



# Investigatory Powers Act 2016

## 2016 CHAPTER 25

### PART 5 U.K.

#### EQUIPMENT INTERFERENCE

##### *Power to issue warrants*

#### 102 Power to issue warrants to intelligence services: the Secretary of State U.K.

- (1) The Secretary of State may, on an application made by or on behalf of the head of an intelligence service, issue a targeted equipment interference warrant if—
  - (a) the Secretary of State considers that the warrant is necessary on grounds falling within subsection (5),
  - (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 satisfactory arrangements made for the purposes of sections 129 and 130 (safeguards relating to disclosure etc.) are in force in relation to the warrant, and
  - (d) 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.
- (2) But the Secretary of State may not issue a targeted equipment interference warrant under subsection (1) if—
  - (a) the Secretary of State considers that the only ground for considering the warrant to be necessary is for the purpose of preventing or detecting serious crime, and
  - (b) the warrant, if issued, would authorise interference only with equipment which would be in Scotland at the time of the issue of the warrant or which the Secretary of State believes would be in Scotland at that time.

For the power of the Scottish Ministers to issue a targeted equipment interference warrant, see section 103.

*Status: Point in time view as at 27/06/2018. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: Investigatory Powers Act 2016, Cross Heading: Power to issue warrants is up to date with all changes known to be in force on or before 03 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) The Secretary of State may, on an application made by or on behalf of the head of an intelligence service, issue a targeted examination warrant if—
- (a) the Secretary of State considers that the warrant is necessary on grounds falling within subsection (5),
  - (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 the warrant is or may be necessary to authorise the selection of protected material for examination in breach of the prohibition in section 193(4) (prohibition on seeking to identify communications of, or private information relating to, individuals in the British Islands), and
  - (d) 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.
- (4) But the Secretary of State may not issue a targeted examination warrant under subsection (3) if the warrant, if issued, would relate only to a person who would be in Scotland at the time of the issue of the warrant or whom the Secretary of State believes would be in Scotland at that time.
- For the power of the Scottish Ministers to issue a targeted examination warrant, see section 103.
- (5) A warrant is necessary on grounds falling within this subsection if it is necessary—
- (a) in the interests of national security,
  - (b) for the purpose of preventing or detecting serious crime, or
  - (c) 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.
- (6) A warrant may be considered necessary on the ground falling within subsection (5)(c) only if the interference with equipment which would be authorised by the warrant is considered necessary for the purpose of obtaining information relating to the acts or intentions of persons outside the British Islands.
- (7) The fact that the information 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 on grounds falling within subsection (5).
- (8) An application for the issue of a warrant under this section may only be made on behalf of the head of an intelligence service by a person holding office under the Crown.
- (9) Nothing in subsection (2) or (4) prevents the Secretary of State from doing anything under this section for the purposes specified in section 2(2) of the European Communities Act 1972.

#### Commencement Information

- I1** S. 102(1)-(3) in force at 31.5.2018 for specified purposes by S.I. 2018/652, reg. 4(d)(i) (with reg. 22(a))
- I2** S. 102(1)-(3) in force at 27.6.2018 in so far as not already in force by S.I. 2018/652, reg. 9(a)(i)
- I3** S. 102(4) in force at 31.5.2018 for specified purposes by S.I. 2018/652, reg. 4(d)(ii)
- I4** S. 102(4) in force at 27.6.2018 for specified purposes by S.I. 2018/652, reg. 9(a)(ii)

*Status: Point in time view as at 27/06/2018. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: Investigatory Powers Act 2016, Cross Heading: Power to issue warrants is up to date with all changes known to be in force on or before 03 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**15** S. 102(5)-(9) in force at 31.5.2018 by S.I. 2018/652, reg. 4(d)(iii)

### **103 Power to issue warrants to intelligence services: the Scottish Ministers** U.K.

- (1) The Scottish Ministers may, on an application made by or on behalf of the head of an intelligence service, issue a targeted equipment interference warrant if—
  - (a) the warrant authorises interference only with equipment which is in Scotland at the time the warrant is issued or which the Scottish Ministers believe to be in Scotland at that time,
  - (b) the Scottish Ministers consider that the warrant is necessary for the purpose of preventing or detecting serious crime,
  - (c) the Scottish Ministers consider that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct,
  - (d) the Scottish Ministers consider that satisfactory arrangements made for the purposes of sections 129 and 130 (safeguards relating to disclosure etc.) are in force in relation to the warrant, and
  - (e) except where the Scottish Ministers consider that there is an urgent need to issue the warrant, the decision to issue the warrant has been approved by a Judicial Commissioner.
- (2) The Scottish Ministers may, on an application made by or on behalf of the head of an intelligence service, issue a targeted examination warrant if—
  - (a) the warrant relates only to a person who is in Scotland, or whom the Scottish Ministers believe to be in Scotland, at the time of the issue of the warrant,
  - (b) the Scottish Ministers consider that the warrant is necessary for the purpose of preventing or detecting serious crime,
  - (c) the Scottish Ministers consider that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct,
  - (d) the Scottish Ministers consider that the warrant is or may be necessary to authorise the selection of protected material in breach of the prohibition in section 193(4) (prohibition on seeking to identify communications of, or private information relating to, individuals in the British Islands), and
  - (e) except where the Scottish Ministers consider that there is an urgent need to issue the warrant, the decision to issue the warrant has been approved by a Judicial Commissioner.
- (3) The fact that the information 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 as mentioned in subsection (1)(b) or (2)(b).
- (4) An application for the issue of a warrant under this section may only be made on behalf of the head of an intelligence service by a person holding office under the Crown.

#### **Commencement Information**

- 16** S. 103(1)(2) in force at 31.5.2018 for specified purposes by S.I. 2018/652, reg. 4(e)(i) (with reg. 22(b))
- 17** S. 103(1)(2) in force at 27.6.2018 in so far as not already in force by S.I. 2018/652, reg. 9(b)
- 18** S. 103(3)(4) in force at 31.5.2018 by S.I. 2018/652, reg. 4(e)(ii)

*Status: Point in time view as at 27/06/2018. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: Investigatory Powers Act 2016, Cross Heading: Power to issue warrants is up to date with all changes known to be in force on or before 03 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 104 Power to issue warrants to the Chief of Defence Intelligence **U.K.**

- (1) The Secretary of State may, on an application made by or on behalf of the Chief of Defence Intelligence, issue a targeted equipment interference warrant if—
  - (a) the Secretary of State considers that the warrant is necessary in the interests of national security,
  - (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 satisfactory arrangements made for the purposes of sections 129 and 130 (safeguards relating to disclosure etc.) are in force in relation to the warrant, and
  - (d) 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.
- (2) The fact that the information 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 as mentioned in subsection (1)(a).
- (3) An application for the issue of a warrant under this section may only be made on behalf of the Chief of Defence Intelligence by a person holding office under the Crown.

### Commencement Information

- I9** S. 104(1) in force at 31.5.2018 for specified purposes by S.I. 2018/652, reg. 4(f)(i)  
**I10** S. 104(1) in force at 27.6.2018 in so far as not already in force by S.I. 2018/652, reg. 9(c)  
**I11** S. 104(2)(3) in force at 31.5.2018 by S.I. 2018/652, reg. 4(f)(ii)

## 105 Decision to issue warrants under sections 102 to 104 to be taken personally by Ministers **U.K.**

- (1) The decision to issue a warrant under section 102 or 104 must be taken personally by the Secretary of State.
- (2) The decision to issue a warrant under section 103 must be taken personally by a member of the Scottish Government.
- (3) Before a warrant under section 102, 103 or 104 is issued, it must be signed by the person who has taken the decision to issue it (subject to subsection (4)).
- (4) If it is not reasonably practicable for a warrant to be signed by the person who has taken the decision to issue it, the warrant may be signed by a senior official designated by the Secretary of State or (as the case may be) the Scottish Ministers for that purpose.
- (5) 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 person who took the decision to issue it, and
  - (b) the Secretary of State or (as the case may be) a member of the Scottish Government has personally and expressly authorised the issue of the warrant.

*Status: Point in time view as at 27/06/2018. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: Investigatory Powers Act 2016, Cross Heading: Power to issue warrants is up to date with all changes known to be in force on or before 03 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Commencement Information

**I12** S. 105 in force at 31.5.2018 by S.I. 2018/652, reg. 4(g)

VALID FROM 28/11/2018

## 106 Power to issue warrants to law enforcement officers **U.K.**

- (1) A law enforcement chief described in Part 1 or 2 of the table in Schedule 6 may, on an application made by a person who is an appropriate law enforcement officer in relation to the chief, issue a targeted equipment interference warrant if—
  - (a) the law enforcement chief considers that the warrant is necessary for the purpose of preventing or detecting serious crime,
  - (b) the law enforcement chief considers that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct,
  - (c) the law enforcement chief considers that satisfactory arrangements made for the purposes of sections 129 and 130 (safeguards relating to disclosure etc.) are in force in relation to the warrant, and
  - (d) except where the law enforcement chief considers that there is an urgent need to issue the warrant, the decision to issue the warrant has been approved by a Judicial Commissioner.
- (2) The fact that the information 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 as mentioned in subsection (1)(a).
- (3) A law enforcement chief described in Part 1 of the table in Schedule 6 may, on an application made by a person who is an appropriate law enforcement officer in relation to the chief, issue a targeted equipment interference warrant if—
  - (a) the law enforcement chief considers that the warrant is necessary for the purpose of preventing death or any injury or damage to a person's physical or mental health or of mitigating any injury or damage to a person's physical or mental health,
  - (b) the law enforcement chief considers that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct,
  - (c) the law enforcement chief considers that satisfactory arrangements made for the purposes of sections 129 and 130 (safeguards relating to disclosure etc.) are in force in relation to the warrant, and
  - (d) except where the law enforcement chief considers that there is an urgent need to issue the warrant, the decision to issue the warrant has been approved by a Judicial Commissioner.
- (4) If it is not reasonably practicable for a law enforcement chief to consider an application under this section, an appropriate delegate may, in an urgent case, exercise the power to issue a targeted equipment interference warrant.
- (5) For the purposes of this section—
  - (a) a person is a law enforcement chief if the person is listed in the first column of the table in Schedule 6;

*Status: Point in time view as at 27/06/2018. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: Investigatory Powers Act 2016, Cross Heading: Power to issue warrants is up to date with all changes known to be in force on or before 03 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) a person is an appropriate delegate in relation to a law enforcement chief listed in the first column if the person is listed in the corresponding entry in the second column of that table;
  - (c) a person is an appropriate law enforcement officer in relation to a law enforcement chief listed in the first column if the person is listed in the corresponding entry in the third column of that table.
- (6) Where the law enforcement chief is the Chief Constable or the Deputy Chief Constable of the Police Service of Northern Ireland, the reference in subsection (1)(a) to the purpose of preventing or detecting serious crime includes a reference to the interests of national security.
- (7) A law enforcement chief who is an immigration officer may consider that the condition in subsection (1)(a) is satisfied only if the serious crime relates to an offence which is an immigration or nationality offence (whether or not it also relates to other offences).
- (8) A law enforcement chief who is an officer of Revenue and Customs may consider that the condition in subsection (1)(a) is satisfied only if the serious crime relates to an assigned matter within the meaning of section 1(1) of the Customs and Excise Management Act 1979.
- (9) A law enforcement chief who is a designated customs official may consider that the condition in subsection (1)(a) is satisfied only if the serious crime relates to a matter in respect of which a designated customs official has functions.
- (10) A law enforcement chief who is the chair of the Competition and Markets Authority may consider that the condition in subsection (1)(a) is satisfied only if the offence, or all of the offences, to which the serious crime relates are offences under section 188 of the Enterprise Act 2002.
- (11) A law enforcement chief who is [<sup>F1</sup>the Director General of the Independent Office for Police Conduct] may consider that the condition in subsection (1)(a) is satisfied only if the offence, or all of the offences, to which the serious crime relates are offences that are being investigated as part of an investigation <sup>F2</sup>... under Schedule 3 to the Police Reform Act 2002.
- (12) A law enforcement chief who is the Police Investigations and Review Commissioner may consider that the condition in subsection (1)(a) is satisfied only if the offence, or all of the offences, to which the serious crime relates are offences that are being investigated under section 33A(b)(i) of the Police, Public Order and Criminal Justice (Scotland) Act 2006.
- (13) For the purpose of subsection (7), an offence is an immigration or nationality offence if conduct constituting the offence—
- (a) relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement), or
  - (b) is undertaken for the purposes of or otherwise in relation to—
    - (i) the British Nationality Act 1981;
    - (ii) the Hong Kong Act 1985;
    - (iii) the Hong Kong (War Wives and Widows) Act 1996;
    - (iv) the British Nationality (Hong Kong) Act 1997;

*Status: Point in time view as at 27/06/2018. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: Investigatory Powers Act 2016, Cross Heading: Power to issue warrants is up to date with all changes known to be in force on or before 03 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (v) the British Overseas Territories Act 2002;
- (vi) an instrument made under any of those Acts.

(14) In this section—

“designated customs official” has the same meaning as in Part 1 of the Borders, Citizenship and Immigration Act 2009 (see section 14(6) of that Act);

“immigration officer” means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971.

#### Textual Amendments

- F1** Words in s. 106(11) substituted (31.1.2017 for specified purposes, 8.1.2018 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(1)(5)(e), [Sch. 9 para. 74\(3\)\(a\)](#); S.I. 2017/1249, reg. 2 (with reg. 3)
- F2** Words in s. 106(11) omitted (31.1.2017 for specified purposes, 8.1.2018 in so far as not already in force) by virtue of [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(1)(5)(e), [Sch. 9 para. 74\(3\)\(b\)](#); S.I. 2017/1249, reg. 2 (with reg. 3)

VALID FROM 28/11/2018

#### 107 Restriction on issue of warrants to certain law enforcement officers **U.K.**

- (1) A law enforcement chief specified in subsection (2) may not issue a targeted equipment interference warrant under section 106 unless the law enforcement chief considers that there is a British Islands connection.
- (2) The law enforcement chiefs specified in this subsection are—
  - (a) the Chief Constable of a police force maintained under section 2 of the Police Act 1996;
  - (b) the Commissioner, or an Assistant Commissioner, of the metropolitan police force;
  - (c) the Commissioner of Police for the City of London;
  - (d) the chief constable of the Police Service of Scotland;
  - (e) the Chief Constable or a Deputy Chief Constable of the Police Service of Northern Ireland;
  - (f) the Chief Constable of the British Transport Police Force;
  - (g) the Chief Constable of the Ministry for Defence Police;
  - [<sup>F3</sup>(h) the Director General of the Independent Office for Police Conduct;]
  - (i) the Police Investigations and Review Commissioner.
- (3) The Director General of the National Crime Agency may not issue a targeted equipment interference warrant on the application of a member of a collaborative police force unless the Director General considers that there is a British Islands connection.

“Collaborative police force” has the meaning given by paragraph 2 of Part 3 of Schedule 6.

- (4) For the purpose of this section, there is a British Islands connection if—

*Status: Point in time view as at 27/06/2018. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: Investigatory Powers Act 2016, Cross Heading: Power to issue warrants is up to date with all changes known to be in force on or before 03 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) any of the conduct authorised by the warrant would take place in the British Islands (regardless of the location of the equipment that would, or may, be interfered with),
- (b) any of the equipment which would, or may, be interfered with would, or may, be in the British Islands at some time while the interference is taking place, or
- (c) a purpose of the interference is to obtain—
  - (i) communications sent by, or to, a person who is, or whom the law enforcement officer believes to be, for the time being in the British Islands,
  - (ii) information relating to an individual who is, or whom the law enforcement officer believes to be, for the time being in the British Islands, or
  - (iii) equipment data which forms part of, or is connected with, communications or information falling within sub-paragraph (i) or (ii).

(5) Except as provided by subsections (1) to (3), a targeted equipment interference warrant may be issued under section 106 whether or not the person who has power to issue the warrant considers that there is a British Islands connection.

#### **Textual Amendments**

- F3** S. 107(2)(h) substituted (31.1.2017 for specified purposes, 8.1.2018 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(1)(5)(e), [Sch. 9 para. 74\(4\)](#); [S.I. 2017/1249](#), [reg. 2](#) (with [reg. 3](#))



**Status:**

Point in time view as at 27/06/2018. This version of this cross heading contains provisions that are not valid for this point in time.

**Changes to legislation:**

Investigatory Powers Act 2016, Cross Heading: Power to issue warrants is up to date with all changes known to be in force on or before 03 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.