



Investigatory Powers Act 2016

2016 CHAPTER 25

PART 7

BULK PERSONAL DATASET WARRANTS

Bulk personal datasets: interpretation

199 Bulk personal datasets: interpretation

- (1) For the purposes of this Part, an intelligence service retains a bulk personal dataset if—
 - (a) the intelligence service obtains a set of information that includes personal data relating to a number of individuals,
 - (b) the nature of the set is such that the majority of the individuals are not, and are unlikely to become, of interest to the intelligence service in the exercise of its functions,
 - (c) after any initial examination of the contents, the intelligence service retains the set for the purpose of the exercise of its functions, and
 - (d) the set is held, or is to be held, electronically for analysis in the exercise of those functions.
- (2) In this Part, “personal data” has the same meaning as in the Data Protection Act 1998 except that it also includes data relating to a deceased individual where the data would be personal data within the meaning of that Act if it related to a living individual.

Requirement for warrant

200 Requirement for authorisation by warrant: general

- (1) An intelligence service may not exercise a power to retain a bulk personal dataset unless the retention of the dataset is authorised by a warrant under this Part.
- (2) An intelligence service may not exercise a power to examine a bulk personal dataset retained by it unless the examination is authorised by a warrant under this Part.

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- (3) For the purposes of this Part, there are two kinds of warrant—
- (a) a warrant, referred to in this Part as “a class BPD warrant”, authorising an intelligence service to retain, or to retain and examine, any bulk personal dataset of a class described in the warrant;
 - (b) a warrant, referred to in this Part as “a specific BPD warrant”, authorising an intelligence service to retain, or to retain and examine, any bulk personal dataset described in the warrant.
- (4) Section 201 sets out exceptions to the restrictions imposed by subsections (1) and (2) of this section.

201 Exceptions to section 200(1) and (2)

- (1) Section 200(1) or (2) does not apply to the exercise of a power of an intelligence service to retain or (as the case may be) examine a bulk personal dataset if the intelligence service obtained the bulk personal dataset under a warrant or other authorisation issued or given under this Act.
- (2) Section 200(1) or (2) does not apply at any time when a bulk personal dataset is being retained or (as the case may be) examined for the purpose of enabling any of the information contained in it to be destroyed.
- (3) Sections 210(8), 219(8) and 220(5) provide for other exceptions to section 200(1) or (2) (in connection with cases where a Judicial Commissioner refuses to approve a specific BPD warrant, the non-renewal or cancellation of BPD warrants and initial examinations).

202 Restriction on use of class BPD warrants

- (1) An intelligence service may not retain, or retain and examine, a bulk personal dataset in reliance on a class BPD warrant if the head of the intelligence service considers that the bulk personal dataset consists of, or includes, protected data.

For the meaning of “protected data”, see section 203.

- (2) An intelligence service may not retain, or retain and examine, a bulk personal dataset in reliance on a class BPD warrant if the head of the intelligence service considers—
- (a) that the bulk personal dataset consists of, or includes, health records, or
 - (b) that a substantial proportion of the bulk personal dataset consists of sensitive personal data.
- (3) An intelligence service may not retain, or retain and examine, a bulk personal dataset in reliance on a class BPD warrant if the head of the intelligence service considers that the nature of the bulk personal dataset, or the circumstances in which it was created, is or are such that its retention, or retention and examination, by the intelligence service raises novel or contentious issues which ought to be considered by the Secretary of State and a Judicial Commissioner on an application by the head of the intelligence service for a specific BPD warrant.
- (4) In subsection (2)—
- “health records” has the same meaning as in section 206;

“sensitive personal data” means personal data consisting of information about an individual (whether living or deceased) which is of a kind mentioned in section 2(a) to (f) of the Data Protection Act 1998.

203 Meaning of “protected data”

- (1) In this Part, “protected data” means any data contained in a bulk personal dataset other than data which is one or more of the following—
 - (a) systems data;
 - (b) data which falls within subsection (2);
 - (c) data which is not private information.
- (2) The data falling within this subsection is identifying data which—
 - (a) is contained in the bulk personal dataset,
 - (b) is capable of being logically separated from the bulk personal dataset, and
 - (c) if it were so separated, would not reveal anything of what might reasonably be considered to be the meaning (if any) of any of the data which would remain in the bulk personal dataset or of the bulk personal dataset itself, disregarding any meaning arising from the existence of that data or (as the case may be) the existence of the bulk personal dataset or from any data relating to that fact.
- (3) For the meaning of “systems data” see section 263(4).
- (4) In this section, “private information” includes information relating to a person’s private or family life.

Issue of warrants

204 Class BPD warrants

- (1) The head of an intelligence service, or a person acting on his or her behalf, may apply to the Secretary of State for a class BPD warrant.
- (2) The application must include—
 - (a) a description of the class of bulk personal datasets to which the application relates, and
 - (b) in a case where the intelligence service is seeking authorisation for the examination of bulk personal datasets of that class, the operational purposes which it is proposing should be specified in the warrant (see section 212).
- (3) The Secretary of State may issue the warrant if—
 - (a) the Secretary of State considers that the warrant is necessary—
 - (i) in the interests of national security,
 - (ii) for the purposes of preventing or detecting serious crime, or
 - (iii) 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,
 - (b) the Secretary of State considers that the conduct authorised by the warrant is proportionate to what is sought to be achieved by the conduct,
 - (c) where the warrant authorises the examination of bulk personal datasets of the class described in the warrant, the Secretary of State considers that—

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- (i) each of the specified operational purposes (see section 212) is a purpose for which the examination of bulk personal datasets of that class is or may be necessary, and
 - (ii) the examination of bulk personal datasets of that class 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 the arrangements made by the intelligence service for storing bulk personal datasets of the class to which the application relates and for protecting them from unauthorised disclosure are satisfactory, and
 - (e) the decision to issue the warrant has been approved by a Judicial Commissioner.
- (4) The fact that a class BPD warrant would authorise the retention, or the retention and examination, of bulk personal datasets relating to 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 (3)(a).
- (5) An application for a class BPD warrant may only be made on behalf of the head of an intelligence service by a person holding office under the Crown.

205 Specific BPD warrants

- (1) The head of an intelligence service, or a person acting on his or her behalf, may apply to the Secretary of State for a specific BPD warrant in the following cases.
- (2) Case 1 is where—
- (a) the intelligence service is seeking authorisation to retain, or to retain and examine, a bulk personal dataset, and
 - (b) the bulk personal dataset does not fall within a class described in a class BPD warrant.
- (3) Case 2 is where—
- (a) the intelligence service is seeking authorisation to retain, or to retain and examine, a bulk personal dataset, and
 - (b) the bulk personal dataset falls within a class described in a class BPD warrant but either—
 - (i) the intelligence service is prevented by section 202(1), (2) or (3) from retaining, or retaining and examining, the bulk personal dataset in reliance on the class BPD warrant, or
 - (ii) the intelligence service at any time considers that it would be appropriate to seek a specific BPD warrant.
- (4) The application must include—
- (a) a description of the bulk personal dataset to which the application relates, and
 - (b) in a case where the intelligence service is seeking authorisation for the examination of the bulk personal dataset, the operational purposes which it is proposing should be specified in the warrant (see section 212).
- (5) Where subsection (3)(b)(i) applies, the application must include an explanation of why the intelligence service is prevented by section 202(1), (2) or (3) from retaining, or retaining and examining, the bulk personal dataset in reliance on a class BPD warrant.

- (6) The Secretary of State may issue the warrant if—
- (a) the Secretary of State considers that the warrant is necessary—
 - (i) in the interests of national security,
 - (ii) for the purposes of preventing or detecting serious crime, or
 - (iii) 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,
 - (b) the Secretary of State considers that the conduct authorised by the warrant is proportionate to what is sought to be achieved by the conduct,
 - (c) where the warrant authorises the examination of a bulk personal dataset, the Secretary of State considers that—
 - (i) each of the specified operational purposes (see section 212) is a purpose for which the examination of the bulk personal dataset is or may be necessary, and
 - (ii) the examination of the bulk personal dataset 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 the arrangements made by the intelligence service for storing the bulk personal dataset and for protecting it from unauthorised disclosure are satisfactory, and
 - (e) except where the Secretary of State considers that there is an urgent need to issue the warrant, the decision to issue it has been approved by a Judicial Commissioner.
- (7) The fact that a specific BPD warrant would authorise the retention, or the retention and examination, of bulk personal datasets relating to 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 (6)(a).
- (8) A specific BPD warrant relating to a bulk personal dataset (“dataset A”) may also authorise the retention or examination of other bulk personal datasets (“replacement datasets”) that do not exist at the time of the issue of the warrant but may reasonably be regarded as replacements for dataset A.
- (9) An application for a specific BPD warrant may only be made on behalf of the head of an intelligence service by a person holding office under the Crown.

206 Additional safeguards for health records

- (1) Subsections (2) and (3) apply if—
- (a) an application is made by or on behalf of the head of an intelligence service for the issue of a specific BPD warrant, and
 - (b) the purpose, or one of the purposes, of the warrant is to authorise the retention, or the retention and examination, of health records.
- (2) The application must contain a statement that the purpose, or one of the purposes, of the warrant is to authorise the retention, or the retention and examination, of health records.
- (3) The Secretary of State may issue the warrant only if the Secretary of State considers that there are exceptional and compelling circumstances that make it necessary to authorise the retention, or the retention and examination, of health records.

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- (4) Subsection (5) applies if—
- (a) an application is made by or on behalf of the head of an intelligence service for a specific BPD warrant,
 - (b) the head of the intelligence service considers that the bulk personal dataset includes, or is likely to include, health records, and
 - (c) subsections (2) and (3) do not apply.
- (5) The application must contain either—
- (a) a statement that the head of the intelligence service considers that the bulk personal dataset includes health records, or
 - (b) a statement that the head of the intelligence service considers that it is likely that the bulk personal dataset includes health records and an assessment of how likely this is.
- (6) In this section, “health record” means a record, or a copy of a record, which—
- (a) consists of information relating to the physical or mental health or condition of an individual,
 - (b) was made by or on behalf of a health professional in connection with the care of that individual, and
 - (c) was obtained by the intelligence service from a health professional or a health service body or from a person acting on behalf of a health professional or a health service body in relation to the record or the copy.
- (7) In subsection (6)—
- “health professional” has the same meaning as in the Data Protection Act 1998 (see section 69 of that Act);
- “health service body” has the meaning given by section 69(3) of that Act.

207 Protected data: power to impose conditions

Where the Secretary of State decides to issue a specific BPD warrant, the Secretary of State may impose conditions which must be satisfied before protected data retained in reliance on the warrant may be selected for examination on the basis of criteria which are referable to an individual known to be in the British Islands at the time of the selection.

208 Approval of warrants by Judicial Commissioners

- (1) In deciding whether to approve a decision to issue a class BPD warrant or a specific BPD warrant, a Judicial Commissioner must review the Secretary of State’s conclusions as to the following matters—
- (a) whether the warrant is necessary on grounds falling within section 204(3)(a) or (as the case may be) section 205(6)(a),
 - (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) where the warrant authorises examination of bulk personal datasets of a class described in the warrant or (as the case may be) of a bulk personal dataset described in the warrant, whether—
 - (i) each of the specified operational purposes (see section 212) is a purpose for which the examination of bulk personal datasets of that

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- class or (as the case may be) the bulk personal dataset is or may be necessary, and
- (ii) the examination of bulk personal datasets of that class or (as the case may be) the bulk personal dataset is necessary as mentioned in section 204(3)(c)(ii) or (as the case may be) section 205(6)(c)(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 class BPD warrant or a specific BPD warrant, 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 class BPD warrant or a specific BPD warrant, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision to issue the warrant.

209 Approval of specific BPD warrants issued in urgent cases

- (1) This section applies where—
- (a) a specific BPD warrant 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 specific BPD warrant, the warrant—
- (a) ceases to have effect (unless already cancelled), and
- (b) may not be renewed,
- and section 208(4) does not apply in relation to the refusal to approve the decision.
- (5) Section 210 contains further provision about what happens if a Judicial Commissioner refuses to approve a decision to issue a warrant.

210 Failure to approve specific BPD warrant issued in urgent case

- (1) This section applies where under section 209(3) a Judicial Commissioner refuses to approve the decision to issue a warrant.

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- (2) The head of the intelligence service to whom the warrant was addressed must, so far as is reasonably practicable, secure that anything in the process of being done in reliance on the warrant stops as soon as possible.
- (3) The Judicial Commissioner may—
 - (a) direct that the whole or part of a bulk personal dataset retained in reliance on the warrant is destroyed;
 - (b) impose conditions as to the use or retention of the whole or part of any such bulk personal dataset.
- (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 head of the intelligence service to whom the warrant was addressed.
- (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) An intelligence service is not to be regarded as in breach of section 200(1) or (2) where it retains or (as the case may be) examines a bulk personal dataset in accordance with conditions imposed under subsection (3)(b).
- (9) Nothing in this section or section 209 affects the lawfulness of—
 - (a) anything done in reliance on the warrant before it ceases to have effect;
 - (b) if anything is in the process of being done in reliance on 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.

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

- (1) The decision to issue a class BPD warrant or a specific BPD warrant must be taken personally by the Secretary of State.
- (2) Before a class BPD warrant is issued, it must be signed by the Secretary of State.
- (3) Before a specific BPD warrant is issued, it must be signed by the Secretary of State (subject to subsection (4)).
- (4) If it is not reasonably practicable for a specific BPD warrant to be signed by the Secretary of State, it may be signed by a senior official designated by the Secretary of State 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 Secretary of State, and
- (b) the Secretary of State has personally and expressly authorised the issue of the warrant.

212 Requirements that must be met by warrants

- (1) A class BPD warrant or a specific BPD warrant must contain a provision stating whether it is a class BPD warrant or (as the case may be) a specific BPD warrant.
- (2) A class BPD warrant or a specific BPD 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 class BPD warrant must—
 - (a) include a description of the class of bulk personal datasets to which the warrant relates, and
 - (b) where the warrant authorises examination of bulk personal datasets of that class, specify the operational purposes for which data contained in bulk personal datasets of that class may be selected for examination.
- (4) A specific BPD warrant must—
 - (a) describe the bulk personal dataset to which the warrant relates,
 - (b) where the warrant authorises the retention or examination of replacement datasets, include a description that will enable those datasets to be identified,
 - (c) where the warrant authorises the examination of the bulk personal dataset or replacement datasets, specify the operational purposes for which data contained in the bulk personal dataset and any replacement datasets may be selected for examination, and
 - (d) where the Secretary of State has imposed conditions under section 207, specify those conditions.
- (5) The operational purposes specified in a class BPD warrant or a specific BPD 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 data contained in bulk personal datasets retained in reliance on class BPD warrants or specific BPD warrants may be selected for examination.
- (6) A class BPD warrant or a specific BPD 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 204(3)(a) or (as the case may be) section 205(6)(a).
- (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—

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- (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 Part, “the specified operational purposes”, in relation to a class BPD warrant or a specific BPD warrant, means the operational purposes specified in the warrant in accordance with this section.

Duration, modification and cancellation

213 Duration of warrants

- (1) A class BPD warrant or a specific BPD 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 214), or
 - (b) it is cancelled or (in the case of a specific BPD warrant) otherwise ceases to have effect before the end of that period (see sections 209 and 218).
- (2) In this section, “the relevant period”—
- (a) in the case of an urgent specific BPD 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—
 - (i) the day on which the warrant was issued, or
 - (ii) 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.
- (3) For the purposes of subsection (2)(a), a specific BPD warrant is an “urgent specific BPD warrant” if—
- (a) the warrant was issued without the approval of a Judicial Commissioner, and
 - (b) the Secretary of State considered that there was an urgent need to issue it.
- (4) For provision about the renewal of warrants, see section 214.

214 Renewal of warrants

- (1) If the renewal conditions are met, a class BPD warrant or a specific BPD warrant may be renewed, at any time during the renewal period, by an instrument issued by the Secretary of State.
- (2) The renewal conditions are—
- (a) that the Secretary of State considers that the warrant continues to be necessary on grounds falling within section 204(3)(a) or (as the case may be) section 205(6)(a),
 - (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 the conduct,

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- (c) where the warrant authorises examination of bulk personal datasets of a class described in the warrant or (as the case may be) of a bulk personal dataset described in the warrant, that the Secretary of State considers that—
 - (i) each of the specified operational purposes (see section 212) is a purpose for which the examination of bulk personal datasets of that class or (as the case may be) the bulk personal dataset continues to be, or may be, necessary, and
 - (ii) the examination of bulk personal datasets of that class or (as the case may be) the bulk personal dataset 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 specific BPD 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 class BPD warrant or a specific BPD 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 207 (protected data: power to impose conditions) applies in relation to the renewal of a specific BPD warrant as it applies in relation to the issue of such a warrant (whether or not any conditions have previously been imposed in relation to the warrant under that section).
- (6) Section 208 (approval of warrants by Judicial Commissioner) applies in relation to a decision to renew a warrant as it applies in relation to a decision to issue a warrant.
- (7) In this section—
- “the relevant period” has the same meaning as in section 213;
 - “urgent specific BPD warrant” is to be read in accordance with subsection (3) of that section.

215 Modification of warrants

- (1) The provisions of a class BPD warrant or a specific BPD warrant may be modified at any time by an instrument issued by the person making the modification.
- (2) The only modifications which may be made under this section are—
 - (a) in the case of a class BPD warrant, adding, varying or removing any operational purpose specified in the warrant as a purpose for which bulk personal datasets of a class described in the warrant may be examined;
 - (b) in the case of a specific BPD warrant, adding, varying or removing any operational purpose specified in the warrant as a purpose for which the bulk personal dataset described in the warrant may be examined.
- (3) In this section—
 - (a) a modification adding or varying any operational purpose is referred to as a “major modification”, and

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- (b) a modification removing any operational purpose 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 204(3)(a) or (as the case may be) section 205(6)(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 any bulk personal datasets to which the warrant relates 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 class BPD warrant or a specific BPD 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.

216 Approval of major modifications by Judicial Commissioners

- (1) In deciding whether to approve a decision to make a major modification of a class BPD warrant or a specific BPD 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).

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- (3) Where a Judicial Commissioner refuses to approve a decision to make a major modification under section 215, 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 215, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision to make the modification.

217 Approval of major modifications made in urgent cases

- (1) This section applies where—
 - (a) the Secretary of State makes a major modification of a class BPD warrant or a specific BPD 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 in reliance on the warrant by virtue of that modification stops as soon as possible,and section 216(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 in reliance on the warrant by virtue of the modification before the modification ceases to have effect;
 - (b) if anything is in the process of being done in reliance on 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.

218 Cancellation of warrants

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

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- (3) The cancellation conditions are—
- (a) that the warrant is no longer necessary on any grounds falling within section 204(3)(a) or (as the case may be) section 205(6)(a);
 - (b) that the conduct authorised by the warrant is no longer proportionate to what is sought to be achieved by that conduct;
 - (c) where the warrant authorises examination of bulk personal datasets of a class described in the warrant or (as the case may be) of a bulk personal dataset described in the warrant, that the examination of bulk personal datasets of that class or (as the case may be) of the bulk personal dataset is no longer necessary for any of the specified operational purposes (see section 212).

219 Non-renewal or cancellation of BPD warrants

- (1) This section applies where a class BPD warrant or a specific BPD warrant ceases to have effect because it expires without having been renewed or because it is cancelled.
- (2) The head of the intelligence service to whom the warrant was addressed may, before the end of the period of 5 working days beginning with the day on which the warrant ceases to have effect—
 - (a) apply for—
 - (i) a specific BPD warrant authorising the retention, or the retention and examination, of the whole or any part of the material retained by the intelligence service in reliance on the warrant which has ceased to have effect;
 - (ii) a class BPD warrant authorising the retention or (as the case may be) the retention and examination of bulk personal datasets of a class that is described in a way that would authorise the retention or (as the case may be) the retention and examination of the whole or any part of such material, or
 - (b) where the head of the intelligence service wishes to give further consideration to whether to apply for a warrant of a kind mentioned in paragraph (a)(i) or (ii), apply to the Secretary of State for authorisation to retain, or to retain and examine, the whole or any part of the material retained by the intelligence service in reliance on the warrant.
- (3) On an application under subsection (2)(b), the Secretary of State may—
 - (a) direct that any of the material to which the application relates be destroyed;
 - (b) with the approval of a Judicial Commissioner, authorise the retention or (as the case may be) the retention and examination of any of that material, subject to such conditions as the Secretary of State considers appropriate, for a period specified by the Secretary of State which may not exceed 3 months.
- (4) In deciding whether to give approval for the purposes of subsection (3)(b), 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 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).

- (5) Where a Judicial Commissioner refuses to approve a decision by the Secretary of State to authorise the retention or (as the case may be) the retention and examination of any material under subsection (3)(b), the Judicial Commissioner must give the Secretary of State written reasons for the decision.
- (6) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, refuses to approve such a decision, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision.
- (7) If, during the period specified by the Secretary of State under subsection (3)(b), the head of the intelligence service decides to apply for a warrant of a kind mentioned in subsection (2)(a)(i) or (ii), the head of the intelligence service must make the application as soon as reasonably practicable and before the end of the period specified by the Secretary of State.
- (8) Where a class BPD warrant or a specific BPD warrant ceases to have effect because it expires without having been renewed or it is cancelled, an intelligence service is not to be regarded as in breach of section 200(1) or (2) by virtue of its retention or examination of any material to which the warrant related during any of the following periods.

First period

The period of 5 working days beginning with the day on which the warrant ceases to have effect.

Second period

The period beginning with the day on which the head of the intelligence service makes an application under subsection (2)(a) or (b) in relation to the material and ending with the determination of the application.

Third period

The period during which the retention or examination of the material is authorised under subsection (3)(b).

Fourth period

Where authorisation under subsection (3)(b) is given and the head of the intelligence service subsequently makes, in accordance with subsection (7), an application for a specific BPD warrant or a class BPD warrant in relation to the material, the period (if any) beginning with the expiry of the authorisation under subsection (3)(b) and ending with the determination of the application for the warrant.

Further and supplementary provision

220 Initial examinations: time limits

- (1) This section applies where—
 - (a) an intelligence service obtains a set of information otherwise than in the exercise of a power conferred by a warrant or other authorisation issued or given under this Act, and
 - (b) the head of the intelligence service believes that—
 - (i) the set includes, or may include, personal data relating to a number of individuals, and

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- (ii) the nature of the set is, or may be, such that the majority of the individuals are not, and are unlikely to become, of interest to the intelligence service in the exercise of its functions.
- (2) The head of the intelligence service must take the following steps before the end of the permitted period.
- Step 1*
- Carry out an initial examination of the set for the purpose of deciding whether, if the intelligence service were to retain it after that initial examination and hold it electronically for analysis for the purposes of the exercise of its functions, the intelligence service would be retaining a bulk personal dataset (see section 199).
- Step 2*
- If the intelligence service would be retaining a bulk personal dataset as mentioned in step 1, decide whether to retain the set and hold it electronically for analysis for the purposes of the exercise of the functions of the intelligence service.
- Step 3*
- If the head of the intelligence service decides to retain the set and hold it electronically for analysis as mentioned in step 2, apply for a specific BPD warrant as soon as reasonably practicable after making that decision (unless the retention of the dataset is authorised by a class BPD warrant).
- (3) The permitted period begins when the head of the intelligence service first forms the beliefs mentioned in subsection (1)(b).
- (4) The permitted period ends—
- (a) where the set of information was created in the United Kingdom, 3 months after the day on which it begins;
 - (b) where the set of information was created outside the United Kingdom, 6 months after the day on which it begins.
- (5) If the head of the intelligence service applies for a specific BPD warrant in accordance with step 3 (set out in subsection (2))—
- (a) the intelligence service is not to be regarded as in breach of section 200(1) by virtue of retaining the bulk personal dataset during the period between the taking of the decision mentioned in step 2 and the determination of the application for the specific BPD warrant, and
 - (b) the intelligence service is not to be regarded as in breach of section 200(2) by virtue of examining the bulk personal dataset during that period if the examination is necessary for the purposes of the making of the application for the warrant.

221 Safeguards relating to examination of bulk personal datasets

- (1) The Secretary of State must ensure, in relation to every class BPD warrant or specific BPD warrant which authorises examination of bulk personal datasets of a class described in the warrant or (as the case may be) of a bulk personal dataset described in the warrant, that arrangements are in force for securing that—
- (a) any selection of data contained in the datasets (or dataset) for examination is carried out only for the specified purposes (see subsection (2)), and
 - (b) the selection of any such data for examination is necessary and proportionate in all the circumstances.

- (2) The selection of data contained in bulk personal datasets 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 212.
- (3) The Secretary of State must also ensure, in relation to every specific BPD warrant which specifies conditions imposed under section 207, that arrangements are in force for securing that any selection for examination of protected data on the basis of criteria which are referable to an individual known to be in the British Islands at the time of the selection is in accordance with the conditions specified in the warrant.
- (4) In this section “specified in the warrant” means specified in the warrant at the time of the selection of the data for examination.

222 Additional safeguards for items subject to legal privilege: examination

- (1) Subsections (2) and (3) apply if, in a case where protected data retained in reliance on a specific BPD warrant is to be selected for examination—
 - (a) the purpose, or one of the purposes, of using the criteria to be used for the selection of the data for examination (“the relevant criteria”) is to identify any items subject to legal privilege, or
 - (b) the use of the relevant criteria is likely to identify such items.
- (2) If the relevant criteria are referable to an individual known to be in the British Islands at the time of the selection, the data may be selected for examination using the relevant criteria only if the Secretary of State has approved the use of those criteria.
- (3) In any other case, the data 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.
- (4) The Secretary of State may give approval for the purposes of subsection (2) only with the approval of a Judicial Commissioner.
- (5) Approval may be given under subsection (2) or (3) only if—
 - (a) the Secretary of State or (as the case may be) the senior official considers that the arrangements mentioned in section 205(6)(d) include specific arrangements in respect of items subject to legal privilege, and
 - (b) where subsection (1)(a) applies, the Secretary of State or (as the case may be) the senior official considers that there are exceptional and compelling circumstances that make it necessary to authorise the use of the relevant criteria.
- (6) In deciding whether to give an approval under subsection (2) or (3) in a case where subsection (1)(a) applies, the Secretary of State or (as the case may be) the senior official must have regard to the public interest in the confidentiality of items subject to legal privilege.
- (7) For the purposes of subsection (5)(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 data for examination outweighs the public interest in the confidentiality of items subject to legal privilege,

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- (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.
- (8) In deciding whether to give approval for the purposes of subsection (4), 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 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).
- (9) Subsections (10) and (11) apply if, in a case where protected data retained in reliance on a specific BPD warrant is to be selected for examination—
- (a) the purpose, or one of the purposes, of using the criteria to be used for the selection of the data for examination (“the relevant criteria”) is to identify data that, if the data or any underlying material were not created or held with the intention of furthering a criminal purpose, would be an item subject to legal privilege, and
 - (b) the person to whom the warrant is addressed considers that the data (“the targeted data”) or any underlying material is likely to be data or underlying material created or held with the intention of furthering a criminal purpose.
- (10) If the relevant criteria are referable to an individual known to be in the British Islands at the time of the selection, the data may be selected for examination using the relevant criteria only if the Secretary of State has approved the use of those criteria.
- (11) In any other case, the data 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.
- (12) Approval may be given under subsection (10) or (11) only if the Secretary of State or (as the case may be) the senior official considers that the targeted data or the underlying material is likely to be data or underlying material created or held with the intention of furthering a criminal purpose.
- (13) In this section, “underlying material”, in relation to data retained in reliance on a specific BPD warrant, means any communications or other items of information from which the data was produced.

223 Additional safeguards for items subject to legal privilege: retention following examination

- (1) Where an item subject to legal privilege is retained following its examination in reliance on a specific BPD warrant, 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.
- (2) Unless the Investigatory Powers Commissioner considers that subsection (4) 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.

- (3) If the Investigatory Powers Commissioner considers that subsection (4) applies to the item, the Commissioner may nevertheless impose such conditions under subsection (2)(b) as the Commissioner considers necessary for the purpose of protecting the public interest in the confidentiality of items subject to legal privilege.
- (4) 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.
- (5) The Investigatory Powers Commissioner—
 - (a) may require an affected party to make representations about how the Commissioner should exercise any function under subsection (2), 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)).
- (6) Each of the following is an “affected party” for the purposes of subsection (5)—
 - (a) the Secretary of State;
 - (b) the person to whom the warrant is or was addressed.

224 Offence of breaching safeguards relating to examination of material

- (1) A person commits an offence if—
 - (a) the person selects for examination any data contained in a bulk personal dataset retained in reliance on a class BPD warrant or a specific BPD warrant,
 - (b) the person knows or believes that the selection of that data is in breach of a requirement specified in subsection (2), and
 - (c) the person deliberately selects that data in breach of that requirement.
- (2) The requirements specified in this subsection are that any selection for examination of the data—
 - (a) is carried out only for the specified purposes (see subsection (3)),
 - (b) is necessary and proportionate, and
 - (c) if the data is protected data, satisfies any conditions imposed under section 207.
- (3) The selection for examination of the data 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 212.

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

- (4) 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;

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- (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.
- (5) 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.

225 Application of Part to bulk personal datasets obtained under this Act

- (1) Subject to subsection (2), this section applies where a bulk personal dataset has been obtained by an intelligence service under a warrant or other authorisation issued or given under this Act (and, accordingly, section 200(1) and (2) do not apply by virtue of section 201(1)).
- (2) This section does not apply where the bulk personal dataset was obtained by the intelligence service under a bulk acquisition warrant issued under Chapter 2 of Part 6.
- (3) Where this section applies, the Secretary of State may, on the application of the head of the intelligence service, give a direction that—
 - (a) the intelligence service may retain, or retain and examine, the bulk personal dataset by virtue of the direction,
 - (b) any other power of the intelligence service to retain or examine the bulk personal dataset, and any associated regulatory provision, ceases to apply in relation to the bulk personal dataset (subject to subsection (5)), and
 - (c) section 201(1) also ceases to apply in relation to the bulk personal dataset.
- (4) Accordingly, where a direction is given under subsection (3), the intelligence service may exercise its power by virtue of the direction to retain, or to retain and examine, the bulk personal dataset only if authorised to do so by a class BPD warrant or a specific BPD warrant under this Part.
- (5) A direction under subsection (3) may provide for any associated regulatory provision specified in the direction to continue to apply in relation to the bulk personal dataset, with or without modifications specified in the direction.
- (6) The power conferred by subsection (5) must be exercised to ensure that—
 - (a) where section 56 and Schedule 3 applied in relation to the bulk personal dataset immediately before the giving of the direction, they continue to apply in relation to it (without modification);
 - (b) where sections 57 to 59 applied in relation to the bulk personal dataset immediately before the giving of the direction, they continue to apply in

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relation to it with the modification that the reference in section 58(7)(a) to the provisions of Part 2 is to be read as including a reference to the provisions of this Part.

- (7) The Secretary of State may only give a direction under subsection (3) with the approval of a Judicial Commissioner.
- (8) In deciding whether to give approval for the purposes of subsection (7), the Judicial Commissioner must apply the same principles as would be applied by a court on an application for judicial review.
- (9) Where a Judicial Commissioner refuses to approve a decision by the Secretary of State to give a direction under subsection (3), the Judicial Commissioner must give the Secretary of State written reasons for the decision.
- (10) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, refuses to approve such a decision, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision.
- (11) A direction under subsection (3)—
 - (a) may not be revoked;
 - (b) may be varied but only for the purpose of altering or removing any provision included in the direction under subsection (5).
- (12) Subsections (7) to (10) apply in relation to the variation of a direction under subsection (3) as they apply in relation to the giving of a direction under that subsection.
- (13) The head of an intelligence service may, at the same time as applying for a direction under subsection (3), apply for a specific BPD warrant under section 205 (and the Secretary of State may issue such a warrant at the same time as giving the direction).
- (14) In this section, “associated regulatory provision”, in relation to a power of an intelligence service to retain or examine a bulk personal dataset, means any provision which—
 - (a) is made by or for the purposes of this Act (other than this Part), and
 - (b) applied in relation to the retention, examination, disclosure or other use of the bulk personal dataset immediately before the giving of a direction under subsection (3).

226 Part 7: interpretation

- (1) In this Part—
 - “class BPD warrant” has the meaning given by section 200(3)(a);
 - “personal data” has the meaning given by section 199(2);
 - “senior official” means a member of the Senior Civil Service or a member of the Senior Management Structure of Her Majesty’s Diplomatic Service;
 - “specific BPD warrant” has the meaning given by section 200(3)(b);
 - “the specified operational purposes” has the meaning given by section 212(12).
- (2) See also—
 - section 263 (general definitions),
 - section 265 (index of defined expressions).