



Investigatory Powers Act 2016

2016 CHAPTER 25

PART 5

EQUIPMENT INTERFERENCE

Approval of warrants by Judicial Commissioners

108 Approval of warrants by Judicial Commissioners

- (1) In deciding whether to approve a person's decision to issue a warrant under this Part, a Judicial Commissioner must review the person's conclusions as to the following matters—
 - (a) whether the warrant is necessary on any relevant grounds (see subsection (3)), and
 - (b) whether the conduct which would be authorised by the warrant is proportionate to what is sought to be achieved by that conduct.
- (2) In doing so, the Judicial Commissioner must—
 - (a) apply the same principles as would be applied by a court on an application for judicial review, and
 - (b) consider the matters referred to in subsection (1) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).
- (3) In subsection (1)(a), "relevant grounds" means—
 - (a) in the case of a decision to issue a warrant under section 102, grounds falling within section 102(5);
 - (b) in the case of a decision to issue a warrant under section 103, the purpose of preventing or detecting serious crime;
 - (c) in the case of a decision to issue a warrant under section 104, the interests of national security;
 - (d) in the case of a decision to issue a warrant under section 106(1), the purpose mentioned in section 106(1)(a);

Status: This is the original version (as it was originally enacted).

- (e) in the case of a decision to issue a warrant under section 106(3), the purpose mentioned in section 106(3)(a).
- (4) Where a Judicial Commissioner refuses to approve a person's decision to issue a warrant under this Part, the Judicial Commissioner must give the person written reasons for the refusal.
- (5) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, refuses to approve a person's decision to issue a warrant under this Part, the person may ask the Investigatory Powers Commissioner to decide whether to approve the decision to issue the warrant.

109 Approval of warrants issued in urgent cases

- (1) This section applies where—
 - (a) a warrant under this Part is issued without the approval of a Judicial Commissioner, and
 - (b) the person who issued the warrant considered that there was an urgent need to issue it.
- (2) The person who issued the warrant 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 person of the Judicial Commissioner's decision.

“The relevant period” means the period ending with the third working day after the day on which the warrant was issued.
- (4) If a Judicial Commissioner refuses to approve the decision to issue a warrant, the warrant—
 - (a) ceases to have effect (unless already cancelled), and
 - (b) may not be renewed,and section 108(5) does not apply in relation to the refusal to approve the decision.
- (5) Section 110 contains further provision about what happens if a Judicial Commissioner refuses to approve the decision to issue a warrant.

110 Failure to approve warrant issued in urgent case

- (1) This section applies where under section 109(3) a Judicial Commissioner refuses to approve the decision to issue a warrant.
- (2) The person to whom the warrant was addressed must, so far as is reasonably practicable, secure that anything in the process of being done under the warrant stops as soon as possible.
- (3) Where the refusal relates to a targeted equipment interference warrant, the Judicial Commissioner may—
 - (a) authorise further interference with equipment for the purpose of enabling the person to whom the warrant was addressed to secure that anything in the process of being done under the warrant stops as soon as possible;
 - (b) direct that any of the material obtained under the warrant is destroyed;

- (c) impose conditions as to the use or retention of any of that material.
- (4) Where the refusal relates to a targeted examination warrant, the Judicial Commissioner may impose conditions as to the use of any protected material selected for examination under the warrant.
- (5) The Judicial Commissioner—
 - (a) may require an affected party to make representations about how the Judicial Commissioner should exercise any function under subsection (3) or (4), 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 person who decided to issue the warrant;
 - (b) the person to whom the warrant was addressed.
- (7) The person who decided to issue the warrant may ask the Investigatory Powers Commissioner to review a decision made by any other Judicial Commissioner under subsection (3) or (4).
- (8) On a review under subsection (7), the Investigatory Powers Commissioner may—
 - (a) confirm the Judicial Commissioner’s decision, or
 - (b) make a fresh determination.
- (9) Nothing in this section or section 109 affects the lawfulness of—
 - (a) anything done under the warrant before it ceases to have effect;
 - (b) if anything is in the process of being done under the warrant when it ceases to have effect—
 - (i) anything done before that thing could be stopped, or
 - (ii) anything done that it is not reasonably practicable to stop.