bulk equipment interference warrant must describe the conduct that is authorised by the warrant.

Status: Point in time view as at 22/08/2018.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Investigatory Powers Act 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (4) A bulk equipment interference warrant must specify the operational purposes for which any material obtained under the warrant may be selected for examination.
- (5) The operational purposes specified in the warrant must be ones specified, in a list maintained by the heads of the intelligence services (“the list of operational purposes”), as purposes which they consider are operational purposes for which material obtained under bulk equipment interference warrants may be selected for examination.
- (6) The warrant may, in particular, specify all of the operational purposes which, at the time the warrant is issued, are specified in the list of operational purposes.
- (7) An operational purpose may be specified in the list of operational purposes only with the approval of the Secretary of State.
- (8) The Secretary of State may give such approval only if satisfied that the operational purpose is specified in a greater level of detail than the descriptions contained in section 178(1)(b) or (2).
- (9) At the end of each relevant three-month period, the Secretary of State must give a copy of the list of operational purposes to the Intelligence and Security Committee of Parliament.
- (10) In subsection (9), “relevant three-month period” means—
 - (a) the period of three months beginning with the day on which this section comes into force, and
 - (b) each successive period of three months.
- (11) The Prime Minister must review the list of operational purposes at least once a year.
- (12) In this Chapter, “the specified operational purposes”, in relation to a bulk equipment interference warrant, means the operational purposes specified in the warrant in accordance with this section.

Commencement Information

I51 S. 183 in force at 31.5.2018 by S.I. 2018/652, reg. 5(p)

Duration, modification and cancellation of warrants

184 Duration of warrants

- (1) A bulk equipment interference 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 185), or
 - (b) it is cancelled or otherwise ceases to have effect before the end of that period (see sections 180 and 189).
- (2) In this section, “the relevant period”—
 - (a) in the case of an urgent 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—

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- (i) the day on which the warrant was issued, or
 - (ii) in the case of a warrant which 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 warrant is an “urgent warrant” if—
- (a) the warrant was issued without the approval of a Judicial Commissioner, and
 - (b) the person who decided to issue the warrant considered that there was an urgent need to issue it.

Commencement Information

I52 S. 184 in force at 27.6.2018 by S.I. 2018/652, reg. 10(b)

185 Renewal of warrants

- (1) If the renewal conditions are met, a bulk equipment interference warrant may be renewed, at any time during the renewal period, by an instrument issued by the Secretary of State.

This is subject to subsection (6).

- (2) The renewal conditions are—
- (a) that the Secretary of State considers that the warrant continues to be necessary—
 - (i) in the interests of national security, or
 - (ii) on that ground and on any other grounds falling within section 178(2),
 - (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 that conduct,
 - (c) that the Secretary of State considers that—
 - (i) each of the specified operational purposes (see section 183) is a purpose for which the examination of material obtained under the warrant continues to be, or may be, necessary, and
 - (ii) the examination of such material for each such purpose 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 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 bulk equipment interference warrant must be taken personally by the Secretary of State, and the instrument renewing the warrant must be signed by the Secretary of State.

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- (5) Section 179 (approval of warrants by Judicial Commissioners) applies in relation to a decision to renew a bulk equipment interference warrant as it applies in relation to a decision to issue a bulk equipment interference warrant.

This is subject to subsection (6).

- (6) In the case of a bulk equipment interference warrant which has been modified so that it no longer authorises or requires the securing of interference with any equipment or the obtaining of any communications, equipment data or other information—
- (a) the renewal condition in subsection (2)(a) is to be disregarded,
 - (b) the reference in subsection (2)(c)(ii) to the grounds on which the Secretary of State considers the warrant to be necessary is to be read as a reference to any grounds falling within section 178(1)(b) or (2), and
 - (c) section 179 has effect as if—
 - (i) paragraph (a) of subsection (1) were omitted, and
 - (ii) the reference in subsection (1)(c)(ii) to the grounds on which the Secretary of State considers the warrant to be necessary were a reference to any grounds falling within section 178(1)(b) or (2).
- (7) In this section—
- “the relevant period” has the same meaning as in section 184;
- “urgent warrant” is to be read in accordance with subsection (3) of that section.

Commencement Information

I53 S. 185 in force at 27.6.2018 by S.I. 2018/652, reg. 10(b)

186 Modification of warrants

- (1) The provisions of a bulk equipment interference warrant may be modified at any time by an instrument issued by the person making the modification.
- (2) The modifications which may be made under this section are—
- (a) adding, varying or removing any operational purpose specified in the warrant as a purpose for which any material obtained under the warrant may be selected for examination, and
 - (b) adding, varying or removing any description of conduct authorised by the warrant.
- (3) In this section—
- (a) a modification adding or varying any operational purpose, or any description of conduct, as mentioned in subsection (2) is referred to as a “major modification”, and
 - (b) any other modification within that subsection is referred to as a “minor modification”.
- (4) A major modification adding or varying any operational purpose—
- (a) must be made by the Secretary of State, and

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- (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 178(1)(b)).
- (5) A major modification adding or varying any description of conduct—
- (a) must be made by the Secretary of State, and
 - (b) may be made only if the Secretary of State considers—
 - (i) that the modification is necessary on any of the grounds on which the Secretary of State considers the warrant to be necessary (see section 178(1)(b)), and
 - (ii) that the conduct authorised by the modification is proportionate to what is sought to be achieved by that conduct.
- (6) 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.
- (7) 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.
- (8) 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.
- (9) If at any time a person mentioned in subsection (7) considers that any operational purpose specified in a warrant is no longer a purpose for which the examination of material obtained under the warrant is or may be necessary, the person must modify the warrant by removing that operational purpose.
- (10) The decision to modify the provisions of a 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 (11).
- (11) 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.
- (12) 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.
- (13) Despite section 176(1)(b) and (4)(a), the modification of a bulk equipment interference warrant so that it no longer authorises or requires the securing of interference with any equipment or the obtaining of any communications, equipment data or other information does not prevent the warrant from being a bulk equipment interference warrant.
- (14) Nothing in this section applies in relation to modifying the provisions of a warrant in a way which does not affect the conduct authorised by it.

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Commencement Information

I54 S. 186 in force at 27.6.2018 by S.I. 2018/652, reg. 10(b)

187 Approval of major modifications by Judicial Commissioners

- (1) In deciding whether to approve a decision to make a major modification of a bulk equipment interference warrant, a Judicial Commissioner must review the Secretary of State's conclusions as to the following matters—
 - (a) whether the modification is necessary on any of the grounds on which the Secretary of State considers the warrant to be necessary, and
 - (b) in the case of a major modification adding or varying any description of conduct authorised by the warrant, whether the conduct authorised by the modification 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) Where a Judicial Commissioner refuses to approve a decision to make a major modification under section 186, 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 186, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision to make the modification.

Commencement Information

I55 S. 187 in force at 27.6.2018 by S.I. 2018/652, reg. 10(b)

188 Approval of major modifications made in urgent cases

- (1) This section applies where—
 - (a) the Secretary of State makes a major modification of a bulk equipment interference 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.

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“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 under the warrant by virtue of that modification stops as soon as possible,and section 187(4) does not apply in relation to the refusal to approve the decision.
- (5) The Judicial Commissioner may authorise further interference with equipment for the purpose of enabling the person to whom the warrant is addressed to secure that anything in the process of being done under the warrant by virtue of the modification stops as soon as possible.
- (6) 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.

Commencement Information

156 S. 188 in force at 27.6.2018 by S.I. 2018/652, reg. 10(b)

189 Cancellation of warrants

- (1) The Secretary of State, or a senior official acting on behalf of the Secretary of State, may cancel a bulk equipment interference 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 bulk equipment interference warrant, the person must cancel the warrant.
- (3) The cancellation conditions are—
 - (a) that the warrant is no longer necessary in the interests of national security;
 - (b) that the conduct authorised by the warrant is no longer proportionate to what is sought to be achieved by that conduct;
 - (c) that the examination of material obtained under the warrant is no longer necessary for any of the specified operational purposes (see section 183).
- (4) But the condition in subsection (3)(a) does not apply where the warrant has been modified so that it no longer authorises or requires the securing of interference with any equipment or the obtaining of any communications, equipment data or other information.

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- (5) Where a warrant is cancelled under this section, the person to whom the warrant was addressed must, so far as is reasonably practicable, secure that anything in the process of being done under the warrant stops as soon as possible.
- (6) A warrant that has been cancelled under this section may not be renewed.

Commencement Information

I57 S. 189 in force at 27.6.2018 by S.I. 2018/652, reg. 10(b)

Implementation of warrants

190 Implementation of warrants

- (1) In giving effect to a bulk equipment interference warrant, the person to whom it is addressed (“the implementing authority”) may (in addition to acting alone) act through, or together with, such other persons as the implementing authority may require (whether under subsection (2) or otherwise) to provide the authority with assistance in giving effect to the warrant.
- (2) For the purpose of requiring any person to provide assistance in relation to a bulk equipment interference warrant, the implementing authority may—
 - (a) serve a copy of the warrant on any person who the implementing authority considers may be able to provide such assistance, or
 - (b) make arrangements for the service of a copy of the warrant on any such person.
- (3) A copy of a warrant may be served under subsection (2) on a person outside the United Kingdom for the purpose of requiring the person to provide such assistance in the form of conduct outside the United Kingdom.
- (4) For the purposes of this Act, the provision of assistance in giving effect to a bulk equipment interference warrant includes any disclosure to the implementing authority, or to persons acting on behalf of the implementing authority, of material obtained under the warrant.
- (5) Sections 127 (service of warrants) and 128 (duty of telecommunications operators to assist with implementation) apply in relation to a bulk equipment interference warrant as they apply in relation to a targeted equipment interference warrant issued under section 102 by the Secretary of State.
- (6) References in this section (and in sections 127 and 128 as they apply in relation to bulk equipment interference warrants) to the service of a copy of a warrant include—
 - (a) the service of a copy of one or more schedules contained in the warrant with the omission of the remainder of the warrant, and
 - (b) the service of a copy of the warrant with the omission of any schedule contained in the warrant.

Commencement Information

I58 S. 190 in force at 27.6.2018 by S.I. 2018/652, reg. 10(b)

Status: Point in time view as at 22/08/2018.

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Restrictions on use or disclosure of material obtained under warrants etc.

191 Safeguards relating to retention and disclosure of material

- (1) The Secretary of State must ensure, in relation to every bulk equipment interference warrant, that arrangements are in force for securing—
- (a) that the requirements of subsections (2) and (5) are met in relation to the material obtained under the warrant, and
 - (b) that the requirements of section 193 are met in relation to that material.

This is subject to subsection (8).

- (2) The requirements of this subsection are met in relation to the material obtained under the warrant if each of the following is limited to the minimum that is necessary for the authorised purposes (see subsection (3))—
- (a) the number of persons to whom any of the material is disclosed or otherwise made available;
 - (b) the extent to which any of the material is disclosed or otherwise made available;
 - (c) the extent to which any of the material is copied;
 - (d) the number of copies that are made.
- (3) For the purposes of subsection (2) something is necessary for the authorised purposes if, and only if—
- (a) it is, or is likely to become, necessary in the interests of national security or on any other grounds falling within section 178(2),
 - (b) it is necessary for facilitating the carrying out of any functions under this Act of the Secretary of State, the Scottish Ministers or the head of the intelligence service to whom the warrant is or was addressed,
 - (c) it is necessary for facilitating the carrying out of any functions of the Judicial Commissioners or of the Investigatory Powers Tribunal under or in relation to this Act,
 - (d) it is necessary for the purpose of legal proceedings, or
 - (e) it is necessary for the performance of the functions of any person under any enactment.
- (4) The arrangements for the time being in force under this section for securing that the requirements of subsection (2) are met in relation to the material obtained under the warrant must include arrangements for securing that every copy made of any of that material is stored, for so long as it is retained, in a secure manner.
- (5) The requirements of this subsection are met in relation to the material obtained under the warrant if every copy made of any of that material (if not destroyed earlier) is destroyed as soon as there are no longer any relevant grounds for retaining it (see subsection (6)).
- (6) For the purposes of subsection (5), there are no longer any relevant grounds for retaining a copy of any material if, and only if—
- (a) its retention is not necessary, or not likely to become necessary, in the interests of national security or on any other grounds falling within section 178(2), and
 - (b) its retention is not necessary for any of the purposes mentioned in paragraphs (b) to (e) of subsection (3) above.

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- (7) Subsection (8) applies if—
- (a) any material obtained under the warrant has been handed over to any overseas authorities, or
 - (b) a copy of any such material has been given to any overseas authorities.
- (8) To the extent that the requirements of subsections (2) and (5) and section 193 relate to any of the material mentioned in subsection (7)(a), or to the copy mentioned in subsection (7)(b), the arrangements made for the purpose of this section are not required to secure that those requirements are met (see instead section 192).
- (9) In this section—
- “copy”, in relation to any material obtained under a warrant, means any of the following (whether or not in documentary form)—
- (a) any copy, extract or summary of the material which identifies the material as having been obtained under the warrant, and
 - (b) any record which is a record of the identities of persons who owned, used or were in possession of the equipment which was interfered with to obtain that material,
- and “copied” is to be read accordingly;
- “overseas authorities” means authorities of a country or territory outside the United Kingdom.

Commencement Information

I59 S. 191 in force at 31.5.2018 by S.I. 2018/652, reg. 5(q)

192 Safeguards relating to disclosure of material overseas

- (1) The Secretary of State must ensure, in relation to every bulk equipment interference warrant, that arrangements are in force for securing that—
- (a) any material obtained under the warrant is handed over to overseas authorities only if the requirements of subsection (2) are met, and
 - (b) copies of any such material are given to overseas authorities only if those requirements are met.
- (2) The requirements of this subsection are met in the case of a warrant if it appears to the Secretary of State that requirements corresponding to the requirements of section 191(2) and (5) and section 193 will apply, to such extent (if any) as the Secretary of State considers appropriate, in relation to any of the material which is handed over, or any copy of which is given, to the authorities in question.
- (3) In this section—
- “copy” has the same meaning as in section 191;
- “overseas authorities” means authorities of a country or territory outside the United Kingdom.

Commencement Information

I60 S. 192 in force at 31.5.2018 by S.I. 2018/652, reg. 5(r)

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193 Safeguards relating to examination of material etc.

- (1) For the purposes of section 191, the requirements of this section are met in relation to the material obtained under a warrant if—
- (a) the selection of any of the material obtained under the warrant for examination is carried out only for the specified purposes (see subsection (2)),
 - (b) the selection of any of the material for examination is necessary and proportionate in all the circumstances, and
 - (c) where any such material is protected material, the selection of the material for examination meets any of the selection conditions (see subsection (3)).
- (2) The selection of material obtained under the warrant for examination is carried out only for the specified purposes if the material is selected for examination only so far as is necessary for the operational purposes specified in the warrant in accordance with section 183.

In this subsection “specified in the warrant” means specified in the warrant at the time of the selection of the material for examination.

- (3) The selection conditions referred to in subsection (1)(c) are—
- (a) that the selection of the protected material for examination does not breach the prohibition in subsection (4);
 - (b) that the person to whom the warrant is addressed reasonably considers that the selection of the protected material for examination would not breach that prohibition;
 - (c) that the selection of the protected material for examination in breach of that prohibition is authorised by subsection (5);
 - (d) that the selection of the protected material for examination in breach of that prohibition is authorised by a targeted examination warrant issued under Part 5.
- (4) The prohibition referred to in subsection (3)(a) is that the protected material may not at any time be selected for examination if—
- (a) any criteria used for the selection of the material for examination are referable to an individual known to be in the British Islands at that time, and
 - (b) the purpose of using those criteria is to identify protected material consisting of communications sent by, or intended for, that individual or private information relating to that individual.

It does not matter for the purposes of this subsection whether the identity of the individual is known.

- (5) The selection of protected material (“the relevant material”) for examination is authorised by this subsection if—
- (a) criteria referable to an individual have been, or are being, used for the selection of material for examination in circumstances falling within subsection (3)(a) or (b),
 - (b) at any time it appears to the person to whom the warrant is addressed that there has been a relevant change of circumstances in relation to the individual (see subsection (6)) which would mean that the selection of the relevant material for examination would breach the prohibition in subsection (4),
 - (c) since that time, a written authorisation to examine the relevant material using those criteria has been given by a senior officer, and

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- (d) the selection of the relevant material for examination is made before the end of the permitted period (see subsection (7)).
- (6) For the purposes of subsection (5)(b) there is a relevant change of circumstances in relation to an individual if—
- (a) the individual has entered the British Islands, or
 - (b) a belief by the person to whom the warrant is addressed that the individual was outside the British Islands was in fact mistaken.
- (7) In subsection (5)—
- “senior officer”, in relation to a warrant addressed to the head of an intelligence service, means a member of the intelligence service who—
- (a) is a member of the Senior Civil Service or a member of the Senior Management Structure of Her Majesty's Diplomatic Service, or
 - (b) holds a position in the intelligence service of equivalent seniority to such a member;
- “the permitted period” means the period ending with the fifth working day after the time mentioned in subsection (5)(b).
- (8) In a case where the selection of protected material for examination is authorised by subsection (5), the person to whom the warrant is addressed must notify the Secretary of State that the selection is being carried out.
- (9) In this Part, “protected material” means any material obtained under the warrant other than material which is—
- (a) equipment data;
 - (b) information (other than a communication or equipment data) which is not private information.

Commencement Information

I61 S. 193 in force at 27.6.2018 by S.I. 2018/652, reg. 10(b) (with reg. 23)

194 Additional safeguards for items subject to legal privilege

- (1) Subsection (2) applies if, in a case where protected material obtained under a bulk equipment interference warrant is to be selected for examination—
- (a) the selection of the material for examination meets any of the selection conditions in section 193(3)(a) to (c), and
 - (b) either—
 - (i) the purpose, or one of the purposes, of using the criteria to be used for the selection of the material for examination (“the relevant criteria”) is to identify any items subject to legal privilege, or
 - (ii) the use of the relevant criteria is likely to identify such items.
- (2) The material may be selected for examination using the relevant criteria only if a senior official acting on behalf of the Secretary of State has approved the use of those criteria.
- (3) In deciding whether to give an approval under subsection (2) in a case where subsection (1)(b)(i) applies, a senior official must have regard to the public interest in the confidentiality of items subject to legal privilege.

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- (4) A senior official may give an approval under subsection (2) only if—
- (a) the official considers that the arrangements made for the purposes of section 191 (safeguards relating to retention and disclosure of material) include specific arrangements for the handling, retention, use and destruction of items subject to legal privilege, and
 - (b) where subsection (1)(b)(i) applies, the official considers that there are exceptional and compelling circumstances that make it necessary to authorise the use of the relevant criteria.
- (5) For the purposes of subsection (4)(b), there cannot be exceptional and compelling circumstances that make it necessary to authorise the use of the relevant criteria unless—
- (a) the public interest in obtaining the information that would be obtained by the selection of the material for examination outweighs the public interest in the confidentiality of items subject to legal privilege,
 - (b) there are no other means by which the information may reasonably be obtained, and
 - (c) obtaining the information is necessary in the interests of national security or for the purpose of preventing death or significant injury.
- (6) Subsection (7) applies if, in a case where protected material obtained under a bulk equipment interference warrant is to be selected for examination—
- (a) the selection of the material for examination meets any of the selection conditions in section 193(3)(a) to (c),
 - (b) the purpose, or one of the purposes, of using the criteria to be used for the selection of the material for examination (“the relevant criteria”) is to identify communications or other items of information that, if they were not communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose, would be items subject to legal privilege, and
 - (c) the person to whom the warrant is addressed considers that the communications or other items of information (“the targeted communications or other items of information”) are likely to be communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose.
- (7) The material may be selected for examination using the relevant criteria only if a senior official acting on behalf of the Secretary of State has approved the use of those criteria.
- (8) A senior official may give an approval under subsection (7) only if the official considers that the targeted communications or other items of information are likely to be communications made or (as the case may be) other items of information created or held with the intention of furthering a criminal purpose.
- (9) Where an item subject to legal privilege which has been obtained under a bulk equipment interference warrant is retained following its examination, for purposes other than the destruction of the item, the person to whom the warrant is addressed must inform the Investigatory Powers Commissioner as soon as is reasonably practicable.

(For provision about the grounds for retaining material obtained under a bulk equipment interference warrant, see section 191.)

Status: Point in time view as at 22/08/2018.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Investigatory Powers Act 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (10) Unless the Investigatory Powers Commissioner considers that subsection (12) applies to the item, the Commissioner must—
- (a) direct that the item is destroyed, or
 - (b) impose one or more conditions as to the use or retention of that item.
- (11) If the Investigatory Powers Commissioner considers that subsection (12) applies to the item, the Commissioner may nevertheless impose such conditions under subsection (10)(b) as the Commissioner considers necessary for the purpose of protecting the public interest in the confidentiality of items subject to legal privilege.
- (12) This subsection applies to an item subject to legal privilege if—
- (a) the public interest in retaining the item outweighs the public interest in the confidentiality of items subject to legal privilege, and
 - (b) retaining the item is necessary in the interests of national security or for the purpose of preventing death or significant injury.
- (13) The Investigatory Powers Commissioner—
- (a) may require an affected party to make representations about how the Commissioner should exercise any function under subsection (10), and
 - (b) must have regard to any such representations made by an affected party (whether or not as a result of a requirement imposed under paragraph (a)).
- (14) Each of the following is an “affected party” for the purposes of subsection (13)—
- (a) the Secretary of State;
 - (b) the person to whom the warrant is or was addressed.

Commencement Information

I62 S. 194 in force at 27.6.2018 by S.I. 2018/652, reg. 10(b)

195 Additional safeguard for confidential journalistic material

Where—

- (a) material obtained under a bulk equipment interference warrant is retained, following its examination, for purposes other than the destruction of the material, and
- (b) it is material containing confidential journalistic material,

the person to whom the warrant is addressed must inform the Investigatory Powers Commissioner as soon as is reasonably practicable.

Commencement Information

I63 S. 195 in force at 27.6.2018 by S.I. 2018/652, reg. 10(b)

196 Offence of breaching safeguards relating to examination of material

- (1) A person commits an offence if—
- (a) the person selects for examination any material obtained under a bulk equipment interference warrant,

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- (b) the person knows or believes that the selection of that material does not comply with a requirement imposed by section 193 or 194, and
 - (c) the person deliberately selects that material in breach of that requirement.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction in England and Wales—
 - (i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or
 - (ii) to a fine,or to both;
 - (b) on summary conviction in Scotland—
 - (i) to imprisonment for a term not exceeding 12 months, or
 - (ii) to a fine not exceeding the statutory maximum,or to both;
 - (c) on summary conviction in Northern Ireland—
 - (i) to imprisonment for a term not exceeding 6 months, or
 - (ii) to a fine not exceeding the statutory maximum,or to both;
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.
- (3) No proceedings for any offence which is an offence by virtue of this section may be instituted—
- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;
 - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

Commencement Information

I64 S. 196 in force at 27.6.2018 by S.I. 2018/652, reg. 10(b)

197 Application of other restrictions in relation to warrants

Sections 132 to 134 (duty not to make unauthorised disclosures) apply in relation to bulk equipment interference warrants as they apply in relation to targeted equipment interference warrants, but as if the reference in section 133(2)(c) to a requirement for disclosure imposed by virtue of section 126(4) were a reference to such a requirement imposed by virtue of section 190(4).

Commencement Information

I65 S. 197 in force at 27.6.2018 by S.I. 2018/652, reg. 10(b)

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Interpretation

198 Chapter 3: interpretation

(1) In this Chapter—

“communication” includes—

- (a) anything comprising speech, music, sounds, visual images or data of any description, and
- (b) signals serving either for the impartation of anything between persons, between a person and a thing or between things or for the actuation or control of any apparatus;

“equipment” means equipment producing electromagnetic, acoustic or other emissions or any device capable of being used in connection with such equipment;

“equipment data” has the meaning given by section 177;

“private information” includes information relating to a person's private or family life;

“protected material”, in relation to a bulk equipment interference warrant, has the meaning given by section 193(9);

“senior official” means a member of the Senior Civil Service or a member of the Senior Management Structure of Her Majesty's Diplomatic Service;

“the specified operational purposes” has the meaning given by section 183(12).

(2) See also—

section 261 (telecommunications definitions);

section 263 (general definitions);

section 264 (general definitions: “journalistic material” etc.);

section 265 (index of defined expressions).

Commencement Information

I66 S. 198 in force at 31.5.2018 by S.I. 2018/652, reg. 5(s)

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Changes to legislation:

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