



# Regulation of Investigatory Powers Act 2000

## 2000 CHAPTER 23

### PART V

#### MISCELLANEOUS AND SUPPLEMENTAL

##### *Miscellaneous*

#### **73 Conduct in relation to wireless telegraphy**

- (1) Section 5 of the Wireless Telegraphy Act 1949 (misleading messages and interception and disclosure of wireless telegraphy messages) shall become subsection (1) of that section.
- (2) In paragraph (b) of that subsection—
  - (a) for the words from “under the authority of” to “servant of the Crown,” there shall be substituted “under the authority of a designated person”; and
  - (b) in sub-paragraph (i), for the words from “which neither” to the end of the sub-paragraph there shall be substituted “of which neither the person using the apparatus nor a person on whose behalf he is acting is an intended recipient,”.
- (3) In that section, after that subsection there shall be inserted—
  - “(2) The conduct in relation to which a designated person may give a separate authority for the purposes of this section shall not, except where he believes the conduct to be necessary on grounds falling within subsection (5) of this section, include—
    - (a) any conduct which, if engaged in without lawful authority, constitutes an offence under section 1(1) or (2) of the Regulation of Investigatory Powers Act 2000;
    - (b) any conduct which, if engaged in without lawful authority, is actionable under section 1(3) of that Act;

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- (c) any conduct which is capable of being authorised by an authorisation or notice granted by any person under Chapter II of Part I of that Act (communications data);
  - (d) any conduct which is capable of being authorised by an authorisation granted by any person under Part II of that Act (surveillance etc.).
- (3) A designated person shall not exercise his power to give a separate authority for the purposes of this section except where he believes—
  - (a) that the giving of his authority is necessary on grounds falling within subsection (4) or (5) of this section; and
  - (b) that the conduct authorised by him is proportionate to what is sought to be achieved by that conduct.
- (4) A separate authority for the purposes of this section is necessary on grounds falling within this subsection if it is necessary—
  - (a) in the interests of national security;
  - (b) for the purpose of preventing or detecting crime (within the meaning of the Regulation of Investigatory Powers Act 2000) or of preventing disorder;
  - (c) in the interests of the economic well-being of the United Kingdom;
  - (d) in the interests of public safety;
  - (e) for the purpose of protecting public health;
  - (f) for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department; or
  - (g) for any purpose (not falling within paragraphs (a) to (f)) which is specified for the purposes of this subsection by regulations made by the Secretary of State.
- (5) A separate authority for the purposes of this section is necessary on grounds falling within this subsection if it is not necessary on grounds falling within subsection (4)(a) or (c) to (g) but is necessary for purposes connected with—
  - (a) the issue of licences under this Act;
  - (b) the prevention or detection of anything which constitutes interference with wireless telegraphy; or
  - (c) the enforcement of any enactment contained in this Act or of any enactment not so contained that relates to such interference.
- (6) The matters to be taken into account in considering whether the requirements of subsection (3) of this section are satisfied in the case of the giving of any separate authority for the purposes of this section shall include whether what it is thought necessary to achieve by the authorised conduct could reasonably be achieved by other means.
- (7) A separate authority for the purposes of this section must be in writing and under the hand of—
  - (a) the Secretary of State;
  - (b) one of the Commissioners of Customs and Excise; or
  - (c) a person not falling within paragraph (a) or (b) who is designated for the purposes of this subsection by regulations made by the Secretary of State.

- (8) A separate authority for the purposes of this section may be general or specific and may be given—
- (a) to such person or persons, or description of persons,
  - (b) for such period, and
  - (c) subject to such restrictions and limitations,
- as the designated person thinks fit.
- (9) No regulations shall be made under subsection (4)(g) unless a draft of them has first been laid before Parliament and approved by a resolution of each House.
- (10) For the purposes of this section the question whether conduct is capable of being authorised under Chapter II of Part I of the Regulation of Investigatory Powers Act 2000 or under Part II of that Act shall be determined without reference—
- (a) to whether the person whose conduct it is is a person on whom any power or duty is or may be conferred or imposed by or under Chapter II of Part I or Part II of that Act; or
  - (b) to whether there are grounds for believing that the requirements for the grant of an authorisation or the giving of a notice under Chapter II of Part I or Part II of that Act are satisfied.
- (11) References in this section to a separate authority for the purposes of this section are references to any authority for the purposes of this section given otherwise than by way of the issue or renewal of a warrant, authorisation or notice under Part I or II of the Regulation of Investigatory Powers Act 2000.
- (12) In this section “designated person” means—
- (a) the Secretary of State;
  - (b) the Commissioners of Customs and Excise; or
  - (c) any other person designated for the purposes of this section by regulations made by the Secretary of State.”
- (4) In section 16(2) of that Act (regulations and orders), after “the said powers” there shall be inserted “, other than one containing regulations a draft of which has been approved for the purposes of section 5(9),”.

## **74 Warrants under the Intelligence Services Act 1994**

- (1) In subsection (2) of section 5 of the Intelligence Services Act 1994 (the circumstances in which the Secretary of State may issue a warrant authorising interference with property or wireless telegraphy)—
- (a) in paragraph (a), for “on the ground that it is likely to be of substantial value in” there shall be substituted “for the purpose of”; and
  - (b) for paragraph (b) there shall be substituted—
    - “(b) is satisfied that the taking of the action is proportionate to what the action seeks to achieve;”.
- (2) After that subsection, there shall be inserted—
- “(2A) The matters to be taken into account in considering whether the requirements of subsection (2)(a) and (b) are satisfied in the case of any warrant shall

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include whether what it is thought necessary to achieve by the conduct authorised by the warrant could reasonably be achieved by other means.”

- (3) In each of sections 6(1)(b) and 7(5)(b) of that Act (warrants issued under the hand of a senior official of the Secretary of State’s department), the words “of his department” shall be omitted.
- (4) In section 11 of that Act (interpretation), for paragraph (1)(d) there shall be substituted—
- “(d) “senior official” has the same meaning as in the Regulation of Investigatory Powers Act 2000;”.

## **75 Authorisations under Part III of the Police Act 1997**

- (1) Section 93 of the Police Act 1997 (authorisations to interfere with property etc.) shall be amended as follows.
- (2) In subsection (1) (the action that the authorising officer may authorise), for “or” at the end of paragraph (a) there shall be substituted—
- “(ab) the taking of such action falling within subsection (1A), in respect of property outside the relevant area, as he may specify, or”.
- (3) After that subsection there shall be inserted—
- “(1A) The action falling within this subsection is action for maintaining or retrieving any equipment, apparatus or device the placing or use of which in the relevant area has been authorised under this Part or Part II of the Regulation of Investigatory Powers Act 2000 or under any enactment contained in or made under an Act of the Scottish Parliament which makes provision equivalent to that made by Part II of that Act of 2000.
- (1B) Subsection (1) applies where the authorising officer is a customs officer with the omission of—
- (a) the words “in the relevant area”, in each place where they occur; and
- (b) paragraph (ab).”
- (4) In subsection (2) (the grounds on which action may be authorised)—
- (a) in paragraph (a), for the words from “on the ground” to “detection of” there shall be substituted “for the purpose of preventing or detecting”; and
- (b) for paragraph (b) there shall be substituted—
- “(b) that the taking of the action is proportionate to what the action seeks to achieve.”
- (5) After subsection (2) there shall be inserted—
- “(2A) Subsection (2) applies where the authorising officer is the Chief Constable or the Deputy Chief Constable of the Royal Ulster Constabulary as if the reference in subsection (2)(a) to preventing or detecting serious crime included a reference to the interests of national security.
- (2B) The matters to be taken into account in considering whether the requirements of subsection (2) are satisfied in the case of any authorisation shall include whether what it is thought necessary to achieve by the authorised action could reasonably be achieved by other means.”

- (6) In subsection (5) (the meaning of authorising officer)—
- (a) after paragraph (e) there shall be inserted—
    - “(ea) the Chief Constable of the Ministry of Defence Police;
    - (eb) the Provost Marshal of the Royal Navy Regulating Branch;
    - (ec) the Provost Marshal of the Royal Military Police;
    - (ed) the Provost Marshal of the Royal Air Force Police;
    - (ee) the Chief Constable of the British Transport Police;”;
  - (b) in paragraph (g), after “National Crime Squad” there shall be inserted “, or any person holding the rank of assistant chief constable in that Squad who is designated for the purposes of this paragraph by that Director General”; and
  - (c) in paragraph (h), for the word “the”, in the first place where it occurs, there shall be substituted “any”.
- (7) In subsection (6) (the meaning of relevant area), after paragraph (c) there shall be inserted—
- “(ca) in relation to a person within paragraph (ea), means any place where, under section 2 of the Ministry of Defence Police Act 1987, the members of the Ministry of Defence Police have the powers and privileges of a constable;
  - (cb) in relation to a person within paragraph (ee), means the United Kingdom;”.
- (8) After that subsection there shall be inserted—
- “(6A) For the purposes of any authorisation by a person within paragraph (eb), (ec) or (ed) of subsection (5) property is in the relevant area or action in respect of wireless telegraphy is taken in the relevant area if, as the case may be—
- (a) the property is owned, occupied, in the possession of or being used by a person subject to service discipline; or
  - (b) the action is taken in relation to the use of wireless telegraphy by such a person.
- (6B) For the purposes of this section a person is subject to service discipline—
- (a) in relation to the Royal Navy Regulating Branch, if he is subject to the Naval Discipline Act 1957 or is a civilian to whom Parts I and II of that Act for the time being apply by virtue of section 118 of that Act ;
  - (b) in relation to the Royal Military Police, if he is subject to military law or is a civilian to whom Part II of the Army Act 1955 for the time being applies by virtue of section 209 of that Act; and
  - (c) in relation to the Royal Air Force Police, if he is subject to air-force law or is a civilian to whom Part II of the Air Force Act 1955 for the time being applies by virtue of section 209 of that Act.”

## **76 Surveillance etc. operations beginning in Scotland**

- (1) Subject to subsection (2), where—
- (a) an authorisation under the relevant Scottish legislation has the effect of authorising the carrying out in Scotland of the conduct described in the authorisation,

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- (b) the conduct so described is or includes conduct to which Part II of this Act applies, and
- (c) circumstances arise by virtue of which some or all of the conduct so described can for the time being be carried out only outwith Scotland,

section 27 of this Act shall have effect for the purpose of making lawful the carrying out outwith Scotland of the conduct so described as if the authorisation, so far as is it relates to conduct to which that Part applies, were an authorisation duly granted under that Part.

- (2) Where any such circumstances as are mentioned in paragraph (c) of subsection (1) so arise as to give effect outwith Scotland to any authorisation granted under the relevant Scottish legislation, that authorisation shall not authorise any conduct outwith Scotland at any time after the end of the period of three weeks beginning with the time when the circumstances arose.
- (3) Subsection (2) is without prejudice to the operation of subsection (1) in relation to any authorisation on the second or any subsequent occasion on which any such circumstances as are mentioned in subsection (1)(c) arise while the authorisation remains in force.
- (4) In this section “the relevant Scottish legislation” means an enactment contained in or made under an Act of the Scottish Parliament which makes provision, corresponding to that made by Part II, for the authorisation of conduct to which that Part applies.

### *Supplemental*

#### **77 Ministerial expenditure etc**

There shall be paid out of money provided by Parliament—

- (a) any expenditure incurred by the Secretary of State for or in connection with the carrying out of his functions under this Act; and
- (b) any increase attributable to this Act in the sums which are payable out of money so provided under any other Act.

#### **78 Orders, regulations and rules**

- (1) This section applies to any power of the Secretary of State to make any order, regulations or rules under any provision of this Act.
- (2) The powers to which this section applies shall be exercisable by statutory instrument.
- (3) A statutory instrument which contains any order made in exercise of a power to which this section applies (other than the power to appoint a day under section 83(2)) but which contains neither—
  - (a) an order a draft of which has been approved for the purposes of section 12(10), 13(3), 22(9), 25(5), 28(5), 29(6), 30(7), 35(5), 41(6), 47(2), 66(3), 67(11) or 71(9), nor
  - (b) the order to which section 35(7) applies,
 shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (4) A statutory instrument containing any regulations made in exercise of a power to which this section applies shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Any order, regulations or rules made in exercise of a power to which this section applies may—
  - (a) make different provisions for different cases;
  - (b) contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit.

## **79 Criminal liability of directors etc**

- (1) Where an offence under any provision of this Act other than a provision of Part III is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) any person who was purporting to act in any such capacity,he (as well as the body corporate) shall be guilty of that offence and liable to be proceeded against and punished accordingly.
- (2) Where an offence under any provision of this Act other than a provision of Part III—
  - (a) is committed by a Scottish firm, and
  - (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner of the firm,he (as well as the firm) shall be guilty of that offence and liable to be proceeded against and punished accordingly.
- (3) In this section “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

## **80 General saving for lawful conduct**

Nothing in any of the provisions of this Act by virtue of which conduct of any description is or may be authorised by any warrant, authorisation or notice, or by virtue of which information may be obtained in any manner, shall be construed—

- (a) as making it unlawful to engage in any conduct of that description which is not otherwise unlawful under this Act and would not be unlawful apart from this Act;
- (b) as otherwise requiring—
  - (i) the issue, grant or giving of such a warrant, authorisation or notice, or
  - (ii) the taking of any step for or towards obtaining the authority of such a warrant, authorisation or notice,before any such conduct of that description is engaged in; or
- (c) as prejudicing any power to obtain information by any means not involving conduct that may be authorised under this Act.

## **81 General interpretation**

- (1) In this Act—

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“apparatus” includes any equipment, machinery or device and any wire or cable;

“Assistant Commissioner of Police of the Metropolis” includes the Deputy Commissioner of Police of the Metropolis;

“Assistant Surveillance Commissioner” means any person holding office under section 63;

“civil proceedings” means any proceedings in or before any court or tribunal that are not criminal proceedings;

“communication” includes—

- (a) (except in the definition of “postal service” in section 2(1)) anything transmitted by means of a postal service;
- (b) anything comprising speech, music, sounds, visual images or data of any description; and
- (c) signals serving either for the impartation of anything between persons, between a person and a thing or between things or for the actuation or control of any apparatus;

“criminal”, in relation to any proceedings or prosecution, shall be construed in accordance with subsection (4);

“customs officer” means an officer commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979;

“document” includes a map, plan, design, drawing, picture or other image;

“enactment” includes—

- (a) an enactment passed after the passing of this Act; and
- (b) an enactment contained in Northern Ireland legislation;

“GCHQ” has the same meaning as in the Intelligence Services Act 1994;

“Her Majesty’s forces” has the same meaning as in the Army Act 1955;

“intelligence service” means the Security Service, the Secret Intelligence Service or GCHQ;

“interception” and cognate expressions shall be construed (so far as it is applicable) in accordance with section 2;

“interception warrant” means a warrant under section 5;

“legal proceedings” means civil or criminal proceedings in or before any court or tribunal;

“modification” includes alterations, additions and omissions, and cognate expressions shall be construed accordingly;

“ordinary Surveillance Commissioner” means a Surveillance Commissioner other than the Chief Surveillance Commissioner;

“person” includes any organisation and any association or combination of persons;

“police force” means any of 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;
- (c) the City of London police force;
- (d) any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967
- (e) the Royal Ulster Constabulary;



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- (f) the Ministry of Defence Police;
- (g) the Royal Navy Regulating Branch;
- (h) the Royal Military Police;
- (i) the Royal Air Force Police;
- (j) the British Transport Police;

“postal service” and “public postal service” have the meanings given by section 2(1);

“private telecommunication system”, “public telecommunications service” and “public telecommunication system” have the meanings given by section 2(1);

“public authority” means any public authority within the meaning of section 6 of the Human Rights Act 1998 (acts of public authorities) other than a court or tribunal;

“senior official” means, subject to subsection (7), a member of the Senior Civil Service or a member of the Senior Management Structure of Her Majesty’s Diplomatic Service;

“statutory”, in relation to any power or duty, means conferred or imposed by or under any enactment or subordinate legislation;

“subordinate legislation” means any subordinate legislation (within the meaning of the Interpretation Act 1978) or any statutory rules (within the meaning of the Statutory Rules (Northern Ireland) Order 1979);

“Surveillance Commissioner” means a Commissioner holding office under section 91 of the Police Act 1997 and “Chief Surveillance Commissioner” shall be construed accordingly;

“telecommunication system” and “telecommunications service” have the meanings given by section 2(1);

“the Tribunal” means the tribunal established under section 65;

“wireless telegraphy” has the same meaning as in the Wireless Telegraphy Act 1949 and, in relation to wireless telegraphy, “interfere” has the same meaning as in that Act;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

(2) In this Act—

- (a) references to crime are references to conduct which constitutes one or more criminal offences or is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom would constitute one or more criminal offences; and
- (b) references to serious crime are references to crime that satisfies the test in subsection (3)(a) or (b).

(3) Those tests are—

- (a) that the offence or one of the offences that is or would be constituted by the conduct is an offence for which a person who has attained the age of twenty-one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more;
- (b) that the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.

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- (4) In this Act “criminal proceedings” includes—
- (a) proceedings in the United Kingdom or elsewhere before—
    - (i) a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957; or
    - (ii) a disciplinary court constituted under section 50 of the Act of 1957;
  - (b) proceedings before the Courts-Martial Appeal Court; and
  - (c) proceedings before a Standing Civilian Court;
- and references in this Act to criminal prosecutions shall be construed accordingly.
- (5) For the purposes of this Act detecting crime shall be taken to include—
- (a) establishing by whom, for what purpose, by what means and generally in what circumstances any crime was committed; and
  - (b) the apprehension of the person by whom any crime was committed;
- and any reference in this Act to preventing or detecting serious crime shall be construed accordingly, except that, in Chapter I of Part I, it shall not include a reference to gathering evidence for use in any legal proceedings.
- (6) In this Act—
- (a) references to a person holding office under the Crown include references to any servant of the Crown and to any member of Her Majesty’s forces; and
  - (b) references to a member of a police force, in relation to the Royal Navy Regulating Branch, the Royal Military Police or the Royal Air Force Police, do not include references to any member of that Branch or Force who is not for the time being attached to or serving either with the Branch or Force of which he is a member or with another of those police forces.
- (7) If it appears to the Secretary of State that it is necessary to do so in consequence of any changes to the structure or grading of the home civil service or diplomatic service, he may by order make such amendments of the definition of “senior official” in subsection (1) as appear to him appropriate to preserve, so far as practicable, the effect of that definition.

## **82 Amendments, repeals and savings etc**

- (1) The enactments specified in Schedule 4 (amendments consequential on the provisions of this Act) shall have effect with the amendments set out in that Schedule.
- (2) The enactments mentioned in Schedule 5 are hereby repealed to the extent specified in the third column of that Schedule.
- (3) For the avoidance of doubt it is hereby declared that nothing in this Act (except paragraphs 1 and 2 of Schedule 4) affects any power conferred on the Post Office by or under any enactment to open, detain or delay any postal packet or to deliver any such packet to a person other than the person to whom it is addressed.
- (4) Where any warrant under the Interception of Communications Act 1985 is in force under that Act at the time when the repeal by this Act of section 2 of that Act comes into force, the conduct authorised by that warrant shall be deemed for the period which—
  - (a) begins with that time, and
  - (b) ends with the time when that warrant would (without being renewed) have ceased to have effect under that Act,

as if it were conduct authorised by an interception warrant issued in accordance with the requirements of Chapter I of Part I of this Act.

- (5) In relation to any such warrant, any certificate issued for the purposes of section 3(2) of the Interception of Communications Act 1985 shall have effect in relation to that period as if it were a certificate issued for the purposes of section 8(4) of this Act.
- (6) Sections 15 and 16 of this Act shall have effect as if references to interception warrants and to section 8(4) certificates included references, respectively, to warrants under section 2 of the Interception of Communications Act 1985 and to certificates under section 3(2) of that Act; and references in sections 15 and 16 of this Act to intercepted or certified material shall be construed accordingly.

### **83 Short title, commencement and extent**

- (1) This Act may be cited as the Regulation of Investigatory Powers Act 2000.
- (2) The provisions of this Act, other than this section, shall come into force on such day as the Secretary of State may by order appoint; and different days may be appointed under this subsection for different purposes.
- (3) This Act extends to Northern Ireland.