



# Regulation of Investigatory Powers Act 2000

## 2000 CHAPTER 23

### PART II

#### SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES

##### *Police and <sup>F1</sup>Revenue and Customs] authorisations*

#### Textual Amendments

- F1** Words in cross-heading before s. 33 substituted (15.2.2008) by [Serious Crime Act 2007 \(c. 27\)](#), ss. 88, 94, [Sch. 12 para. 11](#); [S.I. 2008/219](#), [art. 2\(b\)](#)

### 33 Rules for grant of authorisations.

- (1) A person who is a designated person for the purposes of section 28 or 29 by reference to his office, rank or position with a police force <sup>F2</sup> . . . shall not grant an authorisation under that section except on an application made by a member of the same force <sup>F3</sup> . . . [<sup>F4</sup> (subject to [<sup>F5</sup>subsection (1ZB)] [<sup>F6</sup> and section 33A ] )].
- [<sup>F7</sup>(1ZA) Subsection (1ZB) applies if the chief officer of police of a police force (“the authorising force”) has made an agreement under section [<sup>F8</sup> 22A ] of the Police Act 1996 with the chief office of police of one or more other police forces.
- (1ZB) A person who is a designated person for the purposes of section 28 or 29 by reference to an office, rank or position with the authorising force may grant an authorisation under that section on an application made by a member of a collaborative force.
- (1ZC) For the purposes of subsection (1ZB) a police force is a collaborative force if—
- its chief officer of police is a party to the agreement mentioned in subsection (1ZA); and

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- (b) its members are permitted by the terms of the agreement to make applications for authorisations under section 28 or 29 to a person who is a designated person for the purposes of that section by reference to an office, rank or position with the authorising force.

<sup>F9</sup>(1ZD) . . . . .

<sup>F9</sup>(1ZE) . . . . .

<sup>F9</sup>(1ZF) . . . . .]

[<sup>F10</sup>(1A) A person who is a designated person for the purposes of section 28 or 29 by reference to his office or position with the [<sup>F11</sup>National Crime Agency] shall not grant an authorisation under that section except on an application made by a member of the staff of the Agency [<sup>F12</sup> (subject to section 33A) ] .]

<sup>F13</sup>(1B) . . . . .

[<sup>F14</sup>(2) A person who is a designated person for the purposes of section 28 or 29 by reference to office, rank or position in Her Majesty's Revenue and Customs shall not grant an authorisation under that section except on an application made by an officer of Revenue and Customs.]

(3) [<sup>F15</sup>Subject to [<sup>F16</sup>subsection (3ZB)] [<sup>F17</sup> and section 33A ] ,] A person who is a senior authorising officer by reference to a police force <sup>F18</sup> . . . shall not grant an authorisation for the carrying out of intrusive surveillance except—

- (a) on an application made by a member of the same force <sup>F19</sup> . . . ; and  
 (b) in the case of an authorisation for the carrying out of intrusive surveillance in relation to any residential premises, where those premises are in the area of operation of that force <sup>F19</sup> . . . .

[<sup>F20</sup>(3A) [<sup>F21</sup>The Director General of the National Crime Agency] or a person designated for the purposes of section 32(6)(k) by that Director General shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by a [<sup>F22</sup>National Crime Agency officer] [<sup>F23</sup> (subject to section 33A) ] .]

[<sup>F24</sup>(3ZA) Subsection (3ZB) applies if—

- (a) the chief officer of police of a police force (“the surveillance authorising force”) has made an agreement under section [<sup>F25</sup> 22A ] of the Police Act 1996 with the chief office of police of one or more other police forces; and  
 (b) an application for an authorisation for the carrying out of intrusive surveillance is made by a member of a collaborative force.

(3ZB) A person who is a senior authorising officer by reference to the surveillance authorising force may—

- (a) grant the authorisation;  
 (b) in a case where the authorisation is for the carrying out of intrusive surveillance in relation to any residential premises, grant the authorisation only in relation to premises in the area which is—  
 (i) the area of operation of a collaborative force; and  
 (ii) specified in relation to members of that force in the agreement mentioned in subsection (3ZA).

(3ZC) For the purposes of subsections (3ZA) and (3ZB) a police force is a collaborative force if—

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- (a) its chief officer of police is a party to the agreement mentioned in subsection (3ZA); and
- (b) its members are permitted by the terms of the agreement to make applications for authorisations for the carrying out of intrusive surveillance to a person who is a senior authorising officer by reference to the surveillance authorising force.

<sup>F26</sup>(3ZD) .....

<sup>F26</sup>(3ZE) .....

<sup>F26</sup>(3ZF) .....

<sup>F27</sup>(4) A person who is a senior authorising officer by virtue of a designation by the Commissioners for Her Majesty's Revenue and Customs shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by an officer of Revenue and Customs.]

<sup>F28</sup>(4A) The <sup>F29</sup>chair of the CMA] shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by an officer of the <sup>F30</sup>CMA].]

<sup>F31</sup>(4ZA) A senior official who is a senior authorising officer by virtue of a designation by the Secretary of State under section 32(6)(ma) shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by an immigration officer.]

(5) A single authorisation may combine both—

- (a) an authorisation granted under this Part by, or on the application of, an individual who is a member of a police force, <sup>F32</sup>a <sup>F33</sup>National Crime Agency officer<sup>F34</sup> ...,] or who is <sup>F35</sup>an officer of Revenue and Customs <sup>F36</sup>, an immigration officer]]<sup>F37</sup> or the chair or an officer of the CMA]; and
- (b) an authorisation given by, or on the application of, that individual under Part III of the <sup>M1</sup>Police Act 1997;

but the provisions of this Act or that Act that are applicable in the case of each of the authorisations shall apply separately in relation to the part of the combined authorisation to which they are applicable.

<sup>F38</sup>(5A) In subsections (1ZA) to (1ZC) and (3ZA) to (3ZC) a reference to a police force is to the following—

- (a) any police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);
- (b) the metropolitan police force; and
- (c) the City of London police force.

<sup>F39</sup>(5B) .....

(6) For the purposes of this section—

- (a) the area of operation of a police force maintained under section 2 of the <sup>M2</sup>Police Act 1996, of the metropolitan police force <sup>F40</sup>or], of the City of London police force <sup>F41</sup>... is the area for which that force is maintained;
- <sup>F42</sup>(aa) the area of operation of the Police Service of Scotland is Scotland;]
- (b) the area of operation of the Royal Ulster Constabulary is Northern Ireland;
- (c) residential premises are in the area of operation of the Ministry of Defence Police if they are premises where the members of that police force, under

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section 2 of the <sup>M3</sup>Ministry of Defence Police Act 1987, have the powers and privileges of a constable;

- (d) residential premises are in the area of operation of the [<sup>F43</sup>Royal Navy Police] the Royal Military Police or the Royal Air Force Police if they are premises owned or occupied by, or used for residential purposes by, a person subject to service discipline;
- (e) the area of operation of the British Transport Police <sup>F44</sup> . . . is the United Kingdom;

<sup>F45</sup>(f) . . . . .

and references in this section to the United Kingdom or to any part or area of the United Kingdom include any adjacent waters within the seaward limits of the territorial waters of the United Kingdom.

[<sup>F46</sup>(7) In subsection (6) “subject to service law” and “civilian subject to service discipline” have the same meanings as in the Armed Forces Act 2006.]

#### Textual Amendments

- F2** Words in s. 33(1) repealed (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\), ss. 59, 174, 178, Sch. 4 para. 137\(2\)\(a\), Sch. 17](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. paras. 10, 13(hh) (subject to [art. 4\(2\)-\(7\)](#))
- F3** Words in s. 33(1) repealed (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\), ss. 59, 174, 178, Sch. 4 para. 137\(2\)\(b\), Sch. 17](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. paras. 10, 13(hh) (subject to [art. 4\(2\)-\(7\)](#))
- F4** Words in s. 33(1) inserted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\), ss. 9\(2\)](#), 116; S.I. 2009/3096, [art. 3\(d\)](#)
- F5** Words in s. 33(1) substituted (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\)](#), art. 1(2), [Sch. 2 para. 33\(11\)\(a\)](#)
- F6** Words in s. 33(1) inserted (31.1.2017 for specified purposes, 31.3.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(5)(e)(6)(b), [Sch. 19 para. 5\(2\)](#)
- F7** S. 33(1ZA)-(1ZF) inserted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\), ss. 9\(3\)](#), 116; S.I. 2009/3096, [art. 3\(d\)](#)
- F8** Word in s. 33(1ZA) substituted (31.1.2017 for specified purposes, 31.3.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(5)(e)(6)(b), [Sch. 19 para. 5\(3\)](#)
- F9** S. 33(1ZD)-(1ZF) omitted (1.4.2013) by virtue of [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\)](#), art. 1(2), [Sch. 2 para. 33\(11\)\(b\)](#)
- F10** S. 33(1A) inserted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\), ss. 59, 178, Sch. 4 para. 137\(3\)](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. para. 10 (subject to [art. 4\(2\)-\(7\)](#))
- F11** Words in s. 33(1A) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 8 para. 83\(2\)](#); S.I. 2013/1682, art. 3(v)
- F12** Words in s. 33(1A) inserted (31.1.2017 for specified purposes, 31.3.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(5)(e)(6)(b), [Sch. 19 para. 5\(4\)](#)
- F13** S. 33(1B) omitted (1.4.2013) by virtue of [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\)](#), art. 1(2), [Sch. 2 para. 33\(11\)\(b\)](#)
- F14** S. 33(2) substituted (15.2.2008) by [Serious Crime Act 2007 \(c. 27\)](#), ss. 88, 94, [Sch. 12 para. 11\(a\)](#); S.I. 2008/219, [art. 2\(b\)](#)
- F15** Words in s. 33(3) inserted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\), ss. 9\(4\)](#), 116; S.I. 2009/3096, [art. 3\(d\)](#)

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- F16** Words in s. 33(3) substituted (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\)](#), art. 1(2), **Sch. 2 para. 33(11)(c)**
- F17** Words in s. 33(3) inserted (31.1.2017 for specified purposes, 31.3.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(5)(e)(6)(b), **Sch. 19 para. 5(5)**
- F18** Words in s. 33(3) repealed (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 174, 178, **Sch. 4 para. 137(4)(a)**, **Sch. 17**; S.I. 2006/378, **art. 4(1)**, **Sch. paras. 10, 13(hh)** (subject to art. 4(2)-(7))
- F19** Words in s. 33(3) repealed (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 174, 178, **Sch. 4 para. 137(4)(b)**, **Sch. 17**; S.I. 2006/378, **art. 4(1)**, **Sch. paras. 10, 13(hh)** (subject to art. 4(2)-(7))
- F20** S. 33(3A) inserted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, **Sch. 4 para. 137(5)**; S.I. 2006/378, **art. 4(1)**, **Sch. para. 10** (subject to art. 4(2)-(7))
- F21** Words in s. 33(3A) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 8 para. 83(3)(a)**; S.I. 2013/1682, art. 3(v)
- F22** Words in s. 33(3A) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 8 para. 83(3)(b)**; S.I. 2013/1682, art. 3(v)
- F23** Words in s. 33(3A) inserted (31.1.2017 for specified purposes, 31.3.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(5)(e)(6)(b), **Sch. 19 para. 5(7)**
- F24** S. 33(3ZA)-(3ZF) inserted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), **ss. 9(5)**, 116; S.I. 2009/3096, **art. 3(d)**
- F25** Word in s. 33(3ZA)(a) substituted (31.1.2017 for specified purposes, 31.3.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(5)(e)(6)(b), **Sch. 19 para. 5(6)**
- F26** S. 33(3ZD)-(3ZF) omitted (1.4.2013) by virtue of [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\)](#), art. 1(2), **Sch. 2 para. 33(11)(d)**
- F27** S. 33(4) substituted (15.2.2008) by [Serious Crime Act 2007 \(c. 27\)](#), ss. 88, 94, **Sch. 12 para. 11(b)**; S.I. 2008/219, **art. 2(b)**
- F28** S. 33(4A) inserted (20.6.2003) by [2002 c. 40](#), ss. 199(3), 279; S.I. 2003/1397, **art. 2(1)**, **Sch.**
- F29** Words in s. 33(4A) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 135(2)(a)** (with art. 3)
- F30** Word in s. 33(4A) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 135(2)(b)** (with art. 3)
- F31** S. 33(4ZA) inserted (25.6.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 21 para. 7(2)** (with **Sch. 20 para. 29**); S.I. 2013/1042, art. 4(i)
- F32** Words in s. 33(5)(a) substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, **Sch. 4 para. 137(6)**; S.I. 2006/378, **art. 4(1)**, **Sch. para. 10** (subject to art. 4(2)-(7))
- F33** Words in s. 33(5)(a) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 8 para. 83(4)**; S.I. 2013/1682, art. 3(v)
- F34** Words in s. 33(5)(a) omitted (1.4.2013) by virtue of [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\)](#), art. 1(2), **Sch. 2 para. 33(11)(e)**
- F35** Words in s. 33(5)(a) substituted (15.2.2008) by [Serious Crime Act 2007 \(c. 27\)](#), ss. 88, 94, **Sch. 12 para. 11(c)**; S.I. 2008/219, **art. 2(b)**
- F36** Words in s. 33(5)(a) inserted (25.6.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 21 para. 7(3)** (with **Sch. 20 para. 29**); S.I. 2013/1042, art. 4(i)
- F37** Words in s. 33(5)(a) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 135(3)** (with art. 3)
- F38** S. 33(5A)(5B) inserted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), **ss. 9(6)**, 116; S.I. 2009/3096, **art. 3(d)**

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- F39** S. 33(5B) omitted (1.4.2013) by virtue of [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\)](#), art. 1(2), **Sch. 2 para. 33(11)(f)**
- F40** Word in s. 33(6)(a) inserted (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\)](#), art. 1(2), **Sch. 2 para. 33(11)(g)(i)(aa)**
- F41** Words in s. 33(6)(a) omitted (1.4.2013) by virtue of [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\)](#), art. 1(2), **Sch. 2 para. 33(11)(g)(i)(bb)**
- F42** S. 33(6)(aa) inserted (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\)](#), art. 1(2), **Sch. 2 para. 33(11)(g)(ii)**
- F43** Words in s. 33(6)(d) substituted (4.6.2007) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383, **Sch. 16 para. 171(2)(a)**; S.I. 2007/1442, **art. 2(1)**
- F44** Words in s. 33(6)(e) repealed (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 174, 178, **Sch. 4 para. 137(7)(a)**, **Sch. 17**; S.I. 2006/378, **art. 4(1)**, **Sch. paras. 10, 13(hh)** (subject to art. 4(2)-(7))
- F45** S. 33(6)(f) repealed (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 174, 178, **Sch. 4 para. 137(7)(b)**, **Sch. 17**; S.I. 2006/378, **art. 4(1)**, **Sch. paras. 10, 13(hh)** (subject to art. 4(2)-(7))
- F46** S. 33(7) substituted (28.3.2009 for certain purposes otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383, **Sch. 16 para. 171(3)**; S.I. 2009/812, **art. 3** (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, **art. 4**

#### Marginal Citations

- M1** 1997 c. 50.  
**M2** 1996 c. 16.  
**M3** 1987 c. 4.

### [<sup>F47</sup>33A Section 33: further provision in cases where NCA is party to collaboration agreement

- (1) This section applies where the Director General of the National Crime Agency has made a collaboration agreement with the chief officer of police of one or more police forces (a “collaborative police force”).
- (2) A person who is a designated person for the purposes of section 28 or 29 by reference to an office, rank or position with a collaborative police force may grant an authorisation under that section on an application made by a National Crime Agency officer.
- (3) A person who is a designated person for the purposes of section 28 or 29 by reference to their position as a National Crime Agency officer may grant an authorisation under that section on an application made by a member of a collaborative police force.
- (4) Authorisations may be granted to persons by virtue of subsection (2) or (3) only if such persons are permitted under the terms of the collaboration agreement to make applications for authorisations under section 28 or 29 to a person who is a designated person for the purposes of that section—
  - (a) in the case of authorisations granted by virtue of subsection (2), by reference to an office, rank or position with the collaborative police force concerned, or
  - (b) in the case of authorisations granted by virtue of subsection (3), by reference to the person's position as a National Crime Agency officer.

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- (5) A person who is a senior authorising officer by reference to a collaborative police force may grant an authorisation for the carrying out of intrusive surveillance on an application made by a National Crime Agency officer.
- (6) The Director General of the National Crime Agency, or a person designated for the purposes of section 32(6)(k) by that Director General, may grant an authorisation for the carrying out of intrusive surveillance on an application made by a member of a collaborative police force.
- (7) Authorisations may be granted to persons by virtue of subsection (5) or (6) only if such persons are permitted under the terms of the collaboration agreement to make applications for authorisations for the carrying out of intrusive surveillance to a person who—
  - (a) in the case of authorisations granted by virtue of subsection (5), is a senior authorising officer by reference to the collaborative police force concerned, or
  - (b) in the case of authorisations granted by virtue of subsection (6), is the Director General of the National Crime Agency or a person designated for the purposes of section 32(6)(k) by that Director General.
- (8) In the case of an application made by virtue of subsection (5) or (6) for the carrying out of intrusive surveillance in relation to any residential premises, authorisation may be granted only in relation to premises in the area which is—
  - (a) the area of operation of a collaborative police force, and
  - (b) specified in relation to members of that force in the collaboration agreement.
- (9) For the purposes of this section the area of operation of a collaborative police force is the area for which that force is maintained.
- (10) In this section—

“collaboration agreement” means an agreement made under section 22A of the Police Act 1996;

“collaborative police force” has the meaning given by subsection (1);

“police force” has the meaning given by section 33(5A).]

#### Textual Amendments

- F47** S. 33A inserted (31.1.2017 for specified purposes, 31.3.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\), s. 183\(5\)\(e\)\(6\)\(b\), Sch. 19 para. 6](#)

### 34 Grant of authorisations in the senior officer’s absence.

- (1) This section applies in the case of an application for an authorisation for the carrying out of intrusive surveillance where—
  - (a) the application is one made by a member of a police force, [<sup>F48</sup>a [<sup>F49</sup>National Crime Agency officer]] or by [<sup>F50</sup>[<sup>F51</sup>an officer of the CMA] or][<sup>F52</sup>an officer of Revenue and Customs [<sup>F53</sup>or an immigration officer];] and
  - (b) the case is urgent.
- (2) If —
  - (a) it is not reasonably practicable, having regard to the urgency of the case, for the application to be considered by any person who is a senior authorising

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officer by reference to the force [<sup>F54</sup>or Agency] in question or, as the case may be, [<sup>F55</sup>as the chair of the CMA or] by virtue of a designation by [<sup>F56</sup>the Commissioners for Her Majesty's Revenue and Customs [<sup>F57</sup>or the Secretary of State],] and

- (b) it also not reasonably practicable, having regard to the urgency of the case, for the application to be considered by a person (if there is one) who is entitled, as a designated deputy of a senior authorising officer, to exercise the functions in relation to that application of such an officer,

the application may be made to and considered by any person who is entitled under subsection (4) to act for any senior authorising officer who would have been entitled to consider the application.

- (3) A person who considers an application under subsection (1) shall have the same power to grant an authorisation as the person for whom he is entitled to act.

- (4) For the purposes of this section—

- (a) a person is entitled to act for the chief constable of a police force maintained under section 2 of the <sup>M4</sup>Police Act 1996 if he holds the rank of assistant chief constable in that force;
- (b) a person is entitled to act for the Commissioner of Police of the Metropolis, or for an Assistant Commissioner of Police of the Metropolis, if he holds the rank of commander in the metropolitan police force;
- (c) a person is entitled to act for the Commissioner of Police for the City of London if he holds the rank of commander in the City of London police force;
- (d) a person is entitled to act for the chief constable of [<sup>F58</sup>the Police Service of Scotland if he holds the rank of deputy or assistant chief constable of the Police Service of Scotland];
- (e) a person is entitled to act for the Chief Constable of the Royal Ulster Constabulary, or for the Deputy Chief Constable of the Royal Ulster Constabulary, if he holds the rank of assistant chief constable in the Royal Ulster Constabulary;
- (f) a person is entitled to act for the Chief Constable of the Ministry of Defence Police if he holds the rank of deputy or assistant chief constable in that force;
- (g) a person is entitled to act for the Provost Marshal of the [<sup>F59</sup>Royal Navy Police] if he holds the position of assistant Provost Marshal in [<sup>F60</sup>that force];
- (h) a person is entitled to act for the Provost Marshal of the Royal Military Police or the Provost Marshal of the Royal Air Force Police if he holds the position of deputy Provost Marshal in the police force in question;
- (i) a person is entitled to act for the Chief Constable of the British Transport Police if he holds the rank of deputy or assistant chief constable in that force;
- [<sup>F61</sup>(j) a person is entitled to act for the [<sup>F62</sup>Director General of the National Crime Agency] if he is a person designated for the purposes of this paragraph by that Director General as a person entitled so to act in an urgent case;]
- (l) a person is entitled to act for a person who is a senior authorising officer by virtue of a designation by [<sup>F63</sup>the Commissioners for Her Majesty's Revenue and Customs,] if he is [<sup>F64</sup>a senior official] designated for the purposes of this paragraph by those Commissioners as a person entitled so to act in an urgent case.

- [<sup>F65</sup>(la) a person is entitled to act for a person who is a senior authorising officer by virtue of a designation under section 32(6)(ma), if the person is a senior official in the department of the Secretary of State by whom functions relating



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to immigration are exercisable who is designated for the purposes of this paragraph by the Secretary of State as a person entitled so to act in an urgent case;]

[<sup>F66</sup>(m) a person is entitled to act for the [<sup>F67</sup>chair of the CMA if he is an officer of the CMA] designated by it for the purposes of this paragraph as a person entitled so to act in an urgent case.]

<sup>F68</sup>(5) . . . . .

(6) In this section “designated deputy”—

[<sup>F69</sup>(a) in relation to the chief constable for a police force in England and Wales, means—

- (i) the person who is the appropriate deputy chief constable for the purposes of section 12A(1) of the Police Act 1996, or
- (ii) a person holding the rank of assistant chief constable who is designated to act under section 12A(2) of that Act;

(aa) in relation to the chief constable [<sup>F70</sup>of the Police Service of Scotland, means the deputy chief constable designated under section 18(3) of the Police and Fire Reform (Scotland) Act 2012;] —

- (i) a person holding the rank of deputy chief constable and, where there is more than one person in the police force who holds that rank, who is designated as the officer having the powers and duties conferred on a deputy chief constable by section 5A(1) of the Police (Scotland) Act 1967, or
- (ii) a person holding the rank of assistant chief constable who is designated to act under section 5A(2) of that Act;]

(b) in relation to the Commissioner of Police for the City of London, means a person authorised to act under section 25 of the <sup>M5</sup>City of London Police Act 1839;

<sup>F71</sup>(c) . . . . .

### Textual Amendments

- F48** Words in s. 34(1)(a) substituted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 138(2)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))
- F49** Words in s. 34(1)(a) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 84(2)**; S.I. 2013/1682, **art. 3(v)**
- F50** Words in s. 34(1)(a) inserted (20.6.2003) by 2002 c. 40, ss. 199(5)(a), 279; S.I. 2003/1397, **art. 2(1)**, Sch.
- F51** Words in s. 34(1)(a) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 136(2)** (with art. 3)
- F52** Words in s. 34(1) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 12(a)**; S.I. 2008/219, **art. 2(b)**
- F53** Words in s. 34(1)(a) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 8(2)** (with Sch. 20 para. 29); S.I. 2013/1042, art. 4(i)
- F54** Words in s. 34(2)(a) substituted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 138(3)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))
- F55** Words in s. 34(2)(a) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 136(3)** (with art. 3)

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- F56** Words in s. 34(2)(a) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 12(b)**; S.I. 2008/219, **art. 2(b)**
- F57** Words in s. 34(2)(a) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 8(3)** (with **Sch. 21 para. 40**); S.I. 2013/1042, **art. 4(i)**
- F58** Words in s. 34(4)(d) substituted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), **art. 1(2)**, **Sch. 2 para. 33(12)(a)**
- F59** Words in s. 34(4)(g) substituted (4.6.2007) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 172(a)**; S.I. 2007/1442, **art. 2(1)**
- F60** Words in s. 34(4)(g) substituted (4.6.2007) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 172(b)**; S.I. 2007/1442, **art. 2(1)**
- F61** S. 34(4)(j) substituted (1.4.2006) for s. 34(4)(j)(k) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 138(4)**; S.I. 2006/378, **art. 4(1)**, **Sch. para. 10** (subject to **art. 4(2)-(7)**)
- F62** Words in s. 34(4)(j) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 84(3)**; S.I. 2013/1682, **art. 3(v)**
- F63** Words in s. 34(4)(l) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 12(c)(i)**; S.I. 2008/219, **art. 2(b)**
- F64** Words in s. 34(4)(l) inserted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 12(c)(ii)**; S.I. 2008/219, **art. 2(b)**
- F65** S. 34(4)(la) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 8(4)** (with **Sch. 21 para. 40**); S.I. 2013/1042, **art. 4(i)**
- F66** S. 34(4)(m) inserted (20.6.2003) by 2002 c. 40, ss. 199(5)(c), 279; S.I. 2003/1397, **art. 2(1)**, **Sch.**
- F67** Words in s. 34(4)(m) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), **art. 1(1)**, **Sch. 1 para. 136(4)** (with **art. 3**)
- F68** S. 34(5) repealed (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 174, 178, **Sch. 4 para. 138(5)**, **Sch. 17**; S.I. 2006/378, **art. 4(1)**, **Sch. paras. 10, 13(hh)** (subject to **art. 4(2)-(7)**)
- F69** S. 34(6)(a)(aa) substituted (8.11.2006) for s. 34(6)(a) by Police and Justice Act 2006 (c. 48), ss. 52, 53, **Sch. 14 para. 39**
- F70** Words in s. 34(6)(aa) substituted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), **art. 1(2)**, **Sch. 2 para. 33(12)(b)**
- F71** S. 34(6)(c) repealed (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 174, 178, **Sch. 4 para. 138(6)**, **Sch. 17**; S.I. 2006/378, **art. 4(1)**, **Sch. paras. 10, 13(hh)** (subject to **art. 4(2)-(7)**)

#### Marginal Citations

- M4** 1996 c. 16.  
**M5** 1839 c. xciv.

### 35 Notification of authorisations for intrusive surveillance.

- (1) Where a person grants or cancels a [<sup>F72</sup>police, [<sup>F73</sup>the National Crime Agency], [<sup>F74</sup>Revenue and Customs [<sup>F75</sup>, immigration]]] [<sup>F76</sup>or CMA] authorisation for the carrying out of intrusive surveillance, he shall give notice that he has done so to [<sup>F77</sup>a Judicial Commissioner] .
- (2) A notice given for the purposes of subsection (1)—
- (a) must be given in writing as soon as reasonably practicable after the grant or, as the case may be, cancellation of the authorisation to which it relates;

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- (b) must be given in accordance with any such arrangements made for the purposes of this paragraph by the [<sup>F78</sup>Investigatory Powers Commissioner] as are for the time being in force; and
  - (c) must specify such matters as the Secretary of State may by order prescribe.
- (3) A notice under this section of the grant of an authorisation shall, as the case may be, either—
  - (a) state that the approval of a [<sup>F79</sup>Judicial Commissioner] is required by section 36 before the grant of the authorisation will take effect; or
  - (b) state that the case is one of urgency and set out the grounds on which the case is believed to be one of urgency.
- (4) Where a notice for the purposes of subsection (1) of the grant of an authorisation has been received by [<sup>F80</sup>a Judicial Commissioner ], he shall, as soon as practicable—
  - (a) scrutinise the authorisation; and
  - (b) in a case where notice has been given in accordance with subsection (3)(a), decide whether or not to approve the authorisation.
- (5) Subject to subsection (6), the Secretary of State shall not make an order under subsection (2)(c) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (6) Subsection (5) does not apply in the case of the order made on the first occasion on which the Secretary of State exercises his power to make an order under subsection (2) (c).
- (7) The order made on that occasion shall cease to have effect at the end of the period of forty days beginning with the day on which it was made unless, before the end of that period, it has been approved by a resolution of each House of Parliament.
- (8) For the purposes of subsection (7)—
  - (a) the order's ceasing to have effect shall be without prejudice to anything previously done or to the making of a new order; and
  - (b) in reckoning the period of forty days no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (9) Any notice that is required by any provision of this section to be given in writing may be given, instead, by being transmitted by electronic means.
- (10) In this section references to a [<sup>F81</sup>police, [<sup>F82</sup>the National Crime Agency], [<sup>F83</sup>Revenue and Customs [<sup>F84</sup> immigration]]] [<sup>F85</sup>or CMA] authorisation are references to an authorisation granted by—
  - (a) a person who is a senior authorising officer by reference to a police force [<sup>F86</sup>or the [<sup>F87</sup>National Crime Agency]];
  - (b) a person who is a senior authorising officer by virtue of a designation [<sup>F88</sup>under section 32(6)(m) or (ma)] ; <sup>F89</sup> . . .
  - [<sup>F90</sup>(ba) the chair of the CMA; or]
  - (c) a person who for the purposes of section 34 is entitled to act for a person falling within paragraph (a) or for a person falling within paragraph (b) [<sup>F91</sup>or for a person falling within paragraph (ba)].

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### Textual Amendments

- F72** Words in s. 35(1) substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, [Sch. 4 para. 139\(2\)](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. para. 10 (subject to art. 4(2)-(7))
- F73** Words in s. 35(1) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 8 para. 85\(2\)](#); S.I. 2013/1682, art. 3(v)
- F74** Words in s. 35(1) substituted (15.2.2008) by [Serious Crime Act 2007 \(c. 27\)](#), ss. 88, 94, [Sch. 12 para. 13\(a\)](#); S.I. 2008/219, [art. 2\(b\)](#)
- F75** Word in s. 35(1) inserted (25.6.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 21 para. 9\(2\)](#) (with [Sch. 21 para. 40](#)); S.I. 2013/1042, art. 4(i)
- F76** Words in s. 35(1) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 137\(2\)](#) (with art. 3)
- F77** Words in s. 35(1) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\)](#), ss. [233\(3\)\(a\)](#), [272\(1\)](#) (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2017/859, reg. 2(e)
- F78** Words in s. 35(2)(b) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\)](#), ss. [233\(3\)\(b\)](#), [272\(1\)](#) (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2017/859, reg. 2(e)
- F79** Words in s. 35(3)(a) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\)](#), ss. [233\(3\)\(c\)](#), [272\(1\)](#) (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2017/859, reg. 2(e)
- F80** Words in s. 35(4) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\)](#), ss. [233\(3\)\(a\)](#), [272\(1\)](#) (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2017/859, reg. 2(e)
- F81** Words in s. 35(10) substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, [Sch. 4 para. 139\(3\)\(a\)](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. para. 10 (subject to art. 4(2)-(7))
- F82** Words in s. 35(10) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 8 para. 85\(3\)\(a\)](#); S.I. 2013/1682, art. 3(v)
- F83** Words in s. 35(10) substituted (15.2.2008) by [Serious Crime Act 2007 \(c. 27\)](#), ss. 88, 94, [Sch. 12 para. 13\(b\)](#); S.I. 2008/219, [art. 2\(b\)](#)
- F84** Word in s. 35(10) inserted (25.6.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 21 para. 9\(3\)\(a\)](#) (with [Sch. 21 para. 40](#)); S.I. 2013/1042, art. 4(i)
- F85** Words in s. 35(10) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 137\(3\)\(a\)](#) (with art. 3)
- F86** Words in s. 35(10)(a) substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, [Sch. 4 para. 139\(3\)\(b\)](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. para. 10 (subject to art. 4(2)-(7))
- F87** Words in s. 35(10)(a) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 8 para. 85\(3\)\(b\)](#); S.I. 2013/1682, art. 3(v)
- F88** Words in s. 35(10)(b) substituted (25.6.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 21 para. 9\(3\)\(b\)](#) (with [Sch. 21 para. 40](#)); S.I. 2013/1042, art. 4(i)
- F89** Word in s. 35(10)(b) repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, [art. 2\(1\)](#), Sch. (with art. 10)
- F90** S. 35(10)(ba) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 137\(3\)\(b\)](#) (with art. 3)
- F91** Words in s. 35(10)(c) inserted (20.6.2003) by 2002 c. 40, ss. 199(6)(c), 279; S.I. 2003/1397, [art. 2\(1\)](#), Sch.

### Modifications etc. (not altering text)

- C1** S. 35 excluded (27.6.2018) by [Investigatory Powers Act 2016 \(c. 25\)](#), s. 272(1), [Sch. 8 para. 25\(a\)](#) (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2018/652, reg. 12(e)(iii)

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### **36 Approval required for authorisations to take effect.**

- (1) This section applies where an authorisation for the carrying out of intrusive surveillance has been granted on the application of—
  - (a) a member of a police force;
  - [<sup>F92</sup>(b) a National Crime Agency officer;]
  - [<sup>F93</sup>(d) an officer of Revenue and Customs <sup>F94</sup> ...;]
  - [<sup>F95</sup>(da) an immigration officer; or]
  - (e) [<sup>F96</sup>an officer of the CMA].
- (2) Subject to subsection (3), the authorisation shall not take effect until such time (if any) as—
  - (a) the grant of the authorisation has been approved by [<sup>F97</sup>a Judicial Commissioner] ; and
  - (b) written notice of the Commissioner’s decision to approve the grant of the authorisation has been given, in accordance with subsection (4), to the person who granted the authorisation.
- (3) Where the person who grants the authorisation—
  - (a) believes that the case is one of urgency, and
  - (b) gives notice in accordance with section 35(3)(b),subsection (2) shall not apply to the authorisation, and the authorisation shall have effect from the time of its grant.
- (4) Where subsection (2) applies to the authorisation—
  - (a) a [<sup>F98</sup>Judicial Commissioner] shall give his approval under this section to the authorisation if, and only if, he is satisfied that there are reasonable grounds for believing that the requirements of section 32(2)(a) and (b) are satisfied in the case of the authorisation; and
  - (b) a [<sup>F98</sup>Judicial Commissioner ] who makes a decision as to whether or not the authorisation should be approved shall, as soon as reasonably practicable after making that decision, give written notice of his decision to the person who granted the authorisation.
- (5) If [<sup>F99</sup>a Judicial Commissioner] decides not to approve an authorisation to which subsection (2) applies, he shall make a report of his findings to the most senior relevant person.
- (6) In this section “the most senior relevant person” means—
  - (a) where the authorisation was granted by the senior authorising officer with any police force who is not someone’s deputy, that senior authorising officer;
  - (b) where the authorisation was granted by the [<sup>F100</sup>Director General of the National Crime Agency], that Director General;
  - (c) where the authorisation was granted by a senior authorising officer with a police force who is someone’s deputy, the senior authorising officer whose deputy granted the authorisation;
  - [<sup>F101</sup>(d) where the authorisation was granted by a person designated for the purposes of section 32(6)(k), or by a person entitled to act for the [<sup>F102</sup>Director General of the National Crime Agency] by virtue of section 34(4)(j), that Director General;]

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- (f) where the authorisation was granted by a person entitled to act for a senior authorising officer under section 34(4)(a) to (i), the senior authorising officer in the force in question who is not someone's deputy; <sup>F103</sup>and]
- <sup>F104</sup>(g) where the authorisation was granted by an officer of Revenue and Customs, the officer of Revenue and Customs for the time being designated for the purposes of this paragraph by a written notice given to the <sup>F105</sup>Investigatory Powers Commissioner ] by the Commissioners for Her Majesty's Revenue <sup>F106</sup>... Customs;]
- <sup>F107</sup>(ga) where the authorisation was granted by a senior official designated under section 32(6)(ma) or entitled to act for such an official under section 34(4)(la), the senior official designated under section 32(6)(ma); and]
- (h) where the authorisation was granted by the <sup>F108</sup>chair of the CMA] or a person entitled to act for <sup>F109</sup>the chair of the CMA] by virtue of section 34(4)(m), <sup>F110</sup>that chair].
- (7) The references in subsection (6) to a person's deputy are references to the following—
- (a) in relation to—
- (i) a chief constable of a police force maintained under section 2 of the <sup>M6</sup>Police Act 1996,
- (ii) the Commissioner of Police for the City of London, or
- <sup>F111</sup>(iii) the chief constable of the Police Service of Scotland,]
- to his designated deputy;
- (b) in relation to the Commissioner of Police of the Metropolis, to an Assistant Commissioner of Police of the Metropolis; and
- (c) in relation to the Chief Constable of the Royal Ulster Constabulary, to the Deputy Chief Constable of the Royal Ulster Constabulary;
- and in this subsection and that subsection “designated deputy” has the same meaning as in section 34.
- (8) Any notice that is required by any provision of this section to be given in writing may be given, instead, by being transmitted by electronic means.

#### Textual Amendments

- F92** S. 36(1)(b) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 8 para. 86(2)**; [S.I. 2013/1682](#), art. 3(v)
- F93** S. 36(1)(d) substituted (15.2.2008) by [Serious Crime Act 2007 \(c. 27\)](#), ss. 88, 94, **Sch. 12 para. 14(a)**; [S.I. 2008/219](#), art. 2(b)
- F94** Word in s. 36(1)(d) omitted (25.6.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 21 para. 10(2)(a)** (with [Sch. 21 para. 40](#)); [S.I. 2013/1042](#), art. 4(i)
- F95** S. 36(1)(da) inserted (25.6.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 21 para. 10(2)(b)** (with [Sch. 21 para. 40](#)); [S.I. 2013/1042](#), art. 4(i)
- F96** Words in s. 36(1)(e) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 138(2)** (with art. 3)
- F97** Words in s. 36(2)(a) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\)](#), ss. 233(3)(a), 272(1) (with [Sch. 9 paras. 7, 8, 10](#)); [S.I. 2017/859](#), reg. 2(e)
- F98** Words in s. 36(4)(a)(b) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\)](#), ss. 233(3)(c), 272(1) (with [Sch. 9 paras. 7, 8, 10](#)); [S.I. 2017/859](#), reg. 2(e)
- F99** Words in s. 36(5) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\)](#), ss. 233(3)(a), 272(1) (with [Sch. 9 paras. 7, 8, 10](#)); [S.I. 2017/859](#), reg. 2(e)

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- F100** Words in s. 36(6)(b) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 86(3)**; S.I. 2013/1682, art. 3(v)
- F101** S. 36(6)(d) substituted (1.4.2006) for s. 36(6)(d)(e) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 140(3)(b)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))
- F102** Words in s. 36(6)(d) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 86(3)**; S.I. 2013/1682, art. 3(v)
- F103** Word in s. 36(6)(f) repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 10)
- F104** S. 36(6)(g) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 14(b)**; S.I. 2008/219, **art. 2(b)**
- F105** Words in s. 36(6)(g) substituted (1.9.2017) by Investigatory Powers Act 2016 (c. 25), ss. 233(3)(b), 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2017/859, reg. 2(e)
- F106** Word in s. 36(6)(g) omitted (25.6.2013) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 10(3)(a)** (with Sch. 21 para. 40); S.I. 2013/1042, art. 4(i)
- F107** S. 36(6)(ga) inserted (25.6.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 21 para. 10(3)(b)** (with Sch. 21 para. 40); S.I. 2013/1042, art. 4(i)
- F108** Words in s. 36(6)(h) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 138(3)(a)** (with art. 3)
- F109** Words in s. 36(6)(h) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 138(3)(b)** (with art. 3)
- F110** Words in s. 36(6)(h) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 138(3)(c)** (with art. 3)
- F111** S. 36(7)(a)(iii) substituted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 2 para. 33(13)**

#### Modifications etc. (not altering text)

- C2** S. 36 excluded (27.6.2018) by Investigatory Powers Act 2016 (c. 25), s. 272(1), **Sch. 8 para. 25(b)** (with Sch. 9 paras. 7, 8, 10); S.I. 2018/652, reg. 12(e)(iii)

#### Marginal Citations

- M6** 1996 c. 16.

### 37 Quashing of police and <sup>F112</sup>Revenue and Customs] authorisations etc.

- (1) This section applies where an authorisation for the carrying out of intrusive surveillance has been granted on the application of—
- (a) a member of a police force;
  - <sup>F113</sup>(b) a National Crime Agency officer;]
  - <sup>F114</sup>(d) an officer of Revenue and Customs <sup>F115</sup>... ;]
  - <sup>F116</sup>(da) an immigration officer; or]
  - <sup>F117</sup>(e) an officer of the CMA.]
- (2) Where <sup>F118</sup>a Judicial Commissioner] is at any time satisfied that, at the time when the authorisation was granted or at any time when it was renewed, there were no reasonable grounds for believing that the requirements of section 32(2)(a) and (b) were

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- satisfied, he may quash the authorisation with effect, as he thinks fit, from the time of the grant of the authorisation or from the time of any renewal of the authorisation.
- (3) If [<sup>F118</sup>a Judicial Commissioner] is satisfied at any time while the authorisation is in force that there are no longer any reasonable grounds for believing that the requirements of section 32(2)(a) and (b) are satisfied in relation to the authorisation, he may cancel the authorisation with effect from such time as appears to him to be the time from which those requirements ceased to be so satisfied.
  - (4) Where, in the case of any authorisation of which notice has been given in accordance with section 35(3)(b), [<sup>F118</sup>a Judicial Commissioner] is at any time satisfied that, at the time of the grant or renewal of the authorisation to which that notice related, there were no reasonable grounds for believing that the case was one of urgency, he may quash the authorisation with effect, as he thinks fit, from the time of the grant of the authorisation or from the time of any renewal of the authorisation.
  - (5) Subject to subsection (7), where [<sup>F118</sup>a Judicial Commissioner] quashes an authorisation under this section, he may order the destruction of any records relating wholly or partly to information obtained by the authorised conduct after the time from which his decision takes effect.
  - (6) Subject to subsection (7), where—
    - (a) an authorisation has ceased to have effect (otherwise than by virtue of subsection (2) or (4)), and
    - (b) [<sup>F118</sup>a Judicial Commissioner] is satisfied that there was a time while the authorisation was in force when there were no reasonable grounds for believing that the requirements of section 32(2)(a) and (b) continued to be satisfied in relation to the authorisation,
 he may order the destruction of any records relating, wholly or partly, to information obtained at such a time by the authorised conduct.
  - (7) No order shall be made under this section for the destruction of any records required for pending criminal or civil proceedings.
  - (8) Where [<sup>F119</sup>a Judicial Commissioner] exercises a power conferred by this section, he shall, as soon as reasonably practicable, make a report of his exercise of that power, and of his reasons for doing so—
    - (a) to the most senior relevant person (within the meaning of section 36); and
    - (b) to the [<sup>F120</sup>Investigatory Powers Commissioner (if he is not that Commissioner)] .
  - (9) Where an order for the destruction of records is made under this section, the order shall not become operative until such time (if any) as—
    - (a) [<sup>F121</sup>any period] for appealing against the decision to make the order has expired; and
    - (b) any appeal brought within that period has been dismissed by the [<sup>F122</sup>Investigatory Powers Commissioner] .
  - (10) No notice shall be required to be given under section 35(1) in the case of a cancellation under subsection (3) of this section.



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### Textual Amendments

- F112** Words in s. 37 heading substituted (15.2.2008) by [Serious Crime Act 2007 \(c. 27\)](#), ss. 88, 94, [Sch. 12 para. 15](#); [S.I. 2008/219](#), [art. 2\(b\)](#)
- F113** S. 37(1)(b) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 8 para. 87](#); [S.I. 2013/1682](#), [art. 3\(v\)](#)
- F114** S. 37(1)(d) substituted (15.2.2008) by [Serious Crime Act 2007 \(c. 27\)](#), ss. 88, 94, [Sch. 12 para. 15](#); [S.I. 2008/219](#), [art. 2\(b\)](#)
- F115** Word in s. 37(1)(d) omitted (25.6.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 21 para. 11\(a\)](#) (with [Sch. 21 para. 40](#)); [S.I. 2013/1042](#), [art. 4\(i\)](#)
- F116** S. 37(1)(da) inserted (25.6.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 21 para. 11\(b\)](#) (with [Sch. 21 para. 40](#)); [S.I. 2013/1042](#), [art. 4\(i\)](#)
- F117** S. 37(1)(e) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), [art. 1\(1\)](#), [Sch. 1 para. 139](#) (with [art. 3](#))
- F118** Words in s. 37(2)-(6) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\)](#), [ss. 233\(3\)\(a\)](#), [272\(1\)](#) (with [Sch. 9 paras. 7, 8, 10](#)); [S.I. 2017/859](#), [reg. 2\(e\)](#)
- F119** Words in s. 37(8) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\)](#), [ss. 233\(3\)\(a\)](#), [272\(1\)](#) (with [Sch. 9 paras. 7, 8, 10](#)); [S.I. 2017/859](#), [reg. 2\(e\)](#)
- F120** Words in s. 37(8)(b) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\)](#), [ss. 233\(3\)\(d\)](#), [272\(1\)](#) (with [Sch. 9 paras. 7, 8, 10](#)); [S.I. 2017/859](#), [reg. 2\(e\)](#)
- F121** Words in s. 37(9)(a) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\)](#), s. 272(1), [Sch. 10 para. 76](#) (with [Sch. 9 paras. 7, 8, 10](#)); [S.I. 2017/859](#), [reg. 2\(j\)](#)
- F122** Words in s. 37(9)(b) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\)](#), [ss. 233\(3\)\(b\)](#), [272\(1\)](#) (with [Sch. 9 paras. 7, 8, 10](#)); [S.I. 2017/859](#), [reg. 2\(e\)](#)

### Modifications etc. (not altering text)

- C3** S. 37(2)-(4) excluded (27.6.2018) by [Investigatory Powers Act 2016 \(c. 25\)](#), s. 272(1), [Sch. 8 para. 25\(c\)](#) (with [Sch. 9 paras. 7, 8, 10](#)); [S.I. 2018/652](#), [reg. 12\(e\)\(iii\)](#)

## 38 Appeals against decisions by [<sup>F123</sup>Judicial Commissioners] .

- (1) Any senior authorising officer may appeal to the [<sup>F124</sup>Investigatory Powers Commissioner] against any of the following—
- any refusal of [<sup>F125</sup>a Judicial Commissioner (other than the Investigatory Powers Commissioner)] to approve an authorisation for the carrying out of intrusive surveillance;
  - any decision of such a Commissioner to quash or cancel such an authorisation;
  - any decision of such a Commissioner to make an order under section 37 for the destruction of records.
- (2) In the case of an authorisation granted by the designated deputy of a senior authorising office or by a person who for the purposes of section 34 is entitled to act for a senior authorising officer, that designated deputy or person shall also be entitled to appeal under this section.
- (3) An appeal under this section must be brought within the period of seven days beginning with the day on which the refusal or decision appealed against is reported to the appellant.
- (4) Subject to subsection (5), the [<sup>F126</sup>Investigatory Powers Commissioner] , on an appeal under this section, shall allow the appeal if—

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- (a) he is satisfied that there were reasonable grounds for believing that the requirements of section 32(2)(a) and (b) were satisfied in relation to the authorisation at the time in question; and
  - (b) he is not satisfied that the authorisation is one of which notice was given in accordance with section 35(3)(b) without there being any reasonable grounds for believing that the case was one of urgency.
- (5) If, on an appeal falling within subsection (1)(b), the [F126Investigatory Powers Commissioner] —
- (a) is satisfied that grounds exist which justify the quashing or cancellation under section 37 of the authorisation in question, but
  - (b) considers that the authorisation should have been quashed or cancelled from a different time from that from which it was quashed or cancelled by the [F127Judicial Commissioner] against whose decision the appeal is brought,
- he may modify that Commissioner’s decision to quash or cancel the authorisation, and any related decision for the destruction of records, so as to give effect to the decision under section 37 that he considers should have been made.
- (6) Where, on an appeal under this section against a decision to quash or cancel an authorisation, the [F126Investigatory Powers Commissioner] allows the appeal he shall also quash any related order for the destruction of records relating to information obtained by the authorised conduct.
- (7) In this section “designated deputy” has the same meaning as in section 34.

#### Textual Amendments

- F123** Words in s. 38 heading substituted (1.9.2017) by *Investigatory Powers Act 2016 (c. 25)*, ss. 233(3)(g), 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2017/859, reg. 2(e)
- F124** Words in s. 38(1) substituted (1.9.2017) by *Investigatory Powers Act 2016 (c. 25)*, ss. 233(3)(b), 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2017/859, reg. 2(e)
- F125** Words in s. 38(1)(a) substituted (1.9.2017) by *Investigatory Powers Act 2016 (c. 25)*, ss. 233(3)(e), 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2017/859, reg. 2(e)
- F126** Words in s. 38(4)-(6) substituted (1.9.2017) by *Investigatory Powers Act 2016 (c. 25)*, ss. 233(3)(b), 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2017/859, reg. 2(e)
- F127** Words in s. 38(5)(b) substituted (1.9.2017) by *Investigatory Powers Act 2016 (c. 25)*, ss. 233(3)(f), 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2017/859, reg. 2(e)

#### Modifications etc. (not altering text)

- C4** S. 38 excluded (27.6.2018) by *Investigatory Powers Act 2016 (c. 25)*, s. 272(1), Sch. 8 para. 25(d) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/652, reg. 12(e)(iii)

### 39 Appeals to the [F128Investigatory Powers Commissioner] : supplementary.

- (1) Where the [F129Investigatory Powers Commissioner] has determined an appeal under section 38, he shall give notice of his determination to both—
- (a) the person by whom the appeal was brought; and
  - (b) the [F130Judicial Commissioner] whose decision was appealed against.
- (2) Where the determination of the [F131Investigatory Powers Commissioner] on an appeal under section 38 is a determination to dismiss the appeal, the [F131Investigatory Powers Commissioner] shall make a report of his findings—

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- (a) to the persons mentioned in subsection (1); and
  - (b) to the Prime Minister.
- (3) [<sup>F132</sup>Subsections (6) to (8) of section 234 of the Investigatory Powers Act 2016] (reports to be laid before Parliament and exclusion of matters from the report) apply in relation to any report to the Prime Minister under subsection (2) of this section as they apply in relation to any report under [<sup>F133</sup>subsection (1) of that section] .
- (4) Subject to subsection (2) of this section, the [<sup>F134</sup>Investigatory Powers Commissioner] shall not give any reasons for any determination of his on an appeal under section 38.

#### Textual Amendments

- F128** Words in s. 39 heading substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\), ss. 233\(3\)\(b\), 272\(1\)](#) (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2017/859, reg. 2(e)
- F129** Words in s. 39(1) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\), ss. 233\(3\)\(b\), 272\(1\)](#) (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2017/859, reg. 2(e)
- F130** Words in s. 39(1)(b) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\), ss. 233\(3\)\(f\), 272\(1\)](#) (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2017/859, reg. 2(e)
- F131** Words in s. 39(2) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\), ss. 233\(3\)\(b\), 272\(1\)](#) (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2017/859, reg. 2(e)
- F132** Words in s. 39(3) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\), s. 272\(1\), Sch. 10 para. 77\(a\)](#) (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2017/859, reg. 2(j)
- F133** Words in s. 39(3) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\), s. 272\(1\), Sch. 10 para. 77\(b\)](#) (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2017/859, reg. 2(j)
- F134** Words in s. 39(4) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\), ss. 233\(3\)\(b\), 272\(1\)](#) (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2017/859, reg. 2(e)

#### <sup>F135</sup>40 Information to be provided to Surveillance Commissioners.

#### Textual Amendments

- F135** S. 40 omitted (1.9.2017) by virtue of [Investigatory Powers Act 2016 \(c. 25\), s. 272\(1\), Sch. 10 para. 78](#) (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2017/859, reg. 2(j) (with reg. 7)

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