

These notes relate to the Regulation of Investigatory Powers (Scotland) Act 2000 (asp 11) which received Royal Assent on 28 September 2000

REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Supplementary provisions

Section 27: Power to extend or modify authorisation provisions

114. *Subsection (1)* enables the Scottish Ministers, by order, to change the types of activities which fall within the categories of intrusive and directed surveillance by providing that a type of directed surveillance will be treated as intrusive surveillance. Furthermore, they may, by order, provide that additional types of surveillance, which are not at present defined as directed or intrusive surveillance in section 1, will be covered by the Act and become capable of being authorised.
115. *Subsection (2)* provides that no order shall be made under this section unless a draft of it has been laid before and approved by resolution of the Scottish Parliament.

Section 28: Orders and regulations

116. **Section 28** makes provision with respect to making of orders and regulations under any provision of the Act.
117. *Subsection (2)* provides that any order or regulations which the Scottish Ministers have the power to make under any provision of the Act shall be exercisable by statutory instrument.
118. *Subsection (3)* specifies that orders or regulations shall be subject to negative resolution procedure before the Scottish Parliament except in the case of the powers to make orders under the sections specified.
119. *Subsection (4)* provides that there is power, when making orders or regulations, to make different provision for different cases and for incidental, supplemental, consequential and transitional provisions.

Section 29: Financial provision

120. **Section 29** provides for Scottish Ministers to pay the Secretary of State an amount which will be agreed between them to reimburse the Secretary of State for any expenditure or increased expenditure incurred by him as a result of this Act. This expenditure will be for the Tribunal.

Section 30: General saving for lawful conduct

121. **Section 30** ensures that nothing in this Act makes any actions unlawful unless that is explicitly stated. The availability of an authorisation or a warrant does not mean that it is unlawful not to seek or obtain one. In this respect, the Act must be read with

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section 6 of the Human Rights Act 1998, which makes it unlawful to act in a way which is incompatible with a Convention right.

Section 31: Interpretation

122. This section defines the terms used in the Act. Amongst other things, it defines “surveillance” and clarifies that this does not include references to:
- the use of a recording device by a covert human intelligence source to record any information obtained in the presence of the source (*subsection (3)(a)*);
 - activity involving interference with property or with wireless telegraphy which requires authorisation or warrant under Part III of the Police Act 1997.

Section 32: Short title and commencement

123. *Subsection (2)* provides that the provisions of this Act will come into force on such day or days as the Scottish Ministers, by order, appoint.