



Regulation of Investigatory Powers Act 2000

2000 CHAPTER 23

PART II

SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES

Police and ^[F1]Revenue and Customs] authorisations

38 Appeals against decisions by ^[F1]Judicial Commissioners] .

- (1) Any senior authorising officer may appeal to the ^[F2]Investigatory Powers Commissioner] against any of the following—
 - (a) any refusal of ^[F3]a Judicial Commissioner (other than the Investigatory Powers Commissioner)] to approve an authorisation for the carrying out of intrusive surveillance;
 - (b) any decision of such a Commissioner to quash or cancel such an authorisation;
 - (c) 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 ^[F4]Investigatory Powers Commissioner] , on an appeal under this section, shall allow the appeal if—

Changes to legislation: *Regulation of Investigatory Powers Act 2000, Section 38 is up to date with all changes known to be in force on or before 25 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (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 [^{F4}Investigatory 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 [^{F5}Judicial 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 [^{F4}Investigatory 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

- F1** 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)
- F2** 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)
- F3** 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)
- F4** 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)
- F5** 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)

- C1** 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)

Changes to legislation:

Regulation of Investigatory Powers Act 2000, Section 38 is up to date with all changes known to be in force on or before 25 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 30(6A)-(6D) inserted by [2016 anaw 6 s. 187\(2\)\(b\)](#)
- Sch. 1 para. 16A and cross-heading inserted by [2016 anaw 6 s. 187\(3\)](#)
- Sch. 1 Pt. 1 para. 20H inserted by [2013 c. 32 Sch. 12 para. 74](#)